

## State Drug Testing Laws

*Reviewed and Revised August 2012*

**The Drug-Free Workplace Act of 1988** requires *some* federal contractors and *all* federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a federal agency. The Act does *not* apply to those that do not have, nor intend to apply for, contracts/grants from the federal government. The Act also does *not* apply to subcontractors or subgrantees. Employers not covered by the federal Drug Free Workplace Act of 1988 may be covered by the laws of their particular state(s). When there is both a federal and state law in existence, employers need to comply with the legislation that provides the greatest benefit to employees.

To check whether there is pending legislative issues or recently enacted legislative changes for your state(s) please [click here](#).

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If a state does not appear on the following chart it is due to our not finding any evidence a statute exists for that state. In some cases provisions only exist for public employers.

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State	Statute
<b>Alabama</b>	<p><b>480-5-6-.03 SUBSTANCE ABUSE TESTING.</b> (1) The specimen collected for substance abuse testing may be tissue, blood, urine, breath, or other product of the human body that is capable of revealing the presence of drugs or their metabolites or of alcohol. However, the collection of any specimen constitutes a search under the Fourth Amendment because it implicates significant privacy concerns. Therefore, to balance the degree of intrusion on the individual's privacy interest against the promotion of the employer's legitimate interests, the preferred specimen is: (a) Urine for drug testing, and (b) Breath for alcohol testing. (2) The methodology and procedures for alcohol testing shall conform to the Department of Transportation (DOT) 49 Code of Federal Regulation Part 40, Procedures For Transportation Workplace Drug Testing Programs, Subpart A - General and Subpart C - Alcohol Testing. Except for those employees who must comply with DOT standards, an employee shall be determined to be under the influence of alcohol if the employee's normal faculties are impaired due to the consumption of alcohol or the employee has an alcohol level of .08 or higher, except for safety sensitive functions the alcohol level may be .04 or higher.</p> <p><b>480-5-6-.04 MEDICAL REVIEW OFFICER.</b> (1) Qualifications and Responsibilities: (a) The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest. (b) The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. The MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history, or</p>

review of any other relevant biomedical factors. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with Code of Alabama, 1975 §§25-5-330 through 25-5-340. (2) Reporting and Review of Results: (a) Positive Result - An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of employer policies. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face. 1. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test results with him or her. 2. Following verification of a positive test result, the MRO shall, as provided in the employer's policy, refer the case to the employer's employee assistance or rehabilitation program, if applicable, to the management official empowered to recommend or take administrative action (or the official's designated agent), or both. 3. The MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a reanalysis of the original specimen, if the single sample method of collection was used, or request a test of the split specimen, if the split sample method of collection was used, if the test is verified as positive. Only the MRO may authorize such a reanalysis. If the reanalysis of the single sample or analysis of the split specimen fails to reconfirm the presence of the drug or drug metabolite, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation to the employer. 4. If an employee has not contacted the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed. (b) Negative Result - The duties of the MRO with respect to negative results are purely administrative. (3) Blind Performance Test Procedures: (a) Each employer or MRO shall use blind testing quality control procedures as provided in this rule. (b) Each employer or MRO shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter.

**480-4-3-.28 Disqualification For Testing Positive For Illegal Drugs.** (1) An employer will be considered to have met the burden of proving the drug policy satisfies the "otherwise reliable" requirement of Code of Ala. 1975, § 25-4-78(3)a.(i) if: (a) The drug policy is delivered to each employee in writing and warns the employee that a positive test result for any illegal drug as listed in the policy could result in dismissal, and the warning contains a statement that either, 1) testing positive; 2) refusal to submit or cooperate with a drug test; or 3) knowingly altering or adulterating the blood, urine or hair sample will result in possible dismissal; and (b) The drug policy provides for an independent confirmatory test from the same specimen at the request of and at the expense of the employee; and (c) The drug policy applies to all employees regardless of position or classification, and clearly states the basis on which testing will be conducted, i.e., pre-employment; random; post accident; by a qualified independent laboratory; and further, if additional testing is imposed on some but not all employees, the employer must show a rational basis for such additional testing; and either 1. It is voluntarily conducted and evaluated in accordance with U.S. Department of Transportation in 49 C.F.R. Part 40 and a copy of the report of the medical review officer is submitted to the Department of Industrial Relations Unemployment Compensation Division with each claim for unemployment compensation filed where separation from employment is alleged to be on account of a drug related separation subject to Section 25-4-78(3)a.(i); or 2. Provides for the review of laboratory findings by a qualified independent medical review officer, and the submittal of such medical review officer's report to the Unemployment Compensation Division for each claim for unemployment compensation filed where separation from employment is alleged to be on account of a drug related separation subject to Section 25-4-78(3)a.(i), which shall be prima facie evidence that the laboratory tests are reliable. (2) The term "Medical Review Officer" (MRO) as used in this rule is defined as a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive drug test results including evaluation of his or

her medical history and any other biomedical information. Such MRO must not be an employee of a drug testing laboratory unless there is clear separation of functions preventing any conflict of interest and the MRO has no responsibility for a laboratory drug testing or quality control operation. (3) The following criteria at a minimum must be reviewed by the MRO for the report of a positive test to satisfy the "otherwise reliable" provision of Alabama Code Section 25-4-78(3)a 1978: (a) Confidentiality of medical information and identify of donor. (b) Maintenance of temperature of specimen within acceptable range. Use of temperature monitored cup that shows consistency of the specimen with the donor's body temperature. (c) Specific gravity test of specimen. (d) Maintenance of documented chain of custody (COC) of specimen with certified copy of original COC form to be provided to MRO. (e) Retention by the laboratory of the original urine specimen and split specimen of the sample for one full year on all positive test. (f) The use of another individual's prescription drugs whether intentional or not is not a valid explanation for a positive test result. (g) The facility at which the specimen is collected is recommended to provide the following: 1. have an enclosure for private urination. 2. have a toilet containing colored water for completion of urination. 3. have running water or sink, and 4. a means outside the enclosure for hand washing. (h) Sealing of the specimen by the collection site person immediately in the presence of the donor. (i) Integrity of specimen maintained by immediately mailing or maintaining the specimen in secure storage in direct control of the collection site person until it is mailed. (4) Provisions of Sections (1)(a), (1)(b)1, and (1)(b)2 of this rule notwithstanding, no otherwise reliable drug policy established to cover existing employees shall be applicable to existing employees until a period of thirty calendar days has elapsed from the date the drug policy was made known to such existing employees in writing and acknowledgment in writing received from the employee. (5) A qualified laboratory for the purposes of this rule is a National Institute on Drug Abuse (NIDA) certified laboratory or if not so certified utilizes gas chromatography and mass spectrometry (GC/MS) testing technique. (6) Hair Testing (a) The drug policy provides each employee at his or her expense to obtain for any position test a followup reconfirming test by a certified laboratory designated by the Medical Review Officer that utilizes the same or equivalent testing methods and standards at the laboratory that performed the initial and confirming tests. (b) The drug policy applies to all similarly-situated applicants or employees regardless of position or classification; clearly states the basis on which drug hair testing will be conducted, i.e., pre-employment, random, monitoring under a rehabilitation agreement or "last change" agreement; by a certified laboratory; if additional testing is conducted on some but not all similarly-situated employees, the employer has rational basis for excluding some but not other similarly-situated employees; provides for review by a qualified independent medical review officer (i.e., a medical review officer not employed by the testing laboratory), and the submittal of such medical review officer's report to the Unemployment Compensation Division for each claim for unemployment compensation filed when separation from employment is alleged to be on account of a drug-related separation subject to § 25-4-78(3)a.(i), which shall be prima facie evidence that the laboratory tests are reliable.

**25-5-334. Notice of testing; written policy statement.** (a) One time only, prior to testing, all employees and job applicants for employment shall be given a notice of testing. In addition, all employees shall be given a written policy statement from the employer which contains all of the following: (1) A general statement of the employer's policy on employee substance abuse which shall identify: a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis used to determine when the testing will be required. b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result. (2) A statement advising an employee or job applicant of the existence of this article. (3) A general statement concerning confidentiality. (4) The consequences of refusing to submit to a drug test. (5) A statement advising an employee of the Employee Assistance Program, if the employer offers the program, or advising the employee of the employer's resource file of assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavioral problems. (6) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the employer within five working days after written notification of the positive test result. (7) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act, if applicable to the employer. (b) An employer not having a

substance abuse testing program in effect on July 1, 1996, shall ensure that at least 60 days elapse between a general onetime notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place prior to July 1, 1996, shall not be required to provide a 60-day notice period. (c) An employer shall include notice of substance abuse testing on vacancy announcements for those positions for which testing is required. A notice of the employer's substance abuse testing policy shall also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy shall be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations. All testing conducted by an employer shall be in conformity with the standards and procedures established in this article and all applicable rules adopted by the State Department of Industrial Relations pursuant to this article. Notwithstanding the foregoing, an employer shall not have a legal duty under this article to request an employee or job applicant to undergo testing.

**25-5-330. Legislative Intent.**— It is the intent of the Legislature to promote drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work related accidents resulting from substance abuse by employees.

**25-5-331. Definitions.**— As used in this article, the following words and terms shall have meanings as follows: (1) Alcohol. Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced. (2) Chain of custody. The methodology of tracking specified materials, specimens, or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all of the materials, specimens, or substances and providing for accountability at each stage in handling, testing, and storing materials, specimens, or substances and reporting test results. (3) Confirmation test or Confirmed test. A second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test shall be different in scientific principle from that of the initial test procedure. The confirmation method shall be capable of providing requisite specificity, sensitivity, and quantitative accuracy. (4) Drug. Amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualone, opiates, barbituates, benzodiazepines, propoxyphene, or a metabolite of any of the substances. (5) Employee. Any person who works for salary, wages, or other remuneration for an employer. (6) Employee assistance program. A program designed to assist in the identification and resolution of job performance problems associated with employees impaired by personal concerns. A minimum level of core services shall include consultation and training; professional, confidential, appropriate, and timely problem assessment services; short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up and monitoring; employee education; and quality assurance. (7) Employer. A person or entity that is subject to the Alabama Workers' Compensation Law, except that this article shall not apply to individual self-insurers or members of group self-insurance funds. (8) Initial test. A sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent procedure or shall use a more accurate scientifically accepted method approved by the National Institute on Drug Abuse as more accurate technology becomes available in a cost-effective form. (9) Job applicant. A person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a substance abuse test and may have begun work pending the results of the substance abuse test. (10) Nonprescription medication. A drug or medication authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries. (11) Prescription medication. A drug or medication lawfully prescribed by a physician for an individual and taken in accordance with the prescription. (12) Reasonable suspicion testing. Substance abuse testing based on a belief that an employee is using or has used drugs or alcohol in violation of the policy of the employer drawn from specific objective and articulate facts and reasonable inferences drawn from the facts in light of experience. Among other things, the facts and inferences may be based upon, but not limited to, the following: a. Observable phenomena while at work such as direct observation of substance abuse or of the physical symptoms or manifestations or being impaired due to substance abuse. b. Abnormal conduct or erratic behavior

while at work or a significant deterioration in work performance. c. A report of substance abuse provided by a reliable and credible source. d. Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer. e. Information that an employee has caused or contributed to an accident while at work. f. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the premises of the employer or while operating the employer's vehicle, machinery, or equipment. (13) Rehabilitation program. An established program capable of providing expert identification, assessment, and resolution of employee drug or alcohol abuse in a confidential and timely service. The service shall in all cases be provided by persons licensed or appropriately certified as health professionals to provide drug or alcohol rehabilitative services. (14) Specimen. Tissue, blood, breath, urine, or other product of the human body capable of revealing the presence of drugs or their metabolites or of alcohol. (15) Substance. Drugs or alcohol. (16) Substance abuse test or Test. Any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites or of alcohol.

**25-5-332. Insurance discounts.**—(a) If an employer implements a drug-free workplace program substantially in accordance with this article, the employer shall qualify for certification for a five percent premium discount under the employer's Workers' Compensation insurance policy. (b) For each policy of Workers' Compensation insurance issued or renewed in the state on and after July 1, 1996, there shall be granted by the insurer a five percent reduction in the premium for the policy if the insured has been certified by the Department of Industrial Relations, Workers' Compensation Division, as having a drug-free workplace program which complies with the requirements of this article and has notified its insurer in writing of the certification. (c)(1) The premium discount provided by this section shall be applied to an insured's policy of Workers' Compensation insurance pro rata as of the date the insured receives certification by the Department of Industrial Relations, Workers' Compensation Division, and shall continue for a period not to exceed four years. Notwithstanding the foregoing, an insurer shall not be required to credit the actual amount of the premium discount to the account of the insured until the final premium audit under the policy. Certification of an insured shall be required for each of the four years in which the premium discount is granted. Thereafter, any premium discount pursuant to this article shall be determined from the experience rating plan of the insured, or in the case of an insured not rated upon experience, as provided in subdivision (2). (2) With respect to an insured which is not rated upon experience, any premium discount given an insured pursuant to this article after the initial four-year period provided in subdivision (1) shall be determined by the State Insurance Commissioner based upon data received from the rating and statistical organization designated by the commissioner pursuant to this article. (d) The Workers' Compensation insurance policy of an insured shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount and to cancellation in accordance with the policy if it is determined by the Department of Industrial Relations, Workers' Compensation Division, that the insured misrepresented the compliance of its drug-free workplace program. (e) Each insurer shall make an annual report to the rating and statistical organization designated by the State Insurance Commissioner pursuant to this article illustrating the total dollar amount of drug-free workplace premium credit. Standard earned premium figures reported pursuant to this subsection on the aggregate calls for experience shall reflect the effects of the credits. The net standard premium shall then be the basis of any premium adjustment. The drug-free workplace credits shall be reported under a unique classification code or unit statistical reports submitted to the rating and statistical organization designated by the State Insurance Commissioner. (f) The State Insurance Commissioner may promulgate rules and regulations necessary for the implementation and enforcement of this article.

**25-5-333. Elements.**—(a) A drug-free workplace program shall contain all the following elements: (1) A written policy statement as provided in Section 25-5-334. (2) Substance abuse testing as provided in Section 25-5-335. (3) Resources of employee assistance providers maintained in accordance with Section 25-5-336. (4) Employee education as provided in Section 25-5-337(a). (5) Supervisor training in accordance with Section 25-5-337(b). (b) In addition to the requirements of subsection (a), a drug-free workplace program shall be implemented in compliance with the confidentiality standards

provided in Section 25-5-339.

**25-5-334. Notice of testing.**—(a) One time only, prior to testing, all employees and job applicants for employment shall be given a notice of testing. In addition, all employees shall be given a written policy statement from the employer which contains all of the following: (1) A general statement of the employer's policy on employee substance abuse which shall identify: a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis used to determine when the testing will be required. b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result. (2) A statement advising an employee or job applicant of the existence of this article. (3) A general statement concerning confidentiality. (4) The consequences of refusing to submit to a drug test. (5) A statement advising an employee of the Employee Assistance Program, if the employer offers the program, or advising the employee of the employer's resource file of assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavioral problems. (6) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the employer within five working days after written notification of the positive test result. (7) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act, if applicable to the employer. (b) An employer not having a substance abuse testing program in effect on July 1, 1996, shall ensure that at least 60 days elapse between a general one-time notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place prior to July 1, 1996, shall not be required to provide a 60-day notice period. (c) An employer shall include notice of substance abuse testing on vacancy announcements for those positions for which testing is required. A notice of the employer's substance abuse testing policy shall also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy shall be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations. All testing conducted by an employer shall be in conformity with the standards and procedures established in this article and all applicable rules adopted by the State Department of Industrial Relations pursuant to this article. Notwithstanding the foregoing, an employer shall not have a legal duty under this article to request an employee or job applicant to undergo testing.

**25-5-335. Tests generally.**—(a) An employer is required to conduct the following types of tests in order to qualify for the Workers' Compensation insurance premium discounts provided under this article. (1) An employer shall require job applicants to submit to a substance abuse test after extending an offer of employment. Limited testing of job applicants by an employer shall qualify under this article if the testing is conducted on the basis of reasonable classifications of job positions. (2) An employer shall require an employee to submit to reasonable suspicion testing. (3) An employer shall require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group. (4) If the employee, in the course of employment, enters an Employee Assistance Program or a rehabilitation program as the result of a positive test, the employer shall require the employee to submit to a substance abuse test as a follow-up to the program. Notwithstanding the foregoing, if an employee voluntarily entered the program, follow-up testing shall not be required. If follow-up testing is conducted, the frequency of the testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee. (5) If the employee has caused or contributed to an on-the-job injury which resulted in a loss of work time, the employer shall require the employee to submit to a substance abuse test. (b) Nothing in this article shall prohibit a private employer from conducting random testing or other lawful testing of employees. (c) All specimen collection and testing under this article shall be performed in accordance with the following procedures: (1) A specimen shall be collected with due regard to the privacy of the individual providing the specimen, and in a manner reasonably calculated to prevent substitution or contamination of the specimen. (2) Specimen collection shall be documented, and the documentation procedures shall include all of the following: a. Labeling of specimen containers so as to reasonably

preclude the likelihood of erroneous identification of test results. b. An opportunity for the employee or job applicant to record any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The providing of information shall not preclude the administration of the test, but shall be taken into account in interpreting any positive confirmed results. (3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner which reasonably precludes specimen contamination or adulteration. (4) Each initial and confirmation test conducted under this article, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory as described in subsection (d). (5) A specimen for a test may be taken or collected by any of the following persons: a. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment. b. A qualified person certified or employed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists, or the Alabama Department of Human Resources. (6) Within five working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform the employee or job applicant in writing of the positive test result, the consequences of the results, and the options available to the employee or job applicant. (7) The employer shall provide to the employee or job applicant, upon request, a copy of the test results. (8) An initial test having a positive result shall be verified by a confirmation test. (9) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested. (10) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees. (11) An employee or job applicant shall pay the cost of any additional tests not required by the employer. (12) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer as provided in this article and retained by the employer for at least one year. (d)(1) No laboratory may analyze initial or confirmation drug specimens unless: a. The laboratory is approved by the National Institute on Drug Abuse or the College of American Pathologists. b. The laboratory has written procedures to ensure the chain of custody. c. The laboratory follows proper quality control procedures including, but not limited to: 1. The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy. 2. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory. 3. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results. 4. Other necessary and proper actions taken to ensure reliable and accurate drug test results. (2) a. A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state all of the following: 1. The name and address of the laboratory which performed the test and the positive identification of the person tested. 2. Positive results on confirmation tests only, or negative results, as applicable. 3. A list of the drugs for which the drug analyses were conducted. 4. The type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests. b. No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this article. (3) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant. (e) If an initial drug test is negative, the employer may seek a confirmation test. Only those laboratories described in subsection (d) shall conduct confirmation drug tests. (f) All positive initial tests shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse as the technology becomes available in a cost-effective form.

**25-5-336.Employee assistance.**—(a) If an employer has an Employee Assistance Program, the employer shall inform the employee of the benefits and services of the Employee Assistance Program. In addition, the employer shall provide the employee with notice of the policies and procedures

regarding access to and utilization of the program. (b) If an employer does not have an Employee Assistance Program, the employer shall maintain a resource file of providers of other employee assistance including drug and alcohol abuse programs, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems and shall notify the employee of the availability of the resource file. In addition, the employer shall post in a conspicuous place a listing of providers or employee assistance in the area.

**25-5-337. Education programs.**—(a) An employer shall provide all employees with a semiannual education program on substance abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one hour should include, but is not limited to, the following information: (1) The explanation of the disease model of addiction for alcohol and drugs. (2) The effects and dangers of the commonly abused substances in the workplace. (3) The policies of the company and procedures regarding substance abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so. (b) In addition to the education program provided in subsection (a), an employer shall provide all supervisory personnel with a minimum of two hours of supervisor training, which includes, but is not limited to, the following information: (1) How to recognize signs of employee substance abuse. (2) How to document and collaborate signs of employee substance abuse. (3) How to refer substance abusing employees to the proper treatment providers.

Sec. 25-5-338. Construction.—(a) No physician-patient relationship is created between an employee or job applicant and an employer, medical review officer, or any person performing or evaluating a drug test solely by the establishment, implementation, or administration of a drug-testing program. (b) Nothing in this article shall be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug related offenses, and taking action based upon a violation of any of those rules. (c) Nothing in this article shall be construed to operate retroactively, and nothing in this article shall abrogate the right of an employer under state or federal law to conduct drug tests, or implement employee drug-testing programs. Notwithstanding the foregoing, only those programs that meet the criteria outlined in this article qualify for reduced Workers' Compensation insurance premiums under this article. (d) Nothing in this article shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy materials in the workplace or in the performance of job responsibilities. The screening or tests shall be limited to the specific materials expressly identified in the statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. (e) No cause of action shall arise in favor of any person based upon the failure of an employer to establish or conduct a program or policy for substance abuse testing.

**25-5-339. Confidentiality.**—(a) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding, except as provided in subsection (c). (b) Employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless the release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form shall contain at a minimum all of the following: (1) The name of the person who is authorized to obtain the information. (2) The purpose of the disclosure. (3) The precise information to be disclosed. (4) The duration of the consent. (5) The signature of the person authorizing release of the information. (c) Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this subsection shall be inadmissible as evidence in the criminal proceeding. (d) Nothing contained in this article shall be construed to prohibit the employer or laboratory conducting a test from having access



to employee test information when consulting with legal counsel when the information is relevant to its defense in a civil or administrative matter.

**25-5-340.Certification; rules and regulations; fees.**—The Department of Industrial Relations, Workers' Compensation Division, shall promulgate by rule or regulation procedures and forms for the certification of employers who establish and maintain a drug-free workplace which complies with this article. The department may charge a fee for the certification of a drug-free workplace program in an amount which shall approximate the administrative costs to the department of the certification. The certification fees shall be deposited in a revolving account to fund the administrative costs of certification and are hereby appropriated solely for that purpose. Certification of an employer shall be required for each year in which a premium discount is granted.

**25-4-78.**—An individual shall be disqualified for total or partial unemployment: (3) DISCHARGE FOR MISCONDUCT. a. If he was discharged or removed from his work for a dishonest or criminal act committed in connection with his work or for sabotage or an act endangering the safety of others or for the use of illegal drugs after previous warning or for the refusal to submit to or cooperate with a blood or urine test after previous warning. Disqualification under this paragraph may be applied to separations prior to separation from the most recent bona fide work only if the employer has filed a notice with the director alleging that the separation was under conditions described in this paragraph in such manner and within such time as the director may prescribe. (i) A confirmed positive drug test that is conducted and evaluated according to standards set forth for the conduct and evaluation of such tests by the U.S. Department of Transportation in 49 C.F.R. Part 40 or standards shown by the employer to be otherwise reliable shall be a conclusive presumption of impairment by illegal drugs. No unemployment compensation benefits shall be allowed to an employee having a confirmed positive drug test if the employee had been warned that such a positive test could result in dismissal pursuant to a reasonable drug policy. A drug policy shall be deemed reasonable if the employer shows that all employees of the employer regardless of position or classification, are subject to testing under the policy, and in those instances in which the employer offers as the basis for disqualification from unemployment compensation benefits the results obtained pursuant to additional testing imposed on some but not all classifications, if the employer can also offer some rational basis for conducting such additional testing. Further, no unemployment compensation benefits shall be allowed if the employee refuses to submit to or cooperate with a blood or urine test as set forth above, or if the employee knowingly alters or adulterates the blood or urine specimen. (ii) For purposes of paragraph a. and item (i) of paragraph a. of this subdivision, "warning" shall mean that the employee has been advised in writing of the provisions of the employer's drug policy and that either testing positive pursuant to the standards referenced above or the refusal to submit to or cooperate with a blood or urine test as set out in the above referenced standards could result in termination of employment. This written notification as herein described shall constitute a "warning" as used in paragraph a. and item (i) of paragraph a. of this subdivision. (iii) To the extent that the issue is a positive drug test or the refusal to submit to or cooperate with a blood or urine test, or if the employee knowingly alters or adulterates the blood or urine sample, as distinguished from some other aspect of the employer's drug policy, this disqualification under paragraph a. and item (i) of paragraph a. shall be the only disqualification to apply, in connection with an individual's separation from employment. Other non-separation disqualifications may apply. When an individual is disqualified under this paragraph: 1. He shall not be entitled to benefits for the week in which the disqualifying event occurs or for any week thereafter until he has reentered insured employment or employment of the nature described in subdivisions (5), (6), (7), (8), (9), (10) or (18) of subsection (b) of Section 25-4-10, has earned wages equal at least to 10 times his weekly benefit amount and has been separated from such employment for a nondisqualifying reason. 2. He shall not thereafter be entitled to any benefits under this chapter on account of wages paid to him for the period of employment by the employer by whom he was employed when the disqualifying event occurred. 3. For the purposes of the experience rating provisions of Section 25-4-54: (i) No portion of any benefits based upon wages paid to the individual for the period of employment by the employer by whom he was employed when the disqualifying event occurred shall be charged to the employer's experience rating account. (ii) In the case of a separation prior to the separation from the most recent bona fide work, if the only reason

	<p>disqualification under this paragraph a. was not assessed was the failure of the employer to properly file a timely separation report with the director and the employer files such a report within 15 days after the mailing of a notice of payment, then no portion of any benefits paid based upon the wages paid for the period of employment ending in such prior separation shall be charged to the employer's experience rating account. b. If he was discharged from his most recent bona fide work for actual or threatened misconduct committed in connection with his work (other than acts mentioned in paragraph a. of this subdivision (3)) repeated after previous warning to the individual. When an individual is disqualified under this paragraph, or exempt from disqualification for a separation under such conditions prior to his most recent bona fide work, the effect shall be the same as provided in paragraph b. of subdivision (2) of this section for disqualification or exemption from disqualification respectively. c. If he was discharged from his most recent bona fide work for misconduct connected with his work: 1. He shall be disqualified from receipt of benefits for the week in which he was discharged and for not less than the three nor more than the seven next following weeks, as determined by the director in each case according to the seriousness of the conduct. 2. The total amount of benefits to which he may otherwise be entitled as determined in accordance with Sections 25-4-74 and 25-4-75 shall be reduced by an amount equal to the product of the number of weeks for which he shall be disqualified multiplied by his weekly benefit amount. 3. Only one-half of the benefits paid to him based upon wages for that period of employment immediately preceding the separation to which the disqualification applies shall be charged to the employer for the purposes of the experience rating provisions of Section 25-4-54. If the individual has been separated from employment, other than his most recent bona fide work, under conditions which would have been disqualifying under paragraph c. of this subdivision (3), had the separation been from his most recent bona fide work and the employer answers a notice of payment within 15 days after it is mailed to him detailing the facts in connection with the separation, then only one-half of the benefits paid to him for that period of employment immediately preceding the separation shall be charged to the employer for the purposes of the experience rating provisions of Section 25-4-54. d. If he has been suspended as a disciplinary measure connected with his work, or for misconduct connected with his work, he shall be disqualified from benefits for the week or weeks (not to exceed four weeks) in which, or for which, he is so suspended and the total amount of benefits to which he may otherwise be entitled shall be reduced in the same manner and to the same extent as provided in subparagraph 2 of paragraph c. of this subdivision (3).</p>
<p><b>Alaska</b></p>	<p><b>23.10.620. DRUG AND ALCOHOL TESTING BY EMPLOYERS. Employer policy.</b> (a) Under AS 23.10.600 — 23.10.699, an employer may only carry out the testing or retesting for the presence or evidence of use of drugs or alcohol after adopting a written policy for the testing and retesting and informing employees of the policy. The employer may inform employees by distributing a copy of the policy to each employee subject to testing or making the policy available to employees in the same manner as the employer informs its employees of other personnel practices, including inclusion in a personnel handbook or manual or posting in a place accessible to employees. The employer shall inform prospective employees that they must undergo drug testing. (b) The written policy on drug and alcohol testing must include, at a minimum, (1) a statement of the employer's policy respecting drug and alcohol use by employees; (2) a description of those employees or prospective employees who are subject to testing; (3) the circumstances under which testing may be required; (4) the substances as to which testing may be required; (5) a description of the testing methods and collection procedures to be used, including an employee's right to a confirmatory drug test to be reviewed by a licensed physician or doctor of osteopathy after an initial positive drug test result in accordance with AS 23.10.640(d); (6) the consequences of a refusal to participate in the testing; (7) any adverse personnel action that may be taken based on the testing procedure or results; (8) the right of an employee, on the employee's request, to obtain the written test results and the obligation of the employer to provide written test results to the employee within five working days after a written request to do so, so long as the written request is made within six months after the date of the test; (9) the right of an employee, on the employee's request, to explain in a confidential setting, a positive test result; if the employee requests in writing an opportunity to explain the positive test result within 10 working days after the employee is notified of the test result, the employer must provide an opportunity, in a confidential setting, within 72 hours after receiving the employee's written notice, or before taking adverse employment action; (10) a statement of the employer's policy regarding the confidentiality of the test results. (c) An employer may require the collection and testing of a sample of an employee's or prospective</p>

employee's urine or breath for any job-related purpose consistent with business necessity and the terms of the employer's policy, including (1) investigation of possible individual employee impairment; (2) investigation of accidents in the workplace; an employee may be required to undergo drug testing or alcohol impairment testing for an accident if the test is taken as soon as practicable after an accident and the test is administered to employees who the employer reasonably believes may have contributed to the accident; (3) maintenance of safety for employees, customers, clients, or the public at large; (4) maintenance of productivity, the quality of products or services, or security of property or information; (5) reasonable suspicion that an employee may be affected by the use of drugs or alcohol and that the use may adversely affect the job performance or the work environment. (d) In addition to tests required under (c) of this section, an employer may require employees or groups of employees to undergo drug testing on a random or chance basis. (e) If an employer institutes a policy of drug testing or alcohol impairment testing under AS 23.10.600 — 23.10.699, the policy must identify which employees or positions are subject to testing. An employer must test all or part of the work force based on consideration of safety for employees, customers, clients, or the public at large. An employer may not initiate a testing program under AS 23.10.600 — 23.10.699 until at least 30 days after the employer notifies employees of the employer's intent to implement the program and makes written copies of the policy available as required by (a) of this section. (f) The provisions of AS 23.10.600 — 23.10.699 may not be construed to discourage, restrict, limit, prohibit, or require on-site drug testing or alcohol impairment testing.

**23.10.630. Collection of samples.** (a) An employer may test an employee for the presence of drugs or for alcohol impairment. An employer may test a prospective employee for the presence of drugs. (b) In order to test reliably, an employer may require an employee or prospective employee to provide a sample of the individual's urine or breath and to present reliable individual identification to the person collecting the sample. Collection of the sample must conform to the requirements of AS 23.10.600 — 23.10.699. The employer may designate the type of sample to be used for testing. (c) An employer shall normally schedule a drug test or an alcohol impairment test of employees during, or immediately before or after, a regular work period. Alcohol impairment or drug testing required by an employer is considered to be work time for the purposes of compensation and benefits for current employees. Sample collection shall be performed in a manner that guarantees the individual's privacy to the maximum extent consistent with ensuring that the sample is not contaminated, adulterated, or misidentified. (d) An employer shall pay the entire actual costs for drug testing and alcohol impairment testing required of employees and prospective employees. An employer shall also pay reasonable transportation costs to an employee if the required test is conducted at a location other than the employee's normal work site.

**23.10.645. On-site testing.** (a) An employer may include on-site drug and alcohol tests of employees and prospective employees as part of the employer's drug and alcohol testing policy under AS 23.10.600 — 23.10.699. In on-site testing under this section, an employer may only use products approved by the Food and Drug Administration for employee testing and shall use the products in accordance with the manufacturer's instructions. On-site testing under this section may only be conducted by a test administrator who is certified under AS 23.10.650(b). (b) In on-site testing under this section, the specimen to be tested must be kept in sight of the employee or applicant who is the subject of the test. The test administrator shall (1) conduct the test in a manner that allows the subject of the test to observe the testing procedure and the results; in the case of a sight-impaired employee, the employee may request the presence of an observer; however, the test administrator is not required to delay collection of the sample or administration of the test because of the sight-impaired employee's request; (2) complete the sample documentation required under AS 23.10.640(a); (3) prepare a written record of the results of the on-site test. (c) An employer may not take permanent employment action against an employee based on an unconfirmed, screen, positive on-site test result. If an employer takes temporary adverse employment action based on an on-site test result, the employer shall restore the employee's wages and benefits if the confirmatory test result is negative or if the employee demonstrates that the positive test result was caused by drugs taken in accordance with a valid prescription of the employee or by lawful nonprescription drugs.

**23.10.600. Employer protection from litigation.** (a) If an employer has established a drug and

alcohol testing policy and initiated a testing program under AS 23.10.600 — 23.10.699, a person may not bring an action for damages against the employer for (1) actions in good faith based on the results of a positive drug test or alcohol impairment test; (2) failure to test for drugs or alcohol impairment or failure to test for a specific drug or another controlled substance; (3) failure to test or, if tested, failure to detect a specific drug or other substance, a medical condition, or a mental, emotional, or psychological disorder or condition; or (4) termination or suspension of a drug or alcohol prevention or testing program or policy. (b) A person may not bring an action for damages based on test results against an employer who has established and implemented a drug and alcohol testing program under AS 23.10.600 — 23.10.699 unless the employer's action was based on a false positive test result and the employer knew or clearly should have known that the result was in error and ignored the true test result because of reckless or malicious disregard for the truth or the willful intent to deceive or be deceived. (c) In a claim, including a claim under AS 23.10.600 — 23.10.699, if it is alleged that an employer's action was based on a false positive test result, (1) there is a rebuttable presumption that the test result was valid if the employer complied with the provisions of AS 23.10.600 — 23.10.699; and (2) the employer is not liable for monetary damages if the employer's reliance on a false positive test result was reasonable and in good faith. (d) A person may not bring an action for damages against an employer for an action taken related to a false negative drug test or alcohol impairment test. (e) A person may not bring an action against an employer based on failure of the employer to establish a program or policy on substance abuse prevention or to implement drug testing or alcohol impairment testing.

**23.10.640. Testing procedures.** (a) Sample collection and testing for alcohol impairment and drugs under AS 23.10.600 — 23.10.699 shall be performed under reasonable and sanitary conditions. The person collecting samples shall document the sample, including labeling the sample to preclude to the extent reasonable the possibility of misidentification of the person tested in relation to the test result provided, and shall provide the person to be tested with an opportunity to provide medical information that may be relevant to the test, including identifying current or recently used prescription and nonprescription drugs. (b) Sample collection, storage, and transportation to the place of testing shall be performed in a manner reasonably designed to preclude the possibility of sample contamination, adulteration, or misidentification. (c) Sample testing must comply with scientifically accepted analytical methods and procedures. Except for on-site testing under AS 23.10.645, drug testing shall be conducted at a laboratory approved or certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists, American Association of Clinical Chemists. (d) Drug testing, including on-site drug testing, must include confirmation of a positive drug test result. The confirmation must be by use of a different analytical process than was used in the initial drug screen. The second or confirmatory drug test shall be a gas chromatography mass spectrometry. An employer may not rely on a positive drug test unless the confirmatory drug test results have been reviewed by a licensed physician or doctor of osteopathy. The physician or osteopath shall 1) contact the employee within 48 hours and offer an opportunity to discuss the confirming test result; (2) interpret and evaluate the positive drug test results for legal use; And 3) report test results that have been caused by prescription medication as negative. (e) A drug test conducted under this section or in an on-site test under AS 23.10.645 for a drug for which the United States Department of Health and Human Services has established a cutoff level shall be considered to have yielded a positive result if the test establishes the presence of the drug at levels equal to or greater than that cutoff level. For a drug for which the United States Department of Health and Human Services has not established a cutoff level, the employer shall, in the written policy under AS 23.10.620, inform employees of the cutoff level that the employer will use to establish the presence of the drug.

**23.10.650. Training of test administrators.** (a) Each employer shall ensure that at least one designated employee receives at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on the use of controlled substances. The training will be used by the designee to determine whether reasonable suspicion exists to require an employee to undergo testing under AS 23.10.630. (b) If an employer administers on-site drug or alcohol tests to test employees or prospective employees under AS 23.10.645, the employer shall ensure that each person who will be administering the on-site test receives training and meets the qualifications of this subsection. An on-site test administrator must (1) have been trained by the manufacturer of the test or the manufacturer's

	<p>representative on the proper procedure for administering the test and accurate evaluation of on-site test results; training must be conducted in person by a trainer from the manufacturer or the manufacturer's representative; (2) be certified in writing by the manufacturer or the manufacturer's representative as competent to administer and evaluate the on-site test; (3) have been trained to recognize adulteration of a sample to be used in on-site testing; and (4) sign a statement that clearly states that the on-site test administrator will hold all information related to any phase of a drug test confidential.</p> <p><b>23.10.655. Disciplinary procedures.</b> (a) An employer may take adverse employment action based on (1) a positive drug test or alcohol impairment test result that indicates a violation of the employer's written policy; (2) the refusal of an employee or prospective employee to provide a drug testing sample; or (3) the refusal of an employee to provide an alcohol impairment testing sample. (b) Adverse employment action under (a) of this section may include (1) a requirement that the employee enroll in an employer provided or employer approved rehabilitation, treatment, or counseling program; the program may include additional drug testing and alcohol impairment testing; the employer may require participation in the program as a condition of employment; costs of participating in the program may or may not be covered by the employer's health plan or policies; (2) suspension of the employee, with or without pay, for a designated period of time; (3) termination of employment; (4) in case of drug testing, refusal to hire a prospective employee; and (5) other adverse employment action.</p> <p><b>23.10.660. Confidentiality of results; access to records.</b> A communication received by an employer relevant to drug test or alcohol impairment test results and received through the employer's testing program is a confidential and privileged communication and may not be disclosed except (1) to the tested employee or prospective employee or another person designated in writing by the employee or prospective employee; (2) to individuals designated by an employer to receive and evaluate test results or hear the explanation of the employee or prospective employee; or (3) as ordered by a court or governmental agency.</p> <p><b>23.10.670. Effect of mandatory testing obligations.</b> An employer who is obligated by state or federal requirements to have a drug testing or alcohol impairment testing policy or program shall receive the full benefits of AS 23.10.600 — 23.10.699 even if the required policy or program is not consistent with AS 23.10.600 — 23.10.699, so long as the employer complies with the state or federal requirements applicable to the employer's operations.</p> <p><b>14.09.025. Drug testing for school bus drivers.</b> (a) A school district or regional educational attendance area that provides for the transportation of pupils shall require that the drivers of motor vehicles used to transport pupils submit to testing for the use of drugs and alcohol. The testing program must include random testing. A driver who tests positive for the improper use of drugs or alcohol may be disciplined, including termination from employment. (b) For a driver who is not required to have a commercial driver's license, an employer (1) shall keep and maintain records of the testing for improper use of drugs or alcohol on a confidential basis and may only release the results with the written consent of the employee; and (2) may not retain false positive test results in the employee's employment records and may not release information about a false positive test without the written consent of the employee. (c) The department shall adopt regulations to implement this section. The regulations must include a provision for a hearing before discipline is imposed. (d) In this section, "improper use of drugs or alcohol" means use that constitutes a criminal offense and use that violates regulations adopted by the department under this section.</p>
<p><b>Arizona</b></p>	<p><b>23-493.01. Collection of samples A.</b> In order to test reliably for the presence of drugs, an employer may require samples from its employees and prospective employees and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of the sample shall conform to the requirements of this article. The employer may designate the type of sample to be used for this testing. <b>B.</b> In order to test reliably for alcohol impairment, an employer may require samples from its employees and identification from the person being tested to the person collecting the samples. Collection of the sample shall conform to the requirements of this article. The employer may designate the type of sample to be used for this testing.</p>

**23-493.02. Scheduling of tests --** Regarding the timing and cost of drug tests and alcohol impairment tests, and in order for an employer to qualify for the benefits of this article: 1. Any drug testing or alcohol impairment testing by an employer of employees normally shall occur during, or immediately before or after, a regular work period. The testing by an employer shall be deemed work time for the purposes of compensation and benefits for current employees. 2. An employer shall pay all actual costs for drug testing and alcohol impairment testing required of employees by the employer. An employer may, at its discretion, pay the costs for drug testing of prospective employees. 3. An employer shall pay reasonable transportation costs to current employees if their required tests are conducted at a location other than the employee's normal work site.

**23-493.03. Testing procedures --** All sample collection and testing for drugs and alcohol impairment under this article shall be performed according to the following conditions: 1. The collection of samples shall be performed under reasonable and sanitary conditions. 2. Sample collections shall be documented and these documentation procedures shall include both of the following: (a) Labeling of samples in order to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided. (b) An opportunity for the person to be tested to provide notification of any information that may be considered relevant to the test, including identification of currently or recently used prescription or nonprescription drugs or other relevant medical information. 3. Sample collection, storage and transportation to the place of testing shall be performed in a manner reasonably designed to preclude the possibility of sample contamination, adulteration or misidentification. 4. Sample testing shall comply with scientifically accepted analytical methods and procedures. Drug testing shall be conducted at a laboratory approved or certified by the United States department of health and human services, the college of American pathologists or the department of health services. 5. Drug testing shall include confirmation of any positive drug test results for employees. Confirmation of positive drug test results for employees shall be by use of a different chemical process than was used in the initial drug screen. The second or confirmatory drug test shall be a chromatographic technique such as gas chromatography-mass spectrometry or another comparably reliable analytical method.

**23-493.04. Testing policy requirements --** A. Testing or retesting for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy that has been distributed to every employee subject to testing or that has been made available to employees in the same manner as the employer informs its employees of other personnel practices, including inclusion in a personnel handbook or manual or posting in a place accessible to employees. The employer shall inform prospective employees that they must undergo drug testing. The written policy shall include at least the following: 1. A statement of the employer's policy respecting drug and alcohol use by employees. 2. A description of those employees or prospective employees who are subject to testing. 3. The circumstances under which testing may be required. 4. The substances as to which testing may be required. 5. A description of the testing methods and collection procedures to be used. 6. The consequences of a refusal to participate in the testing. 7. Any adverse personnel action that may be taken based on the testing procedure or results. 8. The right of an employee, on request, to obtain the written test results. 9. The right of an employee, on request, to explain in a confidential setting, a positive test result. 10. A statement of the employer's policy regarding the confidentiality of the test results. B. Within the terms of the written policy, an employer may require the collection and testing of samples for any job-related purposes consistent with business necessity including: 1. Investigation of possible individual employee impairment. 2. Investigation of accidents in the workplace. Employees may be required to undergo drug testing or alcohol impairment testing for accidents if the test is taken as soon as practicable after an accident and the test is administered to employees who the employer reasonably believes may have contributed to the accident. 3. Maintenance of safety for employees, customers, clients or the public at large. 4. Maintenance of productivity, quality of products or services or security of property or information. 5. Reasonable suspicion that an employee may be affected by the use of drugs or alcohol and that the use may adversely affect the job performance or the work environment. C. In addition to the provisions of subsection B, employees or groups of employees may be required to undergo drug testing on a random or chance basis. D. If an employer institutes a policy of drug testing or alcohol impairment testing under this article, all compensated employees including officers, directors and supervisors shall be uniformly included in the testing policy. E. Nothing in this article shall be construed to encourage, discourage, restrict, limit,

prohibit or require on-site drug testing or alcohol impairment testing.

**23-493.05. Disciplinary procedures** -- An employer may take adverse employment action based on a positive drug test or alcohol impairment test. On receipt of a positive drug test or alcohol impairment test result that indicates a violation of the employer's written policy, on the refusal of an employee or prospective employee to provide a drug testing sample or on the refusal of an employee to provide an alcohol impairment testing sample, an employer may use that test result or test refusal as a basis for disciplinary or rehabilitative actions that may include any of the following: 1. A requirement that the employee enroll in an employer provided or employer approved rehabilitation, treatment or counseling program, which may include additional drug testing and alcohol impairment testing, participation in which may be a condition of continued employment and the costs of which may or may not be covered by the employer's health plan or policies. 2. Suspension of the employee, with or without pay, for a designated period of time. 3. Termination of employment. 4. In the case of drug testing, refusal to hire a prospective employee. 5. Other adverse employment action.

**23-493.06. Employer protection from litigation** -- No cause of action is or may be established for any person against an employer who has established a policy and initiated a testing program in accordance with this article for any of the following: 1. Actions in good faith based on the results of a positive drug test or alcohol impairment test. 2. Failure to test for drugs or alcohol impairment or failure to test for a specific drug or any other controlled substance. 3. Failure to test or, if tested, failure to detect any specific drug or other substance, any medical condition or any mental, emotional or psychological disorder or condition. 4. Termination or suspension of any substance abuse prevention or testing program or policy.

**23-493.07. Causes of action based on test results** -- A. No cause of action is or may be established for any person against an employer who has established a program of drug testing or alcohol impairment testing in accordance with this article, unless the employer's action was based on a false positive test result and the employer knew or clearly should have known that the result was in error and ignored the true test result because of reckless or malicious disregard for the truth or the willful intent to deceive or be deceived. B. In any claim, including a claim under this article, if it is alleged that an employer's action was based on a false positive test result: 1. There is a rebuttable presumption that the test result was valid if the employer complied with the provisions of this article. 2. The employer is not liable for monetary damages if its reliance on a false positive test result was reasonable and in good faith. C. There is no employer liability for any action taken related to a false negative drug test or alcohol impairment test.

**23-493.08. Limits to causes of action** -- A. No cause of action for defamation of character, libel, slander or damage to reputation is or may be established for any person against an employer who has established a program of drug testing or alcohol impairment testing in accordance with this article unless all of the following apply: 1. The results of that test were disclosed to a person other than the employer, an authorized employee, agent or representative of the employer, the tested employee, the tested prospective employee or any other person authorized or privileged by law to receive the information. 2. The information disclosed was a false positive test result. 3. The false positive test result was disclosed negligently. 4. All elements of an action for defamation of character, libel, slander or damage to reputation as established by law are satisfied. B. No cause of action arises in favor of any person against an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement drug testing or alcohol impairment testing. C. Compliance with this article by employers is voluntary and no cause of action arises as a result of having a drug testing and alcohol impairment testing policy that is not in compliance with this article.

**23-493.09. Confidentiality of results; access to records** -- A. All communications received by an employer relevant to drug test or alcohol impairment test results and received through the employer's testing program are confidential communications and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer or employee under this article or except disclosure to: 1. The tested employee or prospective employee or any other person designated in writing by that employee or

	<p>prospective employee. 2. Individuals designated by the employer to receive and evaluate test results or hear the explanation of the employee or prospective employee. 3. An arbitrator or mediator, or a court or governmental agency as authorized by state or federal law. B. The tested employee has a right of access to the written test results that pertain to that individual, subject to the maintenance of confidentiality for other individuals. C. Except as otherwise permitted by law, no sample taken for testing pursuant to this article shall be tested for any substance or condition except unlawful drugs or alcohol as defined in this article.</p> <p><b>23-493.10. Construction; collective bargaining</b> -- Nothing in this article shall be construed to infringe on, contradict, preempt or otherwise conflict with the valid provisions of any collective bargaining agreement or to otherwise abridge or infringe on the rights and responsibilities of all parties in the collective bargaining process to negotiate collective bargaining agreements. These contract provisions are fully valid and enforceable, notwithstanding the provisions of this article. An employer who follows the provisions of a drug testing or alcohol impairment testing policy negotiated or bargained to impasse with the collective bargaining representative of its employees or consistent with the terms of a collective bargaining agreement, shall receive the full benefits of this article, even if that policy does not conform to all of the provisions of this article.</p> <p><b>23-493.11. Effect of mandatory testing obligations</b> -- An employer who is obligated by state or federal requirements to have a drug testing or alcohol impairment testing policy or program shall receive the full benefits of this article, even if that policy or program does not conform to all of the provisions of this article, provided the employer complies with the state or federal requirements applicable to the employer's operations.</p>
<p><b>Arkansas</b></p>	<p><b>11-14-101.</b>—(a) It is the intent of the General Assembly to promote drug-free workplaces in order that employers in this state may be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace and reach their desired levels of success without experiencing the costs, delays and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is further the intent of the General Assembly that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits. (b) If an employer implements a drug-free workplace program in accordance with this chapter which includes notice, education and procedural requirements for testing for drugs and alcohol pursuant to rules developed by the Workers' Health and Safety Division of the Workers' Compensation Commission, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol and, if a drug or alcohol is found to be present in the employee's system at a level prescribed by statute or by rule adopted pursuant to this chapter, the employee may be terminated and forfeits eligibility for workers' compensation medical and indemnity benefits. However, a drug-free workplace program must require the covered employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in the employee's body and, if an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for workers' compensation medical and indemnity benefits. In the event of termination, an employee shall be entitled to contest the test results before the Department of Labor.</p> <p><b>11-14-102.</b> As used in this chapter, unless the context otherwise requires: (1) "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing and storing specimens and reporting test results; (2) "Confirmation test," "confirmed test" or "confirmed drug or alcohol test" means a second analytical procedure used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy; (3) "Covered employer" means a person or entity that employs a person, is covered by the Workers' Compensation Law, §11-9-101 et seq., maintains a drug-free workplace pursuant to this chapter and includes on the posting required by §11-14-105 a specific statement that the policy is being implemented pursuant to the provisions of this chapter. This chapter shall have no effect on employers who do not meet this definition; (4) "Director" means the Director of the Workers' Health and Safety</p>



Division of the Workers' Compensation Commission; (5) "Division" means the Workers' Health and Safety Division of the Workers' Compensation Commission; (6) "Drug" means any controlled substance subject to testing pursuant to drug testing regulations adopted by the Department of Transportation. A covered employer shall test an individual for all such drugs in accordance with the provisions of this chapter. The director may add additional drugs by rule in accordance with §11-14-111; (7) "Drug or alcohol rehabilitation program" means a service provider that provides confidential, timely and expert identification, assessment and resolution of employee drug or alcohol abuse; (8) "Drug test" or "test" means any chemical, biological or physical instrumental analysis administered by a laboratory authorized to do so pursuant to this chapter, for the purpose of determining the presence or absence of a drug or its metabolites pursuant to regulations governing drug testing adopted by the Department of Transportation or such other recognized authority approved by rule by the director; (9) "Employee" means any person who works for salary, wages or other remuneration for a covered employer; (10) (A) "Employee assistance program" means an established program capable of: (i) Providing expert assessment of employee personal concerns; (ii) Confidential and timely identification services with regard to employee drug or alcohol abuse; (iii) Referrals of employees for appropriate diagnosis, treatment and assistance; and (iv) Follow-up services for employees who participate in the program or require monitoring after returning to work. (B) If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program; (11) "Employer" means a person or entity that employs a person and that is covered by the Workers' Compensation Law, §11-9-101 et seq.; (12) "Initial drug or alcohol test" means a procedure that qualifies as a screening test or initial test pursuant to regulations governing drug or alcohol testing adopted by the Department of Transportation or such other recognized authority approved by rule by the director; (13) "Job applicant" means a person who has applied for a position with a covered employer and who has been offered employment conditioned upon successfully passing a drug or alcohol test, and may have begun work pending the results of the drug or alcohol test; (14) "Drug Testing Review Officer" means a licensed physician, pharmacist, pharmacologist or similarly qualified individual, employed with or contracted with a covered employer: (A) Who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; (B) Who verifies positive, confirmed test results; and (C) Who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information; (15) "Reasonable-suspicion drug testing" means drug or alcohol testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon: (A) Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol; (B) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance; (C) A report of drug or alcohol use, provided by a reliable and credible source; (D) Evidence that an individual has tampered with a drug or alcohol test during employment with the current covered employer; (E) Information that an employee has caused, contributed to or been involved in an accident while at work; or (F) Evidence that an employee has used, possessed, sold, solicited or transferred drugs or used alcohol while working or while on the covered employer's premises or while operating the covered employer's vehicle, machinery or equipment; (16) "Safety-sensitive position" means a position involving a safety-sensitive function pursuant to regulations governing drug or alcohol testing adopted by the Department of Transportation. For drug-free workplaces, the director is authorized to promulgate rules expanding the scope of safety-sensitive position to cases where impairment may present a clear and present risk to coworkers or other persons. "Safety-sensitive position" means, with respect to any employer: (A) A position in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to: (i) Carry a firearm; (ii) Perform life-threatening procedures; (iii) Work with confidential information or documents pertaining to criminal investigations; or (iv) Work with controlled substances; or (B) A position in which a momentary lapse in attention could result in injury or death to another person; (17) "Specimen" means tissue, fluid or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites; (18) "Alcohol" has the same meaning in this chapter when used in the federal regulations describing the procedures used for testing of alcohol by programs operating pursuant to the authority of the

Department of Transportation, currently compiled at 49 C.F.R. part 40; and (19) "Alcohol test" means an analysis of breath, or blood, or any other analysis which determines the presence and level or absence of alcohol as authorized by the Department of Transportation in its rules and guidelines concerning alcohol testing and drug testing.

**11-14-103.** This chapter applies to a drug-free workplace program implemented pursuant to rules adopted by the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission. The application of the provisions of this chapter is subject to the provisions of any applicable collective bargaining agreement. Nothing in the program authorized by this chapter is intended to authorize any employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with federal constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.

**11-14-104.** (a) A covered employer may test a job applicant for alcohol or for any drug described in §11-14-102; provided, that for public employees such testing shall be limited to the extent permitted by the Arkansas and federal constitutions. A covered employer may test an employee for any drug and at any time set out in §11-14-106. An employee who is not in a safety-sensitive position may be tested for alcohol only when the test is based upon reasonable suspicion. An employee in a safety-sensitive position may be tested for alcohol use at any occasion described in §§11-14-102—11-14-105, inclusive. In order to qualify as having established a drug-free workplace program which affords a covered employer the ability to qualify for the discounts provided under §11-14-112, all drug or alcohol testing conducted by covered employers shall be in conformity with the standards and procedures established in this chapter and all applicable rules adopted pursuant to this chapter. If a covered employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the covered employers shall not be eligible for discounts under §11-14-112. All covered employers qualifying for and receiving discounts provided under §11-14-112 must be reported annually by the insurer to the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission. (b) The director shall adopt a form pursuant to rulemaking authority, which form shall be used by the employer to certify compliance with the provisions of this chapter. Substantial compliance in completing and filing the form with the director shall create a rebuttable presumption that the employer has established a drug-free workplace program and is entitled to the protection and benefit of this chapter. Prior to granting any premium credit to an employer pursuant to §11-14-112, all insurers shall obtain such form from the employer. (c) It is intended that any employer required to test its employees pursuant to the requirements of any federal statute or regulation shall be deemed to be in conformity with this section as to the employees it is required to test by those standards and procedures designated in that federal statute or regulation. All other employees of such employer shall be subject to testing as provided in this chapter in order for such employer to qualify as having a drug-free workplace program.

**11-14-105.**—(a) One (1) time only, prior to testing, a covered employer shall give all employees and job applicants for employment a written policy statement which contains: (1) A general statement of the covered employer's policy on employee drug or alcohol use, which must identify: (A) The types of drug or alcohol testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug or alcohol testing or drug or alcohol testing conducted on any other basis; and (B) The actions the covered employer may take against an employee or job applicant on the basis of a positive confirmed drug or alcohol test result; (2) A statement advising the employee or job applicant of the existence of this section; (3) A general statement concerning confidentiality; (4) Procedures for employees and job applicants to confidentially report to a drug testing officer the use of prescription or nonprescription medications to a drug testing review officer after being tested, but only if the testing process has revealed a positive result for the presence of alcohol or drug use; (5) The consequences of refusing to submit to a drug or alcohol test; (6) A representative sampling of names, addresses and telephone numbers of employee assistance programs and local drug or alcohol rehabilitation programs; (7) A statement that: (A) An employee or job applicant who receives a positive confirmed test result may contest or explain the result to the drug testing review officer within five (5) working days after receiving written notification of the test result; (B) If an employee's or job applicant's explanation or challenge is unsatisfactory to the drug testing review officer, the drug testing

review officer shall report a positive test result back to the covered employer; and (C) A person may contest the drug or alcohol test result pursuant to rules adopted by the Workers' Health and Safety Division of the Workers' Compensation Commission; (8) A statement informing the employee or job applicant of the employee's responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section; (9) A list of all drug classes for which the employer may test; (10) A statement regarding any applicable collective bargaining agreement or contract and any right to appeal to the applicable court; (11) A statement notifying employees and job applicants of their right to consult with a drug testing review officer for technical information regarding prescription or nonprescription medication; and (12) A statement complying with the requirements for notice under §11-14-101. (b) A covered employer shall ensure that at least sixty (60) days elapse between a general one-time notice to all employees that a drug-free workplace program is being implemented and the effective date of the program. (c) A covered employer shall include notice of drug and alcohol testing on vacancy announcements for positions for which drug or alcohol testing is required. A notice of the covered employer's drug and alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the covered employer during regular business hours in the covered employer's personnel office or other suitable locations. (d) Subject to any applicable provisions of a collective bargaining agreement or any applicable labor law, a covered employer may rescind its coverage under this chapter by posting a written and dated notice in an appropriate and conspicuous location on its premises. The notice shall state that the policy will no longer be conducted pursuant to this chapter. The employer shall also provide sixty (60) days' written notice to the employer's workers' compensation insurer of the rescission. As to employees and job applicants, the rescission shall become effective no earlier than sixty (60) days after the date of the posted notice. (e) The director shall develop a model notice and policy for drug-free workplace programs.

**11-14-10** (a) To the extent permitted by law, a covered employer who voluntarily establishes a drug-free workplace is required to conduct the following types of drug or alcohol tests: (1) Job Applicant Drug and Alcohol Testing. A covered employer must, after a conditional offer of employment, require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. An employer may, but is not required to, test job applicants, after a conditional offer of employment, for alcohol. Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with division rule; (2) Reasonable-Suspicion Drug and Alcohol Testing. A covered employer must require an employee to submit to reasonable-suspicion drug or alcohol testing. A written record shall be made of the observations leading to a controlled substances reasonable suspicion test within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier. A copy of this documentation shall be given to the employee upon request, and the original documentation shall be kept confidential by the covered employer pursuant to Section 9 and shall be retained by the covered employer for at least one (1) year; (3) Routine Fitness-For-Duty Drug Testing. (A) A covered employer shall require an employee to undergo drug or alcohol testing if, as a part of the employer's written policy, the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or is scheduled routinely for all members of an employment classification or group; provided, that a public employer may require scheduled, periodic testing only of employees who: (i) Are police or peace officers; (ii) Have drug interdiction responsibilities; (iii) Are authorized to carry firearms; (iv) Are engaged in activities which directly affect the safety of others; (v) Work in direct contact with inmates in the custody of the Department of Correction; or (vi) Work in direct contact with minors who have been adjudicated delinquent or who are in need of supervision in the custody of the Department of Human Services. (B) This subdivision does not require a drug or alcohol test if a covered employer's personnel policy on July 1, 2000, does not include drug or alcohol testing as part of a routine fitness-for-duty medical examination. The test shall be conducted in a nondiscriminatory manner. Routine fitness-for-duty drug or alcohol testing of employees does not apply to volunteer employee health screenings, employee wellness programs, programs mandated by governmental agencies, or medical surveillance procedures that involve limited examinations targeted to a particular body part or function. (4) Follow-Up Drug Testing. If the employee in the course of employment enters an employee assistance program for drug-related or

alcohol-related problems, or a drug or alcohol rehabilitation program, the covered employer must require the employee to submit to a drug and alcohol test, as appropriate, as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two-year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested; and (5) Post-Accident Testing. After an accident which results in an injury, the covered employer shall require the employee to submit to a drug or alcohol test in accordance with the provisions of this chapter. (b) This chapter does not preclude an employer from conducting any lawful testing of employees for drugs or alcohol that is in addition to the minimum testing required under this chapter.

**11-14-107.** (a) All specimen collection and testing for drugs and alcohol under this chapter shall be performed in accordance with the procedures provided for by the Department of Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40. (b) A covered employer may not discharge, discipline, refuse to hire, discriminate against or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a drug testing review officer. (c) A covered employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by regulations of the Department of Transportation or such other recognized authority approved by rule by the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission governing drug testing. (d) A covered employer shall pay the cost of all drug and alcohol tests, initial and confirmation, which the covered employer requires of employees. An employee or job applicant shall pay the costs of any additional drug or alcohol tests not required by the covered employer. (e) A covered employer shall not discharge, discipline or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the covered employer, for a drug-related or alcohol-related problem if the employee has not previously tested positive for drug or alcohol use, entered an employee assistance program for drug-related or alcohol-related problems or entered a drug or alcohol rehabilitation program. Unless otherwise provided by a collective bargaining agreement, a covered employer may select the employee assistance program or drug or alcohol rehabilitation program if the covered employer pays the cost of the employee's participation in the program. However, nothing in this chapter is intended to require any employer to permit or provide such a rehabilitation program. (f) If drug or alcohol testing is conducted based on reasonable suspicion, the covered employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the covered employer pursuant to §11-14-101, and shall be retained by the covered employer for at least one (1) year.

**11-14-108.**—(a) An employee or job applicant whose drug or alcohol test result is confirmed as positive in accordance with this section shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state or local handicap and disability discrimination laws. (b) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined or refused to hire for cause. Nothing in this chapter shall be construed to amend or affect the employment-at-will doctrine. (c) No physician-patient relationship is created between an employee or job applicant and a covered employer or any person performing or evaluating a drug or alcohol test, solely by the establishment, implementation or administration of a drug or alcohol testing program. This section in no way relieves the person performing the test from responsibility for acts of negligence in performing the tests. (d) Nothing in this section shall be construed to prevent a covered employer from establishing reasonable work rules related to employee possession, use, sale or solicitation of drugs or alcohol, including convictions for offenses relating to drugs or alcohol, and taking action based upon a violation of any of those rules. (e) This section does not operate retroactively, and does not abrogate the right of an employer under state law to lawfully conduct drug or alcohol tests, or implement lawful employee drug-testing programs. The provisions of this chapter shall not prohibit an employer from conducting any drug or alcohol testing of employees which is otherwise permitted by law. (f) If an employee or job applicant refuses to submit to a drug or alcohol

test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. However, this subsection does not abrogate the rights and remedies of the employee or job applicant as otherwise provided in this section. (g) This section does not prohibit an employer from conducting medical screening or other tests required, permitted or not disallowed by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with the rules adopted by the Workers' Health and Safety Division of the Workers' Compensation Commission and the Department of Health. If applicable, such drug or alcohol testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented. (h) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug or alcohol testing.

**11-14-109.** (a) All information, interviews, reports, statements, memoranda and drug or alcohol test results, written or otherwise, received by the covered employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceedings, except in accordance with this section or in determining compensability under this chapter or the Workers' Compensation Law, §11-9-101 et seq. (b) Covered employers, laboratories, drug testing review officers, employee assistance programs, drug or alcohol rehabilitation programs and their agents who receive or have access to information concerning drug or alcohol test results shall keep all information confidential. Release of such information under any other circumstance is authorized solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section, relevant to a legal claim asserted by the employee or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum: (1) The name of the person who is authorized to obtain the information; (2) The purpose of the disclosure; (3) The precise information to be disclosed; (4) The duration of the consent; and (5) The signature of the person authorizing release of the information. (c) Information on drug or alcohol test results for tests administered pursuant to this chapter shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding. (d) This section does not prohibit a covered employer, agent of such employer or laboratory conducting a drug or alcohol test from having access to employee drug or alcohol test information or using such information when consulting with legal counsel in connection with actions brought under or related to this section, or when the information is relevant to its defense in a civil or administrative matter. Neither is this section intended to prohibit disclosure among management as is reasonably necessary for making disciplinary decisions relating to violations of drug or alcohol standards of conduct adopted by an employer. (e) A person who discloses confidential medical records of an employee, except as provided in this chapter, shall be deemed guilty of a Class C misdemeanor.

**11-14-110.** (a) A laboratory may not analyze initial or confirmation test specimens unless: (1) The laboratory is licensed and approved by the Department of Health, using criteria established by the Department of Health and Human Services as guidelines for modeling the state drug free testing program pursuant to this section, or the laboratory is certified by the Department of Health and Human Services, the College of American Pathologists or such other recognized authority approved by rule by the director. The Department of Health may license and approve any new laboratory to analyze initial or confirmation test specimens under the provisions of this chapter and may charge a fee, not to exceed two thousand dollars (\$2,000), for the license and approval of the new laboratory; and (2) The laboratory complies with the procedures established by the Department of Transportation for a workplace drug test program or such other recognized authority approved by the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission. (3) The fees set forth in this section shall be cash funds of the Department of Health and shall be deposited as provided in §19-4-801 et seq. (b) Confirmation tests may only be conducted by a laboratory that meets the

requirements of subsection (a) and is certified by either the Substance Abuse and Mental Health Services Administration or the Forensic Urine Testing Programs of the College of American Pathologists.

**11-14-111.** (a) The Director of the Workers' Health and Safety Division of the Workers' Compensation Commission is authorized to adopt rules, using criteria established by the Department of Health and Human Services and the Department of Transportation as guidelines for modeling the state drug and alcohol testing program, concerning, but not limited to: (1) Standards for licensing drug and alcohol testing laboratories and suspension and revocation of such licenses; (2) Body specimens and minimum specimen amounts that are appropriate for drug or alcohol testing; (3) Methods of analysis and procedures to ensure reliable drug or alcohol testing results, including the use of breathalyzers and standards for initial tests and confirmation tests; (4) Minimum cut-off detection levels for alcohol, each drug or metabolites of such drug for the purposes of determining a positive test result; (5) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens tested; and (6) Retention, storage and transportation procedures to ensure reliable results on confirmation tests and retests. (b) The director is authorized to adopt relevant federal rules concerning drug and alcohol testing as a minimum standard for testing procedures and protections. All such rules shall be promulgated in accordance with the Arkansas Administrative Procedure Act, §25-15-201 et seq. (c) The director shall consider drug testing programs and laboratories operating as a part of the Forensic Urine Drug Testing Programs of the College of American Pathologist in issuing guidelines or promulgating rules relative to recognized authorities in drug testing. (d) The director is authorized to set education program requirements for drug-free workplaces by rules promulgated in accordance with the requirements of the Arkansas Administrative Procedure Act, §25-15-201 et seq. Such requirements shall not be more stringent than the federal requirements for workplaces regulated by Department of Transportation rules.

**27-23-201.** This subchapter is known and may be cited as the "Commercial Driver Alcohol and Drug Testing Act".

**27-23-202.** The definition under 49 C.F.R. Section 40.3, as in effect on January 1, 2007, applies to a term that is used in this subchapter if that term is defined under 49 C.F.R. Section 40.3, as in effect on January 1, 2007.

**27-23-203.** (a) This subchapter applies to: (1) An Arkansas employer who is required to comply with the drug and alcohol testing provisions under the Federal Motor Carrier Safety Regulations as in effect on January 1, 2007; (2) An employee who holds a commercial driver's license and who either: (A) Is employed by an Arkansas employer in a safety-sensitive transportation job for which drug and alcohol tests are required under the Federal Motor Carrier Safety Regulations, 49 C.F.R. Section 350-399, as in effect on January 1, 2007; or (B) Has submitted an application for employment with an Arkansas employer for a safety-sensitive transportation job for which drug and alcohol tests are required under the Federal Motor Carrier Safety Regulations, as in effect on January 1, 2007; and (3) A medical review officer who reviews laboratory test results generated by a drug test that an Arkansas employer is required to conduct under the Federal Motor Carrier Safety Regulations, as in effect on January 1, 2007. (b) This subchapter does not apply to an individual who is exempt from holding a commercial driver's license notwithstanding whether the individual holds a commercial driver's license.

**27-23-204.** An employer shall test an employee for alcohol and drugs if the provisions of this subchapter apply to both the employer and employee under Section 27-23-203(a)(1) and (2).

**27-23-205.** (a) An Arkansas employer shall report to the Office of Driver Services within three (3) business days the results of an alcohol screening test that is performed on an employee who holds a commercial driver's license if: (1) The alcohol screening test is performed pursuant to 49 C.F.R. Section 382.303 or Section 382.305 as in effect on January 1, 2007; and (2) One (1) of the following occur regarding the alcohol screening test: (A) A valid positive result; or (B) The refusal to provide a specimen for an alcohol screening test. (b) A medical review officer shall report within three (3) business days to the Office of Driver Services any of the following occurrences regarding a drug test

result of an employee who holds a commercial driver's license: (1) A valid positive result on a drug test for any of the following drugs: (A) Marijuana metabolites; (B) Cocaine metabolites; (C) Amphetamines; (D) Opiate metabolites; or (E) Phencyclidine (PCP); (2) The refusal to provide a specimen for a drug test; or (3) The submission of an adulterated specimen, a dilute positive specimen, or a substituted specimen on a drug test performed.

**27-23-206.** (a) The Office of Driver Services shall maintain the information provided under this section in a database to be known as the Commercial Driver Alcohol and Drug Testing Database for at least three (3) years. (b) Notwithstanding any other provision of law to the contrary, personally identifying information of employees in the Commercial Driver Alcohol and Drug Testing Database is confidential and shall be released by the office only as provided under Section 27-23-207. (c) The use of one (1) report generated from the Commercial Driver Alcohol and Drug Testing Database to establish noncompliance for the imposition of a penalty under Section 27-23-209 shall not subject the contents of the entire database to disclosure.

**27-23-207.** (a) An employer shall submit a request for information from the Commercial Driver Alcohol and Drug Testing Database for each employee who is subject to drug and alcohol testing under this subchapter. (b) The request for information shall be submitted to the Office of Driver Services by the employer with an authorization that is signed by the employee. (c)(1)(A) The fee for the request for information is a nominal fee not to exceed one dollar (\$1.00) per employee per request. (B) The Office of Driver Services shall determine the amount of the fee. (C) The Office of Driver Services shall set the fee prior to implementation by rule. (2) The fee shall be assessed to and paid by the employer requesting the information. (d) The employer shall maintain a record of the report from the Commercial Driver Alcohol and Drug Testing Database that results from the request for information submitted under this section for at least three (3) years.

**27-23-208** (a) An employee who holds a commercial driver's license may submit a request for information from the Commercial Driver Alcohol and Drug Testing Database for his or her report. (b) The request for information shall be submitted with a signed authorization to the Office of Driver Services by the employee who holds a commercial driver's license. (c)(1) The fee for the request for information is one dollar (\$1.00) per request. (2) The fee shall be submitted with the signed authorization.

**27-23-209** (a)(1) The penalty for an employer who knowingly fails to check the Commercial Driver Alcohol and Drug Testing Database as required under this subchapter is one thousand dollars (\$1,000). (2) The penalty described in subdivision (a)(1) of this section shall be assessed beginning July 1, 2008. (b)(1) Except as provided under subdivision (b)(2) of this section, the penalty for an employer who knowingly hires an employee with a record of a positive alcohol or drug test in the Commercial Driver Alcohol and Drug Testing Database is five thousand dollars (\$5,000). (2) This subsection (b) does not apply to an employee who has completed a treatment program or an education program prescribed by a substance abuse professional and who has been found eligible to return to duty by the employer as provided under 49 C.F.R. Sections 40.281—40.313, as in effect on January 1, 2007. (c) The penalty for an employer who knowingly fails to report an occurrence regarding an alcohol screening test as required under Section 27-23-205(a) is five hundred dollars (\$500). (d)(1) The penalty for a medical review officer who knowingly fails to report an occurrence regarding a drug test result as required under Section 27-23-205(b) is five hundred dollars (\$500). (2) If the medical review officer is out of state, the penalty under subdivision (c)(1) shall be extended to the employer that contracted with the medical review officer. (e) The penalties under this section shall not apply to the State of Arkansas, an agency of the state, or a political subdivision of the state. (f) Moneys collected under this section shall be special revenues and be deposited into the State Treasury to the credit of the State Highway and Transportation Department Fund.

**27-23-210.** (a) The Office of Driver Services of the Revenue Division of the Department of Finance and Administration shall pursue grants available through the United States Department of Transportation or other entity to assist with the cost of this program. (b) The Office of Driver Services of the Revenue Division of the Department of Finance and Administration may: (1) Adopt rules to

administer this subchapter; (2) Receive and expend any moneys arising from grants, contributions, or reimbursements from the United States Department of Transportation or other entity for performing its duties under this subchapter; and (3) Contract with a third party to administer the Commercial Driver Alcohol and Drug Testing Database.

**27-23-211.** The state or any entity required to perform duties under this subchapter shall be immune from civil liability for performing the duties required under this subchapter.

**23-16-502** As used in this subchapter: (1) "Contract carrier" means a passenger contract carrier that for compensation transports railroad employees with a vehicle designed or used to transport eight (8) persons or less, including the driver; and (2)(A) "On-duty time" means all time at a terminal, facility, or other property of a contract carrier or on any public property waiting to be dispatched. (B) "On-duty time" includes time spent inspecting, servicing or conditioning the vehicle, unless the driver has been relieved from duty by the contract carrier.

**23-16-505.** (a)(1) Before a driver performs any duties for a contract carrier, the driver shall undergo testing for alcohol and controlled substances as provided under 49 C.F.R. Part 40 and Part 382, as in effect on January 1, 2009. (2) A driver is qualified to drive for a contract carrier if: (A) The alcohol test result under subdivision (a)(1) of this section indicates an alcohol concentration of zero (0); and (B) The controlled substances test result from the medical review officer as defined under 49 C.F.R. Part 40.3, as in effect on January 1, 2009, indicates a verified negative test result. (3) A driver is disqualified from driving for a contract carrier if: (A) The alcohol test result and the controlled substances test result are not in compliance with subdivision (a)(2) of this section; (B) The driver refuses to provide a specimen for an alcohol test result or the controlled substances test result or both; or (C) The driver submits an adulterated specimen, a dilute positive specimen, or a substituted specimen on an alcohol test result or the controlled substances test result that is performed. (b)(1) As soon as practicable after an accident involving a motor vehicle owned or operated by a contract carrier, the contract carrier shall test each surviving driver for alcohol and controlled substances if: (A) The accident involved the loss of human life; or (B) The driver received a citation for a moving traffic violation arising from the accident and the accident involved: (i) Bodily injury to a person who immediately received medical treatment after the accident; or (ii) Disabling damage that required the motor vehicle to be towed from the accident scene to one (1) or more motor vehicles as a result of the accident. (2) If alcohol testing and controlled substances testing cannot be completed as soon as possible but no later than thirty-two (32) hours after the accident, the records shall be submitted to the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department. (c)(1) A common carrier or the employer of a driver of a common carrier shall maintain records of the alcohol testing and controlled substances testing of drivers for five (5) years. (2) The records shall be maintained in a secure location.

**23-16-510.** (a)(1) A person who knowingly violates a provision of this subchapter is liable to the state for a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. (2) Each day that a violation continues is a separate offense. (b) The Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall assess penalties for violations under this subchapter by written notice to the violator. (c) To determine the amount of the penalty, the department or its designee shall evaluate: (1) The nature, circumstances, extent, and gravity of the violation; (2) The degree of culpability, history of prior offenses, ability to pay, and effect on the ability to continue to do business of the person found to have committed a violation; and (3) Other circumstances as justice may require.

**11-3-203.** (a)(1) It is unlawful for any person, partnership, association, or corporation, either for himself or in a representative or fiduciary capacity, to require any employee or applicant for employment, as a condition of employment or continued employment, to submit to or take a physical, medical examination, or drug test unless the examination is provided at no cost to the employee or applicant for employment and unless a true and correct copy, either original or duplicate original, of the examiner's report of the examination is furnished free of charge to the applicant or employee upon a written request of the applicant or employee. (2) It shall further be unlawful for any person,



partnership, association, or corporation to require any employee or applicant for employment to pay, either directly or indirectly, any part of the cost of the examination, report, or copy of the report. (3) Notwithstanding subdivision (a)(1) of this section, if an employee tests positive for an illegal drug as defined by rule of the Department of Labor, the employer and employee may agree in writing who will bear the cost of future drug tests or screens required as a condition of continued employment. (b) Each and every violation of any provision of subsection (a) of this section shall constitute a misdemeanor, punishable by a fine in any amount not exceeding one hundred dollars (\$100). (c) The Director of the Department of Labor shall administer and enforce this section, including without limitation, by: (1) Adopting administrative rules; and (2) Demanding payment and seeking recovery in a court of competent jurisdiction for charges, fees, wage deductions, or other payments made by employees as a result of an employer's violation of this section. (d) This section does not change the definition of "medical examination" under any other state or federal statute.

**5-60-201.** (a)(1)(A) It is unlawful for a person to: (i) Sell, give away, distribute, or market urine in this state or transport urine into this state with the intent of using the urine to defraud or cause deceitful results in a drug or alcohol screening test; (ii) Attempt to foil or defeat a drug or alcohol screening test by the substitution or spiking of a urine sample or by advertising urine sample substitution or urine spiking devices or measures; (iii) Adulterate a urine or other bodily fluid sample with the intent to defraud or cause deceitful results in a drug or alcohol screening test; (iv) Possess adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding or causing deceitful results in a drug or alcohol screening test; or (v) Sell or market an adulterant with the intent by the seller or marketer that the product be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding or causing deceitful results in a drug or alcohol screening test. (B) "Adulterant" means a substance that is not expected to be in human urine or a substance expected to be present in human urine but that is at a concentration so high that it is not consistent with human urine, including, but not limited to: (i) Bleach; (ii) Chromium; (iii) Creatinine; (iv) Detergent; (v) Glutaraldehyde; (vi) Glutaraldehyde/squalene; (vii) Hydrochloric acid; (viii) Hydroiodic acid; (ix) Iodine; (x) Nitrite; (xi) Peroxidase; (xii) Potassium dichromate; (xiii) Potassium nitrite; (xiv) Pyridinium chlorochromate; and (xv) Sodium nitrite. (2) Any person who violates subdivision (a)(1)(A) of this section is guilty of a Class B misdemeanor. (b) Intent to defraud or cause deceitful results in a drug or alcohol screening test is presumed if: (1) A heating element or any other device used to thwart a drug screening test accompanies the sale, giving, distribution, or marketing of urine; or (2) Instructions that provide a method for thwarting a drug screening test accompany the sale, giving, distribution, or marketing of urine.

**5-60-201.** (a)(1)(A) It is unlawful for a person to: (i) Sell, give away, distribute, or market human or synthetic urine in this state or transport human or synthetic urine into this state with the intent of using the human or synthetic urine to defraud or cause deceitful results in a drug or alcohol screening test; (ii) Attempt to foil or defeat a drug or alcohol screening test by substituting synthetic urine or substituting or spiking a human urine sample or by advertising urine sample substitution or human urine spiking devices or measures; (iii) Adulterate a human urine sample or other human bodily fluid sample with the intent to defraud or cause deceitful results in a drug or alcohol screening test; (iv) Possess adulterants which are intended to be used to adulterate a human urine or other human bodily fluid sample for the purpose of defrauding or causing deceitful results in a drug or alcohol screening test; or (v) Sell or market an adulterant with the intent by the seller or marketer that the product be used to adulterate a human urine sample or other human bodily fluid sample for the purpose of defrauding or causing deceitful results in a drug or alcohol screening test. (B) As used in this section, "adulterant" means a substance that is not expected to be in human urine or another human bodily fluid or a substance expected to be present in human urine or another human bodily fluid but that is at a concentration so high that it is not consistent with human urine or another human bodily fluid, including without limitation: (i) Bleach; (ii) Chromium; (iii) Creatinine; (iv) Detergent; (v) Glutaraldehyde; (vi) Glutaraldehyde/squalene; (vii) Hydrochloric acid; (viii) Hydroiodic acid; (ix) Iodine; (x) Nitrite; (xi) Peroxidase; (xii) Potassium dichromate; (xiii) Potassium nitrite; (xiv) Pyridinium chlorochromate; and (xv) Sodium nitrite. (2) Upon conviction, a person who violates subdivision (a)(1)(A) of this section is guilty of a Class B misdemeanor. (b) Intent to defraud or cause deceitful results in a drug or alcohol screening test is presumed if: (1) A heating element or any other

	<p>device used to thwart a drug screening test accompanies the sale, giving, distribution, or marketing of human or synthetic urine; or (2) Instructions that provide a method for thwarting a drug screening test accompany the sale, giving, distribution, or marketing of human or synthetic urine.</p> <p><b>5-60-202.</b> Nothing in this subchapter or §§20-7-309 and 20-7-310 shall be construed to encourage, conflict, or otherwise interfere with the preemption of state and local laws under any federal laws or United States Department of Transportation regulations related to drug testing procedures and confidentiality.</p>
<p><b>California</b></p>	<p><b>8355. Drug-Free Workplace; Certification.</b>—Every person or organization awarded a contract or a grant for the procurement of any property or services from any state agency shall certify to the contracting or granting agency that it will provide a drug-free workplace by doing all of the following: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition. (b) Establishing a drug-free awareness program to inform employees about all of the following: (1) The dangers of drug abuse in the workplace. (2) The person's or organization's policy of maintaining a drug-free workplace. (3) Any available drug counseling, rehabilitation, and employee assistance programs. (4) The penalties that may be imposed upon employees for drug abuse violations. (c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.</p> <p><b>8356. False certification or violation of certification; Termination of grant/contract and/or suspension of payments; Cancellation list.</b> --(a) Each contract or grant awarded by a state agency may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of this article, if the contracting or granting agency determines that any of the following has occurred: (1) The contractor or grantee has made a false certification under Section 8355. (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355. (b) The Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with this chapter. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with this chapter. (c) Every state agency that directly awards grants without review by the Department of General Services shall immediately notify the department of any individual or organization that has an award canceled on the basis of violation of this chapter.</p> <p><b>34520. [Motor carriers and drivers to comply with federal regulations regarding drug and alcohol use, transportation and testing requirements].</b>—(a) Motor carriers and drivers shall comply with the controlled substances and alcohol use, transportation, and testing requirements of the United States Secretary of Transportation as set forth in Part 382 (commencing with Section 382.101) of, and Sections 392.5(a)(1) and 392.5(a)(3) of, Title 49 of the Code of Federal Regulations. (b) (1) Every motor carrier shall make available for inspection, upon the request of an authorized employee of the department, copies of all results and other records pertaining to controlled substances and alcohol use and testing conducted pursuant to federal law, as specified in subdivision (a), including those records contained in individual driver qualification files. (2) For the purposes of complying with the return-to-duty alcohol or controlled substances test requirements, or both, of Section 382.309 of Title 49 of the Code of Federal Regulations and the followup alcohol or controlled substances test requirements, or both, of Section 382.311 of that title, the department may use those test results to monitor drivers who are motor carriers. (3) No evidence derived from a positive test result in the possession of a motor carrier shall be admissible in a criminal prosecution concerning unlawful possession, sale, or distribution of controlled substances. (c) Any drug or alcohol testing consortium, as defined in Section 382.107 of Title 49 of the Code of Federal Regulations, shall mail a copy of all drug and alcohol positive test result summaries to the department within three days of the test. This requirement applies only to drug and alcohol positive tests of those drivers employed by motor carriers who</p>

operate terminals within this state. (d) A transit agency receiving federal financial assistance under Section 3, 9, or 18 of the Federal Transit Act, or under Section 103 (e)(4) of Title 23 of the United States Code, shall comply with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as set forth in Part 655 (commencing with Section 655.1) of Title 49 of the Code of Federal Regulations. (e) The owner-operator shall notify all other motor carriers with whom he or she is under contract when the owner-operator has met the requirements of subdivision (c) of Section 15242. Notwithstanding subdivision (i), a violation of this subdivision is an infraction. (f) Except as provided in Section 382.301 of Title 49 of the Code of Federal Regulations, an applicant for employment as a commercial driver or an owner-operator seeking to provide transportation services and meeting the requirements of subdivision (b) of Section 34624, may not be placed on duty by a motor carrier until a preemployment test for controlled substances and alcohol use meeting the requirements of the federal regulations referenced in subdivision (a) have been completed and a negative test result has been reported. (g) An applicant for employment as a commercial driver or an owner-operator, seeking to provide transportation services and meeting the requirements of subdivision (b) of Section 34624, may not be placed on duty by a motor carrier until the motor carrier has completed a full investigation of the driver's employment history meeting the requirements of the federal regulations cited under subdivision (a). Every motor carrier, whether making or receiving inquiries concerning a driver's history, shall document all activities it has taken to comply with this subdivision. (h) A motor carrier that utilizes a preemployment screening service to review applications is in compliance with the employer duties under subdivisions (e) and (f) if the preemployment screening services that are provided satisfy the requirements of state and federal law and the motor carrier abides by any findings that would, under federal law, disqualify an applicant from operating a commercial vehicle. (i) It is a misdemeanor punishable by imprisonment in the county jail for six months and a fine not to exceed five thousand dollars (\$5,000), or by both the imprisonment and fine, for any person to willfully violate this section. As used in this subdivision, "willfully" has the same meaning as defined in Section 7 of the Penal Code. (j) This section does not apply to a peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, who is authorized to drive vehicles described in Section 34500 if that peace officer is participating in a substance abuse detection program within the scope of his or her employment.

**34520.3. School transportation vehicles (other than a school bus, school pupil activity bus or youth bus); School districts, county offices of education, and drivers; Application of federal drug and alcohol testing requirements that apply to school bus drivers.**—(a) For the purposes of this section, a "school transportation vehicle" is a vehicle that is not a school bus, school pupil activity bus, or youth bus, and is used by a school district or county office of education for the primary purpose of transporting children. (b) A school district or county office of education that employs drivers to drive a school transportation vehicle, and the driver of those vehicles, who are not otherwise required to participate in a testing program of the United States Secretary of Transportation, shall participate in a program that is consistent with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation that apply to school bus drivers and are set forth in Part 382 (commencing with Section 382.101) of, and Sections 392.5(a)(1) and (3) of, Title 49 of the Code of Federal Regulations. (c) It is the intent of the Legislature that this section be implemented in a manner that does not require a school district or county office of education to administer a program for drivers of school transportation vehicles that imposes controlled substance and alcohol use and testing requirements greater than those applicable to school bus drivers under existing law.

**34520.5. Paratransit drivers, drug and alcohol testing program.**—(a) All employers of drivers who operate paratransit vehicles, and the drivers of those vehicles, who are not otherwise required to participate in a testing program of the United States Secretary of Transportation, shall participate in a program consistent with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as set forth in Part 382 (commencing with Section 382.101), Part 653 (commencing with Section 653.1), or Part 654 (commencing with Section 654.1) of Title 49 of the Code of Federal Regulations. (b) Section 34520 is applicable to any controlled substances or alcohol testing program undertaken under this section. (c) The employer of a paratransit vehicle driver shall participate in the pull notice system defined in Section 1808.1.

**34501.18. Motor carriers employing more than 20 full-time drivers; Replacement of over half of drivers in a 30-day period and inspections as to drug testing; Exceptions; Terms defined .—(a)**

Every motor carrier regularly employing more than 20 full-time drivers shall report to the department whenever it replaces more than half of its drivers within a 30-day period. Within 21 days of receipt of that report, the department shall inspect the motor carrier to ensure that the motor carrier is complying with all safety of operations requirements, including, but not limited to, controlled substances testing and hours-of-service regulations. The reporting requirement of this subdivision does not apply to a motor carrier who, through normal seasonal fluctuations in the business operations of the carrier, or through termination of a contract for transportation services, other than a collective bargaining agreement, replaces drivers in one geographical location with drivers in another geographical location. (b) For the purposes of subdivision (a), "employing" means having an employer-employee relationship with a driver or contracting with an owner-operator, as described in Section 34624, to provide transportation services for more than 30 days within the previous year. (c) For the purposes of subdivision (a), "full-time" means that the driver is on-duty with the motor carrier for an average of 30 hours or more per week during the course of his or her employment or contract with the motor carrier.

**34623. Motor carriers, Enforcement; California Highway Patrol has exclusive jurisdiction for regulation of safety of operation of motor carriers of property.—(a)**

The Department of the California Highway Patrol has exclusive jurisdiction for the regulation of safety of operation of motor carriers of property. (b) The motor carrier permit of a motor carrier of property may be suspended for failure to do any of the following: (1) Maintain any vehicle of the carrier in a safe operating condition or to comply with this code or with applicable regulations contained in Title 13 of the California Code of Regulations, if that failure is either a consistent failure or presents an imminent danger to public safety. (2) Enroll all drivers in the pull notice system as required by Section 1808.1. (3) Submit any application or pay any fee required by subdivision (e) or (h) of Section 34501.12 within the timeframes set forth in that section. (c) The motor carrier permit of a motor carrier of property shall be suspended for failure to either (1) comply with the requirements of federal law described in subdivision (a) of Section 34520 of the Vehicle Code, or (2) make copies of results and other records available as required by subdivision (b) of that section. The suspension shall be as follows: (1) For a serious violation, which is a willful failure to perform substance abuse testing in accordance with state or federal law: (A) For a first offense, a mandatory five-day suspension. (B) For a second offense within three years of a first offense, a mandatory three-month suspension. (C) For a third offense within three years of a first offense, a mandatory one year suspension. (2) For a nonserious violation, the time recommended to the department by the Department of the California Highway Patrol. (3) For the purposes of this subdivision, "willful failure" means any of the following: (A) An intentional and uncorrected failure to have a controlled substances and alcohol testing program in place. (B) An intentional and uncorrected failure to enroll an employed driver into the controlled substances and alcohol testing program. (C) A knowing use of a medically disqualified driver, including the failure to remove the driver from safety-sensitive duties upon notification of the medical disqualification. (D) An attempt to conceal legal deficiencies in the motor carrier's controlled substances and alcohol testing program. (d) The department, pending a hearing in the matter pursuant to subdivision (f), may suspend a carrier's permit. (e) (1) A motor carrier whose motor carrier permit is suspended pursuant to subdivision (b) may obtain a reinspection of its terminal and vehicles by the Department of the California Highway Patrol by submitting a written request for reinstatement to the department and paying a reinstatement fee as required by Section 34623.5. (2) A motor carrier whose motor carrier permit is suspended for failure to submit any application or to pay any fee required by Section 34501.12 shall present proof of having submitted that application or have paid that fee to the Department of the California Highway Patrol before applying for reinstatement of its motor carrier permit. (3) The department shall deposit all reinstatement fees collected from motor carriers of property pursuant to this section in the fund. Upon receipt of the fee, the department shall forward a request to the Department of the California Highway Patrol, which shall perform a reinspection within a reasonable time, or shall verify receipt of the application or fee or both the application and fee. Following the term of a suspension imposed under Section 34670, the department shall reinstate a carrier's motor carrier permit suspended under subdivision (b) upon notification by the Department of the California Highway Patrol that the carrier's safety compliance has improved to the satisfaction of the Department of the California Highway Patrol, or that the required application or fees have been

received by the Department of the California Highway Patrol, unless the permit is suspended for another reason or has been revoked. (f) Whenever the department suspends the permit of any carrier pursuant to subdivision (b), (c), or paragraph (3) of subdivision (i), the department shall furnish the carrier with written notice of the suspension and shall provide for a hearing within a reasonable time, not to exceed 21 days, after a written request is filed with the department. At the hearing, the carrier shall show cause why the suspension should not be continued. Following the hearing, the department may terminate the suspension, continue the suspension in effect, or revoke the permit. The department may revoke the permit of any carrier suspended pursuant to subdivision (b) at any time that is 90 days or more after its suspension if the carrier has not filed a written request for a hearing with the department or has failed to submit a request for reinstatement pursuant to subdivision (e). (g) Notwithstanding any other provision of this code, no hearing shall be provided when the suspension of the motor carrier permit is based solely upon the failure of the motor carrier to maintain satisfactory proof of financial responsibility as required by this code, or failure of the motor carrier to submit an application or to pay fees required by Section 34501.12. (h) A motor carrier of property may not operate a commercial motor vehicle on any public highway in this state during any period its motor carrier of property permit is suspended pursuant to this division. (i) (1) A motor carrier of property whose motor carrier permit is suspended pursuant to this section or Section 34505.6, which suspension is based wholly or in part on the failure of the motor carrier to maintain any vehicle in safe operating condition, may not lease, or otherwise allow, another motor carrier to operate the vehicles of the carrier subject to the suspension, during the period of the suspension. (2) A motor carrier of property may not knowingly lease, operate, dispatch, or otherwise utilize any vehicle from a motor carrier of property whose motor carrier permit is suspended, which suspension is based wholly or in part on the failure of the motor carrier to maintain any vehicle in safe operating condition. (3) The department may immediately suspend the motor carrier permit of any motor carrier that the department determines to be in violation of paragraph (2).

**34623.5. Suspension of permit & fees.**— Notwithstanding any other provision of this code, before a permit may be reissued after a suspension has been terminated, there shall, in addition to any other fees required by this code, be paid to the department a fee of one hundred fifty dollars (\$150).

**34624. Motor carriers, Owner-operators.**—(a) The department shall establish a classification of motor carrier of property known as owner-operators. (b) As used in this section and in Sections 1808.1 and 34501.12, an owner-operator is a person who meets all of the following requirements: (1) Holds a class A or class B driver's license or a class C license with a hazardous materials endorsement. (2) Owns, leases, or otherwise operates not more than one power unit and not more than three towed vehicles. (3) Is required to obtain a permit as a motor carrier of property by the department under this division. (c) (1) As used in this section, "power unit" is a motor vehicle described in subdivision (a), (b), (g), (f), or (k) of Section 34500, or a motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, but does not include those vehicles operated by household goods carriers, as defined in Section 5109 of the Public Utilities Code or persons providing transportation of passengers. A "towed vehicle" is a nonmotorized vehicle described in subdivision (d), (e), (f), (g), or (k) of that section. (2) As used in this section, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating of the towing vehicle exceeds 11,500 pounds, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous materials for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which a hazardous waste transporter registration is required pursuant to Section 25163 of the Health and Safety Code. (d) The department, upon suspending or revoking the driving privilege of an owner-operator shall also suspend the owner-operator's motor carrier permit, unless the owner-operator, within 15 days, shows good cause why the permit should not be suspended. (e) Every motor carrier who is within the classification established by this section is responsible for notifying all other motor carriers with whom he or she is under contract when the status of the motor carrier changes so that he or she is no longer within the classification established by this section. (f) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

Colorado

Colorado does not have any law governing drug and/or alcohol testing in employment.

	<p><b>[Editor’s Note:]</b> Medical Use of Marijuana: Colorado voters approved Amendment 20 on the 2000 November Election ballot, allowing for medical use of marijuana. This measure specifically does not require any employer to accommodate the medical use of marijuana in any work place. Further, no governmental, private, or any other health insurance provider shall be required to be liable for any claim for reimbursement for the medical use of marijuana. Noteworthy, in a recent ruling by the U.S. Supreme Court, the court determined that medical necessity is not a defense to the crime of manufacturing and distributing marijuana but did not strike down medical use laws in the states and left open the issue of patients' rights to possess, cultivate or use ( United States v. Oakland Cannabis Buyers' Cooperative, SCt Dkt No 00-151, May 14, 2001).</p>
<p><b>Connecticut</b></p>	<p><b>31-51u. Drug testing: Requirements.</b>—(a) No employer may determine an employee's eligibility for promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action solely on the basis of a positive urinalysis drug test result unless (1) the employer has given the employee a urinalysis drug test, utilizing a reliable methodology, which produced a positive result and (2) such positive test result was confirmed by a second urinalysis drug test, which was separate and independent from the initial test, utilizing a gas chromatography and mass spectrometry methodology or a methodology which has been determined by the commissioner of public health and addiction services 1 to be as reliable or more reliable than the gas chromatography and mass spectrometry methodology. (b) No person performing a urinalysis drug test pursuant to subsection (a) of this section shall report, transmit or disclose any positive test result of any test performed in accordance with subdivision (1) of subsection (a) of this section unless such test result has been confirmed in accordance with subdivision (2) of said subsection (a).</p> <p><b>31-51v. Drug testing: Prospective employees.</b>—No employer may require a prospective employee to submit to a urinalysis drug test as part of the application procedure for employment with such employer unless (1) the prospective employee is informed in writing at the time of application of the employer's intent to conduct such a drug test, (2) such test is conducted in accordance with the requirements of subdivisions (1) and (2) of subsection (a) of section 31-51u and (3) the prospective employee is given a copy of any positive urinalysis drug test result. The results of any such test shall be confidential and shall not be disclosed by the employer or its employees to any person other than any such employee to whom such disclosure is necessary.</p> <p><b>31-51w. Drug testing: Observation prohibited. Privacy of results.</b>—(a) No employer or employer representative, agent or designee engaged in a urinalysis drug testing program shall directly observe an employee or prospective employee in the process of producing the urine specimen. (b) Any results of urinalysis drug tests conducted by or on behalf of an employer shall be maintained along with other employee medical records and shall be subject to the privacy protections provided for in sections 31-128a to 31-128h, inclusive. Such results shall be inadmissible in any criminal proceeding.</p> <p><b>31-51x. Drug testing: Reasonable suspicion required. Random tests.</b>—(a) No employer may require an employee to submit to a urinalysis drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol which adversely affects or could adversely affect such employee's job performance. The commissioner of labor shall adopt regulations in accordance with chapter 54 to specify circumstances which shall be presumed to give rise to an employer having such a reasonable suspicion, provided nothing in such regulations shall preclude an employer from citing other circumstances as giving rise to such a reasonable suspicion. (b) Notwithstanding the provisions of subsection (a) of this section, an employer may require an employee to submit to a urinalysis drug test on a random basis if (1) such test is authorized under federal law, (2) the employee serves in an occupation which has been designated as a high-risk or safety-sensitive occupation pursuant to regulations adopted by the commissioner of labor pursuant to chapter 54, or (3) the urinalysis is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates.</p> <p><b>31-51y. Drug testing: Medical screenings, regulation of employees and testing of gaming participants permitted.</b>—(a) Nothing in sections 31-51t to 31-51aa, inclusive, shall prevent an employer from conducting medical screenings, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of</p>

their job responsibilities. Any such screenings or tests shall be limited to the specific substances expressly identified in the employee consent form. (b) Nothing in sections 31-51t to 31-51aa, inclusive, shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours. (c) Nothing in sections 31-51t to 31-51aa, inclusive, shall restrict or prevent a urinalysis drug test program conducted under the supervision of the division of special revenue within the department of revenue services relative to jai alai players, jai alai court judges, jockeys, harness drivers or stewards participating in activities upon which pari-mutuel wagering is authorized under chapter 226.

**31-51z. Drug testing: Enforcement. Damages.**—(a) Any aggrieved person may enforce the provisions of sections 31-51t to 31-51aa, inclusive, by means of a civil action. Any employer, laboratory or medical facility that violates any provision of sections 31-51t to 31-51aa, inclusive, or who aids in the violation of any provision of said sections shall be liable to the person aggrieved for special and general damages, together with attorney's fees and costs. (b) Any employer, laboratory or medical facility that commits, or proposes to commit, an act in violation of any provision of sections 31-51t to 31-51aa, inclusive, may be enjoined therefrom by any court of competent jurisdiction. An action for injunctive relief under this subsection may be brought by any aggrieved person, by the attorney general or by any person or entity which will fairly and adequately represent the interests of the protected class.

**31-51aa. Drug testing: Effect of collective bargaining agreement.**—No provision of any collective bargaining agreement may contravene or supersede any provision of sections 31-51t to 31-51aa, inclusive, so as to infringe the privacy rights of any employee.

**14-261b. Drug testing of operators of commercial vehicles operating in intrastate commerce.**— (a) For the purposes of this section: (1) "Driver" means an employee driver or a contract driver under contract for ninety days or more in a period of three hundred sixty-five days; and (2) "Employer" means a person employing or contracting with a driver. (b) Notwithstanding the provisions of sections 31-51t to 31-51aa, inclusive, (1) any person employing a driver of a commercial motor vehicle, as defined in section 14-1, operating in intrastate commerce in the state shall require such driver to submit to testing as provided by federal law pursuant to 49 USC 3102 and 49 CFR Parts 382 and 391, and (2) any person employing a driver of a motor vehicle with a gross vehicle weight rating of ten thousand and one pounds or more but not more than twenty-six thousand pounds, a mechanic who repairs or services such a vehicle or a commercial motor vehicle, as defined in section 14-1, or a forklift operator may require such driver, mechanic or operator to submit to testing as provided by federal law pursuant to 49 USC 3102 and 49 CFR Parts 382 and 391. (c) Any employer who fails to comply with the provisions of this section shall be subject to a civil penalty of three hundred dollars which shall be imposed by the commissioner of motor vehicles after notice and opportunity for a hearing pursuant to the provisions of chapter 54. The commissioner shall impose a civil penalty of one thousand dollars for any subsequent failure to comply by such employer.

**14-276a. Regulations re school bus operators and operators of student transportation vehicles; qualifications; training. Preemployment drug test required for operators.**— (a) The Commissioner of Motor Vehicles shall adopt regulations in accordance with the provisions of chapter 54 establishing a procedure for the physical examination and safety training of school bus operators and operators of student transportation vehicles. Such regulations shall provide for minimum physical requirements for such operators and for minimum proficiency requirements for school bus operators. The safety training administered by the commissioner shall conform to the minimum requirements of number 17 of the National Highway Safety Standards. Such safety training shall include instruction relative to the location, contents and use of the first aid kit in the motor vehicle. (b) No person shall operate a school bus as defined in section 14-275 or a student transportation vehicle as defined in section 14-212, for the purpose of transporting school children unless such person has prior to the issuance or renewal of his license endorsement: (1) Furnished evidence to the satisfaction of the commissioner that he meets the minimum physical requirements set by the commissioner for operation of a school bus or a student transportation vehicle; (2) successfully completed a course in safety

	<p>training administered by the commissioner; and in the case of school bus operators, passed an examination in proficiency in school bus operation given by the commissioner. Such proficiency examination shall include a road test administered in either a type I school bus having a gross vehicle weight exceeding ten thousand pounds or a type II school bus having a gross vehicle weight of ten thousand pounds or less. Any operator administered a road test in a type II school bus only shall not be eligible for a license to operate a type I school bus. Any person who violates any provision of this subsection shall be deemed to have committed an infraction. (c) Any town or regional school district may require its school bus operators to have completed a safety training course in the operation of school buses, consisting of a minimum of ten hours of behind-the-wheel instruction and three hours of classroom instruction. (d) A carrier shall require each person whom it intends to employ to operate a school bus, as defined in section 14-275, or a student transportation vehicle, as defined in section 14-212, to submit to a urinalysis drug test in accordance with the provisions of sections 31-51v and 31-51w. No carrier may employ any person who has received a positive test result for such test which was confirmed as provided in subdivisions (2) and (3) of section 31-51u. The commissioner may, after notice and hearing, impose a civil penalty of not more than one thousand dollars for each offense on any carrier which violates any provision of this subsection.</p>
<p><b>Delaware</b></p>	<p><b>2708.School bus driver's</b> qualifications.—(a) No person shall drive, nor shall any contractor or public, parochial or private school, permit any person to drive a school bus within the State unless such driver has qualified for a commercial driver's license (CDL) under Chapter 26 of this title, and a school bus endorsement under this chapter, and other pertinent rules and regulations of the Department. Furthermore, except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a certified Delaware School Bus Driver Trainer, school bus drivers shall at all times, while operating or in control of a school bus have in their immediate possession the following: (1) A properly endorsed and classified Delaware CDL license, with a P (passenger) and S (school bus) endorsement. In exceptional circumstances, the Department of Public Instruction (DPI) may request that the Department issue a 45-day temporary S endorsement to allow a driver to drive upon completion of all requirements except the 12 hours of classroom training. Out-of-state school bus drivers shall comply with §2709 of this title. (2) A physical examination certification indicating a valid and approved State Board of Education physical exam completed within the last year. (b) To qualify for an S (school bus) endorsement an applicant must meet all the following requirements: (1) Be at least 18 years of age with 1 year of driving experience. (2) Have qualified for a CDL license with P (passenger) endorsement. (3) Show completion of a course of training with specific course content as determined by the State Board of Education. Such course shall contain as a minimum 12 hours of classroom training and 6 hours of training aboard a school bus with a certified Delaware School Bus Driver Trainer. Training on the school bus must include 4 hours of actual driving, 2 of which must be with students on the bus. (4) Pass a road test in a school bus administered by the Department. This test may be waived by the Department if the driver has already obtained a P endorsement on the CDL license. (5) Not have more than 5 points on the applicant's driving record at the time of application. (6) Not have had the applicant's license suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last 5 years. (7) Never have been convicted of the manufacture, delivery or possession of a controlled substance or a counterfeit controlled substance classified as such in Schedule I, II, III, IV or V of Chapter 47 of Title 16 in this State or any other jurisdiction. (8) Never have been convicted of a felony in this State or any other jurisdiction within the last 5 years. (9) Never have been convicted of a crime against a child in this State or any other jurisdiction. (c) Any time a license with a school bus endorsement is suspended, revoked or disqualified for moving violations, or the driver exceeds 8 points for moving violations, the school bus endorsement shall become invalid, and the endorsement shall be removed from the license. (d) Renewal of the school bus endorsement shall be as required for other licenses. (e) The Department shall provide school bus driver records at no charge to DPI or to companies contracted to DPI for school bus services. (10) Submit to a drug test, to be administered pursuant to the rules and regulations of the Department of Education, the results of which must be negative for controlled substances as defined by the provisions of 49 U.S.C. Section 31306 and the implementing regulations issued by the Secretary of Transportation pursuant thereto unless the controlled substances have been ingested pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice. Anyone testing positive to the drug test required in this paragraph shall have the right to request and pay for further analysis of their split sample, pursuant to the rules</p>



and regulations of the Department of Education, to determine whether the result was a false positive or the controlled substance was ingested pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's practice. Refusal to submit to testing, which shall include the provision of a substituted or adulterated test sample, shall be deemed to be a positive test result under this Subsection.

**2910. Drug and alcohol testing, Public School bus drivers.**—(a) In order to coordinate State and federal efforts to insure the safety of school children, the Department of Education is authorized to contract for a program of drug and alcohol testing services necessary to enable public school districts, charter schools, and any person or entity that contracts with a school district or charter school to provide transportation for State public school students, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law. Testing services shall be provided at no cost to the bus driver's employer. The nature and extent of testing services to be provided shall be at the discretion of the Department of Education, but shall include pre-employment, reasonable suspicion, random and post-accident testing, for alcohol and controlled substances pursuant to the provisions of 49 U.S.C. Section 31306 and the implementing regulations issued by the Secretary of Transportation of the United States pursuant thereto, as the same may from time to time subsequently be amended. In no event, shall the Department of Education be responsible for the provision of any post-testing services either to a bus driver or to the driver's employer except to cause the results of such testing to be provided to the driver and to the driver's employer. (b) Nothing contained herein shall be deemed to impose any additional obligation upon the employer of a public school bus driver beyond those obligations otherwise imposed upon such employer by State or federal law, or pursuant to rules and regulations promulgated in accordance with Subsection (d) of this Section. (c) No person shall operate a public school bus while not in compliance with the provisions of all federal drug and alcohol testing requirements relevant to the drivers of Delaware public school buses and any regulations adopted by the Department of Education pursuant to this Section. (d) The Department of Education is authorized to promulgate rules and regulations to implement the provisions of this Section including, without limitation, rules and regulations which: (1) Require all employers of public school bus drivers in this State to participate in the testing program contracted for by the Department; and (2) Require public school districts, charter schools and the employers of public school bus drivers to follow such procedures and to maintain such records as the Department deems necessary to insure that public school bus drivers are being tested in accordance with the provisions of federal drug and alcohol testing requirements.

**8922. Drug testing required. (a) Random testing.**—All Department employees in security sensitive positions shall be subject to random testing for the illegal use of drugs. (b) Pre-employment testing.—The Department shall test all security sensitive applicants and applicant employees for the illegal use of drugs. (c) Incident triggered testing.—All Department employees in security sensitive positions shall be subject to incident triggered testing. (d) Reasonable suspicion testing.—The Department may, acting through its supervisory personnel, conduct a drug test based on a reasonable suspicion that the appearance or conduct of the Department employee in a security sensitive position is indicative of being impaired by an illegal drug. The questioned conduct or appearance should be witnessed and must be documented in writing by a supervisor where practicable. (e) Nothing in this section shall be construed to limit the Department's authority pursuant to any other statute, regulation, policy, procedure, contract or other source of authority to test any Department employee for drugs.

**8923. Drugs to be screened.**—(a) The illegal drugs that shall be screened include, but are not limited to, the following: (1) Marijuana/cannabis; (2) Cocaine; (3) Opiates; (4) Phencyclidine ("PCP"); and (5) Amphetamines. (b) The Department technical representative may submit to the Commissioner a written request for approval to screen for an illegal drug or controlled substance other than those listed under subsection (a) of this section. If the Commissioner approves the request, the Department technical representative shall notify all Department employees in security sensitive positions of the addition of that drug to the list of those to be screened.

**8924. Arrest notification required.**—Any security sensitive employee arrested for an alleged violation of Chapter 47 of Title 16 shall report the arrest to the Department on the employee's next

scheduled work day, or within one week, whichever is earlier. Failure to report the arrest shall result in disciplinary action up to and including dismissal.

**8925. Policies and procedures.**—The Department shall promulgate policies and procedures for the full implementation of the subchapter.

**1142. Mandatory drug testing of nursing home job applicants; Hiring on a conditional basis; Notice; Penalty for violations.**—(a) No employer who operates a nursing home, management company, other business entity contracted to operate a nursing home, or agency that refers employees to work in a nursing home may hire any applicant, as defined in Section 1141 of this Title, without first obtaining the results of such applicant's mandatory drug screening. (b) All applicants, as defined in Section 1141 of this Title, shall submit to mandatory drug testing, as specified by regulations promulgated by DHSS. (c) DHSS shall promulgate regulations, regarding the pre-employment testing of all applicants, for use of the following illegal drugs: (1) Marijuana/cannabis; (2) Cocaine; (3) Opiates; (4) Phencyclidine ("PCP"); (5) Amphetamines; (6) Any other illegal drug specified by DHSS, pursuant to regulations promulgated pursuant to this section. (d) Conditional Hire. Notwithstanding the provisions of Subsection (b), when exigent circumstances exist, and an employer must fill a position in order to maintain the required level of service, the employer may hire an applicant on a conditional basis when the employer receives evidence that the applicant has actually had the appropriate drug screening. The final employment of an applicant pursuant to this subsection shall be contingent upon receipt of the results of the drug screening. In addition, all persons hired pursuant to Section 1141 of this Title shall be informed in writing and shall acknowledge, in writing, that his/her results have been requested. Under no circumstances shall an applicant hired on a conditional basis pursuant to this subsection be employed on a conditional basis for more than 2 months. (e) An agency, including but not limited to temporary agencies, must provide the drug screening results it receives regarding a person referred to work in a nursing home to that particular nursing home so that the facility is better able to make an informed decision whether to accept the referral. (f) The employer shall provide to DHSS copies of the results of any drug screening required by this section pursuant to regulation. (g) Any applicant or employer who fails to comply with the requirements of this section shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

**1145. Home health agencies & home caregivers; Drug testing; Purpose; Definitions.**—(a) Purpose. It is the intent of the General Assembly that the primary purpose of the criminal background check and drug testing requirements of this section and Section 1146 of this title is the protection of the safety and well-being of residents of this State who use the services of home health agencies licensed pursuant to this title and/or private healthcare givers in the resident's own home or home of residence. These sections shall be construed broadly to accomplish this purpose. (b) Definitions. (1) "Applicant" means any of the following: a. A person seeking employment in a home health agency, or a management company or other business entity that contracts to provide services on behalf of a home health agency, for the purposes of providing, to individuals in their home or private residence (excluding residents of hospitals and nursing homes), licensed nursing services, home health aide services, physical therapy, speech pathology, occupational therapy or social services; b. A current employee of a home health agency who seeks a promotion in the agency, or a management company or other business entity that contracts to provide services on behalf of a home health agency, in order that he or she may provide, to individuals in their home or private residence (excluding residents of hospitals and nursing homes), licensed nursing services, home health aide services, physical therapy, speech pathology, occupational therapy or social services; or a. A person referred by a temporary agency to a home health agency, or a management company or other business entity that contracts to provide services on behalf of a home health agency. b. Any individual seeking employment in a private residence for the purpose of providing for the health, safety and well-being of an individual in that residence who is unable as a result of physical or mental capacity to provide these things for him/herself in an adequate manner. This definition specifically excludes any person directly related to the person needing care, unless covered under some other section of this statute. 1. "Home health agency" is as defined in 16 Del. C. Section 122(3)o.; (3) "Private residence" is defined as the domicile of the individual in need of care, either personally owned by that individual or considered the place of

	<p>residence of that individual, and that is not licensed, operated for profit or any other reason as a healthcare "facility" as defined in Title 16 of the Delaware Code Section 1131.</p> <p><b>1146. Home health agencies, contractors and referral services; Mandatory drug testing of applicants required; Conditional hire; Copies of results; Failure to comply.</b>—(a) No employer who operates a home health agency, or a management company or other business entity that contracts to provide services on behalf of a home health agency, or agency that refers employees to work in a home health agency, or a management company or other business entity that contracts to provide services on behalf of a home health agency, may hire any applicant, as defined in Section 1145 of this title, without first obtaining the results of such applicant's mandatory drug screening. (b) All applicants, as defined in Section 1145 of this title, with the exception of self-employed healthcare givers seeking employment from a private individual to work in that capacity in a private residence on a private basis, shall submit to mandatory drug testing, as specified by regulations promulgated by DHSS. The requirement for drug tests for healthcare givers seeking employment in a private residence on a private basis is left to the discretion of the employer. Costs for such tests are borne by the employer or the applicant. (c) DHSS shall promulgate regulations, regarding the pre-employment testing of all applicants, for use of the following illegal drugs: (1) Marijuana/cannabis; (2) Cocaine; (3) Opiates; (4) Phencyclidine ( "PCP"); (5) Amphetamines; (6) Any other illegal drug specified by DHSS, pursuant to regulations promulgated pursuant to this section. (d) Conditional hire. Notwithstanding the provisions of subsection (b) of this section, when exigent circumstances exist, and an employer must fill a position in order to maintain the required level of service, the employer may hire an applicant on a conditional basis when the employer receives evidence that the applicant has actually had the appropriate drug screening. The final employment of an applicant pursuant to this subsection shall be contingent upon receipt of the results of the drug screening. In addition, all persons hired pursuant to Section 1145 of this Title shall be informed in writing and shall acknowledge, in writing, that his/her results have been requested. Under no circumstances shall an applicant hired on a conditional basis pursuant to this subsection be employed on a conditional basis for more than 2 months. The provisions of this subsection (d) regarding a conditional hire shall not apply to private individuals seeking to hire a self-employed healthcare giver to work in that capacity in a private residence. (e) An agency, including but not limited to temporary agencies, must provide the drug screening results it receives regarding a person referred to work in a home health agency, or a management company or other business entity that contracts to provide services on behalf of a home health agency, to that particular home health agency, management company, or business entity, so that the home health agency, management company, or business entity is better able to make an informed decision whether to accept the referral. (f) The employer shall provide to DHSS copies of the results of any drug screening required by this section as directed by regulations promulgated by DHSS pursuant to this statute. (g) Any applicant or employer who fails to comply with the requirements of this section shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.</p> <p><b>6531A. Random drug testing, Certain department of education employees permanently assigned at department of correction facilities .</b>—(b)Any Department of Education employee working in the prison education program and whose permanent work assignment location resides within or on the campus of a Department of Correction Level 5 or Level 4 facility must submit to the same random drug testing procedure required of Department of Correction employees.</p> <p><b>6908. Mandatory Drug Testing, Certain Public Works Contracts Receiving Public Funds</b> —(a) In addition to the powers and duties prescribed by other sections in this chapter, the Section shall: (6) Establish procedures through which all public works contracts, which are paid in whole or in part through public funds, include provisions requiring the contractor, its agents, and employees to implement a mandatory drug testing program for all employees or agents working on the job site in nonclerical positions. Provisions governing mandatory drug testing shall be incorporated into all public works contracts and the rules governing the administration of such tests by the contractor shall be promulgated by the Director pursuant to this subsection.</p>
<p><b>District of Columbia</b></p>	<p><b>1-620.11. Public Employment Drug &amp; Alcohol Testing, Commercial Motor Vehicle Drivers.</b>—In compliance with federal regulations issued pursuant to 49 U.S.C. §31306, the Mayor and each</p>

personnel authority shall adopt and administer a program and issue rules for conducting pre-employment, reasonable suspicion, random, post-accident, return-to-duty, and follow-up testing of employees who are employed as drivers of commercial motor vehicles, or who are candidates for such employment, for the use of alcohol and controlled substances.

**1-620.21. Public Employment Drug & Alcohol Testing, Certain Employees of the Human Services or Mental Health departments; Definitions.**—For the purposes of this subchapter, the term: (1) "Applicant" means a person who has filed a written employment application form to work for the Department of Human Services or the Department of Mental Health or has been tentatively selected for employment by either the Department of Human Services or the Department of Mental Health to work as a high potential risk employee. (2) [Repealed] (3) [Repealed] (4) "High potential risk employee" means any Department of Mental Health or Department of Human Services employee who has resident care or custody responsibilities in a secured facility or who works in a residential facility. (5) "Post-accident employee" means any Department of Mental Health or Department of Human Services employee who, while on duty, was involved in a vehicular or other type of accident resulting in personal injury or property damage, or both. (6) "Probable cause" means a reasonable belief by a supervisor that an employee is under the influence of an illegal substance or alcohol such that the employee's ability to perform his or her job is impaired. (7) "Probable cause referral" means a referral, based on probable cause, for testing by the Department of Human Services or the Department of Mental Health for drug or alcohol use. (8) "Random testing" means drug or alcohol testing taken by a Department of Mental Health or Department of Human Services employee at an unspecified time for the purposes of determining whether any Department of Mental Health or Department of Human Services employee has used drugs or alcohol and as a result is unable to satisfactorily perform his or her employment duties. (9) "Residential facility" means a facility that provides a supervised and sheltered living environment for individuals who need such an environment because of their mental, familial, social, or other circumstances. (10) "Secured facility" means a hospital or institution that is: (A) Leased, or owned by the District government; (B) Operated by the District government; and (C) Equipped and qualified to provide in-resident or in-patient care to detained or committed youth or persons with mental illness.

**1-620.22. Departments of Human Services and Mental Health; Testing of employees; When & who to test; Notice; Treatment.** -- (a) The following Department of Mental Health and Department of Human Services employees and prospective employees shall be tested for drug and alcohol use: (1) Applicants for positions that would qualify them as high potential risk employees; (2) Employees who have had a probable cause referral; (3) Post-accident employees, as soon as reasonably possible after an accident; and (4) High potential risk employees. (b) Only high potential risk employees shall be subject to random testing. (c) All employees of the Department of Mental Health and Department of Human Services shall be given written notice, issued at least 30 days before the implementation of a drug and alcohol testing program, that the Department of Mental Health and Department of Human Services will implement a drug and alcohol testing program. (d) No employee may be tested for drug or alcohol use prior to receiving the notice required by subsection (c) of this section. (e) Conditions giving rise to probable cause must be observed and documented. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a probable cause referral. (f) An employee shall be given one opportunity to seek treatment following a positive test result. (g) The Department of Mental Health and Department of Human Services shall procure the services of a contractor to perform the tests required by this subchapter. (h) All testing conducted by a vendor shall be implemented pursuant to this subchapter.

**1-620.23. Departments of Human Services and Mental Health; Test methods, procedures.**—(a) Testing shall be performed by an outside contractor. The contractor shall be certified by the United States Department of Health and Human Services ( "HHS") to perform job related drug and alcohol forensic testing. (b)(1) For random testing, the contractor shall come on-site to Department of Mental Health or Department of Human Services institutions. (2) The contractor shall collect urine specimens and split the samples. (c) The contractor shall perform enzyme-multiplied-immunoassay technique ( "EMIT") testing on one sample and store the other sample. Any positive EMIT test shall be confirmed by the contractor using gas chromatography/mass spectrometry ( "GCMS") methodology. (d) Any

Department of Mental Health or Department of Human Services employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize the stored sample to be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation. (e) Probable cause and post-accident testing shall follow the same procedures set forth in subsections (a) through (d) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or breathalyzer. (f) A breathalyzer shall be deemed positive by the Department of Mental Health's or Department of Human Services' testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

**1-620.24. Departments of Human Services and Mental Health; Motor vehicle operations and implied consent.**—Any Department of Mental Health or Department of Human Services employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the provisions of this subchapter, to the testing of the employee's urine or breath, for the purpose of determining drug or alcohol content, whenever a supervisor has the probable cause or a police officer arrests such employee for a violation of §50-2201.05 or has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District while that employee's alcohol concentration was 0.08 grams or more per 210 liters of breath, or while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the employee's ability to operate a motor vehicle was impaired by the consumption of intoxicating liquor.

**1-620.25. Departments of Human Services and Mental Health; Policy to be issued in writing prior to program implementation; Treatment opportunity; Test results.**—(a) The drug and alcohol testing policy shall be issued in writing in advance of program implementation to inform employees and allow them the opportunity to seek treatment. An employee shall be allowed only one opportunity to seek treatment following his or her first positive test result. Thereafter, any confirmed positive drug test, or positive breathalyzer test, or a refusal to submit to a drug or breathalyzer test shall be grounds for termination of employment. (b) The program shall cover all Department of Mental Health and Department of Human Services employees, including management, and shall be implemented as a single program of each Department. (c) The results of any random test conducted pursuant to this subchapter may not be turned over to any law enforcement agency without the employee's written consent.

**24-211.21. Mandatory drug & alcohol testing of Department of Corrections employees; Terms defined.**—For the purposes of this part, the term: (1) "Applicant" means all persons who have filed any written employment application forms to work at the Department. (2) "Council" means the Council of the District of Columbia. (3) "Department" means the District of Columbia Department of Corrections. (4) "Director" means the Director of the District of Columbia Department of Corrections. (5) "High potential risk employee" ("HPR employee") means any Department employee who has inmate care and custody responsibilities or who works within a correctional institution, including any employees and managers who are carried in a law enforcement retirement status. (6) "Law enforcement retirement status" means any employee who contributes to the 7.5% retirement status category. (7) "Post-accident employee" means any Department employee who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both. (8) "Random testing" means drug or alcohol testing taken by Department employees at an unspecified time for the purposes of determining whether any Department employees have used drugs or alcohol and, as a result, are unable to satisfactorily perform their employment duties. (9) "Reasonable suspicion" means a belief by a supervisor that an employee is under the influence of an illegal substance or alcohol to the extent that the employee's ability to perform his or her job is impaired. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral.

**24-211.22. Dept. of Corrections; Who and when to test; Notice.**—(a) The following Department employees shall be tested for drug and alcohol use: (1) Applicants; (2) Those employees who have had a reasonable suspicion referral; (3) Post-accident employees, as soon as reasonably possible after the

accident; and (4) HPR employees. (b) Only HPR employees shall be subject to random testing. (c) Employees shall be given at least a 30-day written notice from September 20, 1996, that the Department is implementing a drug and alcohol testing program and shall be given an opportunity to seek treatment. Following September 20, 1996, the Department shall procure a testing vendor and testing shall be implemented as described herein.

**24-211.23. Dept. of Corrections; Test methods & procedures; Motor vehicle operators; Positive breathalyzer tests grounds for termination.**—(a) Testing shall be performed by an outside contractor. The contractor shall be a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job related drug and alcohol forensic testing. (b) For random testing, the contractor shall come on-site to the Department's institutions and shall collect urine specimens and split the samples. The contractor shall perform enzyme-multiplied-immunoassay technique ("EMIT") testing on one sample and store the split sample. Any positive EMIT test shall then be confirmed by the contractor using gas chromatography/mass spectrometry ("GCMS") methodology. (c) Any Department employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation. (d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer. (e) Any Department employee who operates a motor vehicle in the District of Columbia shall be deemed to have given his or her consent, subject to conditions in this subchapter, to the testing of the person's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable suspicion or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person was operating or in physical control of a motor vehicle within the District while that person's alcohol concentration was 0.08 grams or more per 210 liters of breath, while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle was impaired by the consumption of an intoxicating beverage. (f) A breathalyzer shall be deemed positive by the Department's testing contractor if the contractor determines that 210 liters of the employee's breath contains 0.08 grams or more of alcohol. A positive breathalyzer test shall be grounds for termination of employment in accordance with subchapter I of Chapter 6 of Title 1.

**24-211.24. Dept. of Corrections; Policy to be issued in writing in advance; Treatment opportunity; Applicability of testing; Test results & impact.**—The drug testing policy shall be issued in advance to inform employees and allow them the opportunity to seek treatment. Thereafter, any confirmed positive test results or a refusal to submit to the test shall be grounds for termination of employment in accordance with subchapter I of Chapter 6 of Title 1. This testing program is for all employees, including management, and shall be implemented as a single Department program. The results of a random test may not be turned over to any law enforcement agency without the employee's written consent.

**1-620.31. Mandatory drug and alcohol testing for certain District employees who serve children; Definitions.**—For the purposes of this title, the term: (1) "Applicant" means any person who has filed any written employment application forms to work as a District employee, or has been tentatively selected for employment. (2) "Child" means an individual 12 years of age and under. (3) "District employee" means a person employed by the District of Columbia government. (4) "Drug" means an unlawful drug and does not include over-the-counter prescription medications. (5) "Employee" means any person employed in a position for which he or she is paid for services on any basis. (6) "Post-accident employee" means an employee of the District of Columbia, who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, from the use of drugs or alcohol on the part of the employee. (7) "Probable cause" or "reasonable suspicion" means a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired. (8) "Random testing" means drug or alcohol testing conducted on an District

employee in a safety-sensitive position at an unspecified time for purposes of determining whether any District employee subject to drug or alcohol testing has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties . (9) "Reasonable suspicion referral" means referral of an employee in a safety-sensitive position for testing by the District for drug or alcohol use. (10) "Safety-sensitive position" means: (A) Employment in which the District employee has direct contact with children or youth; (B) Is entrusted with the direct care and custody of children or youth; and (C) Whose performance of his or her duties in the normal course of employment may affect the health, welfare, or safety of children or youth. (11) "Youth" means an individual between 13 and 17 years of age, inclusive.

**1-620.32. Mandatory drug and alcohol testing for certain District employees who serve children; Employee testing.**—(a) The following individuals shall be tested by the District government for drug and alcohol use: (1) Applicants for employment in safety-sensitive positions; (2) Those District employees who have had a reasonable suspicion referral; and (3) Post-accident District employees, as soon as reasonably possible after the accident. (b) The District shall subject District employees in safety-sensitive positions to random testing, unless a District agency has additional requirements for drug and alcohol testing of its employees, in which case the stricter requirements shall apply. (c) Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral. (d) District employees shall be given written notice that the District is implementing a drug and alcohol testing program at least 30 days in advance of implementation of the program. Upon receipt of a written notice of the program, each employee shall be given one opportunity to seek treatment, if he or she has a drug or alcohol problem. (e) No employee may be tested under this title for drug or alcohol use prior to receiving the notice required by subsection (d) of this section. (f) Following the issuance of the 30-day written notice required by subsection (d) of this section, the Mayor shall procure a testing vendor and testing shall be implemented as described in this title.

**1-620.33. Mandatory drug and alcohol testing for certain District employees who serve children; Motor vehicle operators.**—Any District government employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the conditions in this subchapter, to the testing of the employee's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has probable cause or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person to have been operating or in physical control of a motor vehicle within the District while that person's alcohol concentration was 0.08 grams or more per 210 liters of breath, or while under the influence of an intoxicating liquor or any drug or combination thereof, or while that person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.

**1-620.34. Mandatory drug and alcohol testing for certain District employees who serve children; Testing methodology.**—(a) Testing shall be performed by an outside contractor at a laboratory certified by the United States Department of Health and Human Services ( "HHS") to perform job-related drug and alcohol forensic testing. (b) For random testing of District employees, the contractor shall, at a location designated by the District to collect urine specimens on-site, split each sample and perform enzyme-multiplied-immunossay technique ( "EMIT") testing on one sample and store the split of that sample. Any positive EMIT test shall be then confirmed by the contractor, using the gas chromatography/mass spectrometry ( "GCMS") methodology. (c) Any District employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing method. (d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer. (e) A breathalyzer shall be deemed positive by the District's testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol. (f) Prior to testing, a physician must sit down with the employee and ask what medications he or she might have been taking to rule out any false positives in the drug screening results.

**1-620.35. Mandatory drug and alcohol testing for certain District employees who serve children; Procedure; Employee impact.**—(a) A drug and alcohol testing policy, including the notice required by section 2032(d), shall be issued at least 30 days in advance of implementing the drug and alcohol program to inform District employees of the requirements of the program and to allow each employee one opportunity to seek treatment, if he or she has a drug or alcohol problem. Thereafter, any confirmed positive drug test results, positive breathalyser test, or a refusal to submit to a drug test or breathalyser shall be grounds for termination of employment in accordance with this act. (b) The testing program shall be implemented as a single program. (c) The results of a random test conducted pursuant to this title shall not be turned over to any law enforcement agency without the employee's written consent. (d) An applicant may be offered employment contingent upon receipt of a satisfactory drug testing result, and may begin working in a position that is not a safety-sensitive position prior to receiving the results.

**1-620.36. Mandatory drug and alcohol testing for certain District employees who serve children; Private providers who contract with the District; Private licensed providers.**— Each private provider that contracts with the District of Columbia to provide employees to work in safety-sensitive positions and each private entity licensed by the District government that has employees who work in safety-sensitive positions shall establish mandatory drug and alcohol testing policies and procedures that are consistent with the requirements of this title.

**3901. District government employees and drug and alcohol testing; Mandatory testing for safety-sensitive positions.**—**3901.1** Pursuant to Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 13-353; D.C. Official Code §1-620.31 et seq.) (2006 Repl.), as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code §1-620.33) (2007 Supp.), and as a means of ensuring the health and safety of children and youth, a Mandatory Drug and Alcohol Testing Program for Safety-Sensitive Positions (Program) has been established within the District government. The purpose of the Program is to test appointees (new hires) into and employees in safety-sensitive positions for illegal drug and alcohol use, and including random, reasonable suspicion, and post-accident testing. **3901.2** Each personnel authority with safety-sensitive positions shall contract with a professional testing vendor or vendors to conduct testing under the Program. The vendor or vendors shall ensure quality control, chain-of-custody for samples, reliable collection and testing procedures, and any other safeguards needed to guarantee accurate and fair testing, in accordance with the procedures in 49 C.F.R. Part 40, and District government procedures. **3901.3** The vendor or vendors selected to conduct the testing shall be certified by the United States Department of Health and Human Services (HHS) to perform job-related drug and alcohol forensic testing. **3901.4** District government employees in safety-sensitive positions shall be given written notice that the District government is implementing a drug and alcohol testing program for safety-sensitive positions pursuant to D.C. Official Code §1-620.31 et seq., at least thirty (30) days in advance of implementation of the Program. No employee shall be tested prior to receiving the thirty-day (30-day) initial notification of the Program. **3901.5** The Director, D.C. Department of Human Resources (DCHR), shall develop operating policies and procedures for the Program for agencies subordinate to the Mayor that have safety-sensitive positions. **3901.6** The provisions of the Program are specified in sections 3902 through 3910 of this chapter. **3901.7** Position vacancy announcements for positions identified and designated as safety-sensitive shall include a statement informing each applicant that: (a) The position for which he or she is applying has been identified and designated as a safety-sensitive position subject to mandatory drug and alcohol testing; (b) If tentatively selected for the safety-sensitive position, he or she will be required to submit to testing for illegal drug use prior to appointment, and that appointment to the position will be contingent upon a negative drug test result; and (c) Once hired into a safety-sensitive position, he or she shall be subject to mandatory random drug or alcohol testing. **3901.8** The position description for each position designated as safety-sensitive shall include a statement of such designation and a statement indicating that incumbents of the position shall be subject to testing for drug and alcohol use. **3901.9** The Director, DCHR, shall publish the list of safety-sensitive positions in agencies under the personnel authority of the Mayor, in the District Personnel Manual (or any other procedural manual developed). The list shall be updated



periodically, as needed.

**3902. District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Employees subject to law.**— **3902.1** Pursuant to D.C. Official Code §1-620.32 (a) (2006 Repl.), the following appointees and District government employees shall be subject to drug and alcohol testing: (a) An appointee (new hire) to a safety-sensitive position with a District government agency; (b) A District government employee in safety-sensitive position who has a reasonable suspicion referral; and (c) A post-accident District government employee in a safety-sensitive position, as soon as reasonably possible after the accident. **3902.2** The following subordinate agencies shall be covered under the Program, on the basis that each one of these agencies, as a whole or certain components thereof, has safety-sensitive positions: (a) Department of Human Services; (b) Department of Health; (c) Department of Parks and Recreation; (d) Fire and Emergency Medical Services Department; (e) Metropolitan Police Department; (f) Traffic Safety Administration within the District Department of Transportation; (g) Office of the State Superintendent of Education; (h) Department of Youth Rehabilitation Services; (i) Department of Employment Services; (j) Department of Mental Health; (k) Child and Family Services Agency; (l) Department of Disability Services; (m) D.C. Public Schools; and (n) Any other subordinate or independent District government agency subject to these regulations, including an agency which, as a result of a permanent or a temporary change to its mission such as may be caused by reorganization.

**3903 District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Persons subject to testing, Standards for identifying and determining which persons are subject to testing.**—**3903.1** Upon consulting with the head of a District government agency with safety-sensitive positions, the appropriate personnel authority shall identify and determine which positions in the agency shall be designated safety-sensitive positions subject to mandatory drug and alcohol testing under the Program. In identifying the safety-sensitive positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to at least one (1) of the following duties and responsibilities: (a) Childcare duties; (b) Recreational activities; (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders; (d) Educational activities; (e) Individual counseling; (f) Group counseling; (g) Assessment, case management, and support services; (h) Psychiatric and psychological assessment services; (i) Developmental, speech, and language evaluation services; (j) Diagnostic evaluation and treatment services; (k) Childhood development services; (l) Medical or clinical services; (m) Therapeutic services, including individual and group therapy, and play therapy; (n) Prevention and intervention services; (o) Mentoring services; (p) Youth care services; (q) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services; (r) Cultural enrichment services; (s) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, or youth problem-solving; (t) Youth employment services; or (u) Driving a motor vehicle to transport children or youth. **3903.2** The following standards shall be applied in designating a position as safety-sensitive: (a) The underlying guiding standard to be applied in identifying safety-sensitive positions shall be one of reasonableness, coupled with the standards outlined in section 3903.2 (b) through (f) of this section, as applicable. (b) A determination that a position is a safety-sensitive position shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in section 3903.1 of this section or similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely. (c) Location in a District government agency with safety-sensitive positions does not automatically make a position or its incumbent subject to testing under the Program. (d) Strictly tangential, casual, or occasional contact with children or youth does not automatically make an employee subject to testing under the Program. (e) Administrative, clerical, or technical support positions and staff within the immediate office of the head of a District government agency with safety-sensitive positions, and other components, units, or divisions of the agency that provide non-operational support services shall not be subject to testing under the Program unless the

position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in section 3903.1 of this section, or similar duties and responsibilities related to the direct provision of services to children or youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely. (f) An employee whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to testing under the Program while in the covered temporary assignment. **3904.** District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Notice requirements.—3904.1 Pursuant to D.C. Official Code §1-620.35 (a) (2006 Repl.), the Mayor and other personnel authorities with safety-sensitive positions shall: (a) Issue a drug and alcohol testing policy; and (b) Notify employees in safety-sensitive positions at least thirty (30) days in advance of implementing the Program. 3904.2 The drug and alcohol testing policy shall inform employees in safety-sensitive positions of all of the following: (a) Which employees will be tested; (b) Circumstances under which an employee will be tested; (c) The methodology to be used for testing; and (d) The consequences of a positive test result. 3904.3 Each employee occupying a safety-sensitive position shall sign an acknowledgment that he or she received the employee notification informing him or her of the requirements for alcohol and drug testing under the Program. **3904.4** Upon acknowledging receipt of the written notification, each employee occupying a safety-sensitive position shall be given one (1) opportunity to seek treatment if he or she acknowledges a drug or alcohol problem. An employee who so acknowledges a drug or alcohol problem shall be allowed to undergo and complete a counseling and rehabilitation program, and shall not be subject to administrative action while completing the counseling and rehabilitation program; however, the employing agency shall immediately detail the employee to a non safety-sensitive position while he or she completes the counseling and rehabilitation program.

**3905.** District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Testing—**3905.1** Appointees and District government employees subject to testing under the Program shall be tested for drug and alcohol use as specified in this section and section 3906 of this chapter. **3905.2** A final offer of appointment to a covered position shall not be made until after the results of any test conducted are received and it is determined that the test result is negative. **3905.3** Pursuant to D.C. Official Code §1-620.32 (b) (2006 Repl.), District government employees in safety-sensitive positions shall be subject to random testing, unless the employing agency has additional requirements for drug and alcohol testing of its employees, in which case the stricter testing requirements shall apply. **3905.4** A District government employee who is required to drive a motor vehicle to transport children or youth in the course of performing his or her official duties shall be deemed to have given his or her consent, subject to the conditions of sections 3901 through 3910 of this chapter, to the testing of the employee's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable cause or a police officer arrests such employee for a violation of the law and has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District of Columbia while the employee's alcohol concentration was 0.08 grams or more per two hundred and ten (210) liters of breath; or while under the influence of an intoxicating liquor or any drug or combination thereof; or while the employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor. **3905.5** An employee who acknowledges a drug or alcohol problem upon receiving the initial thirty-day (30-day) notification, and who completes a counseling and rehabilitation program for illegal drug use or alcohol abuse, shall be tested before being allowed to return to the safety-sensitive position he or she occupied before completion of such a program. After returning to the safety-sensitive position, the employee shall be subject to testing as specified in sections 3905.3 and 3905.4 of this section and section 3908 of this chapter, as applicable.

**3906.** District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Testing methods.—**3906.1** Testing for illegal drug use shall be conducted by collecting a urine sample from the individual being tested. **3906.2** Testing for alcohol use shall be conducted utilizing an evidentiary breath-testing device or EBT, commonly referred to as a "breathalyzer."  
**3906.3** The vendor or vendors selected to conduct the testing shall conduct the breathalyzer test for alcohol use; or collect urine specimens on site for drug testing at a location designated by each personnel authority for such purposes. **3906.4** In the case of drug testing, the vendor shall split each

sample and perform enzyme-multiplied-immunossay technique (EMIT) testing on one (1) sample and store the split of that sample. A positive EMIT test shall be confirmed by the vendor, using the gas chromatography/mass spectrometry (GCMS) methodology. 3906.5 The appropriate personnel authority shall notify, in writing, any appointee or employee in a safety-sensitive position found to have a confirmed positive urinalysis test result. The appointee or employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing method. 3906.6 Probable cause or reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in this section. In the case of a reasonable suspicion referral, as confirmed by a second supervisor, or a post-accident employee, a supervisor shall escort the employee to the vendor's test site for specimen collection or a breathalyzer. **3906.7** In the event that a covered employee may require medical care following an accident, medical care shall not be delayed for the purpose of testing. **3906.8** A breathalyzer test shall be deemed positive if the vendor determines that one (1) milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

**3907** District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Positive test results.—**3907.1** The following shall be grounds for termination of employment, provided that the notification requirements in section 3904 of this chapter have been met: (a) A confirmed positive drug test result; (b) A positive breathalyzer test; (c) Refusal to submit to a drug test or breathalyzer; or (d) In the case of an employee who acknowledged a drug and alcohol problem as specified in section 3904.4 of this chapter, failure to complete the counseling and rehabilitation program, or a confirmed positive drug test result for the test conducted upon completion of the counseling and rehabilitation program pursuant to section 3905.5 of this chapter. **3907.2** The appropriate personnel authority shall decline to make a final offer of employment to a safety-sensitive position to an appointee if he or she: (a) Refuses to take the required drug test; or (b) Has a confirmed positive drug test result. **3907.3** A person described in section 3907.2 of this section shall not reapply for appointment to a safety-sensitive position with the District government for a period of one (1) year from the date of his or her refusal to take the required drug test or the date of the confirmed positive test result, as applicable. **3907.4** A District government employee who is terminated for any of the events described in section 3907.1 of this section shall be denied subsequent appointment to a safety-sensitive position with the District government for a period of one (1) year from the date of any of these events.

**3908.** District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Reasonable suspicion testing.—**3908.1** The immediate supervisor or manager of an employee occupying a safety-sensitive position shall make a reasonable suspicion referral for testing of an employee in a safety-sensitive position when there is a reasonable suspicion that the employee is under the influence of illegal drugs or alcohol to the extent that the employee is too impaired to perform his or her duties. **3908.2** Prior to contacting the appropriate personnel authority to make a referral under this section, the supervisor or manager shall: (a) Have probable cause or reasonable suspicion that the employee is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired; (b) Gather all information and facts to support this suspicion; and (c) Receive a second opinion from another supervisor or manager. **3908.3** A reasonable suspicion referral may be based on direct observation of illegal drug use or possession, physical symptoms of being under the influence of illegal drugs, or intoxicated by alcohol, a pattern of erratic behavior, work performance indicators of drug or alcohol abuse, or any other reliable indicators. **3908.4** Testing resulting from a reasonable suspicion referral shall be conducted as specified in sections 3905 and 3906 of this chapter.

**3909. District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Training .—3909.1** Agencies with safety-sensitive positions shall be responsible for providing training in drug abuse detection and recognition; documentation; intervention; and any other appropriate topics, for supervisors and managers in agencies with covered employees.

**3910. District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Recordkeeping requirements; Confidentiality of information.—**

	<p>3910.1 All matters relating to test results and applicants for employment and covered employees involved shall be confidential. All records relating to alcohol and drug testing shall be kept by the appropriate personnel authority in a place apart from employment applications or employees' official personnel folders. 3910.2 The results of a random test shall not be turned over to any law enforcement agency without the subject's written consent.</p> <p><b>3999. District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Definitions.—3999.1</b> When used in this chapter, the following terms shall have the meaning ascribed: <b>Alcohol</b>—for the purposes of sections 3901 through 3910 of this chapter, the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol, no matter how it is packaged or in what form the alcohol is stored, utilized or found. <b>Applicant</b>—for the purposes of sections 3901 through 3910 of this chapter, a person who has filed a resume or written application for District government employment in a safety-sensitive position. <b>Appointee</b>—for the purposes of sections 3901 through 3910 of this chapter, a person who has been made a tentative offer of appointment with the District government in a safety-sensitive position. <b>Breathalyzer/Evidential Breath Testing Device (EBT)</b>—for the purposes of sections 3901 through 3910 of this chapter, method for measuring the level of alcohol present in an individual. <b>Children</b>—for the purposes of sections 3901 through 3910 of this chapter, persons twelve (12) years of age and under. <b>Days</b>—calendar days, unless otherwise specified. <b>Drugs</b>—for the purposes of sections 3901 through 3910 of this chapter, illegal drugs for which tests are required under 49 C.F.R. part 40, such as marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates; but not authorized prescription medications. <b>Enzyme-Multiplied-Immunoassay Technique (EMIT)</b>—for the purposes of sections 3901 through 3910 of this chapter, initial method that is used to test for drugs in urine samples. <b>Gas chromatography mass spectrometry (GCMS) methodology</b>—for the purposes of sections 3901 through 3910 of this chapter, the only authorized confirmation-testing method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. <b>Personnel authority</b>—a person or entity with the authority to administer all or part of a personnel management program as provided in D.C. Official Code §1-604.01 et seq.) (2006 Repl.). <b>Post-accident employee</b>—for the purposes of sections 3901 through 3910 of this chapter, a District government employee in a safety-sensitive position who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, from the use of drugs or alcohol on part of the employee. <b>Probable cause</b>—for the purposes of sections 3901 through 3910 of this chapter, a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired. <b>Random testing</b>—for the purposes of sections 3901 through 3910 of this chapter, drug or alcohol testing conducted on a District government employee in a safety-sensitive position at an unspecified time for purposes of determining whether the employee has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties. <b>Reasonable suspicion</b>—for the purposes of sections 3901 through 3910 of this chapter, a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired. <b>Reasonable suspicion referral</b>—for the purposes of sections 3901 through 3910 of this chapter, referral of an employee in a safety-sensitive position for testing by the District government for drug or alcohol use. <b>Safety sensitive position</b>—for the purposes of sections 3901 through 3910 of this chapter, a position with duties and responsibilities that require the incumbent to provide services that affect the health, safety, and welfare of children or youth, including direct care and custody of children or youth, including but not limited to the duties and responsibilities listed in section 3903.1 (a) through (t) of this chapter. <b>Subordinate agency</b>—any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in section 301 (q) of the CMPA (D.C. Official Code §1-603.01 (17)) (2007 Supp.). <b>Youth</b>—for the purposes of sections 3901 through 3910 of this chapter, persons between thirteen (13) and seventeen (17) years of age, inclusive.</p>
<p><b>Florida</b></p>	<p><b>440.102.</b> Drug-free workplace program; Requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration: <b>(1) DEFINITIONS.</b> Except where the context otherwise requires, as used in this act: (a) "Chain of custody" refers to the methodology of tracking specified materials or substances for</p>

the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results. (b) "Confirmation test," "confirmed test," or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy. (c) "Drug" means alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in this paragraph. An employer may test an individual for any or all of such drugs. (d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(27), that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse. (e) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care Administration, for the purpose of determining the presence or absence of a drug or its metabolites. (f) "Employee" means any person who works for salary, wages, or other remuneration for an employer. (g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(27). (h) "Employer" means a person or entity that employs a person and that is covered by the Workers' Compensation Law. (i) "Initial drug test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens, using an immunoassay procedure or an equivalent, or a more accurate scientifically accepted method approved by the United States Food and Drug Administration or the Agency for Health Care Administration as such more accurate technology becomes available in a cost-effective form. (j) "Job applicant" means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a drug test, and may have begun work pending the results of the drug test. For a public employer, "job applicant" means only a person who has applied for a special-risk or safety-sensitive position. (k) "Medical review officer" or "MRO" means a licensed physician, employed with or contracted with an employer, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information. (l) "Prescription or nonprescription medication" means a drug or medication obtained pursuant to a prescription as defined by s. 893.02 or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries. (m) "Public employer" means any agency within state, county, or municipal government that employs individuals for a salary, wages, or other remuneration. (n) "Reasonable-suspicion drug testing" means drug testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon: 1. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug. 2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance. 3. A report of drug use, provided by a reliable and credible source. 4. Evidence that an individual has tampered with a drug test during his or her employment with the current employer. 5. Information that an employee has caused, contributed to, or been involved in an accident while at work. 6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment. (o) "Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information

or documents pertaining to criminal investigations, or work with controlled substances; a position subject to s. 110.1127; or a position in which a momentary lapse in attention could result in injury or death to another person. (p) "Special-risk position" means, with respect to a public employer, a position that is required to be filled by a person who is certified under chapter 633 or chapter 943. (q) "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration or the Agency for Health Care Administration. **(2) DRUG TESTING.**—An employer may test an employee or job applicant for any drug described in paragraph (1)(c). In order to qualify as having established a drug-free workplace program under this section and to qualify for the discounts provided under s. 627.0915 and deny medical and indemnity benefits under this chapter, an employer must implement drug testing that conforms to the standards and procedures established in this section and all applicable rules adopted pursuant to this section as required in subsection (4). However, an employer does not have a legal duty under this section to request an employee or job applicant to undergo drug testing. If an employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the employer is ineligible for discounts under s. 627.0915. All employers qualifying for and receiving discounts provided under s. 627.0915 must be reported annually by the insurer to the department. **(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.** (a) One time only, prior to testing, an employer shall give all employees and job applicants for employment a written policy statement which contains: 1. A general statement of the employer's policy on employee drug use, which must identify: a. The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug testing or drug testing conducted on any other basis. b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result. 2. A statement advising the employee or job applicant of the existence of this section. 3. A general statement concerning confidentiality. 4. Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications to a medical review officer both before and after being tested. 5. A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the Agency for Health Care Administration shall be available to employers through the department. 6. The consequences of refusing to submit to a drug test. 7. A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs. 8. A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to law or to rules adopted by the Agency for Health Care Administration. 9. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section. 10. A list of all drugs for which the employer will test, described by brand name or common name, as applicable, as well as by chemical name. 11. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court. 12. A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication. (b) An employer not having a drug-testing program shall ensure that at least 60 days elapse between a general one-time notice to all employees that a drug-testing program is being implemented and the beginning of actual drug testing. An employer having a drug-testing program in place prior to July 1, 1990, is not required to provide a 60-day notice period. (c) An employer shall include notice of drug testing on vacancy announcements for positions for which drug testing is required. A notice of the employer's drug-testing policy must also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations. **(4) TYPES OF TESTING.** (a) An employer is required to conduct the following types of drug tests: 1. Job applicant drug testing. An employer must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. 2. Reasonable-suspicion drug testing. An employer must require an

employee to submit to reasonable-suspicion drug testing. 3. Routine fitness-for-duty drug testing. An employer must require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group. 4. Followup drug testing. If the employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a followup to such program, unless the employee voluntarily entered the program. In those cases, the employer has the option to not require followup testing. If followup testing is required, it must be conducted at least once a year for a 2-year period after completion of the program. Advance notice of a followup testing date must not be given to the employee to be tested. (b) This subsection does not preclude a private employer from conducting random testing, or any other lawful testing, of employees for drugs. (c) Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with law or with rules adopted by the Agency for Health Care Administration. **(5) PROCEDURES AND EMPLOYEE PROTECTION.** All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures: (a) A sample shall be collected with due regard to the privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample. (b) Specimen collection must be documented, and the documentation procedures shall include: 1. Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results. 2. A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed test result. (c) Specimen collection, storage, and transportation to the testing site shall be performed in a manner that reasonably precludes contamination or adulteration of specimens. (d) Each initial drug test and confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed or certified laboratory as described in subsection (9). (e) A specimen for a drug test may be taken or collected by any of the following persons: 1. A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment. 2. A qualified person employed by a licensed or certified laboratory as described in subsection (9). (f) A person who collects or takes a specimen for a drug test shall collect an amount sufficient for two drug tests as determined by the Agency for Health Care Administration. (g) Every specimen that produces a positive, confirmed test result shall be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 210 days after the result of the test was mailed or otherwise delivered to the medical review officer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory that performed the test for the employer is responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer. (h) Within 5 working days after receipt of a positive confirmed test result from the medical review officer, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. The employer shall provide to the employee or job applicant, upon request, a copy of the test results. (i) Within 5 working days after receiving notice of a positive confirmed test result, an employee or job applicant may submit information to the employer explaining or contesting the test result, and explaining why the result does not constitute a violation of the employer's policy. (j) The employee's or job applicant's explanation or challenge of the positive test result is

unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, shall be provided by the employer to the employee or job applicant; and all such documentation shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year. (k) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer. (l) An employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by the Agency for Health Care Administration to ensure proper recordkeeping, handling, labeling, and identification of all specimens tested. (m) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees. An employee or job applicant shall pay the costs of any additional drug tests not required by the employer. (n) An employer shall not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program. Unless otherwise provided by a collective bargaining agreement, an employer may select the employee assistance program or drug rehabilitation program if the employer pays the cost of the employee's participation in the program. (o) If drug testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year. (p) All authorized remedial treatment, care, and attendance provided by a health care provider to an injured employee before medical and indemnity benefits are denied under this section must be paid for by the carrier or self-insurer. However, the carrier or self-insurer must have given reasonable notice to all affected health care providers that payment for treatment, care, and attendance provided to the employee after a future date certain will be denied. A health care provider, as defined in s. 440.13(1)(i), that refuses, without good cause, to continue treatment, care, and attendance before the provider receives notice of benefit denial commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. (6) **CONFIRMATION TESTING.** (a) If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test. (b) Only licensed or certified laboratories as described in subsection (9) may conduct confirmation drug tests. (c) All positive initial tests shall be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the Agency for Health Care Administration or the United States Food and Drug Administration as such technology becomes available in a cost-effective form. (d) If an initial drug test of an employee or job applicant is confirmed as positive, the employer's medical review officer shall provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant. (7) **EMPLOYER PROTECTION.** (a) An employee or job applicant whose drug test result is confirmed as positive in accordance with this section shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws. (b) An employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined, or refused to hire for cause. (c) No physician-patient relationship is created between an employee or job applicant and an employer or any person performing or evaluating a drug test, solely by the establishment, implementation, or administration of a drug-testing program. (d) Nothing in this section shall be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules. (e) This section does not operate retroactively, and does not abrogate the right of an employer under state law to conduct drug tests, or implement employee drug-testing programs; however, only those programs that meet the criteria outlined in this section qualify for reduced rates under s. 627.0915. (f) If an employee or job applicant refuses to submit to a drug test, the employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. However, this paragraph does not abrogate the



rights and remedies of the employee or job applicant as otherwise provided in this section. (g) This section does not prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with the rules adopted by the Agency for Health Care Administration under this chapter or under s. 112.0455. A public employer may, through the use of an unbiased selection procedure, conduct random drug tests of employees occupying safety-sensitive or special-risk positions if the testing is performed in accordance with drug-testing rules adopted by the Agency for Health Care Administration and the department. If applicable, random drug testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented. (h) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug testing. **(8) CONFIDENTIALITY.** (a) Except as otherwise provided in this subsection, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this section or in determining compensability under this chapter. (b) Employers, laboratories, medical review officers, employee assistance programs, drug rehabilitation programs, and their agents may not release any information concerning drug test results obtained pursuant to this section without a written consent form signed voluntarily by the person tested, unless such release is compelled by an administrative law judge, a hearing officer, or a court of competent jurisdiction pursuant to an appeal taken under this section or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum: 1. The name of the person who is authorized to obtain the information. 2. The purpose of the disclosure. 3. The precise information to be disclosed. 4. The duration of the consent. 5. The signature of the person authorizing release of the information. (c) Information on drug test results shall not be used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding. (d) This subsection does not prohibit an employer, agent of an employer, or laboratory conducting a drug test from having access to employee drug test information or using such information when consulting with legal counsel in connection with actions brought under or related to this section or when the information is relevant to its defense in a civil or administrative matter. **(9) DRUG-TESTING STANDARDS FOR LABORATORIES.** (a) A laboratory may analyze initial or confirmation test specimens only if: 1. The laboratory is licensed and approved by the Agency for Health Care Administration using criteria established by the United States Department of Health and Human Services as general guidelines for modeling the state drug-testing program pursuant to this section or the laboratory is certified by the United States Department of Health and Human Services. 2. The laboratory has written procedures to ensure the chain of custody. 3. The laboratory follows proper quality control procedures, including, but not limited to: a. The use of internal quality controls, including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy. b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory. c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results. d. Other necessary and proper actions taken to ensure reliable and accurate drug test results. (b) A laboratory shall disclose to the medical review officer a written positive confirmed test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result must, at a minimum, state: 1. The name and address of the laboratory that performed the test and the positive identification of the person tested. 2. Positive results on confirmation tests only, or negative results, as applicable. 3. A list of the drugs for which the drug analyses were conducted. 4. The type of tests conducted for both initial tests and confirmation tests and the minimum cutoff levels of the tests. 5. Any correlation between medication reported by the employee or job applicant pursuant to subparagraph (5)(b)2. and a positive confirmed drug test result. A report must not disclose the presence or absence of any drug other than a specific drug and its

metabolites listed pursuant to this section. (c) The laboratory shall submit to the Agency for Health Care Administration a monthly report with statistical information regarding the testing of employees and job applicants. The report must include information on the methods of analysis conducted, the drugs tested for, the number of positive and negative results for both initial tests and confirmation tests, and any other information deemed appropriate by the Agency for Health Care Administration. A monthly report must not identify specific employees or job applicants. **(10) RULES.** The Agency for Health Care Administration shall adopt rules pursuant to s. 112.0455 and criteria established by the United States Department of Health and Human Services as general guidelines for modeling the state drug-testing program, concerning, but not limited to: (a) Standards for licensing drug-testing laboratories and suspension and revocation of such licenses. (b) Urine, hair, blood, and other body specimens and minimum specimen amounts that are appropriate for drug testing. (c) Methods of analysis and procedures to ensure reliable drug-testing results, including standards for initial tests and confirmation tests. (d) Minimum cutoff detection levels for each drug or metabolites of such drug for the purposes of determining a positive test result. (e) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested. (f) Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests. **(11) PUBLIC EMPLOYEES IN SAFETY-SENSITIVE OR SPECIAL-RISK POSITIONS.** (a) If an employee who is employed by a public employer in a safety-sensitive position enters an employee assistance program or drug rehabilitation program, the employer must assign the employee to a position other than a safety-sensitive position or, if such position is not available, place the employee on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay. (b) An employee who is employed by a public employer in a special-risk position may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under s. 893.03. A special-risk employee who is participating in an employee assistance program or drug rehabilitation program may not be allowed to continue to work in any special-risk or safety-sensitive position of the public employer, but may be assigned to a position other than a safety-sensitive position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay. **(12) DENIAL OF BENEFITS.** An employer shall deny an employee medical or indemnity benefits under this chapter, pursuant to this section. **(13) COLLECTIVE BARGAINING RIGHTS.** (a) This section does not eliminate the bargainable rights as provided in the collective bargaining process if applicable. (b) Drug-free workplace program requirements pursuant to this section shall be a mandatory topic of negotiations with any certified collective bargaining agent for nonfederal public sector employers that operate under a collective bargaining agreement. **(14) APPLICABILITY.** A drug testing policy or procedure adopted by an employer pursuant to this chapter shall be applied equally to all employee classifications where the employee is subject to workers' compensation coverage. **(15) STATE CONSTRUCTION CONTRACTS.—** Each construction contractor regulated under part I of chapter 489, and each electrical contractor and alarm system contractor regulated under part II of chapter 489, who contracts to perform construction work under a state contract for educational facilities governed by chapter 1013, for public property or publicly owned buildings governed by chapter 255, or for state correctional facilities governed by chapter 944 shall implement a drug-free workplace program under this section.

**Sec. 112.0455. Drug-Free Workplace Act .—** (1) **SHORT TITLE.** — This section shall be known and may be cited as the “Drug-Free Workplace Act.” (2) **PURPOSE.** — This section is intended to: (a) Promote the goal of drug-free workplaces within government through fair and reasonable drug-testing methods for the protection of public employees and employers. (b) Encourage employers to provide employees who have drug use problems with an opportunity to participate in an employee assistance program or an alcohol and drug rehabilitation program. (c) Provide for confidentiality of testing results. (3) **FINDINGS.** — The Legislature finds that: (a) Drug use has serious adverse effects upon a significant portion of the workforce, resulting in billions of dollars of lost productivity each year and posing a threat to the workplace and to public safety and security. (b) Maintaining a healthy and productive workforce, safe working conditions free from the effects of drugs, and quality products and services is important to employers, employees, and the general public in this state. The Legislature further finds that drug use creates a variety of workplace problems, including increased injury on the

job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services. (c) Certain drug-testing standards are necessary to protect persons participating in workplace drug-testing programs.(d) In balancing the interests of employers, employees, and the welfare of the general public, the establishment of standards to assure fair and accurate testing for drugs in the workplace is in the best interests of all. (4) **NO LEGAL DUTY TO TEST.** — All drug testing conducted by employers shall be in conformity with the standards established in this section and all applicable rules promulgated pursuant to this section. However, employers shall not have a legal duty under this section to request an employee or job applicant to undergo drug testing. No testing of employees shall take effect until local drug abuse assistance programs have been identified. (5) **DEFINITIONS.**—Except where the context otherwise requires, as used in this act: (a) “Drug” means alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines; cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or a metabolite of any of the substances listed herein. (b) “Drug test” or “test” means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites. (c) “Initial drug test” means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests must use an immunoassay procedure or an equivalent, or must use a more accurate scientifically accepted method approved by the Agency for Health Care Administration as such more accurate technology becomes available in a cost-effective form. (d) “Confirmation test,” “confirmed test,” or “confirmed drug test” means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy. (e) “Chain of custody” refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, storing specimens, and reporting of test results. (f) “Job applicant” means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a drug test. (g) “Employee” means a person who works for salary, wages, or other remuneration for an employer.(h) “Employer” means an agency within state government that employs individuals for salary, wages, or other remuneration.(i) “Prescription or nonprescription medication” means a drug or medication obtained pursuant to a prescription as defined by s. 893.02 or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries. (j) “Random testing” means a drug test conducted on employees who are selected through the use of a computer-generated random sample of an employer’s employees. (k) “Reasonable suspicion drug testing” means drug testing based on a belief that an employee is using or has used drugs in violation of the employer’s policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Reasonable suspicion drug testing may not be required except upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question. Among other things, such facts and inferences may be based upon: 1. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug. 2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.3. A report of drug use, provided by a reliable and credible source, which has been independently corroborated.4. Evidence that an individual has tampered with a drug test during employment with the current employer.5. Information that an employee has caused, or contributed to, an accident while at work.6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer’s premises or while operating the employer’s vehicle, machinery, or equipment. (l) “Specimen” means a tissue, hair, or product of the human body capable of revealing the presence of drugs or their metabolites.(m) “Employee assistance program” means an established program for employee assessment, counseling, and possible referral to an alcohol and drug rehabilitation program. (n) “Special risk” means employees who are required as a condition of employment to be certified under chapter 633 or chapter 943. (6) **NOTICE TO EMPLOYEES.** —(a) Employers with no drug-testing program shall ensure that at least 60 days elapse between a general one-time notice to all

employees that a drug-testing program is being implemented and the beginning of actual drug testing. Employers with drug-testing programs in place prior to the effective date of this section are not required to provide a 60-day notice period. (b) Prior to testing, all employees and job applicants for employment shall be given a written policy statement from the employer which contains: 1. A general statement of the employer's policy on employee drug use, which shall identify: a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis; and b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result. 2. A statement advising the employee or job applicant of the existence of this section. 3. A general statement concerning confidentiality. 4. Procedures for employees and job applicants to confidentially report the use of prescription or nonprescription medications both before and after being tested. Additionally, employees and job applicants shall receive notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications shall be developed by the Agency for Health Care Administration. 5. The consequences of refusing to submit to a drug test. 6. Names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs. 7. A statement that an employee or job applicant who receives a positive confirmed drug test result may contest or explain the result to the employer within 5 working days after written notification of the positive test result. If an employee or job applicant's explanation or challenge is unsatisfactory to the employer, the person may contest the drug test result as provided by subsections (14) and (15). 8. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil actions brought pursuant to this section. 9. A list of all drugs for which the employer will test, described by brand names or common names, as applicable, as well as by chemical names. 10. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission. 11. A statement notifying employees and job applicants of their right to consult the testing laboratory for technical information regarding prescription and nonprescription medication. (c) An employer shall include notice of drug testing on vacancy announcements for those positions where drug testing is required. A notice of the employer's drug-testing policy shall also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy shall be made available for inspection by the general public during regular business hours in the employer's personnel office or other suitable locations. (7) **TYPES OF TESTING.**—Drug testing must be conducted within each agency's appropriation. An employer may conduct, but is not required to conduct, the following types of drug tests: (a) Job applicant testing.—An employer may require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusal to hire the job applicant. (b) Reasonable suspicion.—An employer may require an employee to submit to reasonable suspicion drug testing. (c) Random testing.—An employer may conduct random testing once every 3 months. The random sample of employees chosen for testing must be computer-generated by an independent third party. A random sample may not constitute more than 10 percent of the total employee population. (d) Routine fitness for duty.—An employer may require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group. (e) Followup testing.—If the employee in the course of employment enters an employee assistance program for drug-related problems, or an alcohol and drug rehabilitation program, the employer may require the employee to submit to a drug test as a followup to such program, and on a quarterly, semiannual, or annual basis for up to 2 years thereafter. (8) **PROCEDURES AND EMPLOYEE PROTECTION.**—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures: (a) A sample shall be collected with due regard to the privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample. (b) Specimen collection shall be documented, and the documentation procedures shall include: 1. Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results. 2. A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication, or other relevant medical information. Such form shall provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical

name, which may alter or affect a drug test. The providing of information does not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed results. (c) Specimen collection, storage, and transportation to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration. (d) Each initial and confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed laboratory as described in subsection (12). (e) A specimen for a drug test may be taken or collected by any of the following persons: 1. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment. 2. A qualified person employed by a licensed laboratory. (f) A person who collects or takes a specimen for a drug test conducted pursuant to this section shall collect an amount sufficient for two drug tests as determined by the Agency for Health Care Administration. (g) Any drug test conducted or requested by an employer may occur before, during, or immediately after the regular work period of the employee, and shall be deemed to be performed during work time for the purposes of determining compensation and benefits for the employee. (h) Every specimen that produces a positive confirmed result shall be preserved by the licensed laboratory that conducts the confirmation test for a period of at least 210 days from the time the results of the positive confirmation test are mailed or otherwise delivered to the employer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory that performed the test for the employer is responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer. (i) Within 5 working days after receipt of a positive confirmed test result from the testing laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. (j) The employer shall provide to the employee or job applicant, upon request, a copy of the test results. (k) Within 5 working days after receiving notice of a positive confirmed test result, the employee or job applicant may submit information to an employer explaining or contesting the test results, and why the results do not constitute a violation of the employer's policy. (l) If an employee or job applicant's explanation or challenge of the positive test results is unsatisfactory to the employer, a written explanation as to why the employee or job applicant's explanation is unsatisfactory, along with the report of positive results, shall be provided by the employer to the employee or job applicant. All such documentation shall be kept confidential and exempt from the provisions of s. 119.07(1) by the employer pursuant to subsection (11) and shall be retained by the employer for at least 1 year. (m) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test. (n) Upon successful completion of an employee assistance program or an alcohol and drug rehabilitation program, the employee shall be reinstated to the same or equivalent position that was held prior to such rehabilitation. (o) An employer may not discharge, discipline, or discriminate against an employee, or refuse to hire a job applicant, on the basis of any prior medical history revealed to the employer pursuant to this section. (p) An employer who performs drug testing or specimen collection shall use chain-of-custody procedures as established by the Agency for Health Care Administration to ensure proper recordkeeping, handling, labeling, and identification of all specimens to be tested. (q) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees. (r) An employee or job applicant shall pay the costs of any additional drug tests not required by the employer. (s) An employer may not discharge, discipline, or discriminate against an employee solely upon voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered an alcohol and drug rehabilitation program. However, special risk employees may be subject to discharge or disciplinary action when the presence of illicit drugs, pursuant to s. 893.13, is

confirmed. (t) If testing is conducted based on reasonable suspicion, each employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential and exempt from the provisions of s. 119.07(1) by the employer pursuant to subsection (11) and retained by the employer for at least 1 year. (u) If an employee is unable to participate in outpatient rehabilitation, the employee may be placed on leave status while participating in an employee assistance program or an alcohol and drug rehabilitation program. If placed on leave-without-pay status, the employee shall be permitted to use any accumulated leave credits prior to being placed on leave without pay. Upon successful completion of an employee assistance program or an alcohol and drug rehabilitation program, the employee shall be reinstated to the same or equivalent position that was held prior to such rehabilitation. (9)

**CONFIRMATION TESTING.** —(a) If an initial drug test is negative, the employer may in its sole discretion and at the employer's expense seek a confirmation test. (b) Only licensed laboratories as described in subsection (12) shall conduct confirmation drug tests. (c) All positive initial tests shall be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the Agency for Health Care Administration as such technology becomes available in a cost-effective form. (10) **EMPLOYER PROTECTION.** —(a) No employee or job applicant whose drug test result is confirmed as positive in accordance with the provisions of this section shall, by virtue of the result alone, be defined as a person with a “handicap” as cited in the 1973 Rehabilitation Act. (b) An employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section shall be considered to have discharged, disciplined, or refused to hire for cause. (c) No physician-patient relationship is created between an employee or job applicant and an employer or any person performing or evaluating a drug test, solely by the establishment, implementation, or administration of a drug-testing program. (d) Nothing in this section shall be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules. (e) Nothing in this section shall be construed to operate retroactively, and nothing in this section shall abrogate the right of an employer under state law to conduct drug tests prior to January 1, 1990. A drug test conducted by an employer prior to January 1, 1990, is not subject to this section. (f) If an employee or job applicant refuses to submit to a drug test, the employer shall not be barred from discharging or disciplining the employee, or from refusing to hire the job applicant. However, nothing in this paragraph shall abrogate the rights and remedies of the employee or job applicant as otherwise provided in this section. (g) An employer who refuses to hire a job applicant based on a positive confirmed drug test result shall not be required to hold the employment position vacant while the job applicant pursues administrative action. However, should the job applicant prevail in the actions, the employer shall provide him or her the opportunity of employment in the next available comparable position. (h) An employer may discharge or discipline an employee following a first-time positive confirmed drug test result. If the employer does not discharge the employee, the employer may refer the employee to an employee assistance program or an alcohol and drug rehabilitation program in which the employee may participate at the expense of the employee or pursuant to a health insurance plan. 1. If an employer refers an employee to an employee assistance program or an alcohol and drug rehabilitation program, the employer must determine whether the employee is able to safely and effectively perform the job duties assigned to the employee while the employee participates in the employee assistance program or the alcohol and drug rehabilitation program. 2. An employee whose assigned duties require the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with detainees in the correctional system, work with confidential information or documents pertaining to criminal investigations, work with controlled substances, hold a position subject to s. 110.1127, or hold a position in which a momentary lapse in attention could result in injury or death to another person, is deemed unable to safely and effectively perform the job duties assigned to the employee while the employee participates in the employee assistance program or the alcohol and drug rehabilitation program. 3. If an employer refers an employee to an employee assistance program or an alcohol and drug rehabilitation program and the employer determines that the employee is unable, or the employee is deemed unable, to safely and effectively perform the job duties assigned to the employee before he or she completes the employee assistance program or the alcohol

and drug rehabilitation program, the employer shall place the employee in a job assignment that the employer determines the employee can safely and effectively perform while participating in the employee assistance program or the alcohol and drug rehabilitation program. 4. If a job assignment in which the employee may safely and effectively perform is unavailable, the employer shall place the employee on leave status while the employee is participating in an employee assistance program or an alcohol and drug rehabilitation program. If placed on leave status without pay, the employee may use accumulated leave credits before being placed on leave without pay. (i) This section does not prohibit an employer from conducting medical screening or other tests required by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. (11) **CONFIDENTIALITY.** —(a) Except as otherwise provided in this subsection, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this section. (b) Employers, laboratories, employee assistance programs, drug and alcohol rehabilitation programs, and their agents may not release any information concerning drug test results obtained pursuant to this section without a written consent form signed voluntarily by the person tested, except where such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section, or where deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum: 1. The name of the person who is authorized to obtain the information. 2. The purpose of the disclosure. 3. The precise information to be disclosed. 4. The duration of the consent. 5. The signature of the person authorizing release of the information. (c) Information on drug test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section shall be inadmissible as evidence in any such criminal proceeding. (d) Nothing herein shall be construed to prohibit certifying bodies of special risk employees from receiving information on positive confirmed drug test results for the purpose of reviewing certification. (e) Nothing herein shall be construed to prohibit the employer, agent of the employer, or laboratory conducting a drug test from having access to employee drug test information when consulting with legal counsel in connection with actions brought under or related to this section or where the information is relevant to its defense in a civil or administrative matter. (12) **DRUG-TESTING STANDARDS; LABORATORIES.** —(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this section. A license issued by the agency is required in order to operate a laboratory. (b) A laboratory may analyze initial or confirmation drug specimens only if: 1. The laboratory is licensed and approved by the Agency for Health Care Administration using criteria established by the United States Department of Health and Human Services as general guidelines for modeling the state drug testing program and in accordance with part II of chapter 408. Each applicant for licensure and licensee must comply with all requirements of part II of chapter 408. 2. The laboratory has written procedures to ensure chain of custody. 3. The laboratory follows proper quality control procedures, including, but not limited to: a. The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy. b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory. c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results. d. Other necessary and proper actions taken to ensure reliable and accurate drug test results. (c) A laboratory shall disclose to the employer a written test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result shall, at a minimum, state: 1. The name and address of the laboratory which performed the test and the positive identification of the person tested. 2. Positive results on confirmation tests only, or negative results, as applicable. 3. A list of the drugs for which the drug analyses were conducted. 4. The type of tests conducted for both initial and confirmation tests and the minimum cutoff levels of the tests. 5. Any correlation between medication reported by the

employee or job applicant pursuant to subparagraph (8)(b)2. and a positive confirmed drug test result. No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this section. (d) The laboratory shall submit to the Agency for Health Care Administration a monthly report with statistical information regarding the testing of employees and job applicants. The reports shall include information on the methods of analyses conducted, the drugs tested for, the number of positive and negative results for both initial and confirmation tests, and any other information deemed appropriate by the Agency for Health Care Administration. No monthly report shall identify specific employees or job applicants. (e) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant. (13) **RULES.** —(a) The Agency for Health Care Administration may adopt additional rules to support this law and part II of chapter 408, using criteria established by the United States Department of Health and Human Services as general guidelines for modeling drug-free workplace laboratories, concerning, but not limited to: 1. Standards for drug-testing laboratory licensing and denial, suspension, and revocation of a license.2. Urine, hair, blood, and other body specimens and minimum specimen amounts which are appropriate for drug testing, not inconsistent with other provisions established by law. 3. Methods of analysis and procedures to ensure reliable drug-testing results, including standards for initial tests and confirmation tests, not inconsistent with other provisions established by law. 4. Minimum cutoff detection levels for drugs or their metabolites for the purposes of determining a positive test result, not inconsistent with other provisions established by law. 5. Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens being tested, not inconsistent with other provisions established by law. 6. Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.7. A list of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. (b) The following standards and procedures are established related to hair testing:1. **Hair cutoff levels for initial drug-screening tests.** — The following initial cutoff levels must be used when screening hair specimens to determine whether they are negative for these drugs or their metabolites: a. Marijuana: 10 pg/10 mg of hair;b. Cocaine: 5 ng/10 mg of hair; andc. Opiate/synthetic narcotics and metabolites: 5 ng/10 mg of hair. For the purpose of this section, opiate and metabolites include the following: (I) Codeine;(II) Heroin, monoacetylmorphine (heroin metabolites);(III) Morphine;d. Phencyclidine: 3 ng/10 mg of hair; ande. Amphetamines: 5 ng/10 mg of hair. For the purpose of this section, amphetamines include the following:(I) Amphetamines;(II) Methamphetamine;2. **Hair cutoff levels for drug confirmation testing.** —a. All specimens identified as positive on the initial test must be confirmed using gas chromatography/mass spectrometry (GC/MS), mass spectrometry/mass spectrometry (MS/MS) at the following cutoff levels for these drugs on their metabolites. All confirmations must be by quantitative analysis. (I) Marijuana metabolites: 1 pg/10 mg of hair (Delta-9-tetrahydrocannabinol-0-carboxylic acid).(II) Cocaine: must be at or above 5 ng/10 mg of hair. Cocaine metabolites if present will be recorded at the following minimum levels: (A) Benzoylecgonine at 1 ng/10 mg of hair; and(B) Cocaethlyene at 1 ng/10 mg of hair.(III) Opiate/synthetic narcotics and metabolites: 5 ng/10 mg of hair; opiate and metabolites include the following:(A) Codeine;(B) 6-Monoacetylmorphine (heroin metabolite); and(C) Morphine.(IV) Phencyclidine: 3 ng/10 mg of hair.(V) Amphetamines: 5 ng/10 mg of hair. For the purpose of this section, amphetamines include the following:(A) Amphetamines; and(B) Methamphetamines.b. All hair specimens undergoing confirmation must be decontaminated using a wash procedure which has been published in the peer-reviewed literature which, as a minimum, has an initial 15-minute organic solvent wash followed by multiple (minimum of three) 30-minute aqueous washes. c. After hair is washed, the drug entrapped in the hair is released either by digestion (chemical or enzymatic) or by multiple solvent extractions. The resulting digest or pooled solvent extracts are then screened and confirmed by approved methods. d. All confirmation analysis methods must eliminate the melanin fraction of the hair before analysis. If a nondigestion method is used, the laboratory must present published data in the peer-reviewed literature from a large population study which indicates that the method of extraction does not possess a statistically significant hair-color bias. e. Additional hair samples may be collected to reconfirm the initial report. The recollected sample shall be retested as specified; however, the confirmation analysis must be performed even if the screening test is negative. A second positive report must be made if the drug concentration in the digest by confirmation methods exceeds the limit of quantitation of the testing



laboratory's method. A second test must be offered to anyone disputing a positive hair test result. 3.

**Hair specimen collection procedures.** —a. **Designation of collection site.** — Each drug-testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of hair specimens to a licensed drug-testing facility. b.

**Security.** — While security is important with any collection, in the case of hair, only the temporary storage area in the designated collection site needs to be secure. c. **Chain of custody.** — Chain-of-custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of hair specimens from one authorized individual or place to another shall always be accomplished through chain-of-custody procedures. Every effort shall be made to minimize the number of persons handling specimens. d. **Access to authorized personnel only.** — The hair collection site need be off limits to unauthorized personnel only during the actual collection of specimens. e. **Privacy.** — Procedures for collecting hair should be performed on one individual at a time to prevent substitutions or interference with the collection of reliable samples. Procedures must ensure that the hair collection does not infringe on the individual's privacy. f.

**Integrity and identity of specimen.** — Precautions must be taken to ensure that the root end of a hair specimen is indicated for the laboratory which performs the testing. The maximum length of hair that shall be tested is 3.9 cm distal from the head, which on average represents a 3-month time window. The following minimum precautions must be taken when collecting a hair specimen to ensure that specimens are obtained and correctly identified: (I) When an individual arrives at the collection site, the collection site personnel shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site personnel shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other employer official who can positively identify the individual. If the individual's identity cannot be established, the collection site personnel shall not proceed with the collection. (II) If the individual fails to arrive at the assigned time, the collection site personnel shall contact the appropriate authority to obtain guidance on the action to be taken. (III) The collection site personnel shall note any unusual behavior or appearance on the chain-of-custody form.(IV) Hair shall be cut as close to the scalp or body, excluding the pubic area, as possible. Upon taking the specimen from the individual, the collection site personnel shall determine that it contains approximately ½-inch of hair when fanned out on a ruler (about 40 mg of hair). (V) Both the individual being tested and the collection site personnel shall keep the specimen in view at all times prior to the specimen container being sealed with a tamper-resistant seal and labeled with the individual's specimen number and other required information. (VI) The collection site personnel shall label the container which contains the hair with the date, the individual's specimen number, and any other identifying information provided or required by the drug-testing program. (VII) The individual shall initial the container for the purpose of certifying that it is the specimen collected from the individual. (VIII) The collection site personnel shall indicate on the chain-of-custody form all information identifying the specimen. The collection site personnel shall sign the chain-of-custody form next to the identifying information or the chain of custody on the specimen container. (IX) The individual must be asked to read and sign a statement certifying that the specimen identified as having been collected from the individual is in fact that specimen the individual provided. (X) The collection site personnel shall complete the chain-of-custody form.g. **Collection control.** — To the maximum extent possible, collection site personnel shall keep the individual's specimen container within sight both before and after collection. After the specimen is collected, it must be properly sealed and labeled. An approved chain-of-custody form must be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose must be documented on an approved chain-of-custody form each time a specimen is handled or transferred, and every individual in the chain must be identified. Every effort must be made to minimize the number of persons handling specimens. h. **Transportation to the testing facility.** — Collection site personnel shall arrange to transport the collected specimens to the drug-testing facility. The specimens shall be placed in containers which shall be securely sealed to eliminate the possibility of undetected tampering. The collection site personnel shall ensure that the chain-of-custody documentation is sealed separately from the specimen and placed inside the container sealed for transfer to the drug-testing facility. 4. **Quality assurance and quality control.** — a. **Quality assurance.** — Testing facilities shall have a quality assurance program which encompasses all aspects of the testing process, including, but not limited to, specimen acquisition, chain of custody,

security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs. b. **Quality control.** —(I) Each analytical run of specimens to be screened shall include:(A) Hair specimens certified to contain no drug;(B) Hair specimens fortified with known standards; and(C) Positive controls with the drug or metabolite at or near the threshold (cutoff).(II) In addition, with each batch of samples, a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values must be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen must be documented. A minimum of 5 percent of all test samples must be quality control specimens. The testing facility's quality control samples, prepared from fortified hair samples of determined concentration, must be included in the run and must appear as normal samples to drug-screen testing facility analysis. One percent of each run, with a minimum of at least one sample, must be the testing facility's own quality control samples. 5.a. **Proficiency testing.** —(I) Each hair drug-testing facility shall enroll and demonstrate satisfactory performance in a proficiency-testing program established by an independent group. (II) The drug-testing facility shall maintain records which document the handling, processing, and examination of all proficiency-testing samples for a minimum of 2 years from the date of testing. (III) The drug-testing facility shall ensure that proficiency-testing samples are analyzed at least three times each year using the same techniques as those employed for unknown specimens. (IV) The proficiency-testing samples must be included with the routine sample run and tested with the same frequency as unknown samples by the individuals responsible for testing unknown specimens. (V) The drug-testing facility may not engage in discussions or communications concerning proficiency-testing results with other drug-testing facilities, nor may they send proficiency-testing samples or portions of the samples to another drug-testing facility for analysis. b. Satisfactory performance. —(I) The drug-testing facility shall maintain an overall testing-event score equivalent to passing proficiency scores for other drug-testing matrices. (II) Failure to participate in a proficiency-testing event shall result in a score of 0 percent for that testing event.c. **Unsuccessful performance.** — Failure to achieve satisfactory performance in two consecutive testing events, or two out of three consecutive testing events, is determined to be unsuccessful performance. (c) The Department of Management Services may adopt rules for all executive branch agencies implementing this section.(d) The State Courts Administrator may adopt rules for the state courts system implementing this section.(e) The Justice Administrative Commission may adopt rules on behalf of the state attorneys and public defenders of Florida, the capital collateral regional counsel, and the Judicial Qualifications Commission. (f) The President of the Senate and the Speaker of the House of Representatives may adopt rules, policies, or procedures for the employees and members of the legislative branch implementing this section. This section shall not be construed to eliminate the bargainable rights as provided in the collective bargaining process where applicable. (14) **DISCIPLINE REMEDIES.** —(a) An executive branch employee who is disciplined or who is a job applicant for another position and is not hired pursuant to this section, may file an appeal with the Public Employees Relations Commission. Any appeal must be filed within 30 calendar days of receipt by the employee or job applicant of notice of discipline or refusal to hire. The notice shall inform the employee or job applicant of the right to file an appeal, or if available, the right to file a collective bargaining grievance pursuant to s. 447.401. Such appeals shall be resolved pursuant to the procedures established in ss. 447.207(1)-(4), 447.208(2), and 447.503(4) and (5). A hearing on the appeal shall be conducted within 30 days of the filing of the appeal, unless an extension is requested by the employee or job applicant and granted by the commission or an arbitrator. (b) The commission shall promulgate rules concerning the receipt, processing, and resolution of appeals filed pursuant to this section. (c) Appeals to the commission shall be the exclusive administrative remedy for any employee who is disciplined or any job applicant who is not hired pursuant to this section, notwithstanding the provisions of chapter 120. However, nothing in this subsection shall affect the right of an employee or job applicant to file a collective bargaining grievance pursuant to s. 447.401 provided that an employee or job applicant may not file both an appeal and a grievance. (d) An employee or a job applicant who has been disciplined or who has not been hired pursuant to this section must exhaust either the administrative appeal process or collective bargaining grievance-arbitration process. (e) Upon resolving an appeal filed pursuant to paragraph (c), and finding a violation of this section, the commission may order the following relief: 1. Rescind the disciplinary action, expunge related records

from the personnel file of the employee or job applicant and reinstate the employee. 2. Order compliance with paragraph (10)(g).3. Award back pay and benefits.4. Award the prevailing employee or job applicant the necessary costs of the appeal, reasonable attorney's fees, and expert witness fees. (15) **NONDISCIPLINE REMEDIES.** —(a) Any person alleging a violation of the provisions of this section, that is not remediable by the commission or an arbitrator pursuant to subsection (14), must institute a civil action for injunctive relief or damages, or both, in a court of competent jurisdiction within 180 days of the alleged violation, or be barred from obtaining the following relief. Relief is limited to: 1. An order restraining the continued violation of this section.2. An award of the costs of litigation, expert witness fees, reasonable attorney's fees, and noneconomic damages provided that damages shall be limited to the recovery of damages directly resulting from injury or loss caused by each violation of this section. (b) Any employer who complies with the provisions of this section shall be without liability from all civil actions arising from any drug testing program or procedure performed in compliance with this section. (c) Pursuant to any claim alleging a violation of this section, including a claim under this section where it is alleged that an employer's action with respect to a person was based on an incorrect test result, there shall be a rebuttable presumption that the test was valid if the employer complied with the provisions of this section. (d) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug testing. (16) **FEDERAL COMPLIANCE.** — The drug-testing procedures provided in this section do not apply where the specific work performed requires employees or job applicants to be subject to drug testing pursuant to: (a) Federal regulations that specifically preempt state and local regulation of drug testing with respect to such employees and job applicants; (b) Federal regulations or requirements enacted or implemented in connection with the operation of federally regulated facilities;(c) Federal contracts where the drug testing is conducted for safety, or protection of sensitive or proprietary data or national security; or (d) State agency rules that adopt federal regulations applicable to the interstate component of a federally regulated activity. **LICENSE FEE.** — Fees from licensure of drug-testing laboratories shall be sufficient to carry out the responsibilities of the Agency for Health Care Administration for the regulation of drug-testing laboratories. In accordance with s. 408.805, applicants and licensees shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The fee shall be not less than \$16,000 or more than \$20,000 per biennium and shall be established by rule.

**110.1091. State employees' assistance program; Confidentiality.**—(1) An employing state agency may provide a counseling, therapeutic, or other professional treatment program to assist any state employee who has a behavioral disorder, medical disorder, or substance abuse problem or who has an emotional difficulty that affects the employee's job performance. Each employing state agency may designate community diagnostic and referral resources as necessary to implement the provisions of this subsection. (2) A state employee's personal identifying information contained in records held by an employing state agency relating to an employee's participation in an employee assistance program is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

**775.082. Punishment for crimes and violations** —(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows: (b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days. (5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county. (6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1). (7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence. (10) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

**775.083. Fines for violations.**— (1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed: (e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation. Fines imposed in this subsection shall be deposited by the clerk of the court in the fine and forfeiture fund established pursuant to s. 142.01. If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain. (2) In addition to the fines set forth in subsection (1), court costs shall be assessed and collected in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law. The court costs imposed by this section shall be \$50 for a felony and \$20 for any other offense and shall be deposited by the clerk of the court into an appropriate county account for disbursement for the purposes provided in this subsection. A county shall account for the funds separately from other county funds as crime prevention funds. The county, in consultation with the sheriff, must expend such funds for crime prevention programs in the county, including safe neighborhood programs under ss. 163.501-163.523. (3) The purpose of this section is to provide uniform penalty authorization for criminal offenses and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

**287.087. Public contracts for procurement of goods and services; Two or more comparable bidders; Preference to business having drug-free workplace program in place.**—Whenever two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall: (1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition. (2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations. (3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1). (4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction. (5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted. (6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

**255.60. Contracts with charitable youth organizations on public service work; Drug-Free Workplace Program required.**—The state, or the governing body of any political subdivision of the state, is authorized, but not required, to contract for public service work such as highway and park maintenance, notwithstanding competitive sealed bid procedures required under this chapter or chapter 287, upon compliance with this section. (1) The contractor or supplier must meet the following conditions: (a) The contractor or supplier must be a not-for-profit corporation incorporated under chapter 617 and in good standing. (b) The contractor or supplier must hold exempt status under section 501(a) of the Internal Revenue Code, as an organization described in s. 501(c)(3) of the Internal Revenue Code. (c) The corporate charter of the contractor or supplier must state that the corporation is organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program. (d) Administrative salaries and benefits for any such corporation shall not exceed 15 percent of gross revenues. Field supervisors shall not be considered administrative

overhead. (2) The contract, if approved by authorized agency personnel of the state, or the governing body of a political subdivision, as appropriate, must provide at a minimum that: (a) Labor shall be performed exclusively by at-risk youth and their direct supervisors; and shall not be subject to subcontracting. (b) Payment must be production-based. (c) The contract will terminate should the contractor or supplier no longer qualify under subsection (1). (d) The supplier or contractor has instituted a drug-free workplace program substantially in compliance with the provisions of s. 287.087. (e) The contractor or supplier agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure that the contractor or supplier has complied with this section. (3) No contract under this section may exceed the annual sum of \$250,000. (4) Should a court find that a contract purporting to have been entered into pursuant to this section does not so qualify, the court may order that the contract be terminated on reasonable notice to the parties. The court shall not require disgorgement of any moneys earned for goods or services actually delivered or supplied. (5) Nothing in this section shall excuse any person from compliance with ss. 287.132-287.134.

**944.474. Department of Corrections, Drug and alcohol testing of employees; Employee wellness program; Random drug testing; Reasonable suspicion testing for employees in safety-sensitive and special risk positions; Rulemaking.**—(1) It is the intent of the Legislature that the state correctional system provide a safe and secure environment for both inmates and staff. A healthy workforce is a productive workforce, and security of the state correctional system can best be provided by strong and healthy employees. The Department of Corrections may develop and implement an employee wellness program. The program may include, but is not limited to, wellness education, smoking cessation, nutritional education, and overall health-risk reduction, including the effects of using drugs and alcohol. (2) Under no circumstances shall employees of the department test positive for illegal use of controlled substances. An employee of the department may not be under the influence of alcohol while on duty. In order to ensure that these prohibitions are adhered to by all employees of the department and notwithstanding s. 112.0455, the department may develop a program for the random drug testing of all employees. The department may randomly evaluate employees for the contemporaneous use or influence of alcohol through the use of alcohol tests and observation methods. Notwithstanding s. 112.0455(5)(a), the department may develop a program for the reasonable suspicion drug testing of employees who are in safety-sensitive or special risk positions, as defined in s. 112.0455(5), for the controlled substances listed in s. 893.03(3)(d). The reasonable suspicion drug testing authorized by this subsection shall be conducted in accordance with s. 112.0455, but may also include testing upon reasonable suspicion based on violent acts or violent behavior of an employee who is on or off duty. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 that are necessary to administer this subsection.

**59A-24.003. Public employment, Workplace drug testing standards; Definitions.**—

In addition to the definitions set forth in section 112.0455(5), F.S., as used in this rule chapter the following terms shall mean: (1) "Agency" means the Agency for Health Care Administration. (2) "Aliquot" means a portion of a specimen used for testing. (3) "Approved Proficiency Testing Provider" means a private non-profit proficiency testing organization that meets the following requirements: (a) Supplies a shipment of no less than 10 drug of abuse proficiency testing samples for screening and confirmation testing at least 3 times per year. Samples shall consist of a combination of negative specimens and a selection of positive specimens containing drugs or metabolites of the substances listed in section 112.0455(5)(a), F.S. (b) Evaluates proficiency testing sample results using statistical methods based on results obtained from participant peer group comparisons. (c) Provides no communication with the participant laboratory regarding the drug content of the samples prior to the issuance of the proficiency testing report. (d) Provides explanatory information to assist the participant laboratory in the interpretation of the proficiency testing results. (4) "Collection Site" means a place owned, operated, or contracted by a laboratory licensed under this rule chapter, or a site prepared by a collector authorized under section 112.0455, F.S., and Chapter 59A-24, F.A.C., where individuals present themselves for the purpose of providing a specimen or specimens to be analyzed for the presence of drugs. (5) "Collection Site Person" or "Collector" means a person who instructs and assists donors at a collection site and who collects or receives and makes an initial observation of the specimen provided by those donors. The laboratory is responsible to ensure that the collector(s) is trained to carry out his or her responsibilities under this rule chapter. (6) "Donor" means a job applicant or employee who present themselves to a collection site for the purpose of submitting to a

drug test. (7) "Federal Workplace Drug Testing Programs" means the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs as contained in Volume 59, Number 110, of the Federal Register published June 9, 1994, and the criteria found in the National Laboratory Certification Program Guidance Document for Laboratories and Inspectors as published by the Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention, August 29, 1994, each incorporated by reference herein. (8) "Forensic Toxicology Laboratory" or "Laboratory" means a place where examinations are performed on specimens taken from the human body to provide information regarding the presence or absence of drugs or their metabolites for the purpose of promoting a drug free workplace under the provisions of section 112.0455, F.S. (9) "Medical Review Officer" or "MRO" means a licensed physician qualified under section 59A-24.008(1)(a)—(e), F.A.C., who evaluated a donor's test result, together with his or her medical history or any other biomedical information, and makes the final determination of the donor's test results. (10) "Prescription or Nonprescription Medication" means a drug or medication obtained pursuant to a prescription as defined by s. 893.02(17), F.S., or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries. (11) "Reason to Believe" means a belief by the collection site person that a particular individual intends to alter or has altered or substituted a specimen. Reason to believe includes, for example: (a) A urine specimen temperature falling outside the specified range of 90—100 degrees Fahrenheit. (b) Unusual urine color or signs of contaminants in the urine. (c) A finding of contaminants on the individual. (d) Unusual behavior or appearance by the individual. (12) "Peer reviewed literature" includes literature approved for publication. (13) "Run" or "batch" means an interval in which tests are performed within which the accuracy and precision of a testing system is expected to be stable. This interval shall not exceed 24 hours; nor shall it exceed the stability limits indicated by the instrument manufacturer. (14) "Split sample" means a specimen that is divided into two separate containers, for the purpose of using one container for immediate testing and the other being tested at the donor's request of the first sample tested results in a confirmed positive test.

**24.004. Drugs to Be Tested/Body Specimens** (1) Notwithstanding the definition of drug in section 112.0455(5)(a), F.S., the only hallucinogen to be tested for is phencyclidine (PCP), the only synthetic narcotics to be tested for are methadone and propoxyphene, and there will be no designer drugs for until standard testing procedures are developed for such drugs. (2) Body Specimens. (a) Urine. Urine will be used for the initial test for all drugs except alcohol and for the confirmation specimen for all drugs and alcohol. (b) Blood. Blood will be used as the initial and confirmation specimen for alcohol. (c) Hair. The initial and confirmation testing for hair for drugs is limited to those drugs listed in section 112.0455, F.S.

**59A-24.005. Collection Site and Specimen Collection Procedures.**---(1) Designation of Collection sites. For urine and blood specimen collection, each laboratory, that has a contract or agreement for testing services with an employer, shall provide collection sites under contract and training for collectors, or shall provide a trained collector to collect specimens for the employer at any time designated by the employer in his contract or agreement with the laboratory. The collector shall be responsible to the laboratory for implementing collection procedures and chain of custody procedures as designated in Chapter 59A-24, F.A.C. The laboratory shall provide to the collection site, or collector, specimen collection kits which, as applicable, contain chain of custody forms, as incorporated in section 59A-24.005(2), F.A.C., mailing boxes or containers, specimen identification labels, laboratory address labels, urine specimen bottles, external temperature strips, tamper-proof tape to seal specimen container(s). Kits for alcohol testing must a 7ml blood vial that contains an anticoagulant and a preservative of sodium fluoride. Employers who do not use hair testing for their drug-free workplace program shall not be required to maintain collection facilities and personnel as described in section 112.0455(13)(b)3.a., F.S. (2) Chain of Custody Form and Procedures. Chain of custody refers to the methodology of documenting the tracking of specified material or substances for the purpose of maintain control and accountability from initial collection to final disposition of all such materials or substances and providing for accountability at each stage in handling, testing, storing and reporting of the test results. The agency chain of custody forms, AHCA Form 3170-5006 July 95; Drug Testing Chain of Custody for urine AHCA Form 3170-5008, Sept. 97; Drug Testing Chain of Custody—Hair, incorporated by reference herein, shall be utilized for this purpose. These forms will be

available from each laboratory licensed under these rules. Each laboratory shall be responsible for obtaining these forms, from a vendor of their own choosing. The Agency shall provide one camera ready copy of this form to each laboratory upon request. (a) A chain of custody form shall be completed for each donor tested. (b) Each laboratory licensed under these rules shall provide legally defensible chain-of-custody forms to be used for each donor. Laboratories licensed prior to the effective date of these rules are permitted to use Drug Testing Chain of Custody, HRS Form 1806, Revised 5/91 (currently AHCA Form 3170-5006 Nov. 94), which is incorporated by reference herein, until 12 months after this rule chapter is effective. Laboratories licensed after the effective date of these rules shall use the Drug Testing Chain of Custody form AHCA Form 3170-5006 July 95, for urine and AHCA Form 3170-5008 Sept. 97 for hair. (c) All chain of custody forms shall provide a unique identifier which shall not be used to identify any other Florida Drug Free Workplace specimen. The employer is permitted to assign an employee identification number for use with each donor tested. (d) The design of the chain of custody forms shall meet the following requirements: 1. Prominently indicate the name and address of the laboratory performing the drug test(s). 2. A section to be completed by the collector or employer representative that solicits the following information: a. Employer name and address; b. medical review officer name and address; c. Employee identification number; d. Reason for the test(s) and e. Test(s) to be performed. 3. A section which indicates the temperature of urine specimens taken within 4 minutes of collection. This shall not be required for chain-of-custody forms for hair specimens. 4. A section to be completed by the collector that indicates the following: a. The collection facility name, address and telephone number; b. A designation that a split sample was or was not collected; c. A remarks section; d. A statement for the collector to sign incorporating the following language: I certify that the specimen identified on this form is the specimen presented to me or collected by me from the donor providing certification on Copy 4 of this form, that it bears the same identification number set forth above, and that it has been collected, labeled and sealed in accordance with the Florida Drug-Free Workplace as found in section 112.0455, Florida Statutes and Chapter 59A-24, Florida Administrative Code; and e. A place for the collector to print his/her name, a place for the collector's signature and the date and time. 5. A section to be initiated by the collector and completed as necessary thereafter that documents the transfer of the specimen for the purpose of maintaining control and accountability for the specimen. At a minimum, this section shall indicate: a. Date of transfer; b. Signature and name of the person releasing the specimen; c. Signature and name of the person receiving the specimen; and d. Purpose of the transfer. 6. A section to be completed by the laboratory which indicates the following: a. An indication as to whether the specimen was received with intact specimen seals; b. The test results; c. Contains the following statement for the certifying scientist to sign: I certify that the specimen identified by the laboratory accession number on this form is the same specimen that bears the specimen identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with the Florida Drug-Free Workplace Program requirements as found in section 112.0455, Florida Statutes and Chapter 59A-24, Florida Administrative Code, and that the results set forth are for that specimen; and d. A place for the certifying scientist to print his/her name, the signature of the certifying scientist and the date. 7. A section to be completed by the Medical Review Officer including the following: a. The statement: I have reviewed the laboratory test(s) for the specimen identified by this form in accordance with the Florida Drug-Free Workplace Program as found in section 112.0455, Florida Statutes and Chapter 59A-24, Florida Administrative Code; b. A space for determination/verification of test results as one of the following; I. Negative; II. Positive; III. Test not performed; and IV. Test canceled. c. A place for remarks; d. The signature of the Medical Review Officer; and e. The name of the Medical Review Officer and date. 8. The chain of custody form shall be comprised of the following copies for distribution: a. Original laboratory copy (Copy 1) which shall be routed to the laboratory with the specimen; the laboratory will retain upon completion of testing. b. Second Original Laboratory copy (Copy 2) which shall be routed to the laboratory with the specimen; as a means of reporting the test result, the laboratory will forward the copy to the Medical Review Officer. c. Split specimen copy (Copy 3) which must accompany the split portion to the laboratory. Split sample testing is optional. d. Medical Review Officer copy (Copy 4) which shall be routed directly to the MRO by the collection site personnel; this form copy is not to be sent to the laboratory. e. Donor copy (Copy 5) which shall be given to the donor by the collector. Do not send to the laboratory. f. Collector copy (Copy 6) which shall be retained by the collector. Do not send to laboratory. g. Employer copy (Copy 7) which shall be forwarded to the employer. (e) AHCA Form

3170-5006 July 95 area permitted to be modified to indicate specialized specimen labels provided that:  
1. The content of each section of the form is not altered. 2. The instructions are not altered. 3. The sequence, number and color of the copies are not altered. 4. The drugs listed in the reverse of Copy 5 are not altered. (f) The form shall contain no information which can be traceable to the donor except the unique identifier, the employee identification number, if used, and the laboratory's specimen identification number. (g) The form shall also contain the following list of over-the-counter and prescription drugs which could alter or affect a test result. Due to the large number of obscure brand names and constant marketing of new products, this list, as follows, is not intended to be all-inclusive.

**Alcohol**

All liquid medications containing ethyl alcohol (ethanol). Please read the label for alcohol content. As an example, Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contact Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is 26.9% (54 proof).

**Amphetamines**

Obetrol, Biphedamine, Desoxyn, Dexedrine, Didrex, Ionamine, Fastin.

**Cannabinoids**

Marinol (Dronabinol, THC).

**Cocaine**

Cocaine HCl topical solution (Roxanne)

**Phencyclidine**

Not legal by prescription.

**Methaqualone**

Not legal by prescription.

**Opiates**

Paregoric, Parepectolin, Donnaygel PG, Morphine, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guiatuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid (Hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin, Tussi-organidin, etc.

**Barbiturates**

Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Floricet, Esgic, Butisol, Mebaral, Butabarbital, Butalbital, Phrenilin, Triad, etc.

Benzodiazepines Ativan, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranxene, Valium, Verstran, Halcion, Paxipam, Restoril, Centrax.

Methadone

Dolophine, Metadose.

Propoxyphene

Darvocet, Darvon N, Dolene, etc.

(h) Handling and transportation of a specimen from one authorized individual or place to another shall always be accomplished through the chain of custody form and procedures. The chain of custody



form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen at the laboratory. The purpose of the transfer of possession, the name and signature of the person releasing and receiving the specimen, and the date shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Since the specimen is handled and the chain of custody form are sealed in tamper-proof sealable plastic bags that would indicate any tampering during transit to the laboratory, and since couriers, express carriers and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping the container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is placed in or taken out of secure storage at the collection site prior to pickup by such personnel. A test shall not be canceled because couriers, express carriers, postal service personnel or other persons involved solely with the transportation of specimen to a laboratory have not documented their participation in the chain of custody or because the chain of custody does not contain entries related to placing the specimen in or removing it from secure temporary storage at the collection site. (i) Once the specimen has arrived at the laboratory, an internal chain of custody form shall be used by the laboratory until the laboratory has finalized the test results. (j) Every effort shall be made to minimize the number of persons handling the specimen. (3) Security Procedures and Specimen Collection. Collection site security and specimen collection security are the responsibility of the collector through contact with the licensed laboratory. Security procedures shall provide for the designated collection site to be secure including the providing of privacy for the donor and the integrity of the specimen. (a) Access to Authorized Personnel Only. No unauthorized personnel shall be permitted in any part of the designated collection site when specimens are collected or stored. (b) Privacy. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual intends to alter or has altered or substituted the specimen to be provided. (c) Integrity and Identity of Specimen. The collection site person shall take precautions to ensure that a specimen not be adulterated or diluted during the collection procedure and that information on the collection bottle and on the chain of custody form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified: 1. To prevent specimen contamination at the collection site: a. For urine specimens, toilet bluing agents shall be placed in toilet tanks so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water in the enclosure or partitioned area where urination occurs. All other sources of water shall be controlled by the collector. 2. When a doctor arrives at the collection site, the collection site person shall request the donor to present a photo identification. If the donor does not have the proper identification, the collection site person shall contact the employer who can positively identify the donor. If the donor's identity cannot be established, the collection site person shall not proceed with the collection. The collection site person shall document the reason for not collecting the specimen and provide the donor with a copy of this documentation. 3. Before collecting a specimen, the collection site person shall check to see that the donor has a chain of custody form or has a letter from the employer authorizing the drug test. If a letter is used, the letter shall contain the following information: a. The name of the individual to be tested; b. The name of the employer and the employer's address, phone number, and fax number; c. The name, address and phone of the laboratory with which the employer has contracted or established an agreement of testing services; d. The name, address, phone number, and secured fax number of the employer's Medical Review Officer; e. The reason for the test (i.e., either job applicant, reasonable suspicion, routine fitness, or follow-up treatment); f. The drugs for which the laboratory will test; and g. The signature of the employer's representative authorizing the testing. 4. If a collection time is assigned by the employer or collection site, and the donor fails to arrive at the collection site at the assigned time, the collection site person shall notify the employer of the missed appointment. 5. The collection site person shall ask the individual to remove any unnecessary outer garments, such as a coat or jacket, and to empty all clothing pockets. The collection site person shall ensure that all personal belongings, such as a purse or briefcase, remain with the outer garments. The individual may retain his or her wallet, provided that the collection site person shall check it for possible contaminants. 6. The individual shall be instructed to wash and dry his or her hands prior to urination. After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to

adulterate the specimen. 7. The individual may provide his or her urine specimen in a stall or otherwise partitioned enclosure that allows for individual privacy. The collection site person shall remain in the restroom or area, but outside the stall or partitioned enclosure. 8. Upon receiving the specimen from the individual, the collection site person shall determine that: a. Urine specimens contain at least 30 milliliters (mL) of urine. The approximate volume of the specimen shall be documented by the collector at the time of collection. If there is less than 30mL of urine in the container, another urine specimen shall be collected in a separate container. Collected specimens which contain less than 30 mL of urine shall not be submitted to the laboratory for testing. Such specimens shall be discarded in the presence of the donor and such procedure shall be annotated by the collector on the chain of custody form. The collector is permitted to give the donor water to drink for the purpose of providing another specimen not to exceed an 8 ounce glass of water every 30 minutes for up to 2 hours. If the donor still fails to provide 30 mL of urine, the collection site person shall reschedule another collection within 24 hours and notify the employer as soon as possible of such rescheduling. b. Blood alcohol specimens shall be collected using aseptic venipuncture technique. The venipuncture site for blood alcohol shall be cleansed with a non-alcoholic antiseptic substance prior to collection. Blood specimens shall contain 7 mL of blood which shall be collected for one tube containing an anticoagulant and a preservative of sodium fluoride. Immediately after collection, the collection site person shall rock the tube gently to mix the anticoagulant and preservative substance with the blood. c. The appropriate quantity of hair shall be collected as described in section 112.0455(13)(b)3.f.(IV), F.S. Scalp hair shall be the only acceptable specimen allowed for hair testing. 9. After a urine specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands. 10. No longer than 4 minutes following collection, the collection site person shall measure and record the temperature of the urine specimen, as indicated, on the chain of custody form. The temperature measuring device must be placed on the outside of the container to prevent contamination. If the temperature measurement exceeds 4 minutes, the specimen shall be rendered invalid and shall be rejected. A second specimen shall be collected and a new chain of custody form generated. 11. If the temperature of a urine specimen is outside the range of 90—100 degrees Fahrenheit, there is reason to believe that the donor may have altered or substituted the specimen and another urine specimen shall be collected under the direct observation by an observer of the same gender as the donor, as specified in section 59A-24.005(3)(c)13. The reason for the observed collection and the identity of the direct observer shall be documented on the chain of custody form. 12. Immediately after a urine specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any usual findings shall be noted on the chain of custody form. 13. Whenever a collection site person has reason to believe that a particular individual may alter or has altered or substituted a urine specimen, a higher level supervisor at the collection site or at the laboratory shall review the decision and concur in advance with the collection of a second specimen under the direct observation of an observer of the same gender of the donor. Once approved by a higher level supervisor, the collector shall require the individual to provide another specimen under direct observation. If the same gendered observer is not the collector, the observer shall be identified on the chain of custody form. The observer, if different from the collector, shall not handle the specimen and the specimen shall be handled to the collector by the donor in the observer's presence. The observer shall keep the specimen in sight at all times prior to it being sealed. A new chain of custody form shall be executed to accompany any specimen collected under direct observation. Information regarding a specimen collected under direct observation shall be included on both the new chain of custody form and on the original form in the remarks section. In addition, the new chain of custody specimen identification number shall be annotated on the original form. Both specimens shall be sent to the laboratory to be analyzed. 14. The individual being tested, the collection site person, and the observer if used for direct observation, shall keep the specimen in view at all times prior to its being sealed and labeled. 15. The collection site person shall place securely on the bottle an identification label containing the donor's specimen number, which matches the specimen number on the chain of custody form, and the date. 16. The employee (donor) and the collector shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from the donor. 17. The collector shall enter on the chain of custody form all required information. 18. The individual shall be asked to sign a statement on the chain of custody form certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided. It shall be noted and signed on the chain of custody form by the

collection site person, with a witness' signature, if the individual refuses to sign this statement. 19. The collection station is permitted to store unrefrigerated urine specimens up to 72 hours after collection, provided they are sealed for shipment as described in section 59A-24.005(3)(c)21., F.A.C., and kept in locked, secure temporary storage. Hair specimens shall be stored at all times in unrefrigerated locked, secured storage. 20. While any part of the above chain of custody procedures is being performed, it is essential that the specimen and the chain of custody form be under the control of the collection site person. If the collection site person leaves his or her work station momentarily, the specimen and the chain of custody form shall be taken with him or her or shall be secured in a locked room, drawer, file cabinet, etc. After the collection site person returns to the work station, the chain of custody proceed will continue. If the collection person is leaving for extended period of time, the specimen shall be packaged for shipment before he or she leaves the site. 21. The collection site person shall arrange to send the collected specimens by express shipment, courier, or U.S. Mail to the drug testing laboratory which is designated by the employer. The specimens shall placed in containers designed to minimize the possibility of damage during shipment. Prior to shipping or storage, the collection site person shall ensure that: a. The specimen container is sealed with forensic tamper-proof tape; b. The forensic tamper-proof tape contains the initials of the donor, the date the specimen was sealed in the specimen container; and c. The completed chain of custody form and specimen container is enclosed and sealed in a tamper-proof sealable plastic bag before packaging for shipment to drug testing laboratory. 22. This rule chapter does nor prohibit the use of split samples provided that such samples are collected in accordance with the provisions of the Mandatory Guidelines for Federal Workplace Drug Testing Programs as defined in section 59A-24.003(7), F.A.C.

**59A-24.006. Drug Testing Laboratories.**—Laboratories shall be licensed by the agency in accordance with this rule chapter in order to collect or analyze specimens for an employer's drug testing program and shall also comply with the provisions of Chapter 483, Part I, F.S. (1) **Laboratory personnel.** (a) **Qualification of Director.** The laboratory shall have a qualified director to assume professional, technical, educational, and administrative responsibilities for the laboratory's drug testing. The director shall meet one of the following requirements: 1. Is duly licensed as a physician in the state in which he or she practices medicine; and is licensed under Chapter 458 or 459, F.S., if the laboratory is located in the state Florida; and has had at least four years of experience in forensic analytical toxicology; or 2. Holds a doctoral degree from an accredited institution with Chemistry, Toxicology or Pharmacology as a major subject of study; and has had at least four years of experience in forensic analytical toxicology; and shall be licensed as a director under Chapter 483, F.S., if the laboratory is located in the State of Florida. (b) **Responsibilities of Director.** The director shall be responsible for the following: 1. The director shall be engaged in and responsible for the day-to-day management of the drug testing laboratory. 2. The director shall be engaged in and responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills. 3. The director shall ensure that the laboratory has a procedure manual which is complete, up-to-date, available to the personnel performing tests. All such procedures must, at a minimum, meet the requirements in this rule chapter. The director shall ensure that the procedures are followed by personnel performing tests. The procedure manual shall be reviewed, signed, and dated by the director whenever procedures are first placed into use, or changed, or when a new director assumes responsibility of the drug testing laboratory. Copies of all procedures and the dates that they are in effect shall be maintained as required in section 59A-7.029(3)(e), F.A.C. 4. The director shall be responsible for maintaining a quality assurance program to assure proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control tests; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system. 5. The director shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance in the laboratory. The director shall ensure that sample results are not reported until all corrective actions have been taken and that he or she can assure that the test results provided are accurate and reliable. (c) **Certifying Scientists.** The laboratory shall have a qualified individual who serves as certifying scientist. This individual reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one

person to perform this function. 1. The certifying scientist(s) shall have a minimum of 2 years experience in forensic analytical toxicology and be qualified as a director or licensed supervisor under the provisions of Chapter 483, Part IV, F.S., in the specialty of clinical chemistry of the laboratory is located in the State of Florida. 2. The laboratory director is permitted to designate technical personnel to certify results that are negative on the initial screening test. These individuals shall be technologists licensed in the specialty of clinical chemistry in accordance with the provisions of Chapter 483, Part IV, F.S., of the laboratory is located in the State of Florida. (d) **Laboratory Operation and Supervision.** 1. The laboratory's drug testing facility shall have an individual(s) responsible for day-to-day operation of the laboratory and the supervision of the technical analysis. This individual(s) shall be licensed as a laboratory supervisor in the specialty of clinical chemistry or qualified as a director in accordance with Chapter 483, Part IV, F.S., in the specialty of clinical chemistry if the laboratory is located in the State of Florida; and 2. Have the minimum of 2 years experience in forensic analytical toxicology. (e) **Technical and Non-Technical Personnel.** 1. Technical personnel shall have the training and skills to conduct forensic toxicology testing and shall be licensed in accordance with Chapter 483, Part IV, F.S., if the laboratory is located in the State of Florida. Documentation of such training and skills shall be maintained by the laboratory and available upon request by the agency. 2. Non-technical personnel, including all persons collecting specimens under these rules shall have the necessary training and skills for the tasks assigned but shall not perform drug testing. (f) **Collection Site Person or Persons Collecting Specimens.** A specimen for a drug test shall be taken or collected by: 1. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment. 2. A qualified person employed by a licensed laboratory who has the necessary training and skills for the assigned tasks. (2) **Training.** The laboratory's drug testing program shall make available continuing education programs to meet the needs of the laboratory personnel. (3) **Files.** Laboratory personnel files shall include resume of training and experience ; certification or license, if any; references; job descriptions; records of performance evaluations and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness if appropriate. (4) **Specimen Security and Analysis procedures.** (a) **Specimen Security and Internal Chain of Custody.** 1. Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records or specimens are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. For the purposes of section 59A-24.006(4)(a)1, F.A.C., authorized individuals means those persons designated by the laboratory to have access to the drug testing laboratory. All authorized visitors, including maintenance and service personnel, shall be escorted by laboratory personnel at all times. Documentation of individuals accessing these areas, dates, time of entry and egress, and purpose of entry must be maintained for no less than 2 years. 2. Laboratories shall use internal chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on the internal chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized personnel shall be responsible for each specimen or aliquot in their possession and shall sign and complete internal chain of custody forms for those specimens or aliquots as they are received. Aliquots and internal chain of custody forms shall be used by laboratory personnel for conducting both initial and confirmation tests. (b) **Receiving Specimens.** When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible damage or tampering and compare information listed on specimen containers within each package to the information on the accompanying chain of custody forms. The laboratory shall establish written standards for the rejection or acceptance of specimens. In addition, any evidence of tampering, mismatched or omitted specimen identification numbers, spillage, damage or other discrepancies in the information on specimen containers and the chain of custody form shall render a specimen invalid and shall be rejected by the laboratory for testing. The laboratory shall immediately report any rejection to the employer and shall note such rejection on the chain of custody form. (c) **Short-Term Refrigerated Storage,** Urine or blood specimens that do not receive an initial test within 72 hours of arrival at the laboratory shall be placed in locked, secure refrigerated units. Temperatures

of these units shall not exceed 6 degrees Celsius. Emergency power equipment shall be available and be used in case of power failure. (d) **Specimen Testing Requirements.** A laboratory must be capable of testing for all drugs listed in section 112.0455(5)(a), F.S., and be capable of conducting testing to ensure that a specimen has not been diluted or adulterated. The laboratory shall test and report drug test results no more than 3 working days after the receipt of the specimen in the laboratory. (e) **Initial Test.** The initial screen for all drugs shall be by an immunoassay except that the initial test for alcohol shall be an enzyme oxidation methodology. 1. Levels on initially screened urine specimens which are equal to or exceed the following shall be considered to presumptively positive and submitted for confirmation testing:

Amphetamines 1,000 ng/mL  
Cannabinoids (11-nor-Delta-9-tetrahydrocannabinol-9-carboxylic acid) 50 ng/mL  
Cocaine (benzoylecgonine) 300 ng/mL  
Phencyclidine 25 ng/mL  
Methaqualone 300 ng/mL  
Opiates 1 300 ng/mL  
Barbiturates 300 ng/mL  
Benzodiazepines 300 ng/mL  
Methadone 300 ng/mL  
Propoxyphene 300 ng/mL  
1 25 ng/mL if immunoassay specific for free morphine

The only specimen for alcohol testing shall be blood and the initially screened specimen shall be considered presumptively positive and submitted for confirmation testing if the level is equal to or exceeds 0.2 g/dL. 2. Levels which exceed the following for hair specimens shall be considered presumptively positive on initial screening and submitted for confirmation testing:

Marijuana 10 pg/10 mg of hair  
Cocaine 5 ng/10 mg of hair  
Opiate/ synthetic narcotics and metabolites 5 ng/10 mg of hair  
Phencyclidine 3 ng/10 mg of hair  
Amphetamines 5 ng/10 mg of hair  
125 ng/mL if immunoassay is specific for free morphine

3. Laboratories are permitted to use multiple screening tests for the same drug or drug class to eliminate any possible presumptive positives due to structural analogs, provided that such tests meet the requirements of this rule chapter. (f) **Confirmation Test.** All specimens identified as presumptively positive on the initial test shall be confirmed using mass spectrometry/mass spectrometry (MS/MS) or gas chromatography/mass spectrometry (GS/MS), except that alcohol will be confirmed using gas chromatography. All confirmations shall be done by quantitative analysis. Levels on confirmation testing for urine specimens which are equal to or exceed the following shall be reported as positive:

Amphetamines (amphetamine, methamphetamine) 2 500 ng/mL  
Cannabinoids (11-nor-Delta 9-tetrahydrocannabinol-9-carboxylic acid) 15 ng/mL  
Cocaine (benzoylecgonine) 150 ng/mL  
Phencyclidine 25 ng/mL  
Methaqualone 150 ng/mL  
Opiates (codeine, morphine) 300 ng/mL  
Barbiturates 150 ng/mL  
Benzodiazepines 150 ng/mL

Methadone 150 ng/mL  
Propoxyphene 150 ng/mL

2 A laboratory shall not report a specimen positive for methamphetamine only. The specimen must contain amphetamine at a concentration equal to or greater than 200 ng/mL by the confirmation test. If this criterion is not met, the specimen shall be reported as negative for methamphetamine. The alcohol level on confirmation testing for blood which is equal to or exceeds 0.02 g/dL shall be reported as positive. 2. Levels for hair specimens on confirmation testing which are equal to or exceed the following shall be reported as positive:

Marijuana Metabolites 1 pg/10 mg of hair  
Cocaine 5 ng/10 mg of hair  
Opiates/synthetic narcotics and metabolites 5 ng/10 mg of hair  
Phencyclidine 3 ng/10 mg of hair  
Amphetamines 5 ng/10 mg of hair

(g) **Reporting Results.** 1. The laboratory shall report all tests results to the MRO indicated on the chain of custody form. Before any test result is reported by the laboratory, the results of initial tests, confirmation tests, and quality control data of such tests shall be reviewed by the certifying scientist and the test certified as an accurate report. The report, at a minimum, shall identify the drugs or metabolites tested for, the results of the drug test either positive or negative, the specimen number assigned on the chain of custody form, the name and address of the laboratory performing the testing, and the drug testing laboratory's specimen accession number. 2. The following criteria shall be used when reporting drug testing results. a. Specimens that test negative as specified in section 59A-24.006(4)(e)1. and 2, F.A.C., on the initial test shall be reported as negative. If an employer wishes to retest a negative specimen under the provisions of section 112.0455(9)(a), F.S., such testing is authorized to be conducted only once and must be requested no more than 7 working days from the time the original negative test result was reported to the employer by the MRO. Hair specimens may be re-collected only once to perform repeat confirmation testing under the provisions of section 112.0455(9)(a), F.S. b. Specimens that test positive as specified in section 59A-24.006(4)(e)1., F.A.C., on initial immunoassay tests, but negative as specified in section 59A-24.006(4)(f), F.A.C., on confirmation shall be reported as negative. c. The laboratory is permitted to report drug test results for specimens that do not meet the adulteration/dilution criteria of the laboratory. Reports on specimens that do not meet the laboratory's adulteration/dilution requirements shall not indicate the actual results of the adulteration/dilution tests, but the report shall indicate the adulteration/dilution test results in non-quantitative terms. d. The laboratory report shall indicate solely that the test(s) resulted in a positive drug test result or resulted in a negative drug test result. 3. The MRO may request from the laboratory, and the laboratory shall provide, detailed quantification of initial and confirmation test results. 4. The laboratory may transmit results to the MRO by various electronic means (for example, teleprinter, facsimile, or computer) in a manner designed to ensure confidentiality of the information. The laboratory and MRO must ensure the security of the data transmission, storage, and retrieval system to only those individuals authorized under these rules to obtain such information. 5. The laboratory shall send the MRO a copy of the original chain of custody form (copy 2) signed by the certifying scientist responsible for attesting to the validity of the test report. 6. The laboratory shall make available copies of all analytical results of donor testing upon request by the MRO or the agency. 7. Unless otherwise specified in this rule chapter, all records pertaining to a given specimen shall be retained by the drug testing laboratory for a minimum of 2 years. (h) **Storage of Specimens.** Drug testing laboratories shall retain and place all confirmed positive urine specimens in locked, secured long-term frozen storage (-15 degrees Celsius or less) and confirmed positive blood specimens in locked, secured long-term refrigerated storage (2—8 degrees Celsius) for a minimum of 210 days. Within this 210 day period an employer, employee, job applicant, or MRO is permitted to request in writing that the laboratory retain the specimen for an additional period of time. If no such request is received, the laboratory is permitted to discard the specimen after 210 days of storage. When notified in writing, the laboratory shall be required to maintain any specimens under legal challenge until such challenge is resolved. To maintain applicable storage temperatures for stored specimens, emergency

power equipment shall be available and used in the case of power failure. After the required retention time has passed, laboratories are permitted to either discard the specimens or pool all or part of these specimens for use in the laboratory's internal quality control program.

1. When an employee or job applicant undertakes an administrative or legal challenge to the test result, it shall be the employee's or job applicant's responsibility to notify the employer and laboratory in writing of such challenge and such notice shall include reference to the chain of custody specimen identification number. After such notification, the sample shall be retained by the laboratory until the case or administrative appeal is settled.

2. During a 180 day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee or job applicant's expense. The laboratory which performed the original test for the employer shall be responsible for transferring a portion of the specimen to be retested at a second laboratory licensed under these rules, selected by the employee or job applicant, and shall be responsible for the integrity of the specimen and for the chain of custody during such transfer.

3. Urine specimens that test negative shall be stored in locked, secured refrigerated (2—8 degrees Celsius) or frozen storage (-15 degrees Celsius or less). Blood specimens that test negative shall be stored in locked, secured refrigerated storage (2 degrees Celsius). These specimens shall be retained for no less than 7 working days after the test result has been reported to the employer by the MRO. After the required retention time has passed, laboratories are permitted to either discard the specimens or pool all or part of these specimens for use in the laboratory's internal quality control program.

4. The laboratory is permitted to discard or pool specimens that test negative immediately after the negative test result is transmitted to the MRO, provided that the laboratory has written authorization from the employer that specimens which test negative are not to be retained for retesting under section 112.0455(9)(a), F.S.

(i) **Retesting Specimens.** As some analytes deteriorate or are lost during freezing, refrigeration, or storage, quantification for a retest is not subject to a specific cutoff requirement but must provide sufficient to detect the presence of the drug or metabolite.

(5) **Subcontracting.** Drug testing laboratories shall not subcontract, except for the collection sites, and shall perform all analysis with their own personnel and equipment. The laboratory must be capable of performing testing for the classes of drugs defined in section 112.0455(5)(a), F.S., using the specimens indicated in section 112.0455(5)(k), F.S., and initial and confirmation methods specified in section 59A-24.006(4)(e), F.A.C.

(6) **Contracted Collected Sites.** Collections sites or collectors shall contract with laboratories licensed under this rule chapter to collect specimens for analysis. Such contracts shall be in writing and include the utilization of the necessary facilities, personnel, materials, equipment, or other supplies, as needed, to collect specimens as required in section 59A-24.005, F.A.C. For the purposes of section 112.0455(8)(e), F.S., persons collecting specimens under contract with a forensic drug testing laboratory shall be deemed to be employees of the licensed laboratory. In addition, the collectors shall be trained by, and shall be accountable to, the licensed laboratory. However, after an accident, if an employee is taken to a facility for medical treatment and the facility does not have a contract with the laboratory, an individual authorized in section 59A-24.006(1)(f), F.A.C., is permitted to collect a specimen provided that this collector utilize, and complete to the fullest extent possible, a chain of custody form. In addition, the collector shall follow the collection procedures found in section 59A-24.005, F.A.C., to the fullest extent possible and shall maintain full control of the specimen until the specimen is sealed and packaged for shipment to the employer's selected laboratory.

(7) **Inspections.** The agency or the representatives of the federal Department of Health and Human Services Federal Workplace Drug Testing Program shall conduct announced or unannounced inspections of the laboratory at any reasonable time for the purpose of determining compliance with this rule chapter. The right of entry and inspection shall also be extended to any collection sites under contract with the laboratory. Inspections shall document the overall quality of the laboratory setting for the purpose of licensure to conduct drug free workplace testing. Inspection reports shall also contain any requirements of the laboratory to correct deficiencies noted during the inspections.

(a) Prior to laboratory licensure and at least twice a year after licensure, an on-site inspection of the laboratory shall be conducted.

(b) In order to be considered for licensure renewal, laboratories certified by the federal Department of Health and Human Services Federal Workplace Drug Testing Programs shall submit one inspection report of the federal Department of Health and Human Services Federal Workplace Drug Testing Programs in lieu of one of the two required bi-annual inspections. This provision does not apply to laboratories applying for initial licensure. In addition, such laboratories certified by the federal Department of Health and Human Services Federal

Workplace Drug Testing Programs shall: 1. Maintain a policy to conduct the testing of all specimens authorized under section 112.0455, F.S., in the same manner as required for those drugs included under the Mandatory Guidelines for Federal Workplace Drug Testing Programs. This policy must be in writing and contained in the laboratory's policy and procedure manual. 2. Submit to the agency all reports of such inspections, post inspection activities and reports including any corrective action taken by the laboratory within 45 days of the receipt of the initial evaluation report in the laboratory. 3. Request in writing that the inspection report be accepted in lieu of an on-site inspection by the agency.

(8) **Documentation.** Laboratories shall maintain and make available for at least 2 years all documentation of the testing process. Except that the laboratory shall be required to maintain documents and records for any specimen(s) under legal challenge until such challenge is resolved. The required documentation shall include: (a) Personnel rules on all individuals authorized to have access to specimens; (b) Chain of custody documents; (c) Quality assurance records; (d) Quality control records; (e) Procedure manuals; (f) All test data, calibration curves and any calculations used determining test results; (g) Donor test reports; (h) Proficiency testing records; (i) Computer generated data used for testing and reporting specimen results. (9) **Additional Requirements for Laboratory Licensure.** (a) **Procedure Manual.** Each laboratory shall have a procedure manual which meets the applicable requirements of section 59A-7.029(3)(b), (d), and (e), F.A.C. (b) **Standards and Controls.** Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with dates indicating when received, when prepared or opened, when placed in service, and the expiration date. (c) **Instruments and Equipment.** 1. Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedures on a quarterly basis. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked quarterly thereafter. 2. There shall be written procedures for instrument setup and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting, repair, and maintenance in accordance with manufacturer's specifications. Manufacturer's specifications for, and records of preventive and regular maintenance shall be maintained for as long as the instrument is in use and for at least 2 years after the instrument is discontinued from use and shall be available upon request by the agency. (d) **Remedial Actions.** There shall be written procedures for the actions to be taken when test systems are not operating correctly or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed. (e) **Personnel Available to Testify at Proceedings.** A laboratory director shall assure that technical personnel, including the director, be available to testify in an administrative or disciplinary proceeding regarding any employee or a job applicant when the proceeding is based on a test result which was analyzed and reported by the laboratory. (10) **Quality Assurance and Quality Control.** Quality assurance and quality control for hair analyses shall be conducted in accordance with section 112.0455(13)(b)4., F.S. (a) **General.** Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmation testing and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs. (b) **Laboratory Quality Control Requirements for Initial and Confirmation Tests.** At a minimum, each analytical run of specimens for an initial or confirmation test shall include the following quality control samples: 1. Negative specimens certified to contain no drug; 2. Urine specimens fortified with known standards; and 3. Positive controls with the drug or metabolite at or near the threshold (cutoff). 4. At least 1 percent of each initial screening run, with a minimum of one sample per run, shall consist of a blind sample(s) of known concentration. Such samples shall appear as ordinary test specimens to the laboratory analysts. (11) **Proficiency Testing.** Proficiency testing is a part of the initial evaluation of a laboratory seeking licensure and is required as a continuing assessment of laboratory performance necessary to maintain continued licensure. (a) **General Considerations.** 1. The laboratory must successfully participate in proficiency testing survey, as described in section 59A-24.006(11), F.A.C. 2. Proficiency testing specimens are permitted to consist of negative specimens as specified in section 59A-24.006(4)(e)1., F.A.C., and positive specimens, as specified in section 59A-24.006(4)(f), F.A.C. 3. Proficiency testing specimens



are permitted to contain interfering substances. 4. Proficiency testing specimens are permitted to be identified for screening or confirmation testing only 5. All procedures associated with the laboratory's handling and testing of any proficiency testing specimens shall be carried out in the same manner as the laboratory tests donor samples. 6. The laboratory shall report results of proficiency testing samples using the same criteria applied to routine drug testing specimens. 7. Failure to admit the results of each proficiency testing survey within the same frames indicated in section 59A-24.006(11)(c)1.c., F.A.C., and section 59A-24.006(11)(c)3.h., F.A.C., is considered unsuccessful participation and will result in a failing score for that proficiency testing survey and administrative action up to and including revocation of licensure, as provided in section 59A-24.006(12), F.A.C. 8. Failure to participate in any proficiency testing survey is considered unsuccessful participation and will result in a failing score for that proficiency testing survey and administrative action up to and including revocation of licensure as provided in section 59A-24.006(12), F.A.C. 9. The laboratory shall be permitted to request that the agency supply additional proficiency testing samples to be tested to document whether the source of unsuccessful proficiency testing performance has been corrected. The agency shall permit no more than two such additional shipments of proficiency testing samples. The laboratory will be required to pay cost of such samples. 10. In addition to the proficiency testing requirements, any licensed laboratory shall be subject to blind performance testing by the agency. Blind performance testing means proficiency test samples which are shipped to a laboratory in a manner such that the samples appear to be actual drug testing samples. (b) **Initial licensure.** Laboratories applying for initial licensure shall be required to successfully complete three proficiency testing surveys supplied by the agency before the laboratory is eligible to be considered for licensure. 1. Two of these proficiency testing surveys shall be completed prior to the initial inspection of the laboratory. 2. The third proficiency testing survey shall be provided so that it arrives prior to the initial inspection. These samples will be analyzed in conjunction with the on-site inspection as directed by the agency. 3. Evaluation of initial proficiency testing surveys shall be in accordance with the requirements set forth in section 59A-24.006(11)(c)3., F.A.C. 4. Any initial applicant whose proficiency testing evaluation does not meet the requirements of section 59A-24.006(11)(c)3., F.A.C., on any of the three initial proficiency testing surveys shall automatically be disqualified for licensure. To be considered for future licensure, the laboratory must reapply for licensure and must submit the required licensure fee as a new applicant. (c) **Continued Licensure.** In order to remain licensed, the laboratory shall participate in four proficiency testing surveys per year. The laboratory must participate in 3 non-agency proficiency testing surveys supplied by an approved proficiency testing organization as defined section 59A-24.003(3), F.A.C., and 1 annual proficiency testing survey supplied by the agency as described below. Failure to meet the applicable grading criteria found in section 59A-24.006(11)(c)3., F.A.C., shall be considered unsuccessful proficiency testing participation. The agency shall revoke or suspend the laboratory's license or take no further action, taking into consideration the potential for such errors to affect the reporting of reliable drug test results. 1. **Non-Agency Supplied Proficiency Testing.** a. Three of the four required proficiency testing surveys shall be obtained at the laboratory's expense from an approved proficiency testing provider, as defined in section 59A-24.003(3), F.A.C. b. Proficiency testing results from the approved non-agency providers shall be graded using the grading criteria required in section 59A-24.006(11)(c)3., F.A.C. c. The laboratory shall submit reports of non-agency supplied proficiency testing results and any corrective action taken with regards to unsuccessful results within 14 working days of their receipt in the laboratory. 2. **Agency Supplied Proficiency Testing.** The remaining proficiency testing survey shall be supplied by the agency and shall be shipped to the laboratory at any time during the licensure year. 3. In order to obtain initial licensure or to remain licensed, the laboratory must meet the following criteria for successful participation on any proficiency testing shipment: a. Report no false positive drug identifications. b. Correctly screen 90 percent of the samples in each proficiency testing survey. c. Achieve a combined score of 90 percent for screening and confirmation testing. d. Correctly confirm 90 percent of the drug challenges for proficiency samples that screen as positive. e. For all proficiency samples screened as positive, quantitate 80 percent of all drug challenges at  $\pm 20$  percent of the group mean. f. Detect and quantitate 50 percent of the total drug challenges for any individual drug or drug classes. g. Submit the results of agency supplied proficiency testing surveys no more than 10 working days from receipt of the samples by the laboratory. h. Submit any remedial action taken in regard to proficiency testing errors found in agency supplied proficiency testing samples within 5 days of such notification by the agency. 4.

**Consequence of Unsuccessful Proficiency Testing Performance.** a. Failure to achieve successful proficiency testing performance as described in section 59A-24.006(11), F.A.C., shall result in administrative action up to and including revocation of licensure as provided in section 59A-24.006(12), F.A.C. b. In the event that laboratory's license is suspended due to unsatisfactory proficiency testing performance, re-instatement of licensure shall not be considered until the laboratory can demonstrate: i. Satisfactory performance on no more than 2 agency supplied proficiency surveys; ii. That the source of unsuccessful proficiency testing performance has been corrected; and iii. That payment for any additional proficiency testing samples supplied by the agency has been received. (12) **Administrative Enforcement and Hearings.** (a) The agency shall enforce the provisions of section 112.0455, F.S., and Chapter 59A-24, F.A.C., by administering remedies for statutory and rule violations as provided in section 112.0455(14), F.S. (b) Whenever the agency has reason to believe that immediate action is necessary in order to protect the interests of an employer, employee, or job applicant, the agency shall immediately suspend or revoke a laboratory's license to conduct drug testing. (c) **Grounds for Disciplinary Action.** The following actions shall result in the agency taking administrative action: 1. Failure to accurately analyze and report donor drug tests; 2. Unsuccessful participation in proficiency testing surveys; 3. A violation of licensure standard; 4. Participation in a pretrial intervention or other first-offender agreement respecting a charge of, the entering of a plea of nolo contendere or guilty to a charge of, a finding of guilt regardless of adjudication of, or a conviction or any criminal offense under federal law or the law of any state relating to the operation of any laboratory; 5. Making a fraudulent statement on an application for forensic toxicology license or any other document required by the agency; 6. Permitting unauthorized persons to perform technical procedures or issue reports; 7. Demonstrating incompetence or making consistent errors in the performance and reporting of drug free workplace testing or proficiency testing samples; 8. Performing a test and rendering a report thereon to a person not authorized by law to receive such service; 9. Knowingly having professional connection with or knowingly lending the use of the name of the licensed forensic toxicology laboratory or the license of the director to an unlicensed forensic toxicology laboratory; 10. Violating or aiding and abetting in the violation of provision of this part or the rules promulgated hereunder; 11. Failing to file any report required by the provisions of this part or the rules promulgated hereunder; 12. Reporting a drug test result when no such test was performed; 13. Knowingly advertising false services or credentials; 14. Failure to correct deficiencies within the time required by the agency; 15. Failing to maintain a secured area for toxicology tests; or 16. Any other cause which affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results. 17. Failure to submit statistical reports as required in section 59A-24.009(3), F.A.C. (d) **Hearings.** All administrative hearings shall be in accordance with Chapter 120, F.S., and applicable rules and regulations. Those proceedings brought in the circuit courts of Florida to enjoin or restrain the unlawful operation of a forensic laboratory without a valid license under section 112.0455, F.S., shall be governed by section 112.0455, F.S., and the Florida Rules of Civil Procedure. (13) **Re-instatement of Licensure.** Upon the submission of evidence to the agency that the laboratory is in compliance with this rule chapter and section 112.0455, F.S., and any other conditions imposed as part of a suspension, the agency shall reinstate the laboratory's license. A laboratory having its license revoked shall be required to reapply for licensure in accordance with the provisions for initial applicants and pay the applicable licensure fee. (14) **Licensure Fee.** (a) Laboratories seeking licensure must complete licensure application form, AHCA Form 3170-5001, July 95, which is hereby incorporated by reference. This form is available from the agency. 1. Initial and annual licensure renewal fees shall be \$8,000 and shall be made payable to the agency. 2. For late filing of an application for renewal, the provisions of section 112.0455(17), F.S., shall apply. (b) Refunds are authorized pursuant to provisions of section 215.26, F.S., and shall be approved only in the following instances: 1. an overpayment of a fee; 2. a payment where no fee is due; and 3. any payment made into the State Treasury in error. (c) Application for refunds shall be filed with the Comptroller within 3 years from the date of the payment into the State Treasury, or else such rights shall be barred. Refund claims shall not otherwise be barred under the laws of this state. (15) **Statistical Information Reporting.** (a) The laboratory shall submit statistical information on drug testing to the agency. No statistical information reported to the agency shall reveal the names of persons tested, nor shall it reveal the employer's identity. This data shall contain the following information on specimens received for drug testing conducted under section 112.0455, F.S.: 1. The total number of specimens received for testing. 2. The total number of specimens that

tested positive on the initial screening. 3. The total number of specimens that were confirmed and reported as positive for each drug class tested. 4. The total number of samples that were received but not tested. (b) Statistical summaries shall be submitted to the agency on a monthly basis no later than 14 working days after the end of a reporting month. Reporting is required even no Florida Drug Free Workplace testing has been done for the reporting month.

**59A-24.008. Review of Test Results.**—Prior to the transmission of test results to the employer, both positive and negative test results shall be reviewed and verified by a medical review officer (MRO) qualified under section 59A-24.008(1), F.A.C. The MRO is permitted to use a language interpreter to assist in communicating the results of drug tests with employees and job applicants. Such language interpreters are subject to the confidentiality provisions of section 112.0455(11), F.S. After the results have been reviewed and verified by the MRO, the test result is reported to the employer. (1)

**Qualifications of Medical Review Officers.** (a) Persons serving as medical review officers shall be medical or osteopathic physicians duly licensed in the state in which he or she practices medicine. (b) The MRO shall have knowledge of substance abuse disorders, laboratory testing procedures, chain of custody procedures, collection procedures, and have the appropriate medical training to interpret and evaluate an individual's drug test result together with the individual's medical history or any other biomedical information. (c) Beginning January 1, 1998, medical review officers shall be certified as medical review officers by the American Association of Medical Review Officers, American Society of Addiction Medicine or the American College of Occupational and Environmental Medicine. (d) The MRO shall be employed by or contracted by the employer and shall not be employed or contracted by a drug testing laboratory performing drug free workplace testing under section 112.0455, F.S. The drug testing laboratory is permitted to assist the employer in locating qualified medical review officers.bb(e) An employer shall not serve as the MRO for his or her own employees and job applicants.bb(2)

**Responsibilities of Medical Review Officer.** The MRO shall evaluate the drug test result(s), which is reported out by the laboratory, to verify by checking the chain of custody form that the specimen was collected, transported, and analyzed under proper procedures, as specified in these rules, and to determine if any alternative medical explanation cause a positive test result. This determination could include conducting a medical interview with the individual, review of the individual's medical history, or the review of any other relevant bio-medical factors. The MRO shall review all medical records made available by the tested individual. The MRO shall not consider the results of samples that are not obtained or processed in accordance with these rules. (a) **Negative Results.** To verify that a negative test result was properly analyzed and handled according to these rules, the MRO shall: 1. Receive and review the test result(s) from the laboratory; 2. Verify the laboratory report by checking the chain of custody form for required signatures, procedures, and information; 3. Ensure that the donor's specimen identification number on copy 2 of the laboratory test report and on copy 4 of the chain of custody form which was sent to the MRO by the collection site accurately identifies the donor with the negative test result; and 4. Notify the employer in writing of the negative test result no more than 7 working days after the specimen was received by the laboratory, and appropriately file copy 2 and 4 of the chain of custody form under confidential procedures for a period of 2 years. 5. Within 24 hours of notification of the employer of a negative test result, notify the testing laboratory that the negative test result has been submitted to the employer.

(b) **Positive Test Results.** To verify that a positive test result was properly analyzed and handled according to these rules, the MRO shall: 1. Receive and review the test result(s) from the laboratory; 2. Verify the laboratory report by checking the chain of custody form for required signatures, procedures, and information; 3. Ensure that the donor's specimen identification number on copy 2 of the laboratory test report and on copy 4 of the chain of custody form which was sent to the MRO by the collection site accurately identifies the donor with the positive test result; 4. Notify the employee or job applicant of a confirmed positive test result, within 3 days of receipt of the test result from the laboratory, and inquire as to whether prescriptive or over-the-counter medications could have caused the positive test result; 5. Within 5 days of notification to the donor of the positive test result, provide an opportunity for employee or job applicant to discuss the positive test result and to submit documentation of any prescriptions relevant to the positive test result; 6. Review any medical records provided by the employee or job applicant, or authorized by the employee or job applicant and released by the individual's physician, to determine of the positive test result was caused by a legally prescribed medication. If the donor does not have prescribed medication, the MRO shall inquire about

over-the-counter medications which could have caused the positive test result. The donor shall be responsible for providing all necessary documentation (i.e., a doctor's report, signed prescription, etc.) within the 5 day period after notification of the positive test result; 7. Notify the employer in writing if the verified test result, wither negative, positive, or unsatisfactory, no more than 7 working days after the specimen was received by the laboratory, and appropriately file the chain of custody form under confidential procedures for 2 years; 8. If the MRO determines that there is a legitimate medical explanation for the positive test result, based on the medical judgment of the MRO and accepted standards of practice, the MRO shall report a negative test result to the employer. 9. Process any employee or job applicant requests for a retest of the original specimen, within 180 days of notice of the positive test result, at another licensed laboratory selected by the employee or job applicant. The donor requesting the additional test shall be required to pay for the costs of retest, including handling and shipping expenses. The MRO shall contact the original testing laboratory to initiate the retest. 10. The MRO shall not declare a confirmed positive as verified, until the MRO receives copy 2 of the chain of custody form from the drug testing laboratory and copy 4 from the collection site. (3) **Chain of Custody Procedures.** A strict chain of custody procedure, initiated at the time of specimen collection, is mandatory for the validation of any test result. The MRO shall be responsible, before reporting either positive or negative test result(s) to the employer, to review all signatures, procedures, and information as required on the chain of custody form to determine that the specimen was under authorized control both before and during laboratory analysis. If proper chain of custody procedures have not been followed, the MRO shall declare the test result as unsatisfactory, due to an unacceptable chain of custody procedure. (4) **Verification for Opiates.** Before a positive test for opiates is verified, the MRO shall determine that there is clinical evidence in addition to the urine test, of illegal drug use of any opium, opiate, or opium derivative (e.g., morphine/codeine). This requirement does not apply if the GC/MS confirmation test for opiates confirms the presence of 6-monoacetylmorphine. (5) **Reanalysis Authorized.** Should any question arise as to the accuracy or validity of a test result which has been collected and analyzed in accordance with these rules, the MRO may order an reanalysis of the original sample at any licensed laboratory licensed under these rules. (6) **Scientifically Unsatisfactory Results.** The MRO, based on a review of the chain of custody form, quality control data, multiple samples and other pertinent results, is permitted to determine that the result is scientifically unsatisfactory for further action and may request the donor to provide another sample or request a reanalysis of the original sample before making such decision. The MRO is permitted to request that the reanalysis be performed by the same laboratory or, that an aliquot of the original specimen be sent to another licensed laboratory. The laboratory shall assist in this review process as requested by the MRO and shall make available appropriate personnel to provide consultation as required by the MRO. The MRO shall report all findings based on the unsatisfactory specimen, as required by this rule chapter, but shall not include any personal identifying information in such reports. (7) **Contacting Donors Who Test Positive.** (a) If the MRO is unable to contact a donor who tested positive within 3 working days of receipt of the test results from the laboratory, the MRO shall contact the employer and request that the employer direct the donor to contact the MRO as soon as possible. If the MRO has not been contacted by the donor within 2 working days from the request to the employer, the MRO shall verify the report as positive. (b) As a safeguard to employees and job applicants, once a MRO verifies a positive test result, the MRO may change the verification of the result of the donor presents information to the MRO which documents that a serious illness, injury, or other circumstance unavoidably prevented the employee from contacting the MRO within the specified time frame and if the donor presents information concerning a legitimate explanation for the positive test result. (c) If the donor declines to talk with the MRO regarding a positive test result, the MRO shall validate the result as positive and annotate such decline in the remarks section. (8) **Identification of Donor.** Prior to providing an employee or job applicant with the opportunity to discuss a test result, the MRO shall confirm the identity of the employee or job applicant. At a minimum, to confirm the identity of the donor, the MRO shall ask the donor to respond with the following information: (a) If the request is in person, the MRO shall request a picture identification. (b) If the request is over the telephone, the MRO shall request: 1. An employee identification number or social security number; 2. Date of birth; 3. Employer's name; and 4. Work telephone number. (9) **Information for Donor.** Once the donor's identification has been established, and before any additional information is solicited from the donor, the MRO shall: (a) Inform the donor that the MRO is an agent of the employee whose responsibility is to make a determination on test results and report them to the

	<p>employer; (b) Inform the donor that medical information revealed during the MRO's inquiry will be kept confidential; unless the donor is in a safety sensitive or special risk position and the MRO believes that such information is relevant to the safety of the donor or to other employees. Any additional release of information shall be solely pursuant to a written consent form signed voluntarily by the donor, except where such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal, or where deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. (c) Outline the rights and procedures for a retest of the original specimen by the donor. (d) If the donor voluntarily admits to the use of the drug in question without a proper prescription, the MRO shall advise the donor that a verified positive test report will be sent to the employer. (10) <b>Verification Signature.</b> After the MRO reviews the chain of custody forms from the laboratory and the collection site (copy 2 from the laboratory and copy 4 from the collection site) and, in the case of a positive test result, has contacted the donor who tested positive, the MRO shall: (a) On copy 2 of the chain of custody form, mark the appropriate box if the verified result is positive or negative and if positive, write in for which drug(s). If the test was not performed or the test was canceled, mark the appropriate box. The reason for the cancellation or non-performance of the test shall be explained in the remarks section. (b) On copy 2 of the chain of custody form, sign and date the verification of the final test result. (c) Prepare and sign a verification letter to the employer revealing the final verified test result. Copies of the laboratory report form or chain of custody are not suitable for this purpose.</p>
<p><b>Georgia</b></p>	<p><b>34-9-412. Implementation of drug-free workplace program; Workers' compensation insurance premium discounts.</b>— If an employer work organization implements a drug-free workplace program substantially in accordance with subsections (a) and (b) of Code Section 34-9-413, the employer work organization shall qualify for certification for a premium discount under such employer's workers' compensation insurance policy as provided in Code Section 33-9-40.2.</p> <p><b>34-9-412.1.</b> Self-insured employers implementing drug-free workplace program; Certification for insurance premium discounts.—A self-insured employer or an employer member of a group self-insurance fund who implements a drug-free workplace program substantially in accordance with Code Section 34-9-413 and who complies with all other provisions of this article required of employers in order to qualify for insurance premium discounts shall be certified by the State Board of Workers' Compensation as having a drug-free workplace program in compliance with this article.</p> <p><b>34-9-413. Drug-free workplace program; Requirements; Confidentiality standards; Core services.</b>—(a) A drug-free workplace program must contain the following elements: (1) Written policy statement as provided in Code Section 34-9-414; (2) Substance abuse testing as provided in Code Section 34-9-415; (3) Resources of employee assistance providers maintained in accordance with Code Section 34-9-416; (4) Employee education as provided in Code Section 34-9-417; and (5) Supervisor training in accordance with Code Section 34-9-418. (b) In addition to the requirements of subsection (a) of this Code section, a drug-free workplace program must be implemented in compliance with the confidentiality standards provided in Code Section 34-9-420. (c) A drug-free workplace program may offer and include the optimum level core services as described in subparagraph (C) of paragraph (6) of Code Section 34-9-11. 1</p> <p><b>34-9-414. Notice of testing; written policy statement.</b>—(a) One time only, prior to testing, all employees and job applicants for employment must be given a notice of testing. In addition, all employees must be given a written policy statement from the employer which contains: (1) A general statement of the employer's policy on employee substance abuse which shall identify: (A) The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis used to determine when such testing will be required; and (B) The actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result; (2) A statement advising an employee or job applicant of the existence of this article; (3) A general statement concerning confidentiality; (4) The consequences of refusing to submit to a drug test; (5) A statement advising an employee of the Employee Assistance Program, if the employer offers such program, or advising the employee of the employer's resource file of assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavioral problems; (6) A statement that an employee or job applicant who receives a positive confirmed test result may</p>

contest or explain the result to the employer within five working days after written notification of the positive test result; and (7) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act or Chapter 23 of Title 45, the "Drug-free Public Work Force Act of 1990," if applicable to the employer. (b) An employer not having a substance abuse testing program in effect on July 1, 1993, shall ensure that at least 60 days elapse between a general one-time notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place prior to July 1, 1993, shall not be required to provide a 60 day notice period. (c) An employer shall include notice of substance abuse testing on vacancy announcements for those positions for which testing is required. A notice of the employer's substance abuse testing policy must also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations.

**34-9-415. Drug & alcohol testing; Types of tests required to qualify for workers' compensation insurance premium discount; Random testing; Collection & testing procedures; Chain of custody; Costs; Labs; Confirmation tests** ---(a) All testing conducted by an employer shall be in conformity with the standards and procedures established in this article and all applicable rules adopted by the State Board of Workers' Compensation pursuant to this article. However, an employer shall not have a legal duty under this article to request an employee or job applicant to undergo testing. (b) An employer is required to conduct the following types of tests in order to qualify for the workers' compensation insurance premium discounts provided under Code Section 34-9-412 and Code Section 33-9-40.2: (1) An employer must require job applicants to submit to a substance abuse test after extending an offer of employment. Testing at the employer worksite with on-site testing kits that satisfy testing criteria in this article shall be deemed suitable and acceptable postoffer testing. Limited testing of job applicants by an employer shall qualify under this paragraph if such testing is conducted on the basis of reasonable classifications of job positions; (2) An employer must require an employee to submit to reasonable suspicion testing; (3) An employer must require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group; (4) If the employee in the course of employment enters an Employee Assistance Program or a rehabilitation program as the result of a positive test, the employer must require the employee to submit to a substance abuse test as a follow-up to such program. However, if an employee voluntarily entered the program, follow-up testing is not required. If follow-up testing is conducted, the frequency of such testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee; (5) If the employee has caused or contributed to an on the job injury which resulted in a loss of worktime, the employer must require the employee to submit to a substance abuse test; and (6) Urinalysis conducted by laboratories, testing at the employer worksite with on-site testing kits, or use of oral testing that satisfies testing criteria in this article shall be deemed suitable and acceptable substance abuse testing. (c) Nothing in this Code section shall prohibit a private employer from conducting random testing or other lawful testing of employees. (d) All specimen collection and testing under this Code section shall be performed in accordance with the following procedures: (1) A specimen shall be collected with due regard to the privacy of the individual providing the specimen and in a manner reasonably calculated to prevent substitution or contamination of the specimen; (2) Specimen collection shall be documented, and the documentation procedures shall include: (A) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and (B) An opportunity for the employee or job applicant to record any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The providing of information shall not preclude the administration of the test, but shall be taken into account in interpreting any positive confirmed results; (3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner which will reasonably preclude specimen contamination or adulteration; (4) Each initial test conducted under this Code section shall be conducted by a laboratory as described in subsection (e) of this Code section or conducted using an on-site testing kit or oral testing that satisfies the testing criteria in this article. Each confirmation test conducted under this Code section, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory as

described in subsection (e) of this Code section; (5) A specimen for a test may be taken or collected by any of the following persons: (A) A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment; (B) A qualified person certified or employed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists, or the Georgia Department of Human Resources; (C) A qualified person certified or employed by a collection company; (D) For the purpose of a pre-job offer screening only, a person trained and qualified to conduct on-site testing; or (E) For the purpose of a pre-job offer screening only, a person trained and qualified to conduct oral testing, if an oral test is used; (6) Within five working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant; (7) The employer shall provide to the employee or job applicant, upon request, a copy of the test results; (8) An initial test having a positive result must be confirmed by a confirmation test conducted in a laboratory in accordance with the requirements of this article; (9) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested. This requirement shall apply to all specimens, including specimens collected using on-site testing kits; (10) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees; (11) An employee or job applicant shall pay the cost of any additional tests not required by the employer; and (12) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer pursuant to Code Section 34-9-420 and retained by the employer for at least one year. (e)(1) No laboratory may analyze initial or confirmation drug specimens unless: (A) The laboratory is approved by the National Institute on Drug Abuse or the College of American Pathologists; (B) The laboratory has written procedures to ensure the chain of custody; and (C) The laboratory follows proper quality control procedures including, but not limited to: (i) The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment and periodic use of blind samples for overall accuracy; (ii) An internal review and certification process for drug test results conducted by a person qualified to perform that function in the testing laboratory; (iii) Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results; and (iv) Other necessary and proper actions taken to ensure reliable and accurate drug test results. (2) A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state: (A) The name and address of the laboratory which performed the test and the positive identification of the person tested; (B) Positive results on confirmation tests only, or negative results, as applicable; (C) A list of the drugs for which the drug analyses were conducted; and (D) The type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests. No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this article. (3) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant. (f) If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test. Only laboratories as described in subsection (e) of this Code section shall conduct confirmation drug tests. (g) All positive initial tests, regardless of the testing methodology used, shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse as such technology becomes available in a cost-effective form.

**34-9-416 [Employee Assistance Programs; Resource information required in lieu of EAP; Notice & posting requirements.]**—(a) If an employer has an Employee Assistance Program, the employer must inform the employee of the benefits and services of the Employee Assistance Program. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program. (b) If an employer does not have an Employee Assistance

Program, the employer must maintain a resource file of providers of other employee assistance including drug and alcohol abuse programs, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems and must notify the employee in writing of the availability of this resource file. In addition, the employer shall post in a conspicuous place a current listing of providers of employee assistance in the area. Such listing of available providers shall be reviewed and updated by the employer during the month of July of each year at which time the employer shall, when necessary, correct and revise information on all providers listed. Employers shall take reasonable care to identify appropriate providers and supply accurate telephone and address information on the posted listing of providers at all times.

**34-9-418. Employers having certification to provide supervisory personnel with training.—**

(a) During the initial year of certification as provided in Code Section 34-9-412.1 and in addition to the education program provided in Code Section 34-9-417, an employer must provide all supervisory personnel with a minimum of two hours of supervisor training, which must include but is not limited to the following information: (1) How to recognize signs of employee substance abuse; (2) How to document and corroborate signs of employee substance abuse; and (3) How to refer substance abusing employees to the proper treatment providers. (b) During the second and any consecutive subsequent years of certification, an employer must provide all supervisory personnel with a minimum of one hour of such supervisory training.

**34-9-419. Physician-patient relationship not created; authorized work rules; applicability of article; medical screening or other tests authorized; employer not required to establish program.—**

(a) No physician-patient relationship is created between an employee or job applicant and an employer, medical review officer, or any person performing or evaluating a drug test solely by the establishment, implementation, or administration of a drug-testing program. (b) Nothing in this article shall be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug related offenses, and taking action based upon a violation of any of those rules. (c) Nothing in this article shall be construed to operate retroactively, and nothing in this article shall abrogate the right of an employer under state or federal law to conduct drug tests, or implement employee drug-testing programs; provided, however, only those programs that meet the criteria outlined in this article qualify for reduced workers' compensation insurance premiums under Code Section 33-9-40.2. (d) Nothing in this article shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy materials in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to the specific materials expressly identified in the statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. (e) No cause of action shall arise in favor of any person based upon the failure of an employer to establish or conduct a program or policy for substance abuse testing.

**34-9-420. Confidentiality of information.—**(a) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding, except as provided in subsection (d) of this Code section. (b) Employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum: (1) The name of the person who is authorized to obtain the information; (2) The purpose of the disclosure; (3) The precise information to be disclosed; (4) The duration of the consent; and (5) The signature of the person authorizing release of the information. (c) Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this subsection shall be inadmissible as evidence in any such criminal proceeding. (d) Nothing contained



in this article shall be construed to prohibit the employer or laboratory conducting a test from having access to employee test information when consulting with legal counsel when the information is relevant to its defense in a civil or administrative matter.

**34-9-421. Rules and regulations.**—The State Board of Workers' Compensation shall promulgate by rule or regulation procedures and forms for the certification of employers who establish and maintain a drug-free workplace which complies with the provisions of this article. The board shall be authorized to charge a fee for the certification of a drug-free workplace program in an amount which shall approximate the administrative costs to the board of such certification. Certification of an employer shall be required for each year in which a premium discount is granted. The State Board of Workers' Compensation shall be authorized to promulgate rules and regulations necessary for the implementation of this article.

**478-1-.21. Public officers and employees; Drug and Alcohol Free Workplace Program.**—

(1) Introduction. The State prohibits the manufacture, distribution, dispensation, possession, or use of alcohol, illegal drugs, unauthorized drugs, inhalants, or other controlled substances during an employee's working hours or while on State premises or worksites. Employees violating the Rule are subject to disciplinary action, up to and including termination of employment. (a) No one who is under the influence of illegal drugs, inhalants, or alcohol may enter, work, or remain on the State's work premises, operate the State's vehicles (whether owned or leased), or represent the State in any capacity. The unauthorized use of legally obtained drugs (including drugs prescribed by a health care professional) that may adversely affect job performance or safety is also prohibited. An employee using legally obtained drugs must notify his/her supervisor and obtain prior authorization before operating a State vehicle, or reporting to work if use of the drug(s) could impair the employee's ability to perform his/her job safely. (b) All employees must be informed of the State's Drug and Alcohol Free Workplace Program and related policies and procedures. An employee's refusal to be tested as required under this Rule, failure to appear for a scheduled test, or disruptive behavior during testing will be subject to disciplinary action, up to and including termination of employment. (c) For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-02

**Terms and Definitions:** 1. "Adulterated Sample" is a specimen that contains a substance that is not expected to be present in human urine or a substance that is expected to be present but is at a concentration so high that it is not consistent with human urine. 2. "Alcohol" is the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol. 3. "Alcohol Concentration or Alcohol Content" is the alcohol in a volume of breath expressed in terms of grams of alcohol per two hundred and ten (210) liters of breath as indicated by an alcohol test. 4. "Alcohol Confirmation Test" is a second test following an alcohol test which indicates an alcohol concentration of 0.02 percent or greater. 5. "Alcohol Testing or Alcohol Test" is a breath test using an evidential breath testing device capable of printing results and approved by the National Highway Traffic Safety Administration and placed on its "Conforming Products List of Evidential Breath Measurement Devices" used to determine whether an individual may have a prohibited concentration of alcohol in a breath specimen. Such testing must be performed by a certified Breath Alcohol Technician. 6. "Breath Alcohol Technician (BAT)" is an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath-testing device in accordance with the regulations of the United States Department of Transportation. 7. "Chain of Custody" is the procedure used to document the handling of the urine specimen from the time the individual gives the specimen to the collector until the specimen is destroyed. 8. "Collector" is a person who instructs and assists individuals, who receives and makes an initial inspection of the specimen provided by those individuals, who initiates and completes the Custody and Control Form (CCF) and who is trained according to either United States Department of Transportation standards for DOT regulated donors or Health and Human Services standards for non-DOT-regulated donors. 9. "Donor" is an individual who has provided a urine sample in the course of completing a drug test. 10. "Drug Testing or Drug Test" is the collection and testing of urine administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Regulations, 53 Fed. Reg. 11979, et seq., as amended). This definition is applicable to pre-employment and random drug testing of P.O.S.T. certified employees. 11. "Drug Testing or Drug Test" is the collection and testing of urine administered in a manner equivalent to that required by the rules and

regulations of the United States Department of Transportation (49 CFR Part 40 and Part 382, 14 CFR Part 121 Appendices I & J, and 33 CFR Part 95). This definition is applicable to pre-employment and random drug testing of employees in safety sensitive positions. 12. "Drug Testing or Drug Test" is the collection and testing of urine administered in a manner equivalent to that required by the regulations of the State of Georgia (Official Code of Georgia 34-9-415). This definition is applicable to pre-employment and random drug testing of P.O.S.T. certified and other non-regulated/non-safety sensitive positions. 13. "High-risk Work" refers to those duties where inattention to duty or errors in judgment by the incumbent while on duty will have the potential for significant risk of harm to the individual, other individuals, or the general public. 14. "Illegal Drug" includes but is not limited to marijuana/cannabinoids (THC), cocaine, amphetamines/meth-amphetamines, opiates or phencyclidine (PCP). The term illegal drug does not include any drug used pursuant to and in accordance with a valid prescription or when used as otherwise authorized by state or federal law. 15. "Individual" is an applicant or employee as defined elsewhere in this Rule. 16. "Medical Review Officer" is a properly licensed physician who receives and reviews the results of drug tests and evaluates those results together with medical history or any other relevant biomedical information to confirm positive results. 17. "Reasonable Suspicion" refers to judgment regarding an employee's behavior and/or appearance that is based on evidence found or reported, including but not limited to: (i) An on-the-job accident or occurrence where there is evidence to indicate the accident or occurrence was in whole or in part the result of the employee's actions or inactions and/or the employee exhibited behavior or in other ways demonstrated that he/she may have illegally been using drugs or was illegally under the influence of drugs; (ii) An on-the-job incident, such as a medical emergency, that is likely to be attributable to illegal drug use by an employee; (iii) Observation of behavior exhibited by an employee that might render the employee unable to perform his/her job or that might pose a threat to the safety or health of the employee, fellow employees, or the general public; (iv) Verifiable information that an employee may be illegally using drugs or under the influence of illegal drugs or alcohol; (v) Physical on-the-job evidence of drug use by an employee; (vi) Documented deterioration in an employee's job performance that is likely to be attributable to drug use by the employee; or (vii) The results of other scientific test(s) that may tend to indicate possible use of drugs or alcohol (viii) Any other action that would give an Appointing Authority reason to suspect that an employee is under the influence of an illegal drug or alcohol. 18. "Safety Sensitive Position" is any position whose incumbent is required to undergo drug and alcohol testing by regulations of the United States Department of Transportation (49 CFR Part 382.103, 14 CFR Part 121 Appendices I & J and 33 CFR Part 95). In general, such positions are those where the duties require possession of a valid commercial driver's license or other positions subject to drug and alcohol testing as required by federal law or regulation. 19. "Screening" is the collection and testing of bodily substances administered according to professionally valid procedures in accordance with accepted medical and legal standards. 20. "Split Specimen" is part of the DOT regulated urine specimen that is sent to the first laboratory and retained unopened, and which is transported to a second laboratory in the event that the individual requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result. 21. "State Employer" is any state Agency, department, commission, bureau, board, college, university, institution or authority of any branch of state government. 22. "Substance Abuse Professional" is a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), or marriage and family counselor. This professional must: be with knowledgeable of and experienced in the diagnosis and treatment of alcohol and controlled substances related disorders; be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties per 49 CFR 40 for the DOT agency regulations applicable to the employers for whom they evaluate employees; be knowledgeable of the DOT SAP Guidelines; receive qualification training on seven key, defined areas by a qualified trainer; satisfactorily complete an examination administered by a nationally-recognized professional or training organization; and satisfactorily complete at least 12 professional development hours of continuing education every three years. 23. "Substituted Sample" is a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine. (2) **General Provisions.** (a) **Other Substance Abuse Testing Programs.** The provisions of this rule should not be construed to prevent an Appointing Authority from establishing any other drug or alcohol testing program, as authorized by law. (b) **Administration.** Drug and alcohol testing should

be conducted in accordance with applicable federal and state laws and regulations, and in accordance with procedures established by the Commissioner. The Commissioner will enter into whatever contracts are necessary to provide for testing and verification services. These testing programs should give due consideration to security of sample collection, chain of custody requirements, accuracy for testing, and confidentiality of results. (c) **Expense of Substance Abuse Testing.** The expense of substance abuse testing is the responsibility of the Agency employing the individual. However, if a donor requests that a split sample of a drug test be submitted for separate analysis, or that the remaining portion of the original specimen be reanalyzed, the Appointing Authority may seek payment or reimbursement of all or part of the cost of the split specimen/reanalysis from the donor, as long as the Appointing Authority has a written policy which specifies the donor's responsibility to pay for the split sample/reanalysis. However, the Appointing Authority cannot make payment, reimbursement, or ability to pay a condition for performing the split sample/reanalysis testing. The Appointing Authority is responsible for ensuring that the split sample/reanalysis testing is performed in a timely manner. (d) **Duty Time.** An employee selected for, or directed to substance abuse testing will be considered as being on duty for all time necessary to undergo the testing process, including any time that may be required for transportation to and from the sample collection facility. (e) **Reporting Drug Test Results.** The State Personnel Administration or its successor agencies will receive all drug test results from the Medical Review Officer and will make available or transmit them to the appropriate Agency or Appointing Authority which has contracted with the State Personnel Administration or its successor agencies for drug testing services. (3) **Reporting for Testing.** (a) **Drug Testing.** Individuals who have been directed to report for drug testing must present themselves to a designated sample collection facility or an approved location within the Appointing Authority's facilities. The Appointing Authority must specify a date and time by which each individual must report for testing. The date and time should be as soon as possible, but not later than two business days following the date the individual receives notification to report. (b) **Alcohol Testing.** The Appointing Authority must specify a date, time and location for an employee to report for alcohol testing. The date and time must be during a workday on which the employee is scheduled to perform safety sensitive duties. The employee must not be notified more than four hours prior to the time of the testing. The test should never be performed more than two hours before or two hours after the performance of the safety sensitive duties. (4) **Refusal or Failure to Appear for Substance Abuse Testing.** (a) An applicant who declines an offer of employment for reasons unrelated to drug testing will not be deemed to have refused testing; (b) An individual who expressly refuses to undergo drug testing or engages in conduct that clearly obstructs the testing process will be deemed to have expressly refused testing; (c) An individual who fails to appear for substance abuse testing after proper notification or who refused to remain readily available for testing will be deemed to have expressly refused testing; (d) An individual who fails to provide adequate urine for drug testing without a valid medical reason will be deemed to have expressly refused testing; (e) An individual who fails to provide adequate breath for alcohol testing without a valid medical explanation will be deemed to have expressly refused testing; (f) If the testing laboratory and the Medical Review Officer determine that the urine sample of a donor is an adulterated sample, the donor will be deemed to have expressly refused testing; or (g) If the testing laboratory and the Medical Review Officer determine that the urine sample of a donor is a substituted sample, the donor will be deemed to have expressly refused testing. (5) **Observed Samples.** An observed sample may be conducted by a representative of the collection facility or a subcontractor of the same sex as the donor. (a) **Criteria for Observed Sample.** When a collection site representative determines that a sample temperature is outside the acceptable range of 90 through 100 degrees Fahrenheit, the sample has an unusual appearance, or unusual behavior or appearance of the donor is observed during the collection steps, the collection may be conducted as an observed sample. A sample will not be collected as an observed sample unless the necessity for it has been confirmed by a supervisor of the site representative or other appropriate collection site personnel. Any other circumstances require the approval of the Appointing Authority. (b) An Appointing Authority may direct a sample to be collected as an observed sample if the Appointing Authority has reason to believe that the donor may attempt to alter or falsify the sample, or as otherwise provided in this Rule. (6) **Pre-Employment Drug Testing.** (a) **Determination of Positions Subject to Pre-Employment Drug Testing.** Each Appointing Authority has conducted an analysis of all jobs utilized in the Appointing Authority's Agency to determine those positions whose duties and responsibilities warrant requiring applicants for those positions to undergo pre-employment drug testing. Any new

positions established in an Agency must undergo a similar analysis not later than six weeks after the position is established. (b) Each Appointing Authority must consult with the Commissioner before making final determinations regarding positions subject to pre-employment drug testing. The identification of positions designated as subject to pre-employment drug testing and accompanying documentation and analysis must be reported to the State Personnel Administration or its successor agencies in the form and manner prescribed by the Commissioner. (c) **Applicability.** For purposes of this section, "applicant" means: 1. An individual who has been offered initial employment with an Agency in a position subject to pre-employment drug testing or who has commenced initial employment with an Agency but has not submitted to an established test for illegal drugs; 2. A current Agency employee who is an incumbent of a position not subject to preemployment drug testing who has been offered employment in a position subject to preemployment testing; or 3. A current Agency employee who has been offered employment in a different state Agency in a position subject to pre-employment drug testing. 4. Applicants are required to complete a pre-employment drug test for the presence of illegal drugs prior to commencing employment or within ten days of commencing employment. 5. Applicants whose results of drug testing do not indicate illegal drug usage may be considered as eligible for employment. (d) **Disqualification from State Employment.** Any applicant as defined under section "A" above whose drug test results are reported as positive by the Medical Review Officer, who expressly refuses a pre-employment drug test, or who fails to appear for a test will be disqualified from holding any position with a State employer for a period of 2 years. The State Personnel Administration or its successor agencies should notify the applicant, in writing, that he/she has been deemed to have used an illegal drug and is therefore disqualified from state employment for a period of two years from the date of notification. (e) **Separation from State Employment.** Any applicant under section "A" above whose drug test results are reported as positive and who commenced employment prior to being required to report for drug testing, or who commenced employment before the results of drug testing were received by the Appointing Authority, should be immediately separated from employment. The Appointing Authority will notify the applicant of the separation and the reasons for it, but the separation cannot be appealed except as provided in other provisions of these policies. (f) **Consequences to Current Employees.** If employment in the new position has not commenced, the Georgia Merit System or its successor agencies will notify the current Appointing Authority of an applicant under sections "B" or "C" above whose drug test results are reported as positive by the Medical Review Officer. The current Appointing Authority may take such action as it deems appropriate. (g) **Notice to the Georgia Merit System or its successor agencies.** Each Agency must notify the Georgia Merit System or its successor agencies of any applicant who has refused or failed to appear for drug testing. The notice should include the name and address of the applicant, the date of refusal or failure to appear, and a brief statement of the circumstances. (h) **Final Determination.** The decision of the Medical Review Officer regarding the verification of a positive drug test result will be final. No appeal or review of the test results by the applicant is permitted. (7) **Random Drug Testing of Employees in High-Risk Positions.** (a) **Determination of High-Risk Positions.** Each Appointing Authority, in consultation with the Commissioner, must determine those positions and groups of positions which require certification under the Georgia Peace Officers Standards and Training Act (P.O.S.T.) and whose incumbents regularly perform high-risk work. 1. Each Appointing Authority, in consultation with the Commissioner, must determine those non-P.O.S.T certified positions and groups of positions whose incumbents regularly perform high-risk work. Examples of these positions may include, but are not limited to: medical personnel, non-DOT regulated drivers, in-home care providers, heavy equipment operators, and electricians. 2. Positions will not be designated as high-risk if the incumbents do not regularly perform high-risk work, regardless of the fact that others in the same classification do regularly perform high-risk work. 3. Any change in duties assigned to a position that would affect the designation or nondesignation of engaging in high-risk work must be reported to the Commissioner within 30 days of the change. (b) **Applicability.** All employees required to be P.O.S.T. certified (including those working under a contract to provide personnel services such as medical, security, or transportation services) and who are engaged in high-risk work are subject to random drug testing for evidence of use of illegal drugs. Employees in other high-risk positions, as designated by the Appointing Authority, are subject to random drug testing for evidence of use of illegal drugs. Prior to being placed in a position subject to testing, an employee or applicant should be notified of the requirement for testing and of the consequences of a positive result or of refusal or failure to appear

for testing. (c) **Selection Procedures.** 1. **Subject Pools.** The Commissioner will establish pools composed of all positions designated as being high-risk by the appointing authorities. One pool will include all P.O.S.T. certified positions; the other(s) will include all those designated as high-risk that do not require P.O.S.T. certification. 2. **Random Sample.** Once each month, the Commissioner will select, at random, a sample of positions in the pool. (d) **Notice of Selection.** The Commissioner will notify each Appointing Authority of positions, if any, that have been selected from the pool. The notice will contain the effective date to be used for determining the incumbent(s) to be screened and when screening will begin. (e) **Testing of Incumbents.** The incumbent of the selected position as of the effective date specified in the Notice of Selection will be the employee subject to testing unless that individual is no longer employed in the Agency. Incumbents selected for random testing will be notified of the selection by the Appointing Authority. (f) **Multiple Incumbents.** Should a selected position have more than one incumbent as of the specified effective date, all incumbents will be subject to testing. (g) **Incumbents on Leave.** If the incumbent of a selected position was on any form of paid or unpaid leave as of the effective date specified in the Notice of Selection and the incumbent returns to duty within 30 calendar days of the effective date, the Appointing Authority should specify a date and time by which the employee must report for testing. The date and time must not be more than two business days following the date the employee returns to duty. 1. **Vacant Positions.** If a position was vacant as of the effective date specified in the Notice of Selection, no incumbent testing for that position will take place. (8) **Drug and Alcohol Testing of Safety Sensitive Employees.** (a) **Determination of Safety Sensitive Positions.** Each Appointing Authority must designate as "safety sensitive" those positions whose incumbents are regulated by one of US DOT's Operating Administrations. This includes: those who perform safety-sensitive functions as defined by the FMCSA in 49 CFR Part 382; those who perform safety-sensitive functions as defined by the FAA in 14 CFR Part 121 Appendix I and; those defined in Chapter 33 of Title 46 United States Code. The Appointing Authority will also designate as "safety sensitive" those positions subject to drug and alcohol testing by federal law or regulation. 1. Any change in duties assigned to a position that would affect the designation or nondesignation of engaging in safety sensitive duties must be reported to the Commissioner within 30 days of the change. (b) **Applicability.** 1. "Employee" or "applicant," for purposes of this section, means any individual who is employed or who has been offered employment in a safety sensitive position. 2. All safety sensitive employees and applicants are subject to drug and alcohol testing for evidence of use of illegal drugs and/or misuse of alcohol. Prior to being placed in a position subject to testing, an employee or applicant should be notified of the requirement for testing and of the consequences of a positive result or of refusal or failure to appear for testing. 3. Safety sensitive employees and applicants will be directed to present themselves to a designated, approved collection facility and will not be subject to on-site testing. All facilities and procedures used for drug and alcohol testing of safety sensitive employees and applicants must meet all requirements established by the Department of Transportation (49 C.F.R. Part 40, Subpart B). (c) **Types of Testing.** 1. **Pre-Employment.** Applicants for safety sensitive positions and employees who have not previously performed safety sensitive duties are required to successfully complete drug testing prior to performing safety sensitive duties. 2. **Random Testing.** All safety sensitive employees are subject to random drug and alcohol testing. (i) **Subject Pool.** The Commissioner will establish a pool composed of all positions designated as being safety sensitive by the appointing authorities. (ii) **Random Sample.** Once each month, the Commissioner will select, at random, a sample of positions in the pool. To the extent that applicable law and regulations differ, the numbers of employees to be tested and the scheduling of employee selection will be determined by the Commissioner in accordance with those laws and regulations. (iii) **Notice of Selection.** The Commissioner will notify each Appointing Authority of positions, if any, that have been selected from the pool. The notice will contain the effective date to be utilized for determining the incumbent(s) to be tested and to determine the commencement of testing. Incumbents selected for random drug or alcohol testing will be notified of the selection by the Appointing Authority. (I) **Multiple Incumbents.** Should a selected position have more than one incumbent as of the specified effective date, all incumbents will be subject to testing. (II) **Incumbents on Leave.** If an employee selected for drug or alcohol testing was on any form of paid or unpaid leave as of the effective date specified in the Notice of Selection and the incumbent returns to duty within 30 calendar days of the effective date, the Appointing Authority should specify a date and time by which the employee must report for testing. The date and time must not be more than two business days following the date the employee returns to duty. (III) **Post-Accident Testing.**

Any employee performing safety sensitive duties who is involved in an on-the-job vehicular accident is required to undergo drug and alcohol testing as soon as possible following the accident when: I. The accident involved the loss of human life; II. The employee received a citation for a moving traffic violation arising from the accident and the accident resulted in injury to a person who immediately receives medical treatment away from the scene of the accident; or III. The employee received a citation for a moving traffic violation arising from the accident and one or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. IV. If the accident involved the loss of human life, any employee present in the vehicle at the time of the accident will be required to undergo drug and alcohol testing. V. Under no circumstances will an employee who may be subject to post-accident testing consume alcohol between the time of the accident and the administration of an alcohol test or until efforts to administer such test have been discontinued. VI. An alcohol test should be administered within two hours following an accident. If for any reason the test cannot be administered within eight hours of an accident, the Appointing Authority will cease attempting to administer the test. VII. A drug test will be administered as soon as possible following an accident, but not later than 32 hours following an accident. VIII. In any instance in which an employee is not tested within specified time limits, the Appointing Authority must prepare and maintain on file a record of the reasons the test was not promptly administered. (d) **Return-to-Duty.** Any employee who has been subject to alcohol testing and whose test result indicates that he/she has misused alcohol must undergo a return-to-duty test. The test must indicate an alcohol concentration of less than 0.02 percent before the employee can be returned to safety sensitive duties. (e) **Follow-Up.** Following a determination by a Substance Abuse Professional that an employee is in need of assistance in resolving problems associated with alcohol misuse, the Appointing Authority will ensure that the employee is subject to unannounced followup alcohol testing. Mandatory follow-up testing will be conducted only when the employee is scheduled to perform safety sensitive functions. Testing must be conducted at least six times in the first 12 months following return to safety sensitive duty and may, upon the recommendation of the Substance Abuse Professional, be continued for up to 60 months. (f) **Reasonable Suspicion.** Any employee may be required to submit to drug and/or alcohol testing when the Appointing Authority has reasonable suspicion to believe that he/she has used illegal drugs or is under the influence of illegal drugs or alcohol while on duty. The determination of reasonable suspicion should be made by a supervisor or other official who is trained to make those determinations. (The training will consist of one hour of illegal drug training and one hour of alcohol training which covers physical, behavioral, speech and performance indicators of probable illegal drug use or alcohol misuse.) A written record, signed by the observing official, must be made to document the observations. Alcohol testing may be conducted only when the employee is scheduled to perform safety sensitive duties. (g) **Alcohol Testing Results.** Any employee whose test indicates an alcohol concentration of 0.02 percent or greater will be given an alcohol confirmation test not less than 15 minutes nor more than 20 minutes after the original test. 1. Any employee whose alcohol confirmation test indicates an alcohol concentration of 0.02 percent or greater will be immediately removed from safety sensitive duties for a period of not less than 24 hours. Any disciplinary or adverse action deemed appropriate by the Appointing Authority may also be imposed. 2. An employee removed from duty will be deemed to have voluntarily forfeited pay for any scheduled duty time during the 24 hour period immediately following the removal. The employee will be notified, in writing, of the forfeiture of pay. 3. Any employee whose alcohol confirmation test indicates an alcohol concentration of 0.04 percent or greater will not be returned to safety sensitive duties until the employee has been evaluated by a Substance Abuse Professional and is able to provide documentation that the Substance Abuse Professional has certified that he/she is fit to return to duty. 4. Any employee whose alcohol confirmation test indicates an alcohol concentration of 0.02 percent or greater will not be returned to safety sensitive duties until a subsequent test indicates an alcohol concentration of less than 0.02 percent. (9) **On-Site Drug Testing.** (a) **Testing.** Upon establishment of a written policy, an Appointing Authority may conduct on-site drug testing according to the provisions of these policies, for any type of drug testing except testing of safety sensitive employees. (b) On-site facilities and procedures must meet all requirements established by the Official Code of Georgia 34-9-415 for drug testing. (c) On-site collectors meeting the training requirements set forth by the Official Code of Georgia 34-9-415, are the only persons authorized to collect urine specimens for drug testing. (d) Testing devices used for on-site drug testing must meet the requirements of the

regulations established by the United States Food and Drug Administration (21 CFR Part 800). (e) **Observed Collection.** If an individual demonstrates behavior that meets the requirements for an observed collection as described earlier in this Rule, the individual will be required to report to an approved collection site to have the observed collection performed by a representative of the collection facility or an approved subcontractor of the same sex as the donor. (f) **On-Site Test Results.** On-site negative results are not subject to further analysis. The collection device should be disposed of immediately in the proper manner as described by the manufacturer. The Custody and Control form should be retained in the office of the official conducting the test for a minimum of 30 days. (g) The Appointing Authority must report the results and the Chain of Custody form information in a method and timeframe established by the State Personnel Administration or its successor agencies. (h) Non-negative results must be submitted under complete chain of custody to a Substance Abuse and Mental Health Services Administration certified laboratory for confirmation testing including re-screen, gas chromatography/mass spectrometry confirmation and MRO review. (i) The Appointing Authority may not take action until a certified laboratory has confirmed a positive initial test to the Georgia Merit System or its successor agencies. (j) The Medical Review Officer must adhere to the following reporting and contact procedure for confirmation testing. (10) **Medical Review Officer Review Procedure.** (a) **Laboratory Reports.** The testing laboratory must forward the results of all drug tests to the Medical Review Officer, who must assure the security of such results. 1. **Negative Results.** The Medical Review Officer must forward negative results of drug tests to the Georgia Merit System or its successor agencies as soon as practicable. 2. **Positive Results.** Laboratory reports indicating the presence of an illegal drug(s) will be retained by the Medical Review Officer until a final determination is reached. Such information is confidential and will only be available to the Medical Review Officer or designee and the affected donor. Positive laboratory reports will be reviewed and determinations of legal or illegal usage will be made in accordance with procedures established by the Medical Review Officer. (b) **Contact Procedure.** The Medical Review Officer will, upon receipt of a positive laboratory report, attempt to contact the donor who provided the urine sample at the daytime or home phone number indicated on the drug testing form. The Medical Review Officer will attempt to determine if there is an alternative medical explanation for the positive report. 1. If the donor expressly refuses to discuss with the Medical Review Officer the results of a drug test, declines the opportunity to provide an explanation of the results, or admits to the usage of an illegal drug(s), the Medical Review Officer, without further action or review, will report to the Georgia Merit System that the results of the drug testing indicate that the donor has used an illegal drug(s). 2. If the Medical Review Officer is unable to directly contact the donor within 2 business days of the initial attempt, he/she will contact the Georgia Merit System or its successor agencies who will contact the appropriate Appointing Authority. The Appointing Authority will attempt to contact the donor and will inform the donor that he/she must personally contact the Medical Review Officer by the end of the next business day, or he/she will be considered to have tested positive for the use of illegal drugs. 3. If the Appointing Authority is unable to contact the donor within 2 business days of the initial attempt, the Appointing Authority will notify the Medical Review Officer. The Medical Review Officer will then deem the donor to have tested positive for the use of illegal drugs. (i) **Reporting Determination of Illegal Drug Usage.** If a donor is unable to provide an alternative medical explanation for the presence of an illegal drug(s), the Medical Review Officer, after appropriate review, will notify the Georgia Merit System or its successor agencies that the test result is positive. (11) **Substance Abuse Testing Results.** (a) **Rejected or Unsuitable Sample.** A donor whose urine sample is rejected or determined to be unsuitable by the testing laboratory for any reason other than that it is an adulterated or substituted sample, may in the discretion of the Appointing Authority, be directed to appear for retesting. The retesting may be conducted as an observed sample. (b) **Negative Test Results.** 1. **Transmittal.** The Georgia Merit System or its successor agencies will make available or transmit all negative test results to the appropriate Appointing Authority as quickly as possible. 2. **Usage.** Negative test results may be utilized by any other Agency for any appropriate purpose for a period of 30 calendar days after the date the test was administered. 3. **Positive Results.** An individual whose results of substance abuse testing indicate that the individual has used an illegal drug(s) will be subject to disciplinary action as specified in other provisions of this Rule or as deemed appropriate by the Appointing Authority. 4. **Confidentiality of Results.** A report from a Medical Review Officer that a donor has used an illegal drug(s) is accessible only to staff of the Appointing Authority and the Georgia Merit System or its successor agencies as necessary to comply with these

	<p>polices or with state and federal law, and will not be considered a public record. The Appointing Authority and the Commissioner should establish policies to assure the confidentiality of such information and to identify those employees who are entitled to the information. (12) <b>Dismissal.</b> This is the exclusive procedure for dismissal under the provisions of this Rule. (a) If an employee expressly refused to appear for substance abuse testing or was determined by the Medical Review Officer to have used an illegal drug, the Appointing Authority will notify the employee, in writing, of immediate termination of employment. The termination will be effective as of the date of the notice. The employee will also be disqualified from holding any position with a State employer for a period of 2 years from the date of the notice. (b) See Rule 478-1-24 for dismissal procedures for classified employees under this provision. (c) For employees in the classified service the dismissal will be the final determination of adverse action and must include these elements: 1. Identify the effective date of the action; 2. Identify the date the employee expressly refused substance abuse testing or the date the employee underwent drug testing; and/or 3. Indicate that the Medical Review Officer determined the employee to have used an illegal drug(s); and the specific illegal drug(s) identified; 4. Inform the employee that he/she will be disqualified from holding any position with a State employer for a period of 2 years from the notice 5. Advise the employee that he/she may appeal the action to the Board by filing an appeal with the Office of State Administrative Hearings within 10 calendar days from the date the employee receives written notice of the final action. Any filing will be considered as timely if postmarked within the time allowed for an appeal but will not be considered filed until actually received by the Office of State Administrative Hearings.</p>
<p><b>Hawaii</b></p>	<p><b>329B-2.5.Exemptions.</b>---This chapter does not apply to: (1) Toxicology tests used in the direct clinical management of patients; (2) Tests for alcohol under chapter 286 or chapter 291; (3) Tests made pursuant to subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 Federal Register 11986); and (4) Substance abuse testing of individuals under the supervision or custody of the judiciary, the department of public safety, the Hawaii paroling authority, and the office of youth services. However, these state governmental entities shall establish chain of custody procedures which require that all specimens be sealed and coded in the presence of the individual being tested and that the individual shall sign an approved form acknowledging that the specimen has been sealed and coded in the individual's presence. The procedure shall include a tracking form documenting the handling and storage of the specimen from collection to final disposition of the specimen. The individual also shall be afforded the option of a confirmatory test by a licensed, certified laboratory. The cost of the confirmatory test shall be paid for by the State; provided that in those instances where a positive test result is confirmed, the individual shall be charged with the cost of the confirmation test. Test results shall not require review by a medical review officer. Positive test results of substance abuse testing and the availability of a confirmatory test shall be provided to the individual in writing. A positive test result from a substance abuse test that fails to meet the requirements of this section shall not be reported or recorded.</p> <p><b>329B-3 .Limitations.</b>—No third party shall require, request, or suggest that any individual submit to a substance abuse test that does not meet all the requirements of this chapter except for third parties who are covered by a drug testing regulation adopted by the department of transportation of the United States Department of Transportation or any other federal agencies. All costs, including confirmatory testing costs, shall be paid for by the third party. Nothing in this chapter shall be construed to preclude the department or any laboratory certifying agency approved by the director from examining the records of laboratories, including substance abuse on-site screening locations, licensed for substance abuse testing to ascertain compliance with licensure or certification requirements, or to preclude the administration of breath tests to determine the alcohol content of the tested individual's blood for purposes of this chapter.</p> <p><b>329B-4.Laboratory requirements.</b>—(a) All substance abuse testing performed in the State shall be performed by a testing laboratory licensed by the department for that purpose, or certified for substance abuse testing by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services, and approved by the director, except as provided in section 329B-5.5. (b) Testing of samples from this State performed in another state shall be performed only by laboratories certified for substance abuse testing by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human</p>



Services, and approved by the director. No laboratory located outside of the State shall be licensed by the department to perform substance abuse testing. (c) The director shall adopt rules governing: (1) Standards for approval and licensure of qualified testing laboratories, and suspension and revocation of a license; (2) Qualifications of laboratory personnel; (3) Body component samples that are appropriate for substance abuse testing; (4) Selection of medical review officers determined to be qualified by the department, and procedures to be followed by medical review officers in the reception, review, and interpretation of the results of laboratory tests requested by a third party; (5) Procedures for taking samples that ensure privacy to the individuals tested and prevent or detect tampering with the sample; (6) Methods of analysis and procedures to ensure reliable testing results, including standards for initial screening and confirmatory tests; provided that confirmatory tests for drugs or metabolites of drugs shall utilize a gas chromatograph with a mass spectrometer detector or other reliable methods approved by the director; (7) Cutoff levels of alcohol, drugs, or the metabolites of drugs; (8) Chain of custody procedures to ensure proper identification, labeling, and handling of the samples to be tested; (9) Retention and storage procedures and durations to ensure availability of samples for retesting when necessary; (10) Establishing fees for licensing of laboratories; (11) Retention of substance abuse test information by the laboratory; and (12) Procedures to ensure confidentiality of the substance abuse testing procedures and substance abuse test information. (d) No laboratory shall be licensed to perform substance abuse testing in the State unless the laboratory participates in and continues to demonstrate satisfactory performance in drug proficiency testing as determined by the director.

**329B-5. Substance abuse testing; Notice & statement required prior to test; Rules; Labs & limit on testing; "Test results" defined** ---. (a) Prior to the collection of any sample for substance abuse testing, the individual to be tested shall receive a written statement of the specific substances to be tested for and a statement that over-the-counter medications or prescribed drugs may result in a positive test result. (b) In accordance with this section, the director shall adopt rules pertaining to: (1) The qualifications, responsibilities, and licensing of the medical review officer; (2) The method of transmittal of laboratory test results and any interpretations of test results to the third party and the tested individual; and (3) The obtaining, disclosure, and confidentiality of substance abuse testing information. (c) No laboratory, including a substance abuse on-site screening location, may test for any substance not included on the written statement containing the specific substances to be tested for. (d) As used in this section, "test results" means laboratory test results or the results of substance abuse on-site screening tests.

**329B-5.5. Substance abuse testing; On-site screening tests; Procedures; Confidentiality of information.**—The substance abuse on-site screening test shall be administered according to the instructions of the manufacturer and this section: (1) Every employer using a substance abuse on-site screening test shall administer the test according to the package insert that accompanies the substance abuse on-site screening test; (2) Any indication of the presence of drugs, alcohol, or the metabolites of drugs by the substance abuse on-site screening test shall not be used to deny or deprive a person of employment or any benefit, or result in any adverse action against the employee or prospective employee, unless a substance abuse test is conducted according to section 329B-5 and the requirements of paragraph (3) are met; (3) Upon the indication of the presence of drugs, alcohol, or the metabolites of drugs by the substance abuse on-site screening test, the employer shall have the employee or prospective employee report within four hours to a laboratory licensed by the department under section 329B-4 and be tested under section 329B-5. The employer shall bear the cost of the laboratory referral. An employee or prospective employee who fails to report for the substance abuse test may be denied or deprived of employment or any benefit, or have adverse action taken against the employee or prospective employee for refusing or failing to report for the substance abuse test; provided that the employer has provided to the employee or prospective employee written notice stating that: (A) At the time of the substance abuse on-site screening test, the employer followed the procedures under section 329B-5.5; (B) The employee or prospective employee was informed that the employee or prospective employee may refuse to submit to the substance abuse test; and (C) If the employee or prospective employee refuses or fails to submit to the substance abuse test, the employer may take adverse employment action against the employee or prospective employee; (4) The operator who administers the substance abuse on-site screening test shall have been trained in the use and

administering of the on-site screening test by the manufacturer of the on-site screening test or the manufacturer's designee; and (5) Any information concerning the substance abuse on-site screening test shall be strictly confidential. Such information shall not be released to anyone without the informed written consent of the individual tested and shall not be released or made public upon subpoena or any other method of discovery, except that information relating to a positive on-site screening test result of an individual shall be disclosed to the individual, a third party, the laboratory to which the individual is referred, and the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual tested and arising from the positive on-site screening test result.

**329B-6 .Test results.**—(a) The laboratory report shall include the following information and shall be reported in a timely manner:(1) The type of test conducted; (2) The test results, which, for each substance tested can be negative due to a negative screening or confirmatory test result, positive due to a positive confirmatory test result, or no result due to an unsatisfactory sample or other reason; (3) The cutoff level used to distinguish positive and negative samples on both the initial and confirmatory tests; (4) The name and address of the laboratory; and (5) Any additional information provided by the laboratory concerning the individual's test. (b) The indication of a substance below the cutoff level as established by the director shall be recorded as a negative test result. The laboratory's report shall not contain any information indicating the possible presence of a substance below a cutoff level, as so established. (c) Any information concerning a substance abuse test pursuant to this chapter shall be strictly confidential. Such information shall not be released to anyone without the informed written consent of the individual tested and shall not be released or made public upon subpoena or any other method of discovery, except that information related to a positive test result of an individual shall be disclosed to the individual, the third party, or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual tested and arising from positive confirmatory test result. Any person who receives or comes into possession of any information protected under this chapter shall be subject to the same obligation of confidentiality as the party from whom the information was received. (d) Failure to adopt or adhere to all the procedures contained in this chapter shall invalidate the test result and the result may not be reported or otherwise used for any purpose.

**329B-7 .Remedies.**—(a) Any person, agency, or entity that willfully and knowingly violates any provision of this chapter shall be fined not less than \$1,000 but not more than \$10,000 for each violation as set by the department, plus reasonable court costs and attorney's fees as determined by the court, which penalty and costs shall be paid to the aggrieved person. This subsection shall not be construed as limiting the right of any person or persons to recover actual damages. (b) In addition to any other enforcement mechanism allowed by law, any person, agency, or entity that commits, or proposed to commit, any act in violation of this chapter may be enjoined therefrom by a court of competent jurisdiction. An action for injunctive relief under this subsection may be brought by any aggrieved person that will fairly and adequately represent the interests of the protected class.

**378-32. Prohibited acts of employers; Employers prohibited from discriminating, discharging, suspending employee based on summons relating to garnishment or bankruptcy, solely due to a work injury compensable under workers compensation, because employee testifies or is to testify in a proceeding, or because the employee tests positive to the presence of drugs, alcohol or metabolites of drugs in a substance abuse on-site screening test; Exceptions.**—It shall be unlawful for any employer to suspend, discharge, or discriminate against any of the employer's employees: (1) Solely because the employer was summoned as a garnishee in a cause where the employee is the debtor or because the employee has filed a petition in proceedings for a wage earner plan under Chapter XIII of the Bankruptcy Act; or (2) Solely because the employee has suffered a work injury which arose out of and in the course of the employee's employment with the employer and which is compensable under chapter 386 unless the employee is no longer capable of performing the employee's work as a result of the work injury and the employer has no other available work which the employee is capable of performing. Any employee who is discharged because of the work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the discharge and during the period thereafter until the employee secures new employment. This paragraph shall not apply to any

	<p>employer in whose employment there are less than three employees at the time of the work injury or who is a party to a collective bargaining agreement which prevents the continued employment or reemployment of the injured employee; (3) Because the employee testified or was subpoenaed to testify in a proceeding under this part; or (4) Because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with section 329B-5.5; provided that this provision shall not apply to an employee who fails or refuses to report to a laboratory for a substance abuse test pursuant to section 329B-5.5.</p> <p><b>378-35. Prohibited acts of employers; Employee remedy following a finding of unlawful discrimination, discharge, or suspension; Reinstatement and/or backpay.—</b>  If the department of labor and industrial relations finds, after a hearing, that an employer has unlawfully suspended, discharged or discriminated against an employee in violation of section 378-32, the department may order the reinstatement, or reinstatement to the prior position, as the case may be, of the employee with or without backpay or may order the payment of backpay without any such reinstatement.</p>
<p><b>Idaho</b></p>	<p><b>72-1702. Drug and alcohol testing as condition of employment or continued employment; Third-party screenings; At-will status unaffected.—</b>(1) It is lawful for a private employer to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment, provided the testing requirements and procedures are in compliance with 42 U.S.C. section 12101. (2) Nothing herein prohibits an employer from using the results of a drug or alcohol test conducted by a third party including, but not limited to, law enforcement agencies, hospitals, etc., as the basis for determining whether an employee has committed misconduct. (3) This act does not change the at-will status of any employee.</p> <p><b>72-1703. Drug and alcohol testing; Cost of testing employees.—</b>(1) Any drug or alcohol testing by an employer of current employees shall be deemed work time for purposes of compensation. (2) All costs of drug and alcohol testing for current employees conducted under the provisions of this act, unless otherwise specified in section 72-1706(2), Idaho Code, shall be paid by the employer.</p> <p><b>72-1704 Drug and alcohol testing; Sample collection and testing requirements.—</b>All sample collection and testing for drugs and alcohol under this act shall be performed in accordance with the following conditions: (1) The collection of samples shall be performed under reasonable and sanitary conditions; (2) The employer or employer's agent who is responsible for collecting the sample will be instructed as to the proper methods of collection; (3) Samples shall be collected and tested with due regard to the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples; (4) Sample collection shall be documented and the documentation procedures shall include: (a) Labeling of samples so as reasonably to preclude the possibility of misidentification of the person tested in relation to the test result provided; and (b) Handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures; (5) Sample collection, storage and transportation to the place of testing shall be performed so as reasonably to preclude the possibility of sample contamination and/or adulteration; (6) Sample testing shall conform to scientifically accepted analytical methods and procedures; (7) Drug testing shall include a confirmatory test before the result of any test can be used as a basis for action by an employer under sections 72-1707 and 72-1708, Idaho Code. A confirmatory test refers to the mandatory second or additional test of the same sample that is conducted by a laboratory utilizing a chromatographic technique such as gas chromatography mass spectrometry or another comparable reliable analytical method; (8) Positive alcohol tests resulting from the use of an initial screen saliva test, must include a confirmatory test that utilizes a different testing methodology meant to demonstrate a higher degree of reliability; (9) Positive alcohol tests resulting from the use of a breath test must include a confirmatory breath test conducted no earlier than fifteen (15) minutes after the initial test; or the use of any other confirmatory test meant to demonstrate a higher degree of reliability.</p> <p>72-1705.[Drug and Alcohol Testing; Employer must have written policy; Types of tests must be listed in policy].—  (1) An employer must have a written policy on drug and/or alcohol testing that is consistent with the</p>

requirements of this act, including a statement that violation of the policy may result in termination due to misconduct. (2) An employer will receive the full benefits of this act, even if its drug and alcohol testing policy does not conform to all of the statutory provisions, if it follows a drug or alcohol testing policy that was negotiated with its employees' collective bargaining representative or that is consistent with the terms of the collective bargaining agreement. (3) Testing for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy that has been communicated to affected employees, and is available for review by prospective employees. (4) The employer must list the types of tests an employee may be subject to in their written policy, which may include, but are not limited to, the following:

- (a) Baseline;
- (b) Preemployment;
- (c) Post-accident;
- (d) Random;
- (e) Return to duty;
- (f) Follow-up;
- (g) Reasonable suspicion.

**72-1706. Drug and alcohol testing, Rights of employees and prospective employees; Positive test results; Retesting requests.**---(1) Any employee or prospective employee who tests positive for drugs or alcohol must be given written notice of that test result, including the type of substance involved, by the employer. The employee must be given an opportunity to discuss and explain the positive test result with a medical review officer or other qualified person. (2) Any employee or prospective employee who has a positive test result may request that the same sample be retested by a mutually agreed upon laboratory. A request for retest must be done within seven (7) working days from the date of the first confirmed positive test notification and may be paid for by the employee or prospective employee requesting the test. If the retest results in a negative test outcome, the employer will reimburse the cost of the retest, compensate the employee for his time if suspended without pay, or if terminated solely because of the positive test, the employee shall be reinstated with back pay.

**72-1707. Drug and alcohol testing; Discharge for work-related misconduct; Failing, refusing or altering test.**—An employer establishes that an employee was discharged for work-related misconduct, as provided in section 72-1366, Idaho Code, upon a showing that the employer has complied with the requirements of this chapter and that the discharge was based on: (1) A confirmed positive drug test or a positive alcohol test, as indicated by a test result of not less than .02 blood alcohol content (BAC), but greater than the level specified in the employer's substance abuse policy; (2) The employee's refusal to provide a sample for testing; or (3) The employee's alteration or attempt to alter a test sample by adding a foreign substance for the purpose of making the sample more difficult to analyze; or (4) The employee's submission of a sample that is not his or her own.

**72-1708. Drug and alcohol testing; Confirmed test result, refusal of test, alteration of test sample, or other proof of violation of employer's written policy; Disciplinary or rehabilitative actions.**—(1) Unless otherwise prohibited, upon receipt of a confirmed positive drug or alcohol test result or other proof which indicates a violation of an employer's written policy, or upon the refusal of an employee to provide a test sample, or upon an employee's alteration of or attempt to alter a test sample, an employer may use that test result or the employee's conduct as the basis for disciplinary or refusal-to-hire action that will result in a claimant's ineligibility to receive benefits under the provisions of section 72-1366(4), (5), (6) or (7), Idaho Code. Actions by the employer may include, but are not limited to, the following: (a) A requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment; (b) Suspension of the employee with or without pay for a period of time; (c) Termination of the employee; (d) Other disciplinary measures in conformance with the employer's usual procedures, including any collective bargaining agreement. (2) Action taken pursuant to this section shall not create any cause of action against the employer.

**72-1709. Failure of claimant to accept suitable work.**—If a claimant for unemployment benefits

does not accept otherwise suitable work, as contemplated in section 72-1366(4), (6) or (7), Idaho Code, because he is required to take a preemployment drug or alcohol test, the claimant has failed to accept suitable work, unless the claimant is required to pay for costs associated with a negative drug or alcohol test result.

**72-1710. Drug and alcohol testing; Absence of program or policy, failure to test or detect, termination or suspension of program or policy; Employer liability, limitations.**—(1) No cause of action arises in favor of any person based upon the absence of an employer established program or policy of drug or alcohol testing in accordance with this chapter. (2) No cause or action arises in favor of any person against an employer for any of the following: (a) Failure to test for drugs or alcohol, or failure to test for a specific drug or other substance; (b) Failure to test for, or if tested, a failure to detect, any specific drug or other physical abnormality, problem or defect of any kind; or (c) Termination or suspension of any drug or alcohol testing program or policy.

**72-1711. Drug and alcohol testing; Claim against employer, False test results; Employer liability; Presumptions and limitations of damages.**—(1) No cause of action arises in favor of any person against an employer who has established a program of drug and alcohol testing in accordance with this chapter, and who has taken any action based on its established substance abuse and/or disciplinary policies, unless the employer's action was based on a false test result, and the employer knew or clearly should have known that the result was in error. (2) In any claim where it is alleged that an employer's action was based on a false test result: (a) There is a rebuttable presumption that the test result was valid if the employer complied with the provisions of section 72-1704, Idaho Code; (b) The employer is not liable for monetary damages if his reliance on a false test result was reasonable and in good faith; and (c) There is no employer liability for any action taken related to a "false negative" drug or alcohol test.

**72-1712. Drug and alcohol testing; Information and confidentiality; Use of information.**—(1) All information, interviews, reports, statements, memoranda or test results, written or otherwise, received through a substance abuse testing program shall be kept confidential, and are intended to be used only for an employer's internal business use; or in a proceeding related to any action taken by or against an employer under section 72-1707, 72-1708 or 72-1711, Idaho Code, or other dispute between the employer and the employee or applicant; or as required to be disclosed by the United States department of transportation law or regulation or other federal law; or as required by service of legal process. (2) The information described in subsection (1) of this section shall be the property of the employer. (3) An employer, laboratory, medical review officer, employee assistance program, drug or alcohol rehabilitation program and their agents, who receive or have access to information concerning test results shall keep the information confidential, except as provided in subsection (4) of this section. (4) Nothing in this chapter prohibits an employer from using information concerning an employee or job applicant's substance abuse test results in a lawful manner with respect to that employee or applicant as provided in chapter 2, title 44, Idaho Code.

**72-1713. Employee whose test results are verified or confirmed positive is not a person with a "disability".**—An employee or prospective employee whose drug or alcohol test results are verified or confirmed as positive in accordance with the provisions of this act shall not, by virtue of those results alone, be defined as a person with a "disability" for purposes of chapter 59, title 67, Idaho Code.

**72-1714. Drug and alcohol testing; Physician-patient relationship not created.**—A physician-patient relationship is not created between an employee or prospective employee, and the employer or any person performing a drug or alcohol test, solely by the establishment of a drug or alcohol testing program in the workplace.

**72-1715. Drug and alcohol testing, Public employments.**—The state of Idaho and any political subdivision thereof may conduct drug and alcohol testing of employees under the provisions of this chapter and as otherwise constitutionally permitted.

**72-1716. Alcohol and drug-free workplace programs; Workers compensation insurance and premium reduction.**—(1) For each policy of worker's compensation insurance issued or renewed in

	<p>the state on or after July 1, 1999, a reduction in the premium for the policy may be granted if the insurer determines the insured has established and maintains an alcohol and drug-free workplace program that complies with the requirements of sections 72-1701 through 72-1715, Idaho Code. (2) The state of Idaho or any political subdivision thereof that conducts drug and alcohol testing of all those employees and prospective employees for whom such testing is not constitutionally prohibited shall qualify for, and may be granted, the employer premium reduction set forth in subsection (1) of this section.</p> <p><b>72-1717. Alcohol and drug-free workplace programs, State construction contracts; Contractors and subcontractors required to comply.</b>—(1) In order to be eligible for the award of any state contract for the construction or improvement of any public property or publicly owned buildings, contractors shall meet the following requirements: (a) Provide a drug-free workplace program that complies with the provisions of this chapter and as otherwise constitutionally permitted for employees, including temporary employees, and maintain such program throughout the duration of the contract; (b) Subcontract work under state construction contracts only to those subcontractors meeting the requirements of subsection (1)(a) of this section. (2) Any contractor submitting a bid for a state construction contract, required to comply with the provisions of this section, shall submit an affidavit along with its bid on the project verifying its compliance with the provisions of this section.</p> <p><b>72-1717. Alcohol and drug-free workplace programs, State construction contracts; Contractors and subcontractors required to comply.</b>—(1) In order to be eligible for the award of any state contract for the construction or improvement of any public property or publicly owned buildings, contractors shall meet the following requirements: (a) Provide a drug-free workplace program that complies with the provisions of this chapter and as otherwise constitutionally permitted for employees, including temporary employees, and maintain such program throughout the duration of the contract; (b) Subcontract work under state construction contracts only to those subcontractors meeting the requirements of subsection (1)(a) of this section. (2) Any contractor submitting a bid for a state construction contract, required to comply with the provisions of this section, shall submit an affidavit along with its bid on the project verifying its compliance with the provisions of this section.</p>
<p><b>Illinois</b></p>	<p><b>580/3.Contracts and grants.</b>—Sec. 3. No grantee or contractor shall receive a grant or be considered for the purposes of being awarded a contract for the procurement of any property or services from the State unless that grantee or contractor has certified to the granting or contracting agency that it will provide a drug free workplace by: (a) Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction. (b) Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's or contractor's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon employees for drug violations. (c) Making it a requirement to give a copy of the statement required by subsection (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace. (d) Notifying the contracting or granting agency within 10 days after receiving notice under part (B) of paragraph (3) of subsection (a) from an employee or otherwise receiving actual notice of such conviction. (e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 5. (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place. (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of this Section.</p> <p><b>580/4.Requirement for individuals.</b>—Sec. 4. The State shall not enter into a contract for more than \$5,000 or make a grant of more than \$5,000 with any individual unless the contract or grant includes a certification by the individual that the individual will not engage in the unlawful manufacture,</p>

distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

**580/5.Employee sanctions and remedies.**—Sec. 5. A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction of a violation of a criminal drug statute occurring in the workplace: (a) Take appropriate personnel action against such employee up to and including termination; or (b) Require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, State, or local health, law enforcement, or other appropriate agency.

**580/6.Suspension, termination or debarment of the contractor or grantee.**—Sec. 6. Each contract or grant awarded by the State shall be subject to suspension of payments or termination, or both, and the contractor or grantee thereunder or the individual who entered the contract with or received the grant from the State shall be subject to suspension or debarment in accordance with the requirements of this Section if the head of the agency determines that: (a) the contractor, grantee, or individual has made a false certification under Section 3 or 4; (b) the contractor or grantee violates such certification by failing to carry out the requirements of Section 3; (c) the contractor or grantee does not take appropriate remedial action against employees convicted on drug offenses as specified in Section 5; or (d) such a number of employees of the contractor or grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor or grant recipient has failed to make a good faith effort to provide a drug free workplace as required by this Act.

**580/7.Suspension, termination or debarment proceedings.**—Sec. 7. Any determination proceedings for suspension of payments, termination, or debarment pursuant to this Act shall be conducted in accordance with The Illinois Administrative Procedure Act.

**580/8.Effect of debarment.**—Sec. 8. Upon issuance of any final decision under this Act requiring debarment of a contractor, grantee or individual, such contractor, grantee or individual shall be ineligible for award of any contract or grant by the State for at least one year but not more than 5 years, as specified in the decision.

**580/9.Waiver.**—Sec. 9. A termination, suspension of payments, or suspension or debarment under this Act may be waived by the head of an agency with respect to a particular contract or grant if the head of the agency determines that suspension of payments, termination of the contract or grant, or suspension or debarment of the contractor, grantee, or individual, as the case may be, would severely disrupt the operation of such agency to the detriment of the general public or would not be in the public interest.

**580/10.Notice of application of Act and necessity of compliance.**—Sec. 10. At the time of entering into a contract or issuing a grant that results in the application of this Act, the State agency letting the contract or issuing the grant must notify the corporation, partnership, or other entity with 25 or more employees or the department, division, or unit of the corporation, partnership, or other entity of the application of this Act and of the necessity of compliance.

**580/11.Rebuttable presumption of good faith compliance.**—Sec. 11. Any actions undertaken by a contractor or grantee in compliance with this Act and in establishing a drug-free workplace shall create a rebuttable presumption of good faith compliance with this Act and shall not be considered a violation of the Illinois Human Rights Act.

**340.1000. Motor carrier drug and alcohol testing programs; Purpose of rules.**—  
This Part prescribes the requirements that all parties who conduct drug and alcohol tests required by the United States Department of Transportation's regulations must follow concerning how to conduct those tests and what procedures to use.

**340.1010. Motor carrier drug and alcohol testing programs; Incorporation of federal rules by**

	<p><b>reference.</b>—(a) The Department incorporates by reference 49 CFR 40 as that part was in effect on October 1, 2006. No later amendments to or editions of 49 CFR 40 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3rd Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The Federal Motor Carrier Safety Regulations are available on the National Archives and Records Administration's website at <a href="http://ecfr.gpoaccess.gov">http://ecfr.gpoaccess.gov</a>. The Division of Traffic Safety's rules are available on the Department's website at <a href="http://www.dot.il.gov/safety.html">http://www.dot.il.gov/safety.html</a>. (b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.</p>
<p><b>Indiana</b></p>	<p><b>22-9-5-24. Prohibiting drugs and alcohol in the workplace; Standards.</b>—Sec. 24. (a) A covered entity may do the following: (1) Prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees. (2) Require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace. (3) Require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41U.S.C. 701 et seq.). (4) Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the entity holds other employees, even if the unsatisfactory job performance or behavior is related to the drug use or alcoholism of the employee. (5) With respect to federal regulations regarding alcohol and the illegal use of drugs, require that: (A) employees comply with the standards established in the regulations of the United States Department of Defense if the employees of the covered entity are employed in an industry subject to those regulations, including complying with regulations, if any, that apply to employment in sensitive positions in the industry, in the case of employees of the covered entity who are employed in those positions (as defined in the regulations of the United States Department of Defense); (B) employees comply with the standards established in the regulations of the United States Nuclear Regulatory Commission if the employees of the covered entity are employed in an industry subject to those regulations, including complying with regulations, if any, that apply to employment in sensitive positions in the industry, in the case of employees of the covered entity who are employed in those positions (as defined in the regulations of the United States Nuclear Regulatory Commission); and (C) employees comply with the standards established in the regulations of the United States Department of Transportation if the employees of the covered entity are employed in a transportation industry subject to those regulations, including complying with regulations, if any, that apply to employment in sensitive positions in the industry, in the case of employees of the covered entity who are employed in those positions (as defined in the regulations of the United States Department of Transportation). (b) For purposes of this chapter, a test to determine the illegal use of drugs shall not be considered a medical examination. (c) Nothing in this chapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on the test results. (d) Nothing in this chapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the United States Department of Transportation of authority to: (1) test employees in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs and for on duty impairment by alcohol; and (2) remove those persons who test positive for illegal use of drugs and on duty impairment by alcohol under subdivision (1) from safety sensitive duties in implementing subsection (c).</p> <p><b>22-9-5-25. Notice posting.</b>—Sec. 25. Each employer, employment agency, labor organization, or joint labor-management committee covered under this chapter shall post notices in a format accessible to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by Section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).</p> <p><b>22-9-5-26. Remedies.</b>—The remedies available regarding complaints directed against a covered entity under this chapter are limited to the remedies provided under IC 22-9-1-6(k).</p> <p><b>12-17.2-3.5-12.1. Drug testing, Child care providers reimbursed through voucher program; Drug test results; Written policy to be maintained on use of tobacco, alcohol or toxic substances; Confidentiality.</b>—Sec. 12.1. (a) A provider shall, at no expense to the state, maintain and make available to the division upon request a copy of drug testing results for: (1) the provider, if the provider is an individual; (2) if the provider operates a child care program in the provider's home, any</p>



individual who resides with the provider and who is at least eighteen (18) years of age; and (3) an individual who: (A) is employed; or (B) volunteers; as a caregiver at the facility where the provider operates a child care program. The drug testing results for an individual described in subdivision (3) must be obtained before the individual is employed or allowed to volunteer as a caregiver. (b) A provider that is not a child care ministry or a child care center shall maintain a written policy specifying the following: (1) That the: (A) use of: (i) tobacco; (ii) alcohol; or (iii) a potentially toxic substance in a manner other than the substance's intended purpose; and (B) use or possession of an illegal substance; is prohibited in the facility where the provider operates a child care program when child care is being provided. (2) That drug testing of individuals who serve as caregivers will be: (A) performed based on a protocol established or approved by the division [of family resources]; and (B) required if an individual is suspected of noncompliance with the requirements specified under subdivision (1). (c) A provider that is a child care ministry or a child care center shall maintain a written policy specifying the following: (1) That the: (A) use of: (i) tobacco; or (ii) a potentially toxic substance in a manner other than the substance's intended purpose; and (B) use or possession of alcohol or an illegal substance; is prohibited in the facility where the provider operates a child care program when child care is being provided. (2) That drug testing of individuals who serve as caregivers will be: (A) performed based on a protocol established or approved by the division [of family resources]; and (B) required if an individual is suspected of noncompliance with the requirements specified under subdivision (1). (d) If: (1) the drug testing results obtained under subsection (a), (b), or (c) indicate the presence of prohibited substance described in subsection (b)(1)(A)(ii), (b)(1)(A)(iii), (b)(1)(B), (c)(1)(A)(ii), or (c)(1)(B); or (2) an individual refuses to submit to a drug test; the provider is ineligible to receive a voucher payment until the individual is suspended or terminated from employment or volunteer service at the facility or no longer resides with the provider. (e) A provider that suspends an individual described in subsection (d) shall maintain a written policy providing for reinstatement of the individual following rehabilitation and drug testing results that are negative for a prohibited substance described in subsection (b)(1)(A)(ii), (b)(1)(A)(iii), (b)(1)(B), (c)(1)(A)(ii), or (c)(1)(B). (f) Drug testing results obtained under this section are confidential and may not be disclosed for any purpose other than the purpose described in this section.

**12-17.2-4-3.5. Drug testing, Child care centers; Drug test results; Written policy to be maintained on use of tobacco, alcohol or toxic substances; Confidentiality.**—Sec. 3.5. (a) A child care center shall, at no expense to the state, maintain and make available to the division upon request a copy of drug testing results for an individual who: (1) is employed; or (2) volunteers; as a caregiver at the child care center. The drug testing results required under this subsection must be obtained before the individual is employed or allowed to volunteer as a caregiver. (b) A child care center shall maintain a written policy specifying the following: (1) That the: (A) use of: (i) tobacco; or (ii) a potentially toxic substance in a manner other than the substance's intended purpose; and (B) use or possession of alcohol or an illegal substance; is prohibited in the child care center when child care is being provided. (2) That drug testing of individuals who serve as caregivers at the child care center will be: (A) performed based on a protocol established or approved by the division [of family resources]; and (B) required if an individual is suspected of noncompliance with the requirements specified under subdivision (1). (c) If: (1) the drug testing results obtained under subsection (a) or (b) indicate the presence of a prohibited substance described in subsection (b)(1)(A)(ii) or (b)(1)(B); or (2) an individual refuses to submit to a drug test; the child care center shall immediately suspend or terminate the individual's employment or volunteer service. (d) A child care center that suspends an individual described in subsection (c) shall maintain a written policy providing for reinstatement of the individual following rehabilitation and drug testing results that are negative for a prohibited substance described in subsection (b)(1)(A)(ii) or (b)(1)(B). (e) Drug testing results obtained under this section are confidential and may not be disclosed for any purpose other than the purpose described in this section. (f) A child care center that does not comply with this section is subject to: (1) denial of an application for a license; or (2) suspension or revocation of a license issued; under this chapter.

**12-17.2-5-3.5. Drug testing, Child care homes; Drug test results; Written policy to be maintained on use of tobacco, alcohol or toxic substances; Confidentiality.**—Sec. 3.5. (a) A child care home shall, at no expense to the state, maintain and make available to the division upon request a copy of drug testing results for: (1) the provider; (2) an individual who resides with the provider and who is at

least eighteen (18) years of age; and (3) an individual who: (A) is employed; or (B) volunteers; as a caregiver at the child care home. The drug testing results for an individual described in subdivision (3) must be obtained before the individual is employed or allowed to volunteer as a caregiver. (b) A child care home shall maintain a written policy specifying the following: (1) That the: (A) use of: (i) tobacco; (ii) alcohol; or (iii) a potentially toxic substance in a manner other than the substance's intended purpose; and (B) use or possession of an illegal substance; is prohibited in the child care home when child care is being provided. (2) That drug testing of individuals who serve as caregivers at the child care home will be: (A) performed based on a protocol established or approved by the division [of family resources]; and (B) required if an individual is suspected of noncompliance with the requirements specified under subdivision (1). (c) If: (1) the drug testing results obtained under subsection (a) or (b) indicate the presence of a prohibited substance described in subsection (b)(1)(A)(ii), (b)(1)(A)(iii), or (b)(1)(B); or (2) an individual refuses to submit to a drug test; the child care home shall immediately suspend or terminate the individual's employment or volunteer service. (d) A child care home that suspends an individual described in subsection (c) shall maintain a written policy providing for reinstatement of the individual following rehabilitation and drug testing results that are negative for a prohibited substance described in subsection (b)(1)(A)(ii), (b)(1)(A)(iii), or (b)(1)(B). (e) Drug testing results obtained under this section are confidential and may not be disclosed for any purpose other than the purpose described in this section. (f) A child care home that does not comply with this section is subject to: (1) denial of an application for a license; or (2) suspension or revocation of a license issued; under this chapter.

**35-43-5-1. Interference with drug or alcohol screening tests; Definitions.**—Sec. 1. (a) The definitions set forth in this section apply throughout this chapter. (g) "Drug or alcohol screening test" means a test that: (1) is used to determine the presence or use of alcohol, a controlled substance, or a drug in a person's bodily substance; and (2) is administered in the course of monitoring a person who is: (A) incarcerated in a prison or jail; (B) placed in a community corrections program; (C) on probation or parole; (D) participating in a court ordered alcohol or drug treatment program; or (E) on court ordered pretrial release.

**35-43-5-18. Interference with drug or alcohol screening tests; Possession of a device or substance designed or used to interfere with testing as a misdemeanor.**—Sec. 18. A person who knowingly or intentionally possesses a: (1) device; or (2) substance; designed or intended to be used to interfere with a drug or alcohol screening test commits possession of a device or substance used to interfere with a drug or alcohol screening test, a Class B misdemeanor.

**35-43-5-19. Interference with drug or alcohol screening tests; Interference by using a device or substance, substituting a specimen, or adulterating a substance as misdemeanor.**—Sec. 19. A person who interferes with or attempts to interfere with a drug or alcohol screening test by: (1) using a: (A) device; or (B) substance; (2) substituting a human bodily substance that is tested in a drug or alcohol screening test; or (3) adulterating a substance used in a drug or alcohol screening test; commits interfering with a drug or alcohol screening test, a Class B misdemeanor.

**4-13-18-1. Drug testing of employees of public works contractors; Application of chapter.**—Sec. 1. This chapter applies only to a public works contract awarded after June 30, 2006.

**4-13-18-5. Drug testing of employees of public works contractors; Public works contracts; Employee drug testing plan required to be included in bid; Collective bargaining agreements.**—Sec. 5. (a) A solicitation for a public works contract must require each contractor that submits a bid for the work to submit with the bid a written plan for a program to test the contractor's employees for drugs. (b) A public works contract may not be awarded to a contractor whose bid does not include a written plan for an employee drug testing program that complies with this chapter. (c) A contractor that is subject to a collective bargaining agreement shall be treated as having an employee drug testing program that complies with this chapter if the collective bargaining agreement establishes an employee drug testing program that includes the following: (1) The program provides for the random testing of the contractor's employees. (2) The program contains a five (5) drug panel that tests for the substances identified in section 6(a)(3) of this chapter. (3) The program imposes disciplinary

	<p>measures on an employee who fails a drug test. The disciplinary measures must include at a minimum, all the following: (A) The employee is subject to suspension or immediate termination. (B) The employee is not eligible for reinstatement until the employee tests negative on a five (5) drug panel test certified by a medical review officer. (C) The employee is subject to unscheduled sporadic testing for at least one (1) year after reinstatement. (D) The employee successfully completes a rehabilitation program recommended by a substance abuse professional if the employee fails more than one (1) drug test. A copy of the relevant part of the collective bargaining agreement constitutes a written plan under this section.</p> <p><b>4-13-18-6. Drug testing of employees of public works contractors; Employee drug testing program requirements.</b>—Sec. 6. (a) A contractor's employee drug testing program must satisfy all of the following: (1) Each of the contractor's employees must be subject to a drug test at least one (1) time each year. (2) Subject to subdivision (1), the contractor's employees must be tested randomly. At least two percent (2%) of the contractor's employees must be randomly selected each month for testing. (3) The program must contain at least a five (5) drug panel that tests for the following: (A) Amphetamines. (B) Cocaine. (C) Opiates (2000 ng/ml). (D) PCP. (E) THC. (4) The program must impose progressive discipline on an employee who fails a drug test. The discipline must have at least the following progression: (A) After the first positive test, an employee must be: (i) suspended from work for thirty (30) days (ii) directed to a program of treatment or rehabilitation; and (iii) subject to unannounced drug testing for one (1) year, beginning the day the employee returns to work. (B) After a second positive test, an employee must be: (i) suspended from work for ninety (90) days; (ii) directed to a program of treatment or rehabilitation; and (iii) subject to unannounced drug testing for one (1) year, beginning the day the employee returns to work. (C) After a third or subsequent positive test, an employee must be: (i) suspended from work for one (1) year; (ii) directed to a program of treatment or rehabilitation; and (iii) subject to unannounced drug testing for one (1) year, beginning the day the employee returns to work. The program may require dismissal of the employee after any positive drug test or other discipline more severe than is described in this subdivision. (b) An employer complies with the requirement of subsection (a) to direct an employee to a program of treatment or rehabilitation if the employer does either of the following: (1) Advises the employee of any program of treatment or rehabilitation covered by insurance provided by the employer. (2) If the employer does not provide insurance that covers drug treatment or rehabilitation programs, the employer advises the employee of agencies known to the employer that provide drug treatment or rehabilitation programs.</p> <p><b>4-13-18-7. Drug testing of employees of public works contractors; Failure to comply with employee drug testing program; Contract cancellation.</b>—Sec. 7. (a) The public works contract must provide for the following: (1) That the contractor implement the employee drug testing program described in the contractor's plan. (2) Cancellation of the contract by the agency awarding the contract if the contractor: (A) fails to implement its employee drug testing program during the term of the contract; (B) fails to provide information regarding implementation of the contractor's employee drug testing program at the request of the agency; or (C) provides to the agency false information regarding the contractor's employee drug testing program. (b) The provisions of the public works contract relating to cancellation of the contract by the agency awarding the contract apply to cancellation of the public works contract under this section.</p>
Iowa	<p><b>730.5. Drug and alcohol testing; Definitions; Applicability, Private employment; Testing as a condition of employment; Collection of samples; Procedures; Unannounced testing, Exceptions; Written policy; Employer liability; Confidentiality of information.</b>—1. <b>Definitions.</b> As used in this section, unless the context otherwise requires: a. "Alcohol" means ethanol, isopropanol, or methanol. b. "Confirmed positive test result" means, except for alcohol testing conducted pursuant to subsection 7, paragraph "f", subparagraph (2), the results of a blood, urine, or oral fluid test in which the level of controlled substances or metabolites in the specimen analyzed meets or exceeds nationally accepted standards for determining detectable levels of controlled substances as adopted by the federal substance abuse and mental health services administration. If nationally accepted standards for oral fluid tests have not been adopted by the federal substance abuse and mental health services administration, the standards for determining detectable levels of controlled substances for purposes of determining a confirmed positive test result shall be the same standard that has been established by the</p>

federal food and drug administration for the measuring instrument used to perform the oral fluid test.

c. "Drug" means a substance considered a controlled substance and included in schedule I, II, III, IV, or V under the federal Controlled Substances Act, 21 U.S.C. section 801 et seq.

d. "Employee" means a person in the service of an employer in this state and includes the employer, and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer who is actively involved in the day-to-day operations of the business.

e. "Employer" means a person, firm, company, corporation, labor organization, or employment agency, which has one or more full-time employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, in this state. "Employer" does not include the state, a political subdivision of the state, including a city, county, or school district, the United States, the United States postal service, or a Native-American tribe.

f. "Good faith" means reasonable reliance on facts, or that which is held out to be factual, without the intent to be deceived, and without reckless, malicious, or negligent disregard for the truth.

g. "Medical review officer" means a licensed physician, osteopathic physician, chiropractor, nurse practitioner, or physician assistant authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer's drug or alcohol testing program, and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.

h. "Prospective employee" means a person who has made application, whether written or oral, to an employer to become an employee.

i. "Reasonable suspicion drug or alcohol testing" means drug or alcohol testing based upon evidence that an employee is using or has used alcohol or other drugs in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

- (1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.
- (2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- (3) A report of alcohol or other drug use provided by a reliable and credible source.
- (4) Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer.
- (5) Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.
- (6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

j. "Safety-sensitive position" means a job wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph.

k. "Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites, which shall include only urine, saliva, breath, and blood. However, sample does not mean blood except as authorized pursuant to subsection 7, paragraph "I".

l. "Unannounced drug or alcohol testing" means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis, without advance notice of the test to employees, other than employees whose duties include responsibility for administration of the employer's drug or alcohol testing program, subject to testing prior to the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

2. **Applicability.** This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations, or orders issued pursuant to federal law. In addition, an employer, through its written policy, may exclude from the pools of employees subject to unannounced drug or alcohol

testing pursuant to subsection 8, paragraph "a", employee populations required to be tested as described in this subsection. 3. **Testing Optional.** This section does not require or create a legal duty on an employer to conduct drug or alcohol testing and the requirements of this section shall not be construed to encourage, discourage, restrict, limit, prohibit, or require such testing. In addition, an employer may implement and require drug or alcohol testing at some but not all of the work sites of the employer and the requirements of this section shall only apply to the employer and employees who are at the work sites where drug or alcohol testing pursuant to this section has been implemented. A cause of action shall not arise in favor of any person against an employer or agent of an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement any component of testing as permitted by this section. 4. **Testing as Condition of Employment—Requirements.** To the extent provided in subsection 8, an employer may test employees and prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring. An employer shall adhere to the requirements of this section concerning the conduct of such testing and the use and disposition of the results of such testing. 5. **Collection of Samples.** In conducting drug or alcohol testing, an employer may require the collection of samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of a sample shall be in conformance with the requirements of this section. The employer may designate the type of sample to be used for this testing. 6. **Scheduling of Tests.** a. Drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees. b. An employer shall pay all actual costs for drug or alcohol testing of employees and prospective employees required by the employer. c. An employer shall provide transportation or pay reasonable transportation costs to employees if drug or alcohol sample collection is conducted at a location other than the employee's normal work site. 7. **Testing Procedures.** All sample collection and testing for drugs or alcohol under this section shall be performed in accordance with the following conditions: a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen. If the sample collected is urine, procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, "individual privacy" means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a urine sample and collection of the urine sample is directly monitored or observed by another individual, the individual who is directly monitoring or observing the collection shall be of the same gender as the individual from whom the urine sample is being collected. b. Collection of a urine sample for testing of current employees shall be performed so that the specimen is split into two components at the time of collection in the presence of the individual from whom the sample or specimen is collected. The second portion of the specimen or sample shall be of sufficient quantity to permit a second, independent confirmatory test as provided in paragraph "i". The sample shall be split such that the primary sample contains at least thirty milliliters and the secondary sample contains at least fifteen milliliters. Both portions of the sample shall be forwarded to the laboratory conducting the initial confirmatory testing. In addition to any requirements for storage of the initial sample that may be imposed upon the laboratory as a condition for certification or approval, the laboratory shall store the second portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the initial confirmatory testing, if the first portion yielded a confirmed positive test result. c. Sample collections shall be documented, and the procedure for documentation shall include the following: (1) Samples, except for samples collected for alcohol testing conducted pursuant to paragraph "f", subparagraph (2), shall be labeled so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided, and samples shall be handled and tracked in a manner such that control and accountability are maintained from initial

collection to each stage in handling, testing, and storage, through final disposition. (2) An employee or prospective employee shall be provided an opportunity to provide any information which may be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. To assist an employee or prospective employee in providing the information described in this subparagraph, the employer shall provide an employee or prospective employee with a list of the drugs to be tested. d. Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification. e. All confirmatory drug testing shall be conducted at a laboratory certified by the United States department of health and human services' substance abuse and mental health services administration or approved under rules adopted by the Iowa department of public health. f. Drug or alcohol testing shall include confirmation of any initial positive test results. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive test result for drugs or alcohol. (1) For drug or alcohol testing, except for alcohol testing conducted pursuant to subparagraph (2), confirmation shall be by use of a different chemical process than was used in the initial screen for drugs or alcohol. The confirmatory drug or alcohol test shall be a chromatographic technique such as gas chromatography/mass spectrometry, or another comparably reliable analytical method. (2) Notwithstanding any provision of this section to the contrary, alcohol testing, including initial and confirmatory testing, may be conducted pursuant to requirements established by the employer's written policy. The written policy shall include requirements governing evidential breath testing devices, alcohol screening devices, and the qualifications for personnel administering initial and confirmatory testing, which shall be consistent with regulations adopted as of January 1, 1999, by the United States department of transportation governing alcohol testing required to be conducted pursuant to the federal Omnibus Transportation Employee Testing Act of 1991. (3) Notwithstanding any provision of this section to the contrary, collection of an oral fluid sample for testing shall be performed in the presence of the individual from whom the sample or specimen is collected. The specimen or sample shall be of sufficient quantity to permit a second, independent, confirmatory test as provided in paragraph "i". In addition to any requirement for storage of the initial sample that may be imposed upon the laboratory as a condition for certification or approval, the laboratory shall store the unused portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the initial confirmatory testing, if the portion yielded a confirmed positive test result. g. A medical review officer shall, prior to the results being reported to an employer, review and interpret any confirmed positive test results, including both quantitative and qualitative test results, to ensure that the chain of custody is complete and sufficient on its face and that any information provided by the individual pursuant to paragraph "c", subparagraph (2), is considered. However, this paragraph shall not apply to alcohol testing conducted pursuant to paragraph "f", subparagraph (2). h. In conducting drug or alcohol testing pursuant to this section, the laboratory, the medical review officer, and the employer shall ensure, to the extent feasible, that the testing only measure, and the records concerning the testing only show or make use of information regarding, alcohol or drugs in the body. i. (1) If a confirmed positive test result for drugs or alcohol for a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph "b" at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. The fee charged an employee shall be an amount that represents the costs associated with conducting the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test on an employee's sample. If the employee, in person or by certified mail, return receipt requested, requests a second confirmatory test, identifies an approved laboratory to conduct the test, and pays the employer the fee for the test within seven days from the date the employer mails by certified mail, return receipt requested, the written notice to the employee of the employee's right to request a test, a second confirmatory test shall be conducted at the laboratory chosen by the employee. The results of the second confirmatory test shall be reported to the medical review officer who reviewed the initial confirmatory test results and the medical review officer shall review the results and issue a report to the employer on whether the results of the second confirmatory test confirmed the initial confirmatory test as to the presence of a specific drug or alcohol. If the results of the second test do not confirm the

results of the initial confirmatory test, the employer shall reimburse the employee for the fee paid by the employee for the second test and the initial confirmatory test shall not be considered a confirmed positive test result for drugs or alcohol for purposes of taking disciplinary action pursuant to subsection 10. (2) If a confirmed positive test result for drugs or alcohol for a prospective employee is reported to the employer by the medical review officer, the employer shall notify the prospective employee in writing of the results of the test, of the name and address of the medical review officer who made the report, and of the prospective employee's right to request records under subsection 13.

j. A laboratory conducting testing under this section shall dispose of all samples for which a negative test result was reported to an employer within five working days after issuance of the negative test result report.

k. Except as necessary to conduct drug or alcohol testing pursuant to this section and to submit the report required by subsection 16, a laboratory or other medical facility shall only report to an employer or outside entity information relating to the results of a drug or alcohol test conducted pursuant to this section concerning the determination of whether the tested individual has engaged in conduct prohibited by the employer's written policy with regard to alcohol or drug use.

l. Notwithstanding the provisions of this subsection, an employer may rely and take action upon the results of any blood test for drugs or alcohol made on any employee involved in an accident at work if the test is administered by or at the direction of the person providing treatment or care to the employee without request or suggestion by the employer that a test be conducted, and the employer has lawfully obtained the results of the test. For purposes of this paragraph, an employer shall not be deemed to have requested or required a test in conjunction with the provision of medical treatment following a workplace accident by providing information concerning the circumstance of the accident.

**8. Drug or Alcohol Testing.** Employers may conduct drug or alcohol testing as provided in this subsection:

a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees: (1) The entire employee population at a particular work site of the employer except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees. (2) The entire full-time active employee population at a particular work site except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee, or who have been excused from work pursuant to the employer's working policy. (3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

b. Employers may conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation.

c. Employers may conduct reasonable suspicion drug or alcohol testing.

d. Employers may conduct drug or alcohol testing of prospective employees.

e. Employers may conduct drug or alcohol testing as required by federal law or regulation or by law enforcement.

f. Employers may conduct drug or alcohol testing in investigating accidents in the workplace in which the accident resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

**9. Written Policy and Other Testing Requirements.**

a. (1) Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees. If an employee or prospective employee is a minor, the employer shall provide a copy of the written policy to a parent of the employee or prospective employee and shall obtain a receipt or acknowledgement from the parent that a copy of the policy has been received. Providing a copy of the written policy to a parent of a minor by certified mail, return receipt requested, shall satisfy the requirements of this subparagraph. (2) In addition, the written policy shall provide that any notice required by subsection 7, paragraph "i", to be provided to an individual pursuant to a drug or alcohol test conducted pursuant to this section, shall also be provided to the parent of the individual by certified mail, return receipt requested, if the individual tested is a minor. (3) In providing information or notice to a parent as required by this paragraph, an employer

shall rely on the information regarding the identity of a parent as provided by the minor. (4) For purposes of this paragraph, "minor" means an individual who is under eighteen years of age and is not considered by law to be an adult, and "parent" means one biological or adoptive parent, a stepparent, or a legal guardian or custodian of the minor. b. The employer's written policy shall provide uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive test result for drugs or alcohol or upon the refusal of the employee or prospective employee to provide a testing sample. The policy shall provide that any action taken against an employee or prospective employee shall be based only on the results of the drug or alcohol test. The written policy shall also provide that if rehabilitation is required pursuant to paragraph "g", the employer shall not take adverse employment action against the employee so long as the employee complies with the requirements of rehabilitation and successfully completes rehabilitation. c. Employers shall establish an awareness program to inform employees of the dangers of drug and alcohol use in the workplace and comply with the following requirements in order to conduct drug or alcohol testing under this section: (1) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program. (2) If an employer does not have an employee assistance program, the employer must maintain a resource file of alcohol and other drug abuse programs certified by the Iowa department of public health, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. d. An employee or prospective employee whose drug or alcohol test results are confirmed as positive in accordance with this section shall not, by virtue of those results alone, be considered as a person with a disability for purposes of any state or local law or regulation. e. If the written policy provides for alcohol testing, the employer shall establish in the written policy a standard for alcohol concentration which shall be deemed to violate the policy. The standard for alcohol concentration shall not be less than .04, expressed in terms of grams of alcohol per two hundred ten liters of breath, or its equivalent. f. An employee of an employer who is designated by the employer as being in a safety-sensitive position shall be placed in only one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph "a", subparagraph (3). An employer may have more than one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph "a", subparagraph (3), but shall not include an employee in more than one safety-sensitive pool. g. Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer's substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph "a", subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph. (1) If the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan. (2) If no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan with any costs not covered by the plan apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars toward the costs not covered by the employee's health care plan. (3) If no employee benefit plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars towards the cost of rehabilitation under this subparagraph. Rehabilitation required pursuant to this paragraph shall not preclude an employer from taking any adverse employment action against the employee during the rehabilitation based on the employee's failure to comply with any



requirements of the rehabilitation, including any action by the employee to invalidate a test sample provided by the employee pursuant to the rehabilitation. h. In order to conduct drug or alcohol testing under this section, an employer shall require supervisory personnel of the employer involved with drug or alcohol testing under this section to attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file maintained by the employer pursuant to paragraph "c", subparagraph (2).

10. **Disciplinary Procedures.** a. Upon receipt of a confirmed positive test result for drugs or alcohol which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary or rehabilitative actions pursuant to the requirements of the employer's written policy and the requirements of this section, which may include, among other actions, the following: (1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, participation in and successful completion of which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies. (2) Suspension of the employee, with or without pay, for a designated period of time. (3) Termination of employment. (4) Refusal to hire a prospective employee. (5) Other adverse employment action in conformance with the employer's written policy and procedures, including any relevant collective bargaining agreement provisions. b. Following a drug or alcohol test, but prior to receipt of the final results of the drug or alcohol test, an employer may suspend a current employee, with or without pay, pending the outcome of the test. An employee who has been suspended shall be reinstated by the employer, with back pay, and interest on such amount at eighteen percent per annum compounded annually, if applicable, if the result of the test is not a confirmed positive test result for drugs or alcohol which indicates a violation of the employer's written policy.

11. **Employer Immunity.** A cause of action shall not arise against an employer who has established a policy and initiated a testing program in accordance with the testing and policy safeguards provided for under this section, for any of the following: a. Testing or taking action based on the results of a positive drug or alcohol test result, indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test. b. Failure to test for drugs or alcohol, or failure to test for a specific drug or controlled substance. c. Failure to test for, or if tested for, failure to detect, any specific drug or other controlled substance. d. Termination or suspension of any substance abuse prevention or testing program or policy. e. Any action taken related to a false negative drug or alcohol test result.

12. **Employer Liability—False Positive Test Results.** a. Except as otherwise provided in paragraph "b", a cause of action shall not arise against an employer who has established a program of drug or alcohol testing in accordance with this section, unless all of the following conditions exist: (1) The employer's action was based on a false positive test result. (2) The employer knew or clearly should have known that the test result was in error and ignored the correct test result because of reckless, malicious, or negligent disregard for the truth, or the willful intent to deceive or to be deceived. b. A cause of action for defamation, libel, slander, or damage to reputation shall not arise against an employer establishing a program of drug or alcohol testing in accordance with this section unless all of the following apply: (1) The employer discloses the test results to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee or the tested applicant for employment, an authorized substance abuse treatment program or employee assistance program, or an authorized agent or representative of the tested employee or applicant. (2) The test results disclosed incorrectly indicate the presence of alcohol or drugs. (3) The employer negligently discloses the results. c. In any cause of action based upon a false positive test result, all of the following conditions apply: (1) The results of a drug or alcohol test conducted in compliance with this section are presumed to be valid. (2) An employer shall not be liable for monetary damages if the employer's reliance on the false positive test result was reasonable and in good faith.

13. **Confidentiality of Results—Exception.** a. All communications received by an employer relevant to employee or prospective employee drug or alcohol test results, or otherwise received through the employer's drug or alcohol testing program, are confidential communications and shall not be used or received in evidence, obtained in discovery, or disclosed in any public or private

	<p>proceeding, except as otherwise provided or authorized by this section. b. An employee, or a prospective employee, who is the subject of a drug or alcohol test conducted under this section pursuant to an employer's written policy and for whom a confirmed positive test result is reported shall, upon written request, have access to any records relating to the employee's drug or alcohol test, including records of the laboratory where the testing was conducted and any records relating to the results of any relevant certification or review by a medical review officer. However, a prospective employee shall be entitled to records under this paragraph only if the prospective employee requests the records within fifteen calendar days from the date the employer provided the prospective employee written notice of the results of a drug or alcohol test as provided in subsection 7, paragraph "i", subparagraph (2). c. Except as provided by this section and as necessary to conduct drug or alcohol testing under this section and to file a report pursuant to subsection 16, a laboratory and a medical review officer conducting drug or alcohol testing under this section shall not use or disclose to any person any personally identifiable information regarding such testing, including the names of individuals tested, even if unaccompanied by the results of the test. d. An employer may use and disclose information concerning the results of a drug or alcohol test conducted pursuant to this section under any of the following circumstances: (1) In an arbitration proceeding pursuant to a collective bargaining agreement, or an administrative agency proceeding or judicial proceeding under workers' compensation laws or unemployment compensation laws or under common or statutory laws where action taken by the employer based on the test is relevant or is challenged. (2) To any federal agency or other unit of the federal government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract. (3) To any agency of this state authorized to license individuals if the employee tested is licensed by that agency and the rules of that agency require such disclosure. (4) To a union representing the employee if such disclosure would be required by federal labor laws. (5) To a substance abuse evaluation or treatment facility or professional for the purpose of evaluation or treatment of the employee. However, positive test results from an employer drug or alcohol testing program shall not be used as evidence in any criminal action against the employee or prospective employee tested. 14. <b>Civil Penalties—Jurisdiction.</b> a. Any laboratory or medical review officer which discloses information in violation of the provisions of subsection 7, paragraph "h" or "k", or any employer who, through the selection process described in subsection 1, paragraph "k", improperly targets or exempts employees subject to unannounced drug or alcohol testing, shall be subject to a civil penalty of one thousand dollars for each violation. The attorney general or the attorney general's designee may maintain a civil action to enforce this subsection. Any civil penalty recovered shall be deposited in the general fund of the state. b. A laboratory or medical review officer involved in the conducting of a drug or alcohol test pursuant to this section shall be deemed to have the necessary contact with this state for the purpose of subjecting the laboratory or medical review officer to the jurisdiction of the courts of this state. 15. <b>Civil Remedies.</b> This section may be enforced through a civil action. a. A person who violates this section or who aids in the violation of this section, is liable to an aggrieved employee or prospective employee for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs. b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or prospective employee, the county attorney, or the attorney general. In an action brought under this subsection alleging that an employer has required or requested a drug or alcohol test in violation of this section, the employer has the burden of proving that the requirements of this section were met. 16. <b>Reports.</b> A laboratory doing business for an employer who conducts drug or alcohol tests pursuant to this section shall file an annual report with the Iowa department of public health by March 1 of each year concerning the number of drug or alcohol tests conducted on employees who work in this state pursuant to this section, the number of positive and negative results of the tests, during the previous calendar year. In addition, the laboratory shall include in its annual report the specific basis for each test as authorized in subsection 8, the type of drug or drugs which were found in the positive drug tests, and all significant available demographic factors relating to the positive test pool.</p>
<p><b>Kansas</b></p>	<p><b>75-4362 Certain state employees and employees of state institutions; Establishment and implementation of a drug screening program for those in safety-sensitive positions; Effect of positive test result on employment.—</b>(a) The director of the division of personnel services of the</p>

department of administration shall have the authority to establish and implement a drug screening program for persons taking office as governor, lieutenant governor or attorney general and for applicants for safety sensitive positions in state government, but no applicant for a safety sensitive position shall be required to submit to a test as a part of this program unless the applicant is first given a conditional offer of employment. (b) The director also shall have the authority to establish and implement a drug screening program based upon a reasonable suspicion of illegal drug use by any person currently holding one of the following positions or offices: (1) The office of governor, lieutenant governor or attorney general; (2) any safety sensitive position; (3) any position in an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, that is not a safety sensitive position; (4) any position in the Kansas state school for the blind, as established under K.S.A. 76-1101 et seq., and amendments thereto; (5) any position in the Kansas state school for the deaf, as established under K.S.A. 76-1001 et seq., and amendments thereto; or (6) any employee of a state veteran's home operated by the Kansas commission on veteran's affairs as described in K.S.A. 76-1901 et seq. and K.S.A. 76-1951 et seq., and amendments thereto. (c) Any public announcement or advertisement soliciting applications for employment in a safety sensitive position in state government shall include a statement of the requirements of the drug screening program established under this section for applicants for and employees holding a safety sensitive position. (d) No person shall be terminated solely due to positive results of a test administered as a part of a program authorized by this section if: (1) The employee has not previously had a valid positive test result; and (2) the employee undergoes a drug evaluation and successfully completes any education or treatment program recommended as a result of the evaluation. Nothing herein shall be construed as prohibiting demotions, suspensions or terminations pursuant to K.S.A. 75-2949e or 75-2949f, and amendments thereto. (e) Except in hearings before the state civil service board regarding disciplinary action taken against the employee, the results of any test administered as a part of a program authorized by this section shall be confidential and shall not be disclosed publicly. (f) The secretary of administration may adopt such rules and regulations as necessary to carry out the provisions of this section. (g) "Safety sensitive positions" means the following: (1) All state law enforcement officers who are authorized to carry firearms; (2) all state corrections officers; (3) all state parole officers; (4) heads of state agencies who are appointed by the governor and employees on the governor's staff; (5) all employees with access to secure facilities of a correctional institution, as defined in K.S.A. 21-3826, and amendments thereto; (6) all employees of a juvenile correctional facility, as defined in K.S.A. 38-1602, and amendments thereto; and (7) all employees within an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, who provide clinical, therapeutic or rehabilitative services to the clients and patients of those institutions.

**65-1,108. Controlled substances testing; Laboratories must be approved; Violations as Class 2 misdemeanor; Exceptions.**—(a) It shall be unlawful for any person or laboratory to perform tests to evaluate biological specimens for the presence of controlled substances included in schedule I or II of the uniform controlled substances act or metabolites thereof, unless the laboratory in which such tests are performed has been approved by the secretary of health and environment to perform such tests. Any person violating any of the provisions of this section shall be deemed guilty of a class B misdemeanor. (b) As used in this section and in K.S.A. 65-1,107 and amendments thereto, "laboratory" shall not include: (1) The office or clinic of a person licensed to practice medicine and surgery in which laboratory tests are performed as part of and incidental to the examination or treatment of a patient of such person; (2) the Kansas bureau of investigation forensic laboratory; (3) urinalysis tests for controlled substances performed only for management purposes on inmates, parolees or probationers by personnel of the department of corrections or office of judicial administration and which shall not be used for revoking or denying parole or probation; (4) urinalysis tests approved by the secretary of corrections for controlled substances performed by the community corrections programs; (5) urinalysis tests approved by the secretary of corrections for controlled substances performed by personnel of the community correctional conservation camp in Labette county which is operated under agreements entered into by the secretary of corrections and the board of county commissioners of Labette county pursuant to K.S.A. 75-52,132 and amendments thereto; or (6) urinalysis tests performed for management purposes only by personnel of alcohol and drug treatment programs which are licensed or certified by the secretary of social and rehabilitation services.

**44-706. Unemployment benefits, Grounds for Disqualification for benefits; Drug-free workplaces; Pre-employment drug screening.**—(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection (a) if (1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology; (2) the individual left temporary work to return to the regular employer; (3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry; (4) the individual left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job; (5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph (5), "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of (A) the safety measures used or the lack thereof, and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity; (6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the federal trade act of 1974), and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974; (7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge; (8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of (A) the rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted, (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted, and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left; (9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute; (10) the individual left work because of a violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating; (11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; or (12) (A) the individual left work due to circumstances resulting from domestic violence, including: (i) The individual's

reasonable fear of future domestic violence at or en route to or from the individual's place of employment; or (ii) the individual's need to relocate to another geographic area in order to avoid future domestic violence; or (iii) the individual's need to address the physical, psychological and legal impacts of domestic violence; or (iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or (v) the individual's reasonable belief that termination of employment is necessary to avoid other situations which may cause domestic violence and to provide for the future safety of the individual or the individual's family. (B) An individual may prove the existence of domestic violence by providing one of the following: (i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction; or (ii) a police record documenting the abuse; or (iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, where the victim was a family or household member; or (iv) medical documentation of the abuse; or (v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or (vi) a sworn statement from the individual attesting to the abuse. (C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual. (b) If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation. (1) For the purposes of this subsection (b), "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. The term "gross misconduct" as used in this subsection (b) shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection (b). Failure of the employee to notify the employer of an absence shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment. (2) For the purposes of this subsection (b), the use of or impairment caused by alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which is a violation of a duty or obligation reasonably owed to the employer as a condition of employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-102 and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A. 41-2701 and amendments thereto. Controlled substance shall be defined as provided in K.S.A. 65-4101 and amendments thereto of the uniform controlled substances act. As used in this subsection (b)(2), "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity. Chemical test shall include, but is not limited to, tests of urine, blood or saliva. A positive chemical test shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein. A positive breath test shall mean a test result showing an alcohol concentration of .04 or greater. Alcohol concentration means the number of grams of alcohol per 210 liters of breath. An individual's refusal to submit to a chemical test or breath alcohol test shall be conclusive evidence of misconduct if the test meets the standards of the drug free workplace act, 41 U.S.C. 701 et seq.; the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment; the test was otherwise required by law and the test constituted a required condition of employment for the individual's job;

the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met: (A) Either (i) the test was required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment, (iv) the test was required by law and the test constituted a required condition of employment for the individual's job, or (v) there was probable cause to believe that the individual used, had possession of, or was impaired by alcoholic liquor, the cereal malt beverage or the controlled substance while working; (B) the test sample was collected either (i) as prescribed by the drug free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment, (iv) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job, or (v) at a time contemporaneous with the events establishing probable cause; (C) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(2)(F) or authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force or effect of law, including law enforcement personnel; (D) the chemical test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies; (E) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test; (F) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and (G) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual. (3) (A) For the purposes of this subsection (b), misconduct shall include, but not be limited to repeated absence, including incarceration, resulting in absence from work of three days or longer, excluding Saturdays, Sundays and legal holidays, and lateness, from scheduled work if the facts show: (i) The individual was absent without good cause; (ii) the absence was in violation of the employer's written absenteeism policy; (iii) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence may or will result in discharge; and (iv) the employee had knowledge of the employer's written absenteeism policy. (B) For the purposes of this subsection (b), if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause. If the employee alleges that the employee's repeated absences were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a)(1). (4) An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances: (A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit; (B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or (C) the individual's refusal to perform work in excess of the contract of hire. (c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which

such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, and/or legal needs relating to such domestic violence. (d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (d) be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (d), failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute. (e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply. (f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States. (g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor. (h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States. (i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins

during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. (j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection (j) and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection (j). (k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess. (l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods. (m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence. (n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any person or organization) who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n); or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no



reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n). No reduction shall be made for payments made under the social security act or railroad retirement act of 1974. (o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) which an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection (o), the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions. (p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection (p) for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities. (q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code. (r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection (r) provided: (1) The individual was engaged in full-time employment concurrent with the individual's school attendance; or (2) the individual is attending approved training as defined in subsection (s) of K.S.A. 44-703 and amendments thereto; or (3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under subsection (c) of K.S.A. 44-705 and amendments thereto. (s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid. (1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant. (2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717 and amendments thereto. (t) If the individual has been discharged for failing a preemployment drug screen required by the employer and if such discharge occurs not later than seven days after the employer is notified of the results of such drug screen. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount. (u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

**44-501. Workers compensation and use of chemical tests; Employer not liable where injury,**

**disability or death was contributed to by employee use or consumption of alcohol or drugs, chemicals or other compounds or substances; Conditions required in order for chemical tests to be admissible as evidence to prove impairment; Burden of proof.**—(d) (2) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances, including but not limited to, any drugs or medications which are available to the public without a prescription from a health care provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens. In the case of drugs or medications which are available to the public without a prescription from a health care provider and prescription drugs or medications, compensation shall not be denied if the employee can show that such drugs or medications were being taken or used in therapeutic doses and there have been no prior incidences of the employee's impairment on the job as the result of the use of such drugs or medications within the previous 24 months. It shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that at the time of the injury that the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above the levels shown on the following chart for the drugs of abuse listed:

Confirmatory test cutoff levels (ng/ml)

Marijuana metabolite 1 ..... 15

Cocaine metabolite 2 ..... 150

Opiates:

Morphine ..... 2000

Codeine ..... 2000

6-Acetylmorphine 4 ..... 10 ng/ml

Phencyclidine ..... 25

Amphetamines:

Amphetamine ..... 500

Methamphetamine 3 ..... 500

1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.

2 Benzoyllecgonine.

3 Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

4 Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

An employee's refusal to submit to a chemical test shall not be admissible evidence to prove impairment unless there was probable cause to believe that the employee used, possessed or was impaired by a drug or alcohol while working. The results of a chemical test shall not be admissible evidence to prove impairment unless the following conditions were met: (A) There was probable cause to believe that the employee used, had possession of, or was impaired by the drug or alcohol while working; (B) the test sample was collected at a time contemporaneous with the events establishing probable cause; (C) the collecting and labeling of the test sample was performed by or under the supervision of a licensed health care professional; (D) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the

department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;(E) the test was confirmed by gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and (F) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the employee. (3) For purposes of satisfying the probable cause requirement of subsection (d)(2)(A) of this section, the employer shall be deemed to have met their burden of proof on this issue by establishing any of the following circumstances: (A) The testing was done as a result of an employer mandated drug testing policy, in place in writing prior to the date of accident, requiring any worker to submit to testing for drugs or alcohol if they are involved in an accident which requires medical attention; (B) the testing was done in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and was not at the direction of the employer; however, the request for GCMS testing for purposes of confirmation, required by subsection (d)(2)(E) of this section, may have been at the employer's request; (C) the worker, prior to the date and time of the accident, gave written consent to the employer that the worker would voluntarily submit to a chemical test for drugs or alcohol following any accident requiring the worker to obtain medical treatment for the injuries suffered. If after suffering an accident requiring medical treatment, the worker refuses to submit to a chemical test for drugs or alcohol, this refusal shall be considered evidence of impairment, however, there must be evidence that the presumed impairment contributed to the accident as required by this section; or (D) the testing was done as a result of federal or state law or a federal or state rule or regulation having the force and effect of law requiring a post accident testing program and such required program was properly implemented at the time of testing.

**1-9-19a.State employment, Drug screening test for employees in certain designated positions and state employees at correctional facilities.**—(a) Any employee holding one of the following positions may be required to submit to a drug screening test in accordance with K.S.A. 75-4362, and amendments thereto, based upon reasonable suspicion of illegal drug use by that employee: (1) Any safety-sensitive position; (2) any position in an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, that is not a safety-sensitive position; (3) any position in the Kansas state school for the blind, as established under K.S.A. 76-1101 et seq., and amendments thereto; (4) any position in the Kansas state school for the deaf, as established under K.S.A. 76-1001 et seq., and amendments thereto; and (5) any employee of a state veteran's home operated by the Kansas commission on veteran's affairs, as described in K.S.A. 76-1901 et seq. and K.S.A. 76-1951 et seq., and amendments thereto. (b)(1) "Safety-sensitive position" shall be defined as provided by K.S.A. 75-4362(g), and amendments thereto. (2) "Reasonable suspicion" means a judgment, supported by specific, contemporaneous, articulable facts or plausible inferences, that is made regarding the employee's behavior, appearance, or speech or supported by evidence found or reported that indicates drug use by the employee. Reasonable suspicion may be based on one or more of the following: (A) An on-the-job accident or occurrence in which there is evidence to indicate any of the following: (i) The accident or occurrence was in whole or in part the result of the employee's actions or inactions; (ii) the employee exhibited behavior or in other ways demonstrated that the employee may have been using drugs or may have been under the influence of drugs; or (iii) a combination of the factors specified in paragraphs (b)(2)(A)(i) and (ii) is present; (B) an on-the-job incident that could be attributable to drug use by the employee, including a medical emergency; (C) direct observation of behavior exhibited by the employee that could render the employee unable to perform the employee's job, in whole or part, or that could pose a threat to safety or health; (D) information that has been verified by a person with the authority to determine reasonable suspicion and that indicates either of the following: (i) The employee could be using drugs or is under the influence of drugs, and this circumstance is affecting on-the-job performance; or (ii) the employee exhibits behavior that could render the employee unable to perform the employee's job or could pose a threat to safety or health; (E) physical, on-the-job evidence of drug use by the employee or possession of drug paraphernalia; (F) documented deterioration in the employee's job performance that could be attributable to drug use by the employee; and (G) any other circumstance providing an articulable basis for reasonable suspicion. (c) Any appointing authority may ask any employee in a position specified in subsection (a) to submit to a drug screening test under the circumstances of reasonable suspicion as a condition of employment. Refusal to comply with this requirement shall be considered the equivalent of receiving a

confirmed positive result for referral or disciplinary purposes. (d) Each employee required to submit to a drug screening test shall be notified of that requirement in writing and shall be advised of all of the following aspects of the drug screening program: (1) The methods of drug screening that may be used; (2) the substances that can be identified; (3) the consequences of a refusal to submit to a drug screening test or a confirmed positive result; and (4) the reasonable efforts to maintain the confidentiality of results and any medical information that are to be provided in accordance with subsection (k). (e) Drug screening tests may screen for any substances listed in the Kansas controlled substances act. (f) Any employee who has reason to believe that technical standards were not followed in deriving the employee's confirmed positive result may appeal the result in writing to the director within 14 calendar days of receiving written notice of the result. (g) A retest by the original or a different laboratory on the same or a new specimen may be authorized by the director, if the director determines that the technical standards established for test methods or chain-of-custody procedures were violated in deriving a confirmed positive result or has other appropriate cause to warrant a retest. (h) An employee who receives a confirmed positive drug screen result shall be subject to dismissal in accordance with K.S.A. 75-2949d and K.S.A. 75-4362, and amendments thereto as follows: (1) Except as provided in paragraph (2) of this subsection, the employee shall not be subject to dismissal solely on the basis of the confirmed positive result if the employee has not previously had a confirmed positive result or the equivalent and the employee successfully completes an appropriate and approved drug assessment and recommended education or treatment program. (2) The employee shall be subject to dismissal if the employee is a temporary employee, is in trainee status, or is on probationary status at the time the employee is given written notice of the drug screen requirement. (3) The employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee fails to successfully complete an appropriate and approved drug assessment and recommended education and treatment program. (4) The employee shall be subject to dismissal, in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed positive result or the equivalent. (5) This regulation shall not preclude the appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, for other circumstances that occur in addition to a confirmed positive result and that are normally grounds for discipline. (i) Each employee who intentionally tampers with a sample provided for drug screening, violates the chain-of-custody or identification procedures, or falsifies a test result shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto. (j) If the result of a drug screening test warrants disciplinary action, an employee with permanent status shall be afforded due process in accordance with K.S.A. 75-2949, and amendments thereto, before any final action is taken. (k)(1) All individual results and medical information shall be considered confidential and, in accordance with K.S.A. 75-4362, and amendments thereto, shall not be disclosed publicly. Each employee shall be granted access to the employee's information upon written request to the director. (2) Drug screening test results shall not be required to be kept confidential in civil service board hearings regarding disciplinary action based on or relating to the results or consequences of a drug screen test. (3) Each appointing authority shall be responsible for maintaining strict security and confidentiality of drug screening records in that agency. Access to these records shall be restricted to the agency's personnel officer or a designee, persons in the supervisory chain of command, the agency's legal counsel, the agency's appointing authority, the secretary of administration or a designee, the department of administration's legal counsel, and the director or a designee. Further access to these records shall not be authorized without the express consent of the director. (l) This regulation shall be effective on and after June 5, 2005.

**R. 1-9-25.State employment, Alcohol and controlled substances testing for employees in commercial driving positions.**—(a) The provisions of 49 C.F.R. Part 382, as in effect on February 15, 1994, and 49 C.F.R. Part 40, as in effect on February 15, 1994 and amendments to Part 40, as published in 59 Fed. Reg. 42,996 (1994), are hereby adopted by reference. (b) Any employee in a commercial driver position may be required to submit to an alcohol or controlled substances test in accordance with the federal omnibus transportation employees act of 1991, 49 U.S.C. Appx. §2717, based upon reasonable suspicion of illegal controlled substance use or alcohol abuse by that employee or for the purposes of random testing, post-accident testing, return-to-duty testing, or follow-up testing. (c) For the purposes of this regulation, "safety-sensitive functions" means any duty required of an employee in a commercial driver position during the following periods: (1) All time spent

waiting to be dispatched at a state plant, terminal, facility, or other state property or on any public property, unless the driver has been relieved from duty by the agency; (2) all time spent inspecting equipment as required by 49 C.F.R. 392.7 and 392.8, as in effect on February 15, 1994, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; (3) all driving time as defined in 49 C.F.R. 395.2, as in effect on February 15, 1994; (4) all time, other than driving time, spent in or upon any commercial motor vehicle, except time spent resting in a sleeper berth; (5) all time spent loading or unloading a vehicle, supervising or assisting in the unloading or loading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments loaded or unloaded; (6) all time spent performing the driver requirements relating to accidents as set out in 49 C.F.R. 392.40 and 392.41, as in effect on February 15, 1994; and (7) all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. (d) (1) Each agency shall require each of its employees in commercial driver positions to submit to an alcohol or a controlled substances test when the agency has reasonable suspicion of illegal controlled substance use or alcohol abuse by that employee. Reasonable suspicion shall be based on a judgment supported by specific, contemporaneous, articulable observations regarding the employee's behavior, appearance, speech, or body odor. Testing under this paragraph may be conducted under these conditions: (A) Only if the observations are made by a supervisor or other state official trained in accordance with 49 C.F.R. 382.603; and (B) for alcohol testing, only if the observations are made during, just preceding, or just after the period of the work day in which the employee is performing a safety-sensitive function. (2) Each employee in a commercial driver position shall be subject to random testing for alcohol and controlled substances. Random testing for alcohol and controlled substances shall be unannounced, and each employee in a commercial driver position shall have an equal chance of being selected for testing each time selections for testing are made. The number of employees selected for random testing each year shall be based on the percentage established by the federal highway administration under 49 C.F.R. 382.305. The process used to randomly select employees to be tested shall be scientifically valid method. Random alcohol testing shall be conducted only during, just preceding, or just after the period of the work day in which the employee is performing a safety-sensitive function. (3) (A) Each employee in a commercial driver position who is involved in an accident shall be tested for alcohol and controlled substances if either of these conditions is met: (i) The employee was performing a safety-sensitive function with respect to the vehicle, and the accident involved the loss of life. (ii) The employee was issued a citation under state or local law for a moving traffic violation arising from the accident. The post-accident testing shall be performed as soon as practicable following the accident. (B) For purposes of this regulation, an "accident" means an incident involving a commercial motor vehicle in which there is a fatality, an injury treated away from the scene, or a vehicle required to be towed from the scene. (C) The driver shall remain available for testing and refrain from consuming alcohol for eight hours or until the driver undergoes a post-accident alcohol test. If the driver is not available, the agency may consider the driver to have refused to be tested. If the alcohol test is not administered within two hours following the accident, the employer shall maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight hours, the agency shall cease attempts to administer the test and shall prepare and maintain the same record. If the controlled substances test is not administered within 32 hours, the agency shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered. (4) Each employee who is in a commercial driver position and who has violated one or more of the provisions of 49 C.F.R. Part 382, Subpart B, shall not return to duty requiring the performance of a safety-sensitive function until the employee undergoes a return-to-duty alcohol test with results indicating an alcohol breath content of less than 0.02 grams of alcohol per 210 liters of breath, a controlled substances test with a verified negative result, or both, as appropriate. (5) Each employee in a commercial driver position who violates one or more of the provisions of 49 C.F.R. Part 382, Subpart B, and who is identified by a substance abuse professional as needing assistance in resolving problems associated with alcohol or controlled substances, shall be subject to unannounced follow-up controlled substances testing, alcohol testing, or both, following the employee's return to duty. This follow-up testing shall consist of at least six tests in the first 12 months following the driver's return to duty. Alcohol testing shall be performed only before, immediately after, or while performing a safety-sensitive function. (e) State agencies may ask a current employee in a commercial driver position to submit to alcohol and controlled substances tests under the provisions of paragraphs (d)(1) through (5)

as a condition of employment. Refusal to comply with these requirements shall be considered the equivalent of receiving a confirmed positive result for referral or disciplinary actions. (f) (1) Each employee required to submit to alcohol or controlled substances tests shall be notified of that requirement in writing. Each employer shall provide to each current employee in a commercial driver position detailed materials containing information identified below in paragraph (f)(2). These materials shall be provided to each current employee before the start of alcohol and controlled substances testing by the agency and to each employee subsequently hired or transferred into a commercial driver position. (2) The information provided to each employee in a commercial driver position shall include the following: (A) The identity of the person designated by the agency to answer drivers' questions about the materials; (B) the categories of drivers who are subject to the provisions of this regulation; (C) sufficient information about the safety-sensitive functions performed by those drivers to make clear which periods of the work day the driver is required to be in compliance with this regulation; (D) specific information concerning driver conduct that is prohibited by this regulation and Subpart B of 49 C.F.R. Part 382; (E) the circumstances under which a driver will be tested for alcohol or controlled substances under this regulation; (F) the procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver; (G) the requirement that each driver submit to alcohol and controlled substances tests administered in accordance with this regulation; (H) an explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences; (I) the consequences for drivers found to have violated 49 C.F.R. 382, Subpart B, including the requirement that the driver be removed immediately from safety-sensitive functions, and the referral, evaluation, and treatment procedures under 49 C.F.R. 382.605; (J) the consequences for drivers found to have an alcohol concentration of 0.02 grams per 210 liters of breath or greater but less than 0.04 grams; (K) information regarding post-accident procedures and instructions necessary for the employee to be able to comply with the post-accident testing requirements; and (L) information concerning the following: (i) The effects of the use of alcohol and controlled substances on an individual's health, work, and personal life; (ii) signs or symptoms of an alcohol or a controlled substances problem, whether the driver's own problem or that of a coworker; and (iii) available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to the state employee assistance program, referral to management, or a combination of these steps. (g) Procedures and testing personnel used in collecting, analyzing, and evaluating test samples shall meet the standards established by the director in accordance with 49 C.F.R. Part 40. (h) In accordance with 49 C.F.R. 40.25(f)(10)(ii)(E), any employee who receives a confirmed positive result on a controlled substances test may request a retest by the original or a different laboratory on the second half of the original specimen, within 72 hours of being notified of the positive test result. (i) (1) An alcohol test shall be considered positive when the alcohol concentration is 0.04 grams of alcohol per 210 liters of breath or greater. However, if the breath alcohol content is 0.02 grams of alcohol per 210 liters of breath or greater and less than 0.04 grams of alcohol, the employee shall not be allowed to perform safety-sensitive functions until a 24-hour period has elapsed, in accordance with 49 C.F.R. 382.505. The agency shall not take action against the employee based solely on a test required by 49 C.F.R. Part 382 with a test result of less than 0.04 grams of alcohol. (2) A permanent employee who receives a confirmed positive controlled substances test result or an alcohol test result with a concentration of 0.04 or greater or who violates any provision of 49 C.F.R. Part 382, Subpart B shall be removed from safety-sensitive functions until the employee has met these requirements: (A) Been evaluated by a substance abuse professional; (B) completed treatment, if required by the substance abuse professional; and (C) taken a return-to-duty alcohol test, controlled substances test, or both, as determined by the substance abuse professional, with results below 0.02 grams of alcohol per 210 liters of breath and a negative result for controlled substances. (3) An employee shall not be subject to dismissal solely on the basis of a confirmed positive test result or a violation of any other provision of 49 C.F.R. 382, Subpart B if the employee has not previously had a confirmed positive result or the equivalent or other violation and the employee successfully completes an appropriate and approved alcohol and controlled substance assessment and any recommended education or treatment program, as provided in paragraph (i)(2). However, the employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed positive result or the equivalent or other violation or if the employee fails to successfully complete an

appropriate and approved alcohol and controlled substance assessment and recommended education and treatment program as prescribed by the substance abuse professional. This regulation shall not preclude the agency appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, and K.A.R. 1-10-6 for other circumstances that occur in addition to a confirmed positive result and that are normally grounds for discipline. (4) If an employee is a temporary employee, or is in trainee status or on probation, other than for a promotional appointment, at the time the employee is given written notice of an appointment for an alcohol or controlled substances test and if the employee violates any provisions of 49 C.F.R Part 382, Subpart B or has a confirmed positive result, the employee shall be subject to dismissal pursuant to K.A.R. 1-10-6. (j) Any employee who intentionally tampers with a sample provided for alcohol or controlled substances testing, violates chain-of-custody or identification procedures, or falsifies a test result shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto. (k) If disciplinary action is warranted under the provisions of this regulation, the employee shall be afforded due process in accordance with K.S.A. 75-2949, and amendments thereto, and K.A.R. 1-10-6. (l) (1) Individual results and medical information shall be considered confidential and shall not be disclosed publicly. Each employee shall be granted access to the employee's information upon written request to the director, in accordance with 49 C.F.R. 382.405. (2) (A) Each agency shall be responsible for maintaining strict security and confidentiality of the alcohol and controlled substances records in that agency. Access to these records shall be restricted to the following personnel: (i) The agency personnel officer, the agency appointing authority, the secretary of administration, the director, or any of their respective designees; (ii) persons in the supervisory chain of command; (iii) the agency legal counsel; or (iv) the department of administration legal counsel. (B) Further access to these records shall not be authorized without the express consent of the director.

**1-9-26. State employment, Pre-duty controlled substances testing for employees in assigned commercial driver functions.**—(a) The provisions of 49 C.F.R. Part 382, as in effect on February 15, 1994, and 49 C.F.R. Part 40, as in effect on May 1, 1995, and amendments to Part 40, as published in 59 Fed. Reg. 42,996 (1994), are hereby adopted by reference. (b) For purposes of this regulation, the term "safety-sensitive function" shall be as defined in K.A.R. 1-9-25(c). (c) When an agency assigns duties to an existing, filled position that would result in the position becoming a commercial driver position, the incumbent employee in the position shall be subject to a controlled substances test and the provisions of 49 C.F.R. 382.413 regarding release of alcohol and controlled substances test information by previous employers. (d) Each employee who is an incumbent in a position to which commercial driver functions are assigned shall be informed of the provisions of subsections (c) and (g) through (i) of this regulation in writing and shall sign a statement agreeing to participate in the testing before administration of the tests. The appointing authority shall advise each employee required to submit to controlled substances testing under this regulation of the following aspects of the testing program: (1) The methods of controlled substances testing that may be used; (2) the substances that may be identified; (3) the consequences of a refusal to submit to a controlled substances test or of a confirmed positive result; and (4) the reasonable efforts utilized by the state to maintain the confidentiality of results and any medical information that may be provided. (e) Procedures and testing personnel used in collecting, analyzing, and evaluating test samples shall meet the standards established by the director in accordance with 49 C.F.R. Part 40. (f) In accordance with 49 C.F.R. 40.25(f)(10)(ii)(E), any employee who receives a confirmed positive result on a controlled substances test may request a retest by the original or a different laboratory on the second half of the original specimen within 72 hours of being notified of the positive test result. (g) If an incumbent employee fails to participate in the required controlled substances test, refuses to sign the written authorization required under subsection (d) of this regulation, or refuses to provide written authorization for release of alcohol and controlled substances test information by previous employers, the employee shall not begin performing the safety-sensitive functions. A subsequent refusal to participate in the required testing or to sign the written authorization shall be grounds for discipline under K.S.A. 75-2949f, and amendments thereto. (h) (1) If an incumbent employee receives a confirmed positive controlled substances test result, the employee shall not perform any safety-sensitive functions until the employee has completed the steps listed below: (A) Been evaluated by a substance abuse professional; (B) completed treatment, if required by the substance abuse professional; and (C) taken a subsequent alcohol test, controlled substances test, or both, as determined by the substance abuse professional,

	<p>with results below 0.02 grams of alcohol per 210 liters of breath and a negative result for controlled substances. (2) An incumbent employee with permanent status in a position to which commercial driver functions are assigned shall not be subject to dismissal solely on the basis of a confirmed positive test result if the employee successfully completes an appropriate and approved alcohol and controlled substance assessment and any recommended education or treatment program, as provided in paragraph (h)(1). However, the employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed "positive" result or the equivalent, if the employee committed some other violation, or if the employee fails to successfully complete an appropriate and approved alcohol and controlled substance assessment and recommended education and treatment program, as prescribed by the substance abuse professional. This regulation shall not preclude the agency appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, and K.A.R. 1-10-6 for other circumstances that occur in addition to a confirmed "positive" result and that are normally grounds for discipline. (3) Any employee who was on probation, other than for a promotional appointment, at the time the employee was given notice of the assignment of commercial driver functions to the employee's position and written notice of the controlled substances testing requirement and who has a confirmed positive result shall be subject to dismissal pursuant to K.A.R. 1-10-6. (4) An alcohol test shall be considered "positive" when the alcohol concentration is 0.04 grams of alcohol per 210 liters of breath or greater. However, if the breath alcohol content is 0.02 grams of alcohol or greater and less than 0.04 grams of alcohol, the employee shall not begin performing safety-sensitive functions until a 24-hour period has elapsed, in accordance with 49 C.F.R. 382.505. (i) The provisions of paragraphs (h)(1) and (2) relating to a confirmed positive test shall apply if the information obtained from a prior employer under 49 C.F.R., 382.413 indicates that, within the preceding two years, both of the following have occurred. (1) The employee violated any of the provisions of 49 C.F.R. Part 382, Subpart B. (2) The employee failed to complete the requirements for returning to work under 49 C.F.R. 382.605, including an evaluation by a substance abuse professional, a return-to-duty alcohol test, controlled substances test, or both, and completion of any rehabilitation or treatment program prescribed by the substance abuse professional. (j) Any employee who intentionally tampers with a sample provided for alcohol or controlled substances testing, violates chain-of-custody or identification procedures, or falsifies a test result shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto. (k) If disciplinary action is warranted based on the provisions of this regulation, the appointing authority shall afford the employee due process in accordance with K.S.A. 75-2949, and amendments thereto, and K.A.R. 1-10-6. (l) (1) Individual results and medical information shall be considered confidential and shall not be disclosed publicly. Each employee shall be granted access to the employee's information upon written request to the director, in accordance with 49 C.F.R. 382.405. (2) (A) Each agency shall be responsible for maintaining strict security and confidentiality of the alcohol and controlled substance testing records in that agency. Access to these records shall be restricted to the following individuals: (i) The agency personnel officer, the agency appointing authority, the secretary of administration, the director, or any of their respective designees; (ii) persons in the supervisory chain of command; (iii) the agency legal counsel; or (iv) the department of administration legal counsel. (B) Further access to these records shall not be authorized without the express consent of the director.</p>
<p><b>Kentucky</b></p>	<p><b>304.13-412. Mine safety, Drug testing of miners; Coal mine licensees implementing a drug-free workplace program, including an employee assistance program, eligible for workers' compensation premium credits.</b>—(1) Any employer who is also a licensee of a coal mine that has implemented a drug-free workplace program, including an employee assistance program, certified by the Office of Mine Safety and Licensing shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance. (2) Each insurer authorized to write workers compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee of a coal mine for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not: (a) Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or (b) Apply to minimum premium policies. (3) The Office of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the Office of Insurance determines that five percent (5%) is actuarially unsound. (4) The credit</p>



on the workers' compensation premium may be applied by the insurer at the final audit.

**KRS 351.010** (1) As used in this chapter, unless the context requires otherwise: (a) "Adulterated specimen" means a specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration; (b) "Approved" means that a device, apparatus, equipment, or machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources; (c) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein; (d) "Board" means the Mining Board created in KRS 351.105; (e) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use; (f) "Commission" means the Mine Safety Review Commission created by KRS 351.1041; (g) "Commissioner" means commissioner of the Department for Natural Resources; (h) "Department" means the Department for Natural Resources; (i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled there from or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal; (j) "Excavations and workings" means the excavated portions of a mine; (k) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters; (l) "Gassy mine." All mines shall be classified as gassy or gaseous; (m) "Illicit substances" includes prescription drugs used illegally or in excess of therapeutic levels as well as illegal drugs; (n) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust; (o) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine; (p) "Medical review officer" or "MRO" means a licensed physician with knowledge of substance abuse disorders, laboratory testing, chain of custody, collection procedures, and the ability to verify positive, confirmed test results. The MRO shall possess the necessary medical training to interpret and evaluate a positive test result in relation to the person's medical history or any other relevant biomedical information; (q) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management, but which are administered as distinct units, shall be considered a separate mine; (r) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of the persons employed therein; (s) "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so; (t) "Open-pit mine" shall include open excavations and open-cut workings, including but not limited to auger operations and highwall mining systems for the extraction of coal; (u) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine; (v) "Permissible" refers to any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration and that meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification by the approving agency; (w) "Preshift examination" means the examination of a mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than three (3) hours before any oncoming shift; (x) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings; (y) "Serious physical injury" means an injury which has a reasonable potential to cause death; (z) "Shaft" means a vertical opening through the strata that is used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials; (aa) "Slope" means an inclined opening used for the same purpose as a shaft; (ab) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines; (ac) "Supervisory personnel" means a person certified under the provisions of this chapter to assist in the supervision of a portion or the whole of

the mine or of the persons employed therein; (ad) "Office" means the Office of Mine Safety and Licensing; (ae) "Executive director" means the executive director of the Office of Mine Safety and Licensing; (af) "Probation" means the status of a certification or license issued by the Office of Mine Safety and Licensing that conditions the validity of the certification or license upon compliance with orders of the Mine Safety Review Commission; and (ag) "Final order of the commission" means an order which has not been appealed to the Franklin Circuit Court within thirty (30) days of entry, or an order affirming the commission's order that has been entered by any court within the Commonwealth and for which all appeals have been exhausted. (2) Except as the context otherwise requires, this chapter applies only to commercial coal mines. (3) The definitions in KRS 352.010 apply also to this chapter, unless the context requires otherwise.

**KRS 351.** (1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner who has passed the examination given by direction of the board for that position, and who has met the requirements for drug- and alcohol-free status. (2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner and is authorized to act as such. (3) Certificates issued to mine foremen and assistant mine foremen shall be classified as follows: (a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; and (b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman. (4) Any mine foreman or assistant mine foreman may act as a fire boss or mine examiner. This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972. (5) The class of mine foreman's certificate awarded shall be determined by the board according to the experience of the applicant. (6) No certificate shall be granted to any person who does not present to the board satisfactory evidence, in the form of affidavits, that the applicant has had the required practical experience in underground or surface coal mines. A data sheet shall be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms shall be furnished by the department. The applicant also shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183. For the purpose of this section, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2) years of practical experience in coal mines when applying for any mine foreman or assistant mine foreman certificate. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or assistant mine foreman certificate shall file proof of having received their degree prior to the examination. (7) Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. (8) Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in postmining activities, at least one (1) year of the required experience shall have been acquired from direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant, or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of

underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section. (9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected by this section. (10) When approved by the commissioner, a person who has successfully completed any mine foreman or assistant mine foreman examination and submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183 may be granted a temporary certification that is valid only until the board acts upon his or her certification at its next regularly scheduled meeting. (11) A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts. (12) The commissioner immediately shall suspend any certification for violation of drug- and alcohol-free status or for failure or refusal to submit to a drug and alcohol test authorized by KRS 351.182, 351.183, 351.184, 351.185, and 352.180. The commissioner shall by certified mail notify the holder of the certification of his or her suspension and of the following:

(a) The right to pursue one (1) of the following options: 1. Appeal the suspension to the Mine Safety Review Commission within thirty (30) days of the notification; or 2. Notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing within thirty (30) days of the notification that the holder intends to be evaluated by a medical professional trained in substance treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by Section 4 of this Act.

(b) Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of the holder's intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing for a period of not less than three (3) years and the holder shall remain ineligible for any other certification issued by the Office of Mine Safety and Licensing during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by: 1. Compliance with all training and testing requirements; 2. Satisfying the requirements of Sections 4 and 5 of this Act; and 3. Compliance with all orders of the Mine Safety Review Commission. (c) The completion of the evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense. (13) The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with subsection (12)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by Section 4 of this Act to the Office of Mine Safety and Licensing. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the Office of Mine Safety and Licensing, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of his or her notification pursuant to subsection (12)(a)2. of this section, the miner's licenses and certifications issued by the Office of Mine Safety and Licensing shall be revoked for a period prescribed under subsection (8) of Section 7 of this Act. The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional (14) If the suspension described in subsection (12) of this section occurs following the miner's first offense as described in this section or Section 6 of this Act, the notification sent to the miner shall not include the option of notifying the Office of Mine Safety and Licensing of the miner's intent to seek an evaluation and treatment. The miner shall only have the right to appeal the suspension to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the suspension, the penalty shall be assessed according to subsection (8)(b) or (c) of Section 7 of this Act.

KRS 351.122 (I) In lieu of an examination prescribed by law or regulation, the board may enter into a reciprocal agreement with another state regarding the certification of miners. The board may, pursuant to a reciprocal agreement, issue to any person holding a certificate issued by another state a certificate

permitting him or her to perform similar tasks in the Commonwealth if: *(a)*The board finds that the requirements for certification in the other state are substantially equivalent to those of Kentucky; *(b)*The person passes only the applicable part of the examination with regard to Kentucky law which is uniquely different from the other state; *(c)*The person has submitted proof, in accordance with KRS 351.182, that he or she is drug and alcohol free; *(d)* The person's retraining is sufficient to meet Kentucky requirements; and *(e)*The person's certification in Kentucky or in any other state has not been suspended, revoked, or probated. (2)Upon receipt of notice from a reciprocal state of a disciplinary action relating to any of the certifications or licenses issued to a miner who also holds corresponding licenses or certifications issued by the Office of Mine Safety and Licensing, the commissioner shall impose analogous sanctions against the miner's Kentucky licenses or certifications. These sanctions shall terminate upon proof of compliance with the orders from the reciprocal state.

KRS 351.182 (1) All applicants for certification as new miners and all initial applicants for all other certifications provided for in this chapter shall provide proof of drug- and alcohol-free status prior to certification in accordance with the provisions of this section. (2)Proof of drug- and alcohol-free status shall be provided in one (1) of two (2) methods: (a)By participation in a drug and alcohol testing program offered by the Office of Mine Safety and Licensing and paid for by the applicant, in accordance with this section and KRS 351.183; or (b)By the submission of drug and alcohol test results from other sources, as provided in KRS 351.183(2). (3)If a newly certified miner gains employment in the coal industry, the initial employer shall reimburse the certified miner for the cost of one (1) drug and alcohol test required by this section and KRS 351.183, 351.184, and 351.185. (4)If the applicant is currently certified in any category other than that for which he is applying by the Office of Mine Safety and Licensing and the applicant is currently employed in the coal industry, the applicant's employer shall reimburse the applicant for the cost of one (1) drug and alcohol test required by this section and KRS 351.183, 351.184, and 351.185. (5)The fee charged to an applicant for the drug and alcohol tests offered by the Office of Mine Safety and Licensing shall not exceed the actual cost of collection, analysis, and medical review officer (MRO) review. (6) The Office of Mine Safety and Licensing shall provide, at each site of examinations for the certifications provided for in Chapter 351, a breath alcohol testing device and a person certified in the operation of the breath alcohol testing device. The breath alcohol test shall be administered prior to examination to determine the applicant's alcohol-free status. The Office of Mine Safety and Licensing may satisfy the requirement to furnish an alcohol testing device and certified personnel by: (a)The use of equipment and appropriately certified personnel of the Office of Mine Safety and Licensing; (b)A memorandum of agreement with state or local police agencies for the provision of equipment and appropriately trained personnel at the examination site; or (c) Inclusion of breath alcohol testing as part of the contract to provide drug testing and collection services set out in KRS 351.183(1). (7) A breath alcohol concentration of .04 shall be the maximum acceptable level of concentration for participation in the examination and subsequent certification. (8) Except for an alternative testing protocol provided for post-accident victims under KRS 352.180(5) to (7), the minimum testing protocol acceptable for the establishment of drug-free status for certification under KRS Chapter 351 shall be at least a ten (10) panel urine test that shall include testing for the following substances:

- (a)Amphetamines;
- (b)Cannabanoids/THC;
- (c)Cocaine;
- (d)Opiates;
- (e)Phencyclidine (PCP);
- (f)Benzodiazepines;
- (g)Propoxyphene;
- (h)Buprenorphine
- (i)Methadone;
- (j)Barbiturates; and
- (k)*The remaining panels to be used in the urine test shall be set by order of the Mine Safety Review Commission no later than June 1 of each year.

**KRS 351.183** (1)The Office of Mine Safety and Licensing may contract with qualified companies to provide the collection of samples and administer the required drug and alcohol tests. The contract may provide that the collection of samples or testing be subcontracted, except that the contract shall require: (a)The contractor and any subcontractors to follow all standards, procedures, and protocols set forth by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) for the collection and testing required by KRS 351.182 and this section; (b) The contractor's or subcontractor's drug-testing protocol shall be a ten (10) panel test described in KRS 351.182(8) and any other test required by order of the Mine Safety Review Commission; and (c)The contractor or the subcontractor shall provide a medical review officer (MRO) who shall: 1. Possess the ability and medical training necessary to verify positive confirmed test results and evaluate those results in relation to an applicant's medical history or other biomedical information; and 2. Follow all procedures outlined in the SAMHSA Medical Review Officer Manual. (2) The executive director of the Office of Mine Safety and Licensing may accept proof of drug- and alcohol-free status from other sources whose tests conform to the requirements set forth in KRS 351.182(7) and (8) and in accordance with KRS 351.182(2)(b) under the following conditions: (a) An applicant shall submit a request for acceptance of his or her drug- and alcohol-free status to the executive director accompanied by pass/fail results of a drug and alcohol test taken within thirty (30) days prior to the request; and (b) The test results shall have been performed by laboratories certified in accordance with the National Laboratory Certification Program (NLCP) by the United States Department of Health and Human Services Administration's SAMHSA and in accordance with subsection (1) of this section. (3) The Office of Mine Safety and Licensing shall maintain and publish annually a list of certified specimen collection services and testing laboratories from which it will accept data.

**KRS 351.184** (1) The results of any testing performed by the Office of Mine Safety and Licensing shall be given to the applicant at the time of his or her notification of the granting or denial of certification. (2) Certification of an applicant shall be denied if any one (1) or more of the following occur: (a) The applicant's positive drug test results for any of the-substances either listed in KRS 351.182(8) or otherwise required to be tested for by order of the Mine Safety Review Commission are deemed to fail by a medical review officer; (b) The applicant's blood alcohol level is above .04 concentration at the time of testing; (c) The applicant's test results demonstrate the submission of an adulterated specimen; or (d) The applicant refuses to submit to a drug or alcohol test as required by KRS 351.182. (3) (a) Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 may:—1. Appeal to the Mine Safety Review Commission within thirty (30) days of receiving the notification required under subsection (12) of Section 2 of this Act; or 2. Notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing within thirty (30) of receiving the notification required under subsection (12) of Section 2 of this Act that the applicant intends to be evaluated by a medical professional trained in substance abuse treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by Section 4 of this Act. (b) Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing for a period of not less than three (3) years and the holder shall remain ineligible for any other certification issued by the Office of Mine Safety and Licensing during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by: 1. Compliance with all training and testing requirements; 2. Satisfying the requirements of Sections 4 and 5 of this Act; and 3. Compliance with all orders of the Mine Safety Review Commission. (c) For the purposes of this subsection, the completion of evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense. (4) The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with subsection (3)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by Section 4 of this Act to the

Office of Mine Safety and Licensing. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the Office of Mine Safety and Licensing, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of the notification required under subsection (12) of Section 2 of this Act, the miner's licenses and certifications issued by the Office of Mine Safety and Licensing shall be revoked for a period prescribed under subsection (8) of Section 7 of this Act. The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional (5) If the denial described in subsection (3) of this section occurs following the miner's first offense as described in this section or Section 2 of this Act, the miner shall not have the option of notifying the Office of Mine Safety and Licensing of his or her intent to comply with subsection (3)(a)2. of this section. The miner shall only have the right to appeal the denial to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the denial, the penalty shall be assessed according to subsection (8)(b) or (c) of Section 7 of this Act

**KRS 351.990** (1) Any person who violates any of the provisions of KRS 351.315 to 351.375 or any administrative regulation, determination, or order promulgated in accordance with KRS 351.315 to 351.375 shall be subject to a civil fine not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) for each violation. (2) Any person who willfully violates any of the provisions of KRS 351.315 to 351.375 or any administrative regulation, determination, or order promulgated in accordance with KRS 351.315 to 351.375 which has become final shall be guilty of a Class A misdemeanor. (3) Any person who violates any of the provisions of KRS 351.330(16) shall be guilty of a Class B misdemeanor. (4) Any person who violates any of the provisions of KRS 351.345(2) shall be guilty of a Class D felony. (5) Any operator who fails to obtain his license as required by KRS 351.175 shall be guilty of a Class A misdemeanor as defined in KRS 532.090. Each day the mine is operated without a license constitutes a separate offense. Venue for the offenses shall lie in the county in which the offense occurred. (6) Any operator operating a mine with knowledge that the mine has been placed under a valid closure order pursuant to KRS 351.175 shall be guilty of a Class D felony. Jurisdiction shall lie in the Circuit Court of the county in which the offense occurred. (7) Any blasting operation that results in the death or serious physical injury of a person may be subject to a civil fine not more than twenty thousand dollars (\$20,000). For the purposes of this subsection, "serious physical injury" means an injury which has a reasonable potential to cause death. (8) Any person who fails a drug or alcohol test required by KRS 351.182, 351.183, 351.184, 351.185, or 352.180 shall be subject to the following penalties if an appeal to the Mine Safety Review Commission is chosen and the appeal is not successful: (a) A first offense shall result in probation, suspension, or combination of both as well as other conditions and time constraints as ordered by the Mine Safety Review Commission. During this time, the person shall be ineligible for any license or certification issued by the Office of Mine Safety and Licensing. All licenses and certifications shall be restored upon compliance with the orders of the Mine Safety Review Commission. The failure to pursue an appeal will result in revocation of all licenses or certifications issued by the Office of Mine Safety and Licensing for three (3) years. (b) A second offense shall result in the revocation of all certifications and licenses issued by the Office of Mine Safety and Licensing for a period of five (5) years. During this time, the person shall be ineligible for any license or certification issued by the Office of Mine Safety and Licensing. Certifications and licenses revoked under this provision may be reissued by: 1. Compliance with all training and testing requirements; 2. Satisfying the requirements of Section 4 and 5 of this Act; and 3. Compliance with all orders of the Mine Safety Review Commission. (c) A third offense shall result in the permanent revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing. The person shall be permanently ineligible for licenses and certifications issued by the Office of Mine Safety and Licensing. (d) The Mine Safety Review Commission shall not have the authority to reconsider any order permanently revoking a miner's license or certifications issued by the Office of Mine Safety and Licensing if the commission's order is final unless, at the time of the entry of the order, the miner was incarcerated or hospitalized, or the miner did not receive actual notice of the motion or other filing seeking permanent revocation, or did not actually receive notification by the commissioner of the Department for Natural Resources pursuant to Section 2 of this Act.

**351.101. Mine safety; Findings and declaration of state legislature on mine safety.**—The General Assembly hereby finds and declares the following: (1) The highest priority and concern of the Commonwealth must be the health and safety of the coal industry's most valuable resource, the miner. (2) The continued prosperity of the coal industry is of primary importance to the state. (3) A high priority must be given to increasing the productivity and competitiveness of the mines in this state. (4) An inordinate number of miners are killed or injured during the first few months of their experience in a mine and upon acquiring new work assignments in a mine. (5) These injuries result in the loss of life and serious injury to miners and are an impediment to the future growth of the state's coal industry. (6) Mining is a technical occupation with various specialties requiring individualized training and education. (7) Injuries can be reduced through proper miner training, education, and certification. (8) Mine safety can be improved by the imposition and enforcement of sanctions against licensed premises and certified and noncertified personnel whose willful and repeated violations of mine safety laws place miners in imminent danger of serious injury or death. (9) Abuse of illicit substances and alcohol in the mining industry represents a serious threat to the health and safety of all miners. Substance and alcohol abuse adversely affect the health and safety of miners. Mine safety can be significantly improved by establishing as a condition of certification that miners remain drug and alcohol free.

**351.102. Mine safety; Laborers and supervisors must hold valid certificate of competency and qualification or valid permit as trainee; Applicants for certified miner and initial applicants for other mining certifications must submit proof of being drug and alcohol free; Grievances; Appeals.**— (1) No person shall be assigned mining duties by a licensee as a laborer or supervisor unless the person holds a valid certificate of competency and qualification or a valid permit as trainee issued in accordance with this section. (2) The Office of Mine Safety and Licensing shall require that all applicants for certified miner and initial applicants for other mining certifications pursuant to this chapter shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183. (3) A permit as trainee miner shall be issued by the commissioner to any person who has submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.18, and has completed a program of education of a minimum of forty (40) hours for underground mining or twenty-four (24) hours for surface mining comprised of sixteen (16) hours of classroom training and eight (8) hours of mine specifics or who has completed a certified mine technology program and has passed an examination approved by the commissioner. An additional eight (8) hours of mine-specific training shall be administered to the trainee miner by the licensee, which training shall be documented on a form approved by the commissioner. This education and training program shall be determined and established by the board, as provided in KRS 351.106. A requirement for a permit as a trainee miner shall be one (1) hour of classroom training dedicated to alcohol and substance abuse education. (4) Trainee miners shall work within the sight and sound of a certified miner. (5) Any miner holding a certificate of competency and qualification may have one (1) person working with him and under his direction as a trainee miner. Any person certified as a mine foreman or assistant mine foreman shall have no more than five (5) persons working under his supervision or direction as trainee miners for the purpose of learning and being instructed in the duties of underground coal mining. (6) A certificate of competency and qualification as a miner shall be issued by the commissioner to any person who has a minimum of forty-five (45) working days' experience within a thirty-six (36) month period as a trainee miner and demonstrated competence as a miner. Any trainee miner who exceeds six (6) months in obtaining the forty-five (45) working days of experience required in this section, shall submit proof of alcohol and drug free status in accordance with the provisions of KRS 351.182 and 351.183. (7) All examinations for the certification of a miner shall be of a practical nature and shall determine the competency and qualification of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees. The examination may be given orally, upon approval by the commissioner, if the miner is unable to read or comprehend a written examination. (8) Examinations shall be held in any district office during regular business hours. (9) If the commissioner or his authorized representative finds that an applicant is not qualified and competent, he shall notify the applicant as soon as possible, but in no case more than thirty (30) days after the date of examination. (10) Any applicant aggrieved by an action of the commissioner or his authorized representative in failing or refusing to issue a certificate of qualification and competency shall, within ten (10) days of notice of the action complained of, appeal

to the commissioner who shall either affirm the action or issue the certificate to the applicant. (11) If the applicant is aggrieved by the action of the commissioner, he may appeal to the commission which shall hold a hearing on the matter in accordance with KRS Chapter 13B. (12) The applicant may appeal from the final order of the commission by filing in the Franklin Circuit Court a petition for appeal in accordance with KRS Chapter 13B.

**351.103. Mine safety; Mine inspectors, electrical inspectors, mine safety instructors, assistant mine foreman, mine foremen, shotfirers and other specialties; Certification required for work as miners; Exception.**—(1) All persons possessing valid certificates as mine inspectors, electrical inspectors, mine safety instructors, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or certified miner shall be eligible to work at any time as miners, provided they fulfill the annual requirements for retraining and reeducation as provided in KRS 351.106. (2) Supervisory, clerical, and technically-trained employees of the mine operator whose work contributes only indirectly to mine operations shall not be required to possess a miner's certificate of competency and qualification.

**351.1041. Mine safety; Mine Safety Review Commission**—(1) The Mine Safety Review Commission is created as an independent governmental entity attached to the Environmental and Public Protection Cabinet, Office of the Secretary, for administrative purposes. The commission shall: (a) Conduct hearings and issue orders regarding a licensee, coal operation, or other person involved in the mining of coal in accordance with KRS 351.194; (b) Jointly with the department establish a process for the department's referral of allegations of mine safety violations, allegations of unsafe working conditions, violation of a miner's drug- and alcohol-free condition of certification, or supervisory personnel's failure to immediately report a fatal accident or an accident involving serious physical injury to the commission for adjudication; (c) Make any recommendations to the department that it believes appropriate upon its review, consideration, and analysis of: 1. All reports of coal mining fatalities and serious physical injuries provided by the commissioner under KRS 351.070(14); 2. Any case in which a miner or a mine owner or operator, in the professional opinion of the department has a history of significant and substantial safety violations even though there has been no serious physical injury or death resulting from the violations; 3. Any case in which a miner or a mine owner or operator has been convicted of a criminal charge for a violation of a federal mine safety standard or standards; and 4. Any case in which the Federal Mine Safety and Health Administration has made a recommendation relating to certification of an individual certified under this chapter. (2) The Mine Safety Review Commission shall consist of three (3) members appointed by the Governor subject to the consent of the Senate and the House of Representatives in accordance with KRS 11.160. Of the members of the Mine Safety Review Commission first appointed under this section, one (1) shall be appointed for a term of one (1) year; one (1) shall be appointed for a term of two (2) years; and one (1) shall be appointed for a term of three (3) years. After the initial appointments, members of the board shall be appointed for terms of four (4) years. A member may be reappointed at the expiration of his or her previous term. Members shall continue to serve until a successor is appointed and qualified. (3) The members of the Mine Safety Review Commission shall have the qualifications required of Judges of the Court of Appeals, except for residence in a district, and shall be subject to the same standards of conduct made applicable to a part-time judge by the Rules of the Kentucky Supreme Court. The members shall receive the per diem equivalent of the salary of a Judge of the Court of Appeals for each day spent in conducting the business of the commission. (4) The Governor shall designate a member of the Mine Safety Review Commission to serve as chair and shall fill any vacancy in the office of chair. (5) The Governor may remove any member for good cause including violation of the Code of Judicial Conduct and repeated failure to perform satisfactorily the specific duties assigned in this chapter or KRS Chapter 352. The Governor may remove the member only after furnishing him or her with a written copy of the charges against that member and holding a public hearing if requested by the member. (6) The commission shall meet on the call of the chair or a majority of the members of the commission. (7) The Environmental and Public Protection Cabinet shall provide administrative services to the Mine Safety Review Commission. If the commission deems it necessary to employ hearing officers to assist it, the Environmental and Public Protection Cabinet shall employ hearing officers to assist the commission in accordance with KRS Chapter 13B and this chapter, notwithstanding the provisions of KRS 13B.030(2)(b). (8) The commission may



conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its duties. (9) The department shall provide the Mine Safety Review Commission with all information requested by the commission for the fulfillment of its responsibilities under this chapter and KRS Chapter 352. (10) The secretary of the Environmental and Public Protection Cabinet shall effectuate the hiring of any staff deemed necessary and affordable for the efficient operations of the Mine Safety Review Commission. This may include an executive director, general counsel, or other administrative support positions, to be appointed in accordance with KRS 12.010 and 12.050.

**351.106. Mine safety; Mining Board to establish criteria and standards for required miner training and education programs; Substance abuse training and education; Awareness training for supervisory personnel required; Retraining and reeducation; Compensation during training; Training records.**—(1) The Mining Board shall establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This education and training shall be provided in a manner determined by the commissioner to be adequate to meet the standards established by the board, which shall include as a minimum the requirements of KRS 351.102 and the requirements of the federal government for the training of miners for new work assignments, and at least sixteen (16) hours of annual retraining and reeducation for all certified persons of which thirty (30) minutes annually shall be dedicated to alcohol and substance abuse education. Effective January 1, 2009, in addition, six (6) hours of annual training on changes in mine safety laws, safe retreat mining practices, disciplinary cases litigated before the Mine Safety Review Commission, changes in mine safety technology, and ways to improve safe working procedures shall be required for all mine foremen. This annual training for mine foremen shall be provided exclusively by the Office of Mine Safety and Licensing. (2) One (1) hour of initial substance abuse training and education shall be required as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement shall not apply to certified persons who received the one (1) hour initial substance abuse training and education as part of their forty (40) hour or twenty-four (24) hour new miner training. (3) In addition to the thirty (30) minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel shall be required to receive an additional thirty (30) minutes of alcohol and substance abuse awareness training annually. (4) Beginning with the first full calendar year after the effective date established by the board and during each calendar year thereafter, each certified miner shall receive at least sixteen (16) hours of retraining and reeducation. (5) Newly-hired experienced miner training shall satisfy the miner's annual retraining requirement if a time lapse occurs between the miner's last training anniversary date and the next scheduled training anniversary date for the mine where he is newly employed, if the miner has complied with the annual retraining requirements within the last twelve (12) months from the date of his newly hired experienced miner training. (6) Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend. (7) The licensee shall pay all certified miners their regular wages and benefits while they receive training required by the department. (8) Willful failure of a working miner to complete annual retraining and reeducation requirements shall constitute grounds for revocation, suspension, or probation of his certificate. (9) If the department discovers a miner working without proper training or the licensee cannot provide proof of training, the miner shall be withdrawn immediately from the mine and the licensee shall pay the miner his regular wages until the training is administered and properly documented. (10) When employment is terminated, the licensee shall provide the employee a copy of his training records, upon request. If the employee does not request his training records immediately, the licensee shall, within fifteen (15) days, provide the employee with those training records. (11) The board may, upon its own motion or whenever requested to do so by the commissioner, deem applicable certificates issued by other states to be proof of training and education equal to the requirements of KRS 351.102 or deem training provided by appropriate federal agencies to be adequate to meet training and education requirements established by the board, if the training and education meet the minimum requirements of this chapter. (12) The secretary may promulgate administrative regulations necessary to establish a program to implement the provisions of this chapter according to the criteria and standards established by the board. This program shall include but not be limited to implementation of a program of instruction and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction.

(13) The commissioner shall keep and maintain current records on all certified miners, all of which shall be maintained by computer for ready access. The commissioner shall not grant certification to any person that, at the time of application, had his or her miner certification, foreman certification, electrician certification, or any other mining specialty certification suspended or revoked by another state. If a person has his or her miner certification, foreman certification, electrician certification, or other mining specialty certification probated in another state, the commissioner or the Mining Board may, at his or its discretion, grant the equivalent certification. However, that certification shall be placed on probation in Kentucky until the probationary period in the other state has expired. (14) The commissioner is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education, and other qualified persons available to him in implementing the program of instruction and examination. (15) The commissioner may make recommendations to the board as he may deem appropriate. The commissioner shall provide information to the board at the board's request. The commissioner is authorized and directed to utilize state and federal moneys and personnel that may be available to the department for educational and training purposes in the implementation of the provisions of this chapter. (16) All training and education required by this section may be conducted in classrooms, on the job, or in simulated mines.

**351.110. Mine safety; Applicant for certification not to be admitted as an inspector, analyst, or foreman unless applicant has required experience; Applicant must submit proof that he or she is drug and alcohol free; Fees; English language requirement; Board may refuse certification if English language requirements are not met or for obvious signs of intoxication.**—(1) The board shall not admit any applicant for certification as a mine inspector, mine safety analyst, electrical inspector, mine safety instructor, mine foreman, or assistant mine foreman to take an examination given by it unless the applicant has the experience required by this chapter, and has submitted proof that he or she is drug and alcohol free in accordance with Sections 2 and 3 of this Act and has presented to the examiner at the time of registration for the examination a United States postal money order or certified check in the amount of fifty dollars (\$50). All money orders or certified checks required herein shall be made payable to the State Treasurer, Frankfort, Kentucky. (2) All money paid to the State Treasurer for licenses and fees required by this chapter shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department. (3) The board may refuse to examine any applicant who cannot readily understand the written English language or cannot express himself intelligently in English, or who is obviously intoxicated.

**351.120. Mine safety; Certification for inspector, instructor, analyst, foreman, shotfirer, etc., by Commissioner of the Department for Natural Resources; Certificate classifications; Experience requirements; Proof of being drug and alcohol free; Suspension of certification for violation of drug- and alcohol-free status or for failure or refusal to submit to a drug and alcohol test; Reapplication.**—(1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner who has passed the examination given by direction of the board for that position, and who has met the requirements for drug- and alcohol-free status. (2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner and is authorized to act as such. (3) Certificates issued to mine foremen and assistant mine foremen shall be classified as follows: (a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; and (b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman. (4) Any mine foreman or assistant mine foreman may act as a fire boss or mine examiner. This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972. (5) The class of mine foreman's certificate awarded shall be determined by the board according to the experience of the applicant. (6) No certificate shall be granted to any person who does not present to the board

satisfactory evidence, in the form of affidavits, that the applicant has had the required practical experience in underground or surface coal mines. A data sheet shall be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms shall be furnished by the department. The applicant also shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183. For the purpose of this section, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2) years of practical experience in coal mines when applying for any mine foreman or assistant mine foreman certificate. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or assistant mine foreman certificate shall file proof of having received their degree prior to the examination. (7) Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. (8) Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in postmining activities, at least one (1) year of the required experience shall have been acquired from direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant, or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section. (9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected by this section. (10) When approved by the commissioner, a person who has successfully completed any mine foreman or assistant mine foreman examination and submitted proof that he or she is drug and alcohol free, in accordance with KRS 351.182 and 351.183, may be granted a temporary certification that is valid only until the board acts upon his or her certification at its next regularly scheduled meeting. (11) A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts. (12) The commissioner immediately shall suspend any certification for violation of drug- and alcohol-free status or for failure or refusal to submit to a drug and alcohol test authorized by KRS 351.182 and 351.183, 351.184, 351.185, and 352.180. No certification may be revoked until the certified person has been granted adequate opportunity for a hearing before the Mine Safety Review Commission conducted in accordance with KRS Chapter 13B. The hearing may be initiated by the filing of a petition by the person whose certification has been suspended by the commissioner or by the Office of Mine Safety and Licensing under process and administrative regulations developed by the Mine Safety Review Commission in accordance with KRS 351.1041. (13) A miner whose certification has been suspended or revoked for violating the drug- and alcohol-free condition of certification may reapply for certification with the Mining Board, provided that he or she has successfully passed a drug and alcohol test meeting the requirements in KRS 351.182 and 351.183 within thirty (30) days prior to reapplication and has fulfilled the terms of final orders entered by the Mine Safety Review Commission.

**351.127. Mine safety; Employment of certified emergency medical technical or mine emergency technician; Certification requirements; Demonstration of drug- and alcohol-free status; Testing**  
.—(1) Certified emergency medical technicians or mine emergency technicians shall be employed at

every licensed coal mine whose employees are actively engaged in the extraction, production, or preparation of coal. Persons employed as mine emergency technicians shall be trained in a manner established in an administrative regulation promulgated by the department. Persons seeking certification as a mine emergency medical technician or mine emergency technician shall be subject to the following additional requirements:

(a) All persons seeking certification as a mine emergency technician shall demonstrate drug- and alcohol-free status in accordance with KRS 351.182 and 351.183; (b) The drug and alcohol testing for those seeking certification as mine emergency technicians shall be administered prior to the examination for the certification, in accordance with KRS 351.182 and 351.183; and (c) Certification as a mine emergency technician shall not be issued until the results of the drug and alcohol testing have been obtained. Notification shall be given to the person in accordance with KRS 351.184. (2) These emergency medical technicians or mine emergency technicians shall be employed in the following manner: (a) At least two (2) emergency medical technicians or mine emergency technicians shall be employed on every shift engaged in the production of coal, and at least one (1) emergency medical or mine emergency technician shall be employed on every nonproduction shift; (b) For underground mines, at least one (1) of the two (2) emergency or mine emergency technicians shall be underground at all times while miners are working in the mines. An additional emergency medical technician or mine emergency technician shall be employed for every additional fifty (50), or any portion thereof, employees per shift who are actively engaged in the extraction, production, or preparation of coal. (3) If these emergency medical technicians or mine emergency technicians are also employed in other capacities at the coal mine, they shall be available for quick response to emergencies and shall have available to them at all times the equipment necessary to respond to emergencies, as prescribed by the commissioner. (4) If the licensee selects existing employees to be trained as emergency medical technicians or mine emergency technicians, the employees selected shall be paid their regular wages during training. (5) Certified emergency medical technicians and mine emergency technicians shall receive annual retraining in the manner established in an administrative regulation promulgated by the department, during which they shall receive their regular wages.

**351.1291 Mine safety; Surface coal miners; Training and annual retraining requirements; Substance abuse training and education; Drug and alcohol testing; Certification.**—(1) All inexperienced surface coal miners shall complete a twenty-four (24) hour course of instruction composed of sixteen (16) hours of classroom training and eight (8) hours of mine specifics that is devised or approved by the department in subjects including but not limited to: accident prevention, cutting and welding, equipment operation, fire protection, first-aid methods, ground control and transportation, handling and use of explosives, mine communications, mine electrical safety standards, mining law, including the statutory rights of miners, safety around bins and hoppers, alcohol and substance abuse education and training, and any other subjects deemed appropriate by the department. For purposes of this section, "inexperienced coal miners" means all persons who have not previously worked at least forty-five (45) days at a surface coal mine in this Commonwealth. (2) All surface coal miners shall complete an eight (8) hour course of annual retraining devised or approved by the department in the subjects identified in subsection (1) of this section, thirty (30) minutes of which shall be dedicated to alcohol and substance abuse education. (3) One (1) hour of initial substance abuse training and education shall be provided as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement does not apply to a certified person who received the one (1) hour initial substance abuse training and education as part of his or her forty (40) hour or twenty-four (24) hour new miner training. (4) In addition to the thirty (30) minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel shall be required to undergo an additional thirty (30) minutes of alcohol and substance abuse awareness training annually. (5) Each applicant for a certified surface miner, in addition to meeting the educational requirements of this chapter, shall pass a drug and alcohol test in accordance with KRS 351.182 and 351.183. (6) The commissioner shall certify all surface coal miners who complete the courses of instruction and show proof of drug and alcohol free condition of certification required in this section.

**351.170. Mine safety; Licensed facilities, Reports of; Operator or superintendent of each licensed facility to report by close of next business day any certified employee who has been discharged for violation of substance or alcohol abuse policies, or who refused to submit to a required test, or who tests positive and fails to complete an employee assistance program.**—(1) All reports of any facility licensed pursuant to this chapter shall be made to the executive director. The licensee of each commercial coal mine shall give at the end of each calendar year accurate information, on blank forms furnished by the commissioner, as to the number of accidents that have occurred, the number of persons employed, the tons of coal mined, and any other related information that the commissioner requests. (2) The operator or superintendent of each licensed facility shall report by the close of the next business day, any certified persons who: (a) Have been discharged for violation of a company's substance or alcohol abuse policies; (b) Refused to submit to a test required by the company's substance or alcohol abuse policies or KRS 351.182, 351.183, 351.184, 351.185, and 352.180; or (c) Tested positive and failed to complete an employee assistance program.

**351.182. Mine safety, Drug testing of miners; Applicants for certification as new minors and initial applicants for all other certifications covered under Chapter 351; Proof of drug- and alcohol-free status prior to certification .**—(1) All applicants for certification as new minors and all initial applicants for all other certifications provided for in this chapter shall provide proof of drug- and alcohol-free status prior to certification in accordance with the provisions of this section. (2) Proof of drug- and alcohol-free status shall be provided in one of two methods: (a) By participation in a drug and alcohol testing program offered by the Office of Mine Safety and Licensing and paid for by the applicant, in accordance with this section and KRS 351.183; or (b) By the submission of drug and alcohol test results from other sources, as provided in KRS 351.183(2). (3) If a newly certified miner gains employment in the coal industry, the initial employer shall reimburse the certified miner for the cost of one drug and alcohol test required by this section and KRS 351.183, 351.184, and 351.185. (4) If the applicant is currently certified in any category other than that for which he is applying by the Office of Mine Safety and Licensing and the applicant is currently employed in the coal industry, the applicant's employer shall reimburse the applicant for the cost of one drug and alcohol test required by this section and KRS 351.183, 351.184, and 351.185. (5) The fee charged to an applicant for the drug and alcohol tests offered by the Office of Mine Safety and Licensing shall not exceed the actual cost of collection, analysis, and medical review officer (MRO) review. (6) The Office of Mine Safety and Licensing shall provide, at each site of examinations for the certifications provided for in Chapter 351, a breath alcohol testing device and a person certified in the operation of the breath alcohol testing device. The breath alcohol test shall be administered prior to examination to determine the applicant's alcohol-free status. The Office of Mine Safety and Licensing may satisfy the requirement to furnish an alcohol testing device and certified personnel by: (a) The use of equipment and appropriately certified personnel of the Office of Mine Safety and Licensing; (b) A memorandum of agreement with state or local police agencies for the provision of equipment and appropriately trained personnel at the examination site; or (c) Inclusion of breath alcohol testing as part of the contract to provide drug testing and collection services set out in KRS 351.183. (7) A breath alcohol concentration of four tenths of a percent (.04) shall be the maximum acceptable level of concentration for participation in the examination and subsequent certification. (8) Except for an alternative testing protocol provided for post-accident victims under KRS 352.180(5) to (7), the minimum testing protocol acceptable for the establishment of drug free status for certification under KRS Chapter 351 shall be an eleven (11) panel urine test that shall include testing for the following substances: (a) Amphetamines; (b) Cannabinoids/THC; (c) Cocaine;(d) Opiates; (e) Phencyclidine (PCP); (f) Benzodiazepines; (g) Propoxyphene; (h) Methaqualone; (i) Methadone; (j) Barbiturates; and (k) Synthetic narcotics.

**351.183. Mine safety, Drug testing of miners; Collection of samples; Standards, procedures and protocol; Medical Review Officer; Proof of drug-free and alcohol-free status from other sources; Office of Mine Safety and Licensing to maintain list of certified specimen collection services and testing laboratories .**—(1) The Office of Mine Safety and Licensing may contract with qualified companies to provide the collection of samples and administer the required drug and alcohol tests. The contract may provide that the collection of samples or testing be subcontracted, except that the contract shall require: (a) The contractor, and any subcontractors, to follow all standards, procedures,

and protocols set forth by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) for the collection and testing required by KRS 351.182 and this section; (b) The contractor's or subcontractor's drug testing protocol shall be an eleven (11) panel test described in KRS 351.182(8); and (c) The contractor or the subcontractor shall provide a Medical Review Officer (MRO) who shall: 1. Possess the ability and medical training necessary to verify positive confirmed test results and evaluate those results in relation to an applicant's medical history or other biomedical information; and 2. Follow all procedures outlined in the SAMHSA Medical Review Officer Manual. (2) The executive director of the Office of Mine Safety and Licensing may accept proof of drug and alcohol free status from other sources whose tests conform to the requirements set forth in KRS 351.182 (7) and (8) and in accordance with KRS 351.182(2)(b) under the following conditions: (a) An applicant shall submit a request for acceptance of his or her drug and alcohol free status to the executive director accompanied by pass/fail results of a drug and alcohol test taken within thirty (30) days prior to the request; and (b) The test results shall have been performed by laboratories certified in accordance with the National Laboratory Certification Program (NLCP) by the United States Department of Health and Human Services Administration's SAMHSA and in accordance with subsection (1) of this section. (3) The Office of Mine Safety and Licensing shall maintain and publish annually a list of certified specimen collection services and testing laboratories from which it will accept data.

**351.184. Mine safety, drug testing of miners; Test results; Grounds for denial of certification; Reapplication for certification; Appeals.**—(1) The results of any testing performed by the Office of Mine Safety and Licensing shall be given to the applicant at the time of his or her notification of the granting or denial of certification. (2) Certification of an applicant shall be denied if any one (1) or more of the following occur: (a) The applicant's positive drug test results for any of the eleven (11) substances listed in KRS 351.182(8) are deemed to fail by a medical review officer; (b) The applicant's blood alcohol level is above four tenths of one percent (.04) concentration at the time of testing; (c) The applicant's test results demonstrate the submission of an adulterated specimen; or (d) The applicant refuses to submit to a drug or alcohol test as required by KRS 351.182. (3) Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 may be retested again, at his or her expense, within ten (10) days of notification of the results of the initial test. (4) If an applicant fails a drug and alcohol retest as provided in subsection (3) of this section and the applicant is denied certification, the applicant may reapply for certification only after an evaluation by a medical professional trained in substance abuse treatment and the successful completion of prescribed treatment and an acceptable result from a drug and alcohol test as required by KRS 351.182. Proof of the evaluation and the successful completion of the prescribed treatment shall be shown at the time of application. (5) Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182, may file an appeal of the denial with the Mine Safety Review Commission within thirty (30) days of the notification of the results of the test.

**351.185. Mine safety, Drug testing of miners; Records of drug or alcohol test results as confidential communications; Exceptions** .—(1) Records of drug or alcohol test results, written or otherwise, received by the Office of Mine Safety and Licensing, its contractors, subcontractors, or other employees are confidential communications and exempt from disclosure under the Kentucky Open Records Act, except as follows: (a) Where release of the information is authorized solely pursuant to a written consent form signed voluntarily by the person tested. The consent form shall contain the following: 1. The name of the person who is authorized to obtain the information; 2. The purpose of the disclosure; 3. The precise information to be disclosed; 4. The duration of the consent; and 5. The signature of the person authorizing the release of the information; (b) Where release of the information is compelled by a hearing officer or court of competent jurisdiction pursuant to an appeal taken under KRS 351.182, 351.183, 351.184, 351.185, 351.102, 351.103, 351.1041, 351.106, 351.110, 351.120, 351.127, 351.1291, 351.170, 352.010, 352.180, 352.210, and 352.390; (c) Where release of the information is relevant to a legal claim asserted by the applicant; (d) Where the information is used by the entity conducting drug or alcohol testing when consulting with legal counsel in connection with matters brought under or related to KRS 351.182, 351.183, 351.184, 351.185, 351.102, 351.103, 351.1041, 351.106, 351.110, 351.120, 351.127, 351.1291, 351.170, 352.010, 352.180, 352.210, and

352.390, or in its defense of civil or administrative actions related to the testing or results; or (e) Where release of the information is deemed appropriate by the Mine Safety Review Commission or a court of competent jurisdiction in disciplinary proceeding brought under the terms of KRS 351.182, 351.183, 351.184, 351.185, 351.102, 351.103, 351.1041, 351.106, 351.110, 351.120, 351.127, 351.1291, 351.170, 352.010, 352.180, 352.210, and 352.390. (2) Information on drug and alcohol test results for tests administered pursuant to KRS 351.182, 351.183, 351.184, 351.185, 351.102, 351.103, 351.1041, 351.106, 351.110, 351.120, 351.127, 351.1291, 351.170, 352.010, 352.180, 352.210, and 352.390 shall not be released or used in any criminal proceeding against the applicant.

**351.186 Mine safety, Drug testing of miners; Employer licensee.** Credit on workers' compensation insurance for implementation of a certified drug-free workplace program.—(1) Any employer who is also a licensee that has implemented a drug-free workplace program certified by the Office of Mine Safety and Licensing shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance. (2) Each insurer authorized to write workers compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not: (a) Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or (b) Apply to minimum premium policies. (3) The Office of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the Office of Insurance determines that five percent (5%) is actuarially unsound. (4) The credit on the workers' compensation premium may be applied by the insurer at the final audit.

**352.180.Mine safety; Mine accidents and injuries; Notice to department and to representative of the miners; Investigations; Recordkeeping requirements; Failure to comply; Post-accident testing to determine if presence of intoxicants or controlled or illicit substances are a contributing factor; Timeliness; Toxicology screens and eleven-panel drug testing to be performed on victims when death occurs.**—(1) Whenever a serious physical injury or loss of life occurs in a mine or in the machinery connected therewith or whenever a fire, explosion, entrapment of an individual for more than thirty (30) minutes, inundation of a mine by water or gases occurs, the superintendent of the mine, or, if he is absent, the mine manager, or if he is absent, the mine foreman in charge of the mine or his designee, shall within fifteen (15) minutes of having actual knowledge of the occurrence and access to the communication system as required under KRS 352.630(3) give notice to the department and to the representative of the miner, stating the particulars of the accident. No person shall alter the scene of a mining accident in a manner that will interfere with the department's investigation of the accident, except to the extent necessary to rescue an individual or to eliminate an imminent danger. (2) Upon receipt of notification of an occurrence set forth in subsection (1) of this section, the mine inspector shall immediately go to the scene of the accident and make an investigation and suggestions and render the assistance as he deems necessary for the future safety of the employees, investigate the cause of the fire, explosion, or accident, make a record thereof, and forward it to the commissioner. (3) The record of the investigations shall be preserved with the other records of the commissioner's office. To aid in making the investigations, the commissioner or the mine inspector may compel the attendance of witnesses and administer oaths. (4) Failure to comply with the reporting requirements set forth in this section shall create a rebuttable presumption of an intentional order to violate mine safety laws that places miners in imminent danger of serious physical injury or death and shall be subject to revocation, suspension, or probation of the mine license and a civil monetary penalty of not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000). (5) The Office of Mine Safety and Licensing may require testing of certified persons to determine whether the presence of intoxicants or controlled or illicit substances are a contributing factor in any mine accident in which serious physical injury or loss of life occurs or which was reported under this section. The executive director or his designee may order the testing of certified persons who: (a) Were working in the immediate area of the accident; or (b) In the judgment of the executive director or his designee, may reasonably have contributed to or witnessed the accident or fatality. (6) The post-accident testing permitted by subsection (5) shall: (a) Meet all guidelines set forth in KRS 351.182, 351.183, 351.184, and 351.185; (b) Be paid for by the Office of Mine Safety

and Licensing; and (c) Be performed on samples obtained within eight (8) hours of the accident. (7) Toxicology screens and eleven-panel drug testing shall be performed on victims when death occurs on mine property. The testing pursuant to this subsection may be performed on specimens of either blood, saliva, or other appropriate bodily fluids. (8) The commissioner or his or her authorized representative may compel the attendance of witnesses and administer oaths to investigate allegations of unsafe mining conditions or violations of mining laws even if no accident or injury has occurred.

**352.210. Mine safety; Mine accidents and injuries; Endangering employees or security of mine; Intoxication or influence of alcohol or a controlled substance or possession of a alcoholic beverage or controlled substance at a licensed facility prohibited; Exception; Notice of discharge of certified employees for violation of company's substance abuse policies or for testing positive and failing to complete an employee assistance program** ---- (1) No person shall knowingly injure any shaft, lamp, instrument, air course or brattice, obstruct or throw open airways, disturb any part of the machinery or appliances, open a door used for directing ventilation without closing it afterwards, enter any part of a mine against caution, disobey any order given in carrying out any of the provisions of KRS Chapter 351 or 352, do any act endangering the life or health of any person employed in the mine or endangering the security of the mine. (2) No person shall enter or be on any licensed facility while intoxicated or under the influence of alcohol or a controlled substance or be in possession of any alcoholic beverage or controlled substance at any licensed facility; provided, however, this shall not apply to private vehicles driven to and from the mine. (3) The licensee shall notify the executive director by the close of the next business day of any certified persons who have been discharged for violation of the company's substance abuse or alcohol abuse policies or who tested positive and failed to complete an employee assistance program.

**352.390. Mine safety, drug testing of minors; Revocation of certificates, Grounds for; Procedure.**—The Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, failure to maintain drug and alcohol free condition of certification, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause. The same procedure provided in subsections (11) and (12) of KRS 351.102 shall apply to the certificate holder.

**304.13-167. Workers compensation insurance, Rate considerations for employers who implement a drug-free workplace program; Credit**—(1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the executive director by an advisory organization designated by the executive director. (2) Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the executive director. (3) A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. These subclassifications and their filing shall be subject to the provisions of this chapter applicable to filings generally. (4) A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. These rating plans and their filing shall be subject to the provisions of this chapter applicable to filings generally. (5) The executive director shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization. (6) The executive director shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers who implement a drug-free workplace program pursuant to administrative regulations adopted by the Office of Workers' Claims in the Department of Labor. The plans shall take effect January 1, 2008, shall be actuarially sound, and shall state the savings anticipated to result from such drug-free workplace programs. The credit shall be at least five percent (5%) unless the executive director determines that five percent (5%) is actuarially unsound. The executive director is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that contain certain criteria for safety programs. The executive



	<p>director shall consult with the executive director of the Office of Workers' Claims in the Department of Labor in setting such criteria. A drug-free workplace credit under this subsection shall not be available to employers who receive a credit under KRS 304.13-412 or Chapter 351.</p>
<p><b>Louisiana</b></p>	<p><b>49:1002. Drug testing; Applicability of chapter; Exemptions from coverage ----</b>A. This Chapter applies to testing for the presence of marijuana, opioids, cocaine, amphetamines, and phencyclidine. B. This Chapter does not preclude or regulate the testing for drugs other than those specified in Subsection A of this Section or other controlled substances as defined in 21 U.S.C. 812, Schedules I, II, III, IV, and alcohol. C. This Chapter shall not apply to treatment centers or physicians using drug testing to diagnose or monitor their patients, nor to any person, firm, or corporation engaged in the production and distribution of gas or electricity that is regulated by the Louisiana Public Service Commission. D. This Chapter shall not apply to drug testing conducted under legal authority including testing of persons in the criminal justice systems, such as arrestees, detainees, probationers, incarcerated persons, or parolees. E. This Chapter shall not apply to drug testing mandated by Federal Executive Order 12564. F. This Chapter shall not apply to drug testing conducted by the National Collegiate Athletic Association (NCAA) or the National Football League (NFL). G. This Chapter shall not apply to any athlete who is currently being drug tested under the auspices of any recognized international, national, regional, or state governing authority. H. This Chapter shall not apply to any person, firm or corporation engaged or employed in the exploration, drilling, and/or production of oil or gas in Louisiana or its territorial waters. I. This Chapter shall not apply to any employer or an employer's agent who uses an on-site screening test to test an employee or prospective employee when there are no negative employment consequences as defined in this Chapter. As used in this Subsection, "on-site screening test" is a screening test which is easily portable and which can be administered in a location outside a laboratory such as a work site or elsewhere, and is certified by the United States Food and Drug Administration (USFDA) for commercial distribution and which meets generally accepted cutoff levels such as those in the mandatory guidelines for federal workplace drug testing programs. J. This Chapter does not preclude an employer or an employer's agent from utilizing a USFDA-cleared specimen testing method that uses a sample as defined in R.S. 49:1001 provided that such sample is processed in a laboratory with a SAMHSA or CAP-FUDT certification using generally accepted cutoff levels as established by the USFDA for the type of sample tested, or by SAMHSA at such time when SAMHSA implements a final rule to regulate the type of sample test. Any sample collected shall be subject to USFDA-cleared immunoassay screening and confirmation testing at a SAMHSA or CAP-FUDT certified laboratory. Such samples that test positive shall be preserved by the laboratory and available for challenge testing at the request of the donor. No sample shall be used to collect or analyze DNA.</p> <p><b>49:1002. Drug testing; Applicability of chapter; Exemptions from coverage ---</b>A. This Chapter applies to testing for the presence of marijuana, opioids, cocaine, amphetamines, and phencyclidine. B. This Chapter does not preclude or regulate the testing for drugs other than those specified in Subsection A of this Section or other controlled substances as defined in 21 U.S.C. 812, Schedules I, II, III, IV, and alcohol. C. This Chapter shall not apply to treatment centers or physicians using drug testing to diagnose or monitor their patients, nor to any person, firm, or corporation engaged in the production and distribution of gas or electricity that is regulated by the Louisiana Public Service Commission. D. This Chapter shall not apply to drug testing conducted under legal authority including testing of persons in the criminal justice systems, such as arrestees, detainees, probationers, incarcerated persons, or parolees. E. This Chapter shall not apply to drug testing mandated by Federal Executive Order 12564. F. This Chapter shall not apply to drug testing conducted by the National Collegiate Athletic Association (NCAA) or the National Football League (NFL). G. This Chapter shall not apply to any athlete who is currently being drug tested under the auspices of any recognized international, national, regional, or state governing authority. H. This Chapter shall not apply to any person, firm or corporation engaged or employed in the exploration, drilling, or production of oil or gas in Louisiana or its territorial waters. The initial cut-off level for marijuana testing of fifty nanograms per milliliter as provided in R.S. 49:1005(B) may be reduced or modified by any person, firm, or corporation engaged in construction, maintenance, or manufacturing at any refining or chemical manufacturing facility. I. This Chapter shall not apply to any employer or an employer's agent who uses an on-site screening test to test an employee or prospective employee when there are no negative employment consequences as defined in this Chapter. As used in this Subsection, "on-site</p>

screening test" is a screening test which is easily portable and which can be administered in a location outside a laboratory such as a work site or elsewhere, and is certified by the United States Food and Drug Administration (USFDA) for commercial distribution and which meets generally accepted cutoff levels such as those in the mandatory guidelines for federal workplace drug testing programs. J. This Chapter does not preclude an employer or an employer's agent from utilizing a USFDA-cleared specimen testing method that uses a sample as defined in R.S. 49:1001 provided that such sample is processed in a laboratory with a SAMHSA or CAP-FUDT certification using generally accepted cutoff levels as established by the USFDA for the type of sample tested, or by SAMHSA at such time when SAMHSA implements a final rule to regulate the type of sample test. Any sample collected shall be subject to USFDA-cleared immunoassay screening and confirmation testing at a SAMHSA or CAP-FUDT certified laboratory. Such samples that test positive shall be preserved by the laboratory and available for challenge testing at the request of the donor. No sample shall be used to collect or analyze DNA.

**49:1005. Use of certified laboratories for drug testing of samples collected.**—A. All drug testing of individuals in residence in the state and all drug testing of samples collected in the state, including territorial waters and any other location to which the laws of Louisiana are applicable, shall be performed in SAMHSA-certified or CAP-FUDT-certified laboratories, if both of the following apply: (1) If, as a result of such testing, mandatory or discretionary negative employment consequences will be rendered to the individual. (2) Drug testing is performed for any or all of the following classes of drugs: marijuana, opioids, cocaine, amphetamines, and phencyclidine. B. Drug testing as provided in this Subsection shall be performed in compliance with the SAMHSA guidelines except as provided in this Chapter or pursuant to statutory or regulatory authority under R.S. 23:1081 et seq. and R.S. 23:1601 et seq. The cut off limits for drug testing shall be in accordance with SAMHSA guidelines with the exception of initial testing for marijuana. The initial cut off level for marijuana shall be no less than fifty nanograms/ML and no more than one hundred nanograms/ML as specified by the employer or the testing entity. The Department of Health and Hospitals shall have the responsibility to adopt the SAMHSA guidelines for purposes of governing drug-testing programs for specimens collected in accordance with this Chapter. The Department of Health and Hospitals shall have the responsibility for adoption of any subsequent revisions of the SAMHSA guidelines as of the initial effective date of this Chapter.

**49:1006. Collection of forensic urine drug specimens.**—A. All collections of urine specimens for drug testing shall be collected, stored, and transported in compliance with the NIDA guidelines, or pursuant to statutory or regulatory authority granted under R.S. 23:1081 et seq. and R.S. 23:1601 et seq. B. (1) All collection of urine specimens shall be collected with regard to privacy of the individual. (2) Direct observation of the individual during collection of the urine specimen may be allowed under any of the following conditions: (a) There is reason to believe that the individual may alter or substitute the specimen to be provided. (b) The individual has provided a urine specimen that falls outside the acceptable temperature range as listed in the NIDA guidelines. (c) The last urine specimen provided by the individual was verified by the medical review officer as being adulterated based upon the determinations of the laboratory. (d) The collection site person observes conduct indicating an attempt to substitute or adulterate the sample. (e) The individual has previously been determined to have a urine specimen positive for one or more of the drugs the testing of which is regulated by this Chapter, and is being tested for purposes of follow-up testing upon or after return to service. (f) The type of drug testing is post-accident or reasonable suspicion/cause. (3) A designated representative of the entity authorizing the drug testing shall review and concur in advance with any decision by a collection site person to obtain a specimen under direct observation. All direct observation shall be conducted by a same gender collection site person. C. Every collection site person shall be responsible for sanitary collection of urine specimens while maintaining privacy, security, and the chain of custody. Every collection site person shall be responsible for the proper disposal of biohazardous waste and dispose of all biohazardous waste in accordance with proper safety procedures. D. The employer may, but is not required to, direct each collection site person to collect split samples. If split samples are collected, they shall be collected according to the following: (1) The donor shall urinate into a collection container, which the collection site person, in the presence of the donor, after the initial examination, pours into two specimen bottles. (2) The first bottle is to be used

for the employer-mandated test, and at a minimum shall contain the quantity specified by the NIDA guidelines. If there is no additional urine available for the second specimen bottle, the first specimen bottle shall nevertheless be processed for testing. (3) Up to sixty ML of the remainder of the urine shall be poured into the second specimen bottle. (4) All requirements of this Part shall be followed with respect to both samples, including the requirement that a copy of the chain of custody form accompany each bottle processed under split sample procedures. (5) The first sample of the split sample collection may be forwarded to an NIDA-certified or a CAP-FUDT-certified laboratory in compliance with the NIDA guidelines for initial and confirmatory testing in compliance with the regulations of this Chapter or pursuant to statutory or regulatory authority under R.S. 23:1081 et seq. or R.S. 23:1601. (6) The second sample may be sealed, labeled, and stored for future use or used for testing for drugs not listed in the regulations of this Chapter. Any specimen collected under split sample procedures must be stored in a secured, refrigerated environment and an appropriate entry made in the chain of custody form. (7) If the test of the first bottle is confirmed positive, and a split sample is collected, the employee may request that the medical review officer direct that the second bottle be tested at the employee's own expense, in an NIDA-certified or CAP-FUDT-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the first bottle. The result of this test is transmitted to the medical review officer without regard to the cutoff values as listed in the NIDA guidelines. The medical review officer shall honor such a request if made within seventy-two hours of the employee's having actual notice that he or she tested positive. (8) Action taken by the employer as the result of a positive drug test such as removal from performing a safety-sensitive function is not stayed pending the result of the second test. (9) If the result of the second test is negative, the medical review officer shall cancel the positive results of the first test. E. All samples collected for drug testing shall be packaged, sealed, labeled, and transported with the proper chain of custody procedures for analysis to an NIDA-certified or CAP-FUDT-certified laboratory in strict accordance with the NIDA guidelines. F. An employer or testing entity conducting drug testing pursuant to this Chapter shall not be required to submit blind samples to an NIDA-certified or CAP-FUDT-certified laboratory.

**49:1007. Review of drug testing results; medical review officer.**—A. All results of drug testing shall be reported directly from the laboratory to a qualified medical review officer as provided in this Section. B. Confirmed positives on pre-employment drug testing may be reviewed by the medical review officer. If the employer chooses not to confirm a positive test result of a pre-employment drug screen test, the employer shall notify the pre-employment applicant of the positive drug screen result and shall offer the applicant the opportunity to pay for confirmation of that test and a review of that confirmation test by a medical review officer. The medical review officer shall review all confirmed positive drug testing results of employees and report such results to the employer in compliance with the NIDA guidelines or pursuant to statutory or regulatory authority granted under R.S. 23:1081 et seq. and R.S. 23:1601 et seq. Negative results need not be reviewed by the medical review officer, and these negative results shall be reported to the appropriate representative of the employee. C. Adulterated specimens shall be reported as such to the medical review officer with clarification as to the specific nature of the adulteration. The medical review officer shall contact the individual who submitted the specimen as outlined in the NIDA guidelines before making a final decision to verify a positive or report an adulteration. D. Employers who have a drug testing program in effect on January 1, 1991 and who annually conduct ten thousand or more drug tests shall not be required to utilize a medical review officer.

**49:1008. Initial testing; screening laboratories; guidelines.**—A. (1) Screening laboratories performing only the initial testing shall be inspected and approved by the bureau of health services financing, health standards section of the Department of Health and Hospitals. In no event shall such inspection be conducted more than once each year. Upon approval, the Department of Health and Hospitals shall issue a certificate to the screening laboratory. As a condition for approval, screening laboratories shall successfully participate in a proficiency testing program for any screened drugs listed in R.S. 49:1002(A), and shall maintain records to assure ongoing quality assurance, quality control, and equipment maintenance. The department shall refuse or revoke the certification of any screening laboratory which is not in compliance with the provisions of this Chapter. (2) The department shall be authorized to impose an inspection fee, not to exceed two hundred fifty dollars per

inspection, to provide for the administrative costs of inspection, approval, and certification. However, the fee shall be charged for only one inspection during any year. (3) The Department of Health and Hospitals shall promulgate rules and regulations relative to the ongoing inspection, approval, and certification of screening laboratories and shall adopt an administrative appeal procedure for any screening laboratory for which certification is refused or revoked. B. Only screening procedures acceptable to the Department of Health and Hospitals shall be used by screening laboratories. C. Screening laboratories shall collect split samples in strict accordance with the provisions of this Chapter. Following collection of split samples, the first sample shall be sealed, labeled, and stored in strict accordance with the NIDA guidelines. The second sample shall be analyzed according to temperature, pH, specific gravity, and initial testing, using procedures that are in accordance with the NIDA guidelines. Specimens shall be examined for adulteration. D. Except in pre-employment drug screening, the specimens that test positive on the initial screening or are adulterated shall be recorded as such and the first sample of the split specimen collection shall be forwarded to an NIDA-certified or a CAP-FUDT-certified laboratory in strict accordance with the NIDA guidelines for initial and confirmatory testing in accordance with this Part. E. Except in pre-employment drug screening, the results of the initial screening drug test may not be used as a basis for rendering permanent mandatory or discretionary consequences to the individual submitting the specimen. F. Laboratory screening personnel shall comply with personnel requirements to provide reasonable assurance of accuracy of test results.

**49:1011.Employee drug testing; rights of the employee** ----.A. Any employee, confirmed positive, upon his written request, shall have the right of access within seven working days to records relating to his drug tests and any records relating to the results of any relevant certification, review, or suspension/revocation-of-certification proceedings. B. An employer may, but shall not be required to, afford an employee whose drug test is certified positive by the medical review officer the opportunity to undergo rehabilitation without termination of employment.

**49:1012.Employee drug testing; responsibility of employer**.—A. All information, interviews, reports, statements, memoranda, or test results received by the employer through its drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. B. No cause of action for defamation of character, libel, slander, or damage to reputation or privacy arises in favor of any person against an employer or testing entity who has established a program of drug or alcohol testing in accordance with this Chapter, unless: (1) The results of that test were disclosed to any person other than the employer or testing entity, an authorized employee or agent of the employer or testing entity, the tested employee, or the tested prospective employee; (2) The information disclosed was based on a false test result or a failure to comply with the provisions of this Chapter; (3) All elements of an action for defamation of character, libel, slander, or damage to reputation or privacy as established by statute or civil law, are satisfied. C. Any provision of this Chapter held to be prohibited by the laws of the state of Louisiana shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Chapter.

**49:1015.Public employee drug testing**.—A. A public employer may require, as a condition of continued employment, samples from his employees to test for the presence of drugs following an accident during the course and scope of his employment, under other circumstances which result in reasonable suspicion that drugs are being used, or as a part of a monitoring program established by the employer to assure compliance with terms of a rehabilitation agreement. B. A public employer may require samples from prospective employees, as a condition of hiring, to test for the presence of drugs. C. A public employer may implement a program of random drug testing of those employees who occupy safety-sensitive or security-sensitive positions. D. Any public employee drug testing shall occur pursuant to a written policy, duly promulgated, and shall comply with the provisions of this Chapter. E. In the event the Louisiana State Racing Commission shall require or conduct drug testing on its employees, agents, and representatives, the Commission shall comply with the provisions of this Part and the Louisiana Administrative Procedure Act as well as seek prior approval of the procedures of the drug testing by the appropriate legislative oversight committee. The failure of the State Racing

Commission to receive the required legislative approval shall negate all test results conducted under the non-approved procedures. Any drug testing program or procedure required or conducted by the State Racing Commission shall be applicable and include the members of the State Racing Commission. F. (1) A public employer shall require samples to test for the presence of drugs, as a condition of hiring, from prospective employees whose principal responsibilities of employment include operating a public vehicle, performing maintenance on a public vehicle, or supervising any public employee who operates or maintains a public vehicle. (2) A public employer shall implement a program of random drug testing of those employees whose principal responsibility is to operate public vehicles, maintain public vehicles, or supervise any public employee who drives or maintains public vehicles. (3)(a) For the purposes of this Subsection, "public vehicle" shall include any motor vehicle, watercraft, aircraft or rail vehicle owned or controlled by the state or by a local governmental subdivision that has adopted an ordinance as provided in Subparagraph (b) of this Paragraph. (b) For purposes of this Subsection, "public employer" shall mean the state and any local governmental subdivision that has adopted an ordinance providing that the subdivision is a public employer for such purpose. The governing authority of any local governmental subdivision may adopt such an ordinance. (4) The provisions of this Subsection shall not be construed so as to supplant any testing program in existence that meets the requirements of the Subsection.

**23:897. Medical examinations, fingerprinting, and drug testing, Requiring employees to pay cost of prohibited; Civil and criminal penalties; Exceptions, Right of reimbursement if employee resigns within 90 working days, Contract allowing for wage withholding.**—A. Except as provided in Subsection K of this Section and in R.S. 23:634(B), it is unlawful for any public or private employer to require any employee or applicant for employment to pay or to in any manner pass on to the applicant or to withhold from an employee's pay the cost of fingerprinting, a medical examination, or a drug test, or the cost of furnishing any records available to the employer or required by the employer as a condition of employment. B. Whoever violates this Section shall be fined not more than one hundred dollars or imprisoned for not more than ninety days, or both. C. (1) Any person violating the provisions of this Section shall be subject, in addition to the criminal penalty provided in Subsection B of this Section, to a civil penalty of up to five hundred dollars. (2) Reasonable litigation expenses may be awarded to the prevailing party of the adjudicatory hearing. "Reasonable litigation expenses" means any expenses, not exceeding seven thousand five hundred dollars, reasonably incurred in prosecuting, opposing, or contesting an agency action, including but not limited to attorney fees, stenographer fees, investigative fees and expenses, witness fees and expenses, and administrative costs. D. For the purpose of imposing civil penalties provided in Subsection C of this Section, each incident where an employee or applicant for employment was required to bear the cost of fingerprinting, a medical examination, or a drug test, or the cost of furnishing records available to the employer and required by the employer shall be considered to be a separate offense. E. Civil penalties for violation of this Section may be imposed by the office of regulatory services only by a ruling of the secretary pursuant to an adjudicatory hearing held in accordance with the Administrative Procedure Act. F. The secretary of the Department of Labor may institute civil proceedings in the Nineteenth Judicial District Court to enforce the department's rulings. The court shall award to the prevailing party reasonable attorney fees and judicial interest on such civil penalties from the date of judgement until paid and all court costs. G. The secretary may institute civil proceedings in the Nineteenth Judicial District Court seeking injunctive relief to restrain and prevent violations of the provisions of this Section or of the rules and regulations adopted under the provisions of this Section. The court shall award reasonable attorney fees and court costs to the prevailing party. H. In addition to the imposition and collection of civil penalties provided in Subsection C of this Section, the secretary is authorized to and shall collect from each employer for reimbursement to each employee or applicant for employment any amount of money charged to an employee or applicant for employment in violation of Subsection A of this Section. I. The secretary is empowered to enforce the civil provisions of this Section and to adopt and promulgate such reasonable rules and regulations and to conduct such investigations as the secretary deems necessary to ensure enforcement of this Section. J. Nothing in this Section shall be interpreted to prevent the collection of fees by a physician or other third party providing services to the employee or employer. K. Notwithstanding any other provision of law, an employer shall have a right of reimbursement from an employee or an applicant who becomes an employee, provided the employee is compensated at a rate equivalent to not less than one

dollar above the existing federal minimum wage and is not a part-time or seasonal employee as defined in R.S. 23:1021, for the costs of such employee's or applicant's preemployment medical examination or drug test if the employee terminates the employment relationship sooner than ninety working days after his first day of work or never reports to work, unless such termination is attributable to a substantial change made to the employment by the employer as applied in Louisiana Employment Security Law. L. Out of the civil penalties collected for violations of this Chapter, expenses incurred in enforcing the provisions of this Chapter may be paid by the department. M. An employer may withhold from the wages of an employee the costs of the preemployment medical examination, drug test, or both provided that all of the provisions of R.S. 23:634(B) and Subsection K of this Section are met and further providing that the employee has signed a contract which fully explains the terms and conditions under which the employer's right of reimbursement is established and authorizing the employer to withhold the cost of such preemployment medical examination, drug test, or both if the employee resigns within ninety working days.

**301. Public Safety Services; Policy; Drug-free workplace**—A. The employees of Public Safety Services are among the state's most valuable resources, and the physical and mental well-being of our employees is necessary for them to properly carry out their responsibilities. Substance abuse causes serious adverse consequences to users, affecting their productivity, health and safety, dependents, and co-workers, as well as the general public. B. The State of Louisiana and Public Safety Services have a long-standing commitment to working toward a drug-free workplace. In order to curb the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees. Further, the Governor of the State of Louisiana issued Executive Order MJF 98-38 providing for the promulgation by executive agencies of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees, pursuant to Louisiana Revised Statute 49:1001, et seq.

**303. Public safety service employees; Drug testing policy; Applicability**.—Public Safety Services fully supports these efforts and is committed to a drug-free workplace. This policy shall apply to all employees of Public Safety Services including appointees and all other persons having an employment relationship with this agency.

**305. Public safety service employees; Drug testing; Definitions—Controlled Substances**—a drug, chemical substance or immediate precursor in Schedules I through V of R.S. 40:964 or Section 202 of the Controlled Substances Act (21 U.S.C. 812). **Designer (Synthetic) Drugs**—those chemical substances that are made in clandestine laboratories where the molecular structure of both legal and illegal drugs is altered to create a drug that is not explicitly banned by federal law. **Employee**—unclassified, classified, and student employees, student interns, and any other person having an employment relationship with this agency, regardless of the appointment type (e.g., full-time, part-time, temporary, restricted, detail, job appointment, etc.). **Illegal Drug**—any drug which is not legally obtainable or which has not been legally obtained, to include prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes or being used by one other than the person for whom prescribed. **Reasonable Suspicion**—belief based upon reliable, objective and articulable facts derived from direct observation of specific physical, behavioral, odorous presence, or performance indicators and being of sufficient import and quantity to lead a prudent person to suspect that an employee is in violation of this policy. **Safety-Sensitive or Security-Sensitive Position**—a position determined to contain duties of such nature that the compelling State interest to keep the incumbent drug-free outweighs the employee's privacy interests. At varying degrees, all Public Safety Services employees, regardless of rank or classification, have access to records that directly or indirectly affect the safety and security of residents of the State of Louisiana (i.e., Criminal Records, Drivers License Records, etc.). For this reason, all positions of Public Safety Services are considered to be "safety-sensitive" or "security-sensitive". Under the Influence—for the purposes of this policy—a drug, chemical substance, or the combination of a drug and/or chemical substance that affects an employee in any detectable manner. The symptoms of influence are not confined to that consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech, or difficulty in maintaining balance. A determination of influence can be established by a professional opinion or a

scientifically valid test. Workplace-any location on agency property including all property, offices, and facilities (including all vehicles and equipment) whether owned, leased, or otherwise used by the agency or by an employee on behalf of the agency in the conduct of its business in addition to any location from which an individual conducts agency business while such business is being conducted.

**307. Public safety service employees; Drug-free workplace policy.**—A. It shall be the policy of Public Safety Services to maintain a drug-free workplace and workforce free of substance abuse. Employees are prohibited from reporting to work or performing work for Public Safety Services with the presence in their bodies of illegal drugs, controlled substances, or designer (synthetic) drugs at or above the initial testing levels and confirmatory testing levels as established in the contract between the State of Louisiana and the official provider of drug testing services. Employees are further prohibited from the illegal use, possession, dispensation, distribution, manufacture, or sale of controlled substances, designer (synthetic) drugs, and illegal drugs, at the work site and while on official state business, on duty or on call for duty. B. To assure maintenance of a drug-free workplace, it shall be the policy of Public Safety Services to implement a program of drug testing, in accordance with Executive Order No. MJF 98-38, R.S. 49:1001, et seq., and all other applicable federal and state laws, as set forth below.

**309. Public safety service employees; Drug testing; Conditions for.**—A. **Reasonable Suspicion:** Any employee shall be required to submit to a drug test if there is reasonable suspicion (as defined in this policy) that the employee is using drugs. 1. **Post Accident.** Each employee involved in an accident that occurs during the course and scope of employment shall be required to submit to a drug test if the accident: a) involves circumstances leading to a reasonable suspicion of the employee's drug use, or, b) results in a fatality. 2. **Rehabilitation Monitoring.** Any employee who is participating in a substance abuse after-treatment program or who has a rehabilitation agreement with the agency following an incident involving substance abuse shall be required to submit to random drug testing. 3. **Pre-employment.** Each prospective employee shall be required to submit to drug screening at the time and place designated by the Human Resource Director following a job offer contingent upon a negative drug-testing result. Pursuant to R.S. 49:1008, a prospective employee who tests positive for the presence of drugs in the initial screening shall be eliminated from consideration of employment. 4. **Safety-Sensitive or Security-Sensitive Positions-Random Testing.** As every Public Safety Services position is considered to be "safety-sensitive" or "security-sensitive", every employee shall be required to submit to drug testing as required by the Appointing Authority, who shall periodically (quarterly) call for a sample of such employees, selected at random by a computer generated random selection process, and require them to report for testing. All such testing shall, if applicable, occur during the selected employee's work schedule.

**311. Public safety service employees; Drug testing; Procedures.**—A. Drug testing pursuant to this policy shall be conducted for the presence of cannabinoids (marijuana metabolites), cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines in accordance with the provisions of R.S. 49:1001, et. seq. Public Safety Services reserves the right to test its employees for the presence of any other illegal drug or controlled substance when there is reasonable suspicion to do so. B. The Human Resource Director and the Deputy Undersecretary shall be involved in any determination that one of the above-named conditions requiring drug testing exists. All recommendations for drug testing must be approved by Public Safety Services. Upon such final determination by the responsible officials, the Human Resource Director shall notify the supervisor of the employee to be tested, who shall immediately notify the employee where and when to report for the testing. C. Testing services shall be performed by a provider chosen by the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws. At a minimum, the testing service shall assure the following. 1. All specimen collections will be performed in accordance with applicable federal and state regulations and guidelines to ensure the integrity of the specimen and the privacy of the donor. The Human Resource Director shall review and concur in advance with any decision by a collection site person to obtain a specimen under direct supervision. All direct observation shall be conducted by a same gender collection site person. 2. Chain of custody forms must be provided to ensure the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition. 3. A Substance Abuse and Mental Health Services Administration (SAMSHA) certified

laboratory shall perform testing. 4. The laboratory shall use a cut-off of 50 ng/ml for a positive finding in testing for cannabinoids. 5. All positives reported by the laboratory must be confirmed by Gas Chromatography/Mass Spectrometry. D. All positive results of a drug-testing shall be reported by the laboratory to a qualified medical review officer.

**313. Public safety service employees; Drug testing; Confidentiality of information**—All information, interviews, reports, statements, memoranda, and/or test results received by Public Safety Services through its drug testing program are confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained to discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant.

**315. Public safety service employees; Drug testing; Compliance; Administration of.**—A. The Deputy Secretary of Public Safety Services is responsible for the overall compliance with this policy and shall submit to the Office of the Governor, through the Commissioner of Administration, a report on this policy and drug testing program, describing progress, the number of employees affected, the categories of testing being conducted, the associated costs for testing, and the effectiveness of the program by November 1 of each year. B. The Human Resource Director is responsible for administering the drug testing program; recommending to the Deputy Secretary when drug testing is appropriate; receiving, acting on, and holding confidential all information received from the testing services provider and from the medical review officer; collecting appropriate information necessary to agency defense in the event of legal challenge; and providing the Deputy Secretary with the data necessary to submit a detail report to the Office of the Governor as described above. C. All supervisory personnel are responsible for reporting to the Human Resource Director any employee they suspect may be under the influence of any illegal drug and/or chemical substance. Supervisory personnel are also responsible for assuring that each employee under their supervision receives a copy of this policy, signs a receipt form, and understands or is given the opportunity to understand and have questions answered about its contents.

**317. Public safety service employees; Drug testing; Policy violation**—Violation of this policy, including refusal to submit to drug testing when properly ordered to do so, will result in actions up to and including termination of employment. Each violation and alleged violation of this policy will be handled on an individual basis, taking into account all data, including the risk to self, fellow employees, and the general public.

**101. Department of Revenue; Drug Free Workplace and Drug Testing.**—A. **Introduction and Purpose** ---1. The employees of the Department of Revenue are among the state's most valuable resources, and the physical and mental well-being of our employees is necessary for them to properly carry out their responsibilities. Substance abuse causes serious adverse consequences to users, affecting their productivity, health and safety, dependents, and co-workers, as well as the general public. 2. The state of Louisiana and the Department of Revenue have a long-standing commitment to working toward a drug-free, alcohol-free workplace. In order to curb the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws that provide for the creation and implementation of drug testing programs for state employees. Further, the Governor of the State of Louisiana issued Executive Orders KBB 2005-08 and 2005-11 providing for the promulgation by executive agencies of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees, pursuant to R.S. 49:1001 et seq. B. **Applicability**---1. This regulation applies to all Department of Revenue employees including appointees and all other persons having an employment relationship with this agency. C. **Definitions--**  
-Controlled Substances—a drug, chemical substance or immediate precursor in Schedules I through V of R.S. 40:964 or Section 202 of the Controlled Substances Act (21 U.S.C. 812). Designer (Synthetic) Drugs—those chemical substances that are made in clandestine laboratories where the molecular structure of both legal and illegal drugs is altered to create a drug that is not explicitly banned by federal law. Employee—unclassified, classified, and student employees, student interns, and any other person having an employment relationship with this agency, regardless of the appointment type (e.g., full time, part time, temporary, restricted, detailed, job appointment, etc.). Illegal Drug—any



drug that is not legally obtainable or that has not been legally obtained, to include prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes or being used by one other than the person for whom prescribed. For purposes of this regulation, alcohol consumption at or above the initial testing levels and confirmatory testing levels as established in the contract between the state of Louisiana and the official provider of drug testing services will classify alcohol as an illegal drug. **Public Vehicle**—any motor vehicle, water craft, air craft or rail vehicle owned or controlled by the state of Louisiana. **Random Testing**—testing randomly performed on employees holding a safety-sensitive or security-sensitive position. The secretary shall periodically call for a sample of such employees, selected at random by a computer generated random selection process. **Reasonable Suspicion**—belief based upon reliable, objective and articulable facts derived from direct observation of specific physical, behavioral, odorous presence, or performance indicators and being of sufficient import and quantity to lead a prudent person to suspect that an employee is in violation of this regulation. **Safety-Sensitive or Security-Sensitive Position**—a position determined by the secretary to contain duties of such nature that the compelling state interest to keep the incumbent drug-free and alcohol-free outweighs the employee's privacy interests. Positions considered as safety-sensitive or security-sensitive are listed in §101.J. These positions were determined with consideration of statutory law, jurisprudence, and the practices of this agency. Examples of safety-sensitive and security-sensitive positions are as follows: a. positions with duties that are required or are authorized to carry a firearm; b. positions with duties that require operation or maintenance of any heavy equipment or machinery, or the supervision of such an employee; c. positions with duties that require the operation or maintenance of a public vehicle, or the supervision of such an employee. **Secretary**—Secretary of the Department of Revenue. **Testing with Cause**—testing performed on employees on the basis of reasonable suspicion, post accident, rehabilitation monitoring, or possession of illegal drugs or drug paraphernalia while in the workplace. **Under the Influence**—for the purposes of this regulation, a drug, chemical substance, or the combination of a drug or chemical substance that affects an employee in any detectable manner. The symptoms or influence are not confined to that consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech, or difficulty in maintaining balance. A determination of influence can be established by a professional opinion or a scientifically valid test. **Workplace**—any location on agency property including all property, offices, and facilities, including all vehicles and equipment, whether owned, leased, or otherwise used by the agency or by an employee on behalf of the agency in the conduct of its business in addition to any location from which an individual conducts agency business while such business is being conducted. **D. Drug-Free Workplace Policy**---1. It shall be the policy of the Department of Revenue to maintain a drug-free, alcohol-free workplace and a workforce free of substance abuse. 2. Employees are prohibited from reporting to work or performing work with the presence in their bodies of illegal drugs, controlled substances, designer (synthetic) drugs, or alcohol at or above the initial testing levels and confirmatory testing levels as established in the contract between the state of Louisiana and the official provider of drug testing services. 3. Employees are further prohibited from the illegal use, possession, dispensation, distribution, manufacture, or sale of controlled substances, designer (synthetic) drugs, illegal drugs, and alcohol at the work site and while on official state business, on duty or on call for duty. **E. Conditions Requiring Drug Tests**---Drug and alcohol testing shall be required under the following conditions. 1. **Reasonable Suspicion**--- Any employee shall be required to submit to a drug and alcohol test if there is reasonable suspicion, as defined in §101.C. Reasonable Suspicion, that the employee is using illegal drugs or is under the influence of alcohol while on duty. 2. **Post Accident**---Each employee involved in an accident that occurs during the course and scope of employment shall be required to submit to a drug and alcohol test if the accident: a. involves circumstances leading to a reasonable suspicion of the employee's drug or alcohol use; or b. results in a fatality. 3. **Rehabilitation Monitoring** ---. Any employee who is participating in a substance abuse after-treatment program or who has a rehabilitation agreement with the agency following an incident involving substance abuse shall be required to submit to periodic drug testing. 4. **Pre-Employment** ---. Each prospective employee shall be required to submit to drug screening at the time and place designated by the Director of the Human Resources following a job offer contingent upon a negative drug-testing result. A prospective employee who tests positive for the presence of drugs in the initial screening or who fails to submit to drug testing shall be eliminated from consideration for employment. Employees transferring to the department from other state agencies without a break in service are exempt from pre-employment testing. **5. Safety-Sensitive and**

**Security-Sensitive Positions** --- a. Appointments and Promotions. Each employee who is offered a safety-sensitive or security-sensitive position as defined in § 101.J shall be required to pass a drug test before being placed in such position, whether through appointment or promotion. All such testing shall, if applicable, occur during the selected employee's work schedule. b. Random Testing. Every employee in a safety-sensitive or security-sensitive position shall be required to submit to drug testing as required by the secretary, who shall periodically call for a sample of such employees, selected at random by a computer-generated random selection process, and require them to report for testing. All such testing shall, if applicable, occur during the selected employee's work schedule. 6. Employees in Possession of Illegal Drugs. Any employee previously found in possession of suspected illegal drugs or drug paraphernalia in the workplace shall be required to submit to subsequent random drug tests. F.

**Drug and Alcohol Testing Procedure** --- 1. Drug testing pursuant to this regulation shall be conducted for the presence of any illegal drugs, including, cannabinoids (marijuana metabolites), cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines in accordance with the provisions of R.S. 49:1001 et seq. The Department of Revenue reserves the right to test its employees for the presence of alcohol, any other illegal drugs, or controlled substances when there is reasonable suspicion to do so. For purposes of this regulation, alcohol consumption at or above the initial testing levels and confirmatory testing levels as established in the contract between the state of Louisiana and the official provider of drug testing services will classify alcohol as an illegal drug. 2. The Director of Human Resources and the secretary shall be involved in any determination that one of the above-named conditions requiring drug and alcohol testing exists. All recommendations for drug testing must be approved by the secretary. Upon final determination by the responsible officials, the Director of the Human Resources shall notify the supervisor of the employee to be tested, and the supervisor shall immediately notify the employee where and when to report for the testing. 3. Testing services shall be performed by a provider chosen by the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws. At a minimum, the testing service shall assure the following. a. All specimen collections will be performed in accordance with applicable federal and state regulations and guidelines to ensure the integrity of the specimen and the privacy of the donor. The Director of Human Resources shall review and concur in advance with any decision by a collection site person to obtain a specimen under direct supervision. All direct observation shall be conducted by a person of the same-sex at the collection site. b. Chain of custody forms must be provided to ensure the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition. c. Testing shall be performed by a Substance Abuse Mental Services Health Administration (SAMSHA) certified laboratory. d. The laboratory shall use a cut-off of 50 ng/ml for a positive finding in testing for cannabinoids. e. The laboratory shall use a concentration cut-off of 0.08 or more for the initial positive finding in testing for alcohol. f. All positives reported by the laboratory must be confirmed by gas chromatography/mass spectrometry. 4. All confirmed positive results of alcohol and drug testing shall be reported by the laboratory to a qualified medical review officer. G. **Confidentiality** ---1. All information, interviews, reports, statements, memoranda, or test results received through this drug testing program are confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. 2. All records regarding this policy shall be maintained by the Director of Human Resources in a secured, confidential file. H. **Responsibilities** --- 1. The secretary is responsible for the overall compliance with this regulation and shall submit to the Office of the Governor, through the Commissioner of Administration, a report on this regulation and drug testing program, describing progress, the number of employees affected, the categories of testing being conducted, the associated costs for testing, and the effectiveness of the program by November 1 of each year. 2. The Director of the Human Resources is responsible for administering the drug and alcohol testing program; recommending to the secretary when drug testing is appropriate; receiving, acting on, and holding confidential all information received from the testing services provider and from the medical review officer; collecting appropriate information necessary to agency defense in the event of legal challenge; and providing the secretary with the data necessary to submit a detailed report to the Office of the Governor as described above. 3. All supervisory personnel are responsible for reporting to the Director of Human Resources any employee they suspect may be under the influence of any illegal drug, alcohol, or chemical substance. Supervisory personnel are also responsible for assuring that each employee under their supervision understands or is given the

opportunity to understand and have questions answered about this regulation's contents. **I. Violation of the Regulation** ---1. All initial screening tests with positive results must be confirmed by a second test with the results reviewed by a medical review officer. a. A breath test resulting in 0.08 or greater alcohol concentration level will be considered an initial positive result. b. If a positive test result occurs, the confirmation test will be performed within 30 minutes, but not less than 15 minutes, of completion of the initial screening test. c. Urine samples will be tested using the split sample method, with a confirmation test performed on the second half of the sample in the event that a positive test result occurs. 2. If the confirmation test produces positive results, the medical review officer will contact the employee/applicant prior to posting the results of the test as positive. a. The employee/applicant will have the opportunity to verify the legitimacy of the result, i.e., producing a valid prescription in his/her name. b. If the employee applicant is able to successfully verify the legitimacy of the positive results, the medical review officer will confirm the result as negative and report the results to the department. c. If the employee is unable to successfully verify the legitimacy of the positive results, the employee shall be subject to disciplinary action up to and including possible termination of employment, as determined by the secretary. 3. Each violation and alleged violation of this regulation will be handled individually, taking into account all data, including the risk to self, fellow employees, and the general public. 4. Any employee whose drug test is confirmed positive may make a written request for access to records relating to his drug tests and any records relating to the results of any relevant certification, review, or suspension/revocation-of-certification proceedings within seven working days. 5. The secretary may, but shall not be required to, allow an employee whose drug test is certified positive by the medical review officer the opportunity to undergo rehabilitation without termination of employment, subject to the employee complying with the following conditions. a. The employee must meet with an approved chemical abuse counselor for a substance abuse evaluation. b. The employee must release the substance abuse evaluation before returning to work. c. The employee shall be screened on a periodic basis for not less than 12 months nor more than 60 months. d. The employee will be responsible for costs associated with follow-up testing, return to duty testing, counseling and any other recommended treatment. 6. Positive post accident or return to duty tests will result in the employee's immediate dismissal. 7. Any employee who refuses to submit to a urine test for the presence of illegal drugs or a breath test for the presence of alcohol shall be subject to the consequences of a positive test. 8. In the event that a current or prospective employee receives a confirmed positive test result, the employee may challenge the test results within 72 hours of actual notification. a. The employee's challenge will not prevent the employee from being placed on suspension pending the investigation until the challenge is resolved. b. The employee may submit a written explanation of the reason for the positive test result to the medical review officer. c. Employees who are on legally prescribed and obtained medication for a documented illness, injury or ailment will be eligible for continued employment upon receiving clearance from the medical review officer. 9. In the event that a current or prospective employee remains unable to provide a sufficient urine specimen or amount of breath, the collector or Breath Alcohol Technician (BAT) must discontinue testing and notify the Director of Human Resources of their actions. a. In both instances, whether the discrepancy is an insufficient urine specimen or amount of breath, the Director of Human Resources shall promptly inform the secretary. b. The secretary shall then direct the employees to have a medical evaluation, at the expense of the Department of Revenue, by a licensed physician who possesses expertise in the medical issue surrounding the failure to provide a sufficient specimen. c. This medical evaluation must be performed within five working days after the secretary is notified of the employee's inability to provide a sufficient specimen. d. The physician shall provide the secretary with a report of his/her conclusions as to whether the employee's inability to provide a sufficient urine specimen or amount of breath is genuine. e. If the physician determines that the employee's inability to provide a sufficient urine specimen or amount of breath is not genuine, the employees will be subject to the consequences of a positive test. **J. Safety-Sensitive or Security-Sensitive Positions to be Randomly Drug Tested** ---1. All candidates for the following positions are required to pass a drug test before being placed in the position, whether through appointment or promotion and employees who occupy these positions are subject to random drug/alcohol testing.

- a. Alcohol Beverage Control Investigator Supervisor
- b. Alcohol Beverage Control Investigator
- c. Alcohol Beverage Control Manager

- d. Alcohol Beverage Control Staff Officer
- e. Alcohol Beverage Control Special Investigator
- f. Alcohol and Tobacco Control Agent 1-6
- g. Alcohol and Tobacco Control Commissioner
- h. Alcohol and Tobacco Control Deputy Commissioner
- i. Alcohol and Tobacco Control Financial Investigator 1-2
- j. Alcohol and Tobacco Control Special Investigator 1-2
- k. Alcohol and Tobacco Control Specialist
- l. Special Investigation Division—Assistant Director
- m. Special Investigations Division—Director
- n. Special Investigations Division—Revenue Agent 3

**E.O. KBB 05-08 Drug testing, state employees—SECTION 1:** A. All executive departments and all other agencies, boards, commissions, and entities of state government in the executive branch over which the governor has appointing authority or, as chief executive officer of the state, has general executive authority, which are not authorized by the Louisiana Constitution of 1974, as amended, or legislative act to manage and supervise their own system, (hereafter "executive agency") shall promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees, pursuant to R.S.49:1001 et seq., as set forth in this Order. B. All executive departments which operate under the authority of another statewide elected official or which are authorized by the Louisiana Constitution of 1974, as amended, or legislative act to manage and supervise its own system, (hereafter "executive agency") are requested to promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees pursuant to R.S. 49:1001, et seq., as set forth in this Order. **SECTION 2:** A. The appointing authority of each executive agency shall duly promulgate a written policy in compliance with R.S. 49:1001 et seq., which at a minimum mandates drug testing of an employee or appointee (hereafter "employee") or a prospective employee or prospective appointee (hereafter "prospective employee") as follows: 1. when individualized, reasonable suspicion exists of an employee's drug use; 2. following an accident that occurs during the course and scope of an employee's employment that: a) involves circumstances leading to a reasonable suspicion of the employee's drug use; b) results in a fatality; or c) results in or causes the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5); 3. randomly, as a part of a monitoring program established by the executive agency to assure compliance with terms of a rehabilitation agreement; 4. prior to hiring or appointing a prospective employee, except employees transferring from one executive agency to another without a lapse in service; 5. prior to promoting an employee to a safety-sensitive or security-sensitive position or to a higher safety-sensitive or security-sensitive position; and 6. randomly, for all employees in safety-sensitive or security-sensitive positions. B. The appointing authority of each executive agency shall determine which positions within their agency, if any, are "safety-sensitive or security-sensitive positions", by considering statutory law, jurisprudence, the practices of the executive agency, and the following non-exclusive list of examples of safety-sensitive and/or security-sensitive positions: 1. positions with duties that may require or authorize the safety inspection of a structure; 2. positions with duties that may require or authorize access to a prison or an incarcerated individual; 3. positions with duties that may require or authorize carrying a firearm; 4. positions with duties that may allow access to controlled substances (drugs); 5. positions with duties that may require or authorize inspecting, handling, or transporting hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5); 6. positions with duties that may require or authorize any responsibility over power plant equipment; 7. positions with duties that may require instructing or supervising any person to operate or maintain, or that may require or authorize operating or maintaining, any heavy equipment or machinery; and 8. positions with duties that may require or authorize the operation or maintenance of a public vehicle, or the supervision of such an employee. C. Prior to the appointing authority of an executive agency promulgating its drug testing policy regarding safety-sensitive and/or security-sensitive positions, the appointing authority shall consult with the Louisiana Department of Justice. **SECTION 3:** A. No drug testing of an employee or a prospective employee shall occur in the absence of a duly promulgated written policy which is in full compliance with the provisions of R.S. 49:1001, et seq. B. Any employee drug testing program in existence on the effective date of this Order shall not be supplanted by the provisions of this Order, but

shall be supplemented, where approximate, in accordance with the provisions of this Order and R.S. 49:1001, et seq. **SECTION 4:** All information, interviews, reports, statements, memoranda, and/or test results received by the executive agency through its drug testing program are confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. **SECTION 5:** A. Pursuant to R.S. 49:1011, an executive agency may, but is not required to, afford an employee whose drug test result is certified positive by the medical review officer, the opportunity to undergo rehabilitation without termination of employment. B. Pursuant to R.S. 49:1008, if a prospective employee tests positive for the presence of drugs in the initial drug screening, the positive drug test result shall be the cause of the prospective employee's elimination from consideration for employment or appointment. **SECTION 6:** Each executive agency shall procure employee drug testing services through the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws. **SECTION 7:** Each executive agency shall submit to the Office of the Governor, through the Commissioner of Administration, a report on its written policy and drug testing programs, describing the progress of its programs, the number of employees affected by the programs, the categories of testing being conducted, the associated costs of testing, and the effectiveness of the programs, by December 1, 2005. Each executive agency shall annually update its report by December 1. **SECTION 8:** All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed (or requested pursuant to Subsection 1B) to cooperate with the implementation of the provisions in this Order. **SECTION 9:** This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

**E.O. KBB 2005-1; Drug testing, state employees.—SECTION 1:** Section 3 of Executive Order No. KBB 2005-8, issued on March 18, 2005, is amended as follows: A. No drug testing of an employee or a prospective employee shall occur in the absence of a duly promulgated written policy which is in full compliance with the provisions of R.S. 49:1001, et seq. B. Any employee drug testing program in existence on the effective date of this Order shall not be supplanted by the provisions of this Order, but shall be supplemented, where appropriate, in accordance with the provisions of this Order and R.S. 49:1001, et seq. **SECTION 2:** All other sections, subsections, and paragraphs of Executive Order No. KBB 2005-8 shall remain in full force and effect. **SECTION 3:** This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

**E.O. BJ 08-69; State Employee Drug Testing Policy—SECTION 1:** A. All executive departments and all other agencies, boards, commissions, and entities of state government in the executive branch over which the governor has appointing authority or, as chief executive officer of the state, has general executive authority, which are not authorized by the Louisiana Constitution of 1974, as amended, or legislative act to manage and supervise their own system, (hereafter “executive agency”) shall promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees, pursuant to R.S. 49:1001, et seq., as set forth in this Order. B. All executive departments which operate under the authority of another statewide elected official or which are authorized by the Louisiana Constitution of 1974, as amended, or legislative act to manage and supervise its own system, (hereafter “executive agency”) are requested to promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees pursuant to R.S. 49:1001, et seq., as set forth in this Order. **SECTION 2:** A. The appointing authority of each executive agency shall duly promulgate a written policy in compliance with R.S. 49:1001, et seq., which at a minimum mandates drug testing of an employee or appointee (hereafter “employee”) or a prospective employee or prospective appointee (hereafter “prospective employee”) as follows: 1. When individualized, reasonable suspicion exists of an employee's drug use; 2. Following an accident that occurs during the course and scope of an employee's employment that a) involves circumstances leading to a reasonable suspicion of the employee's drug use; b) results in a fatality; or c) results in or causes the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5); 3. Randomly, as a part of a monitoring program established by the executive agency to assure compliance with terms of a rehabilitation agreement; 4.

	<p>Prior to hiring or appointing a prospective employee, except employees transferring from one executive agency to another without a lapse in service; 5. Prior to promoting an employee to a safety-sensitive or security-sensitive position or to a higher safety-sensitive or security-sensitive position; and 6. Randomly, for all employees in safety-sensitive or security-sensitive positions. B. The appointing authority of each executive agency shall determine which positions within their agency, if any, are “safety-sensitive or security-sensitive positions,” by considering statutory law, jurisprudence, the practices of the executive agency, and the following non-exclusive list of examples of safety-sensitive and/or security-sensitive positions: 1. Positions with duties that may require or authorize the safety inspection of a structure; 2. Positions with duties that may require or authorize access to a prison or an incarcerated individual; 3. Positions with duties that may require or authorize carrying a firearm; 4. Positions with duties that may allow access to controlled substances (drugs); 5. Positions with duties that may require or authorize inspecting, handling, or transporting hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5); 6. Positions with duties that may require or authorize any responsibility over power plant equipment; 7. Positions with duties that may require instructing or supervising any person to operate or maintain, or that may require or authorize operating or maintaining, any heavy equipment or machinery; and 8. Positions with duties that may require or authorize the operation or maintenance of a public vehicle, or the supervision of such an employee. C. Prior to the appointing authority of an executive agency promulgating its drug testing policy regarding safety-sensitive and/or security-sensitive positions, the appointing authority shall consult with the Louisiana Department of Justice. <b>SECTION 3:</b> A. No drug testing of an employee or a prospective employee shall occur in the absence of a duly promulgated written policy which is in full compliance with the provisions of R.S. 49:1001, et seq. B. Any employee drug testing program in existence on the effective date of this Order shall not be supplanted by the provisions of this Order, but shall be supplemented, where appropriate, in accordance with the provisions of this Order and R.S. 49:1001, et seq. <b>SECTION 4:</b> All information, interviews, reports, statements, memoranda, and/or test results received by the executive agency through its drug testing program are confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. <b>SECTION 5:</b> A. Pursuant to R.S. 49:1011, an executive agency may, but is not required to, afford an employee whose drug test result is certified positive by the medical review officer, the opportunity to undergo rehabilitation without termination of employment. B. Pursuant to R.S. 49:1008, if a prospective employee tests positive for the presence of drugs in the initial drug screening, the positive drug test result shall be the cause of the prospective employee's elimination from consideration for employment or appointment. <b>SECTION 6:</b> Each executive agency shall procure employee drug testing services through the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws. <b>SECTION 7:</b> Each executive agency shall submit to the Office of the Governor, through the commissioner of the Division of Administration, a report on its written policy and drug testing programs, describing the progress of its programs, the number of employees affected by the programs, the categories of testing being conducted, the associated costs of testing, and the effectiveness of the programs, by February 1, 2009. Each executive agency shall annually update its report by December 1. <b>SECTION 8:</b> All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed (or requested pursuant to Subsection 1B) to cooperate with the implementation of the provisions in this Order. <b>SECTION 9:</b> his Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.</p>
<p><b>Maine</b></p>	<p><b>683 Procedures.</b>—No employer may require, request or suggest that any employee or applicant submit to a substance abuse test except in compliance with this section. All actions taken under a substance abuse testing program shall comply with this subchapter, rules adopted under this subchapter and the employer's written policy approved under section 686. 1. <b>Employee assistance program required.</b> Before establishing any substance abuse testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program. A. The employer may meet this requirement by participating in a cooperative employee assistance program that serves the employees of more than one employer. B. The employee assistance program must be certified by the Office of Substance Abuse under rules adopted pursuant to section 687. The rules must ensure that the employee assistance programs have the necessary personnel, facilities and</p>

procedures to meet minimum standards of professionalism and effectiveness in assisting employees.

2. **Written policy.** Before establishing any substance abuse testing program, an employer must develop or, as required in section 684, subsection 3, paragraph C, must appoint an employee committee to develop a written policy in compliance with this subchapter providing for, at a minimum:

A. The procedure and consequences of an employee's voluntary admission of a substance abuse problem and any available assistance, including the availability and procedure of the employer's employee assistance program;

B. **When substance abuse testing may occur.** The written policy must describe: (1) Which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing under section 684, subsection 3. For applicant testing and probable cause testing of employees, an employer may designate that all positions are subject to testing; and (2) The procedure to be followed in selecting employees to be tested on a random or arbitrary basis under section 684, subsection 3;

C. **The collection of samples.** (1) The collection of any sample for use in a substance abuse test must be conducted in a medical facility and supervised by a licensed physician or nurse. A medical facility includes a first aid station located at the work site. (2) An employer may not require an employee or applicant to remove any clothing for the purpose of collecting a urine sample, except that: (a) An employer may require that an employee or applicant leave any personal belongings other than clothing and any unnecessary coat, jacket or similar outer garments outside the collection area; or (b) If it is the standard practice of an off-site medical facility to require the removal of clothing when collecting a urine sample for any purpose, the physician or nurse supervising the collection of the sample in that facility may require the employee or applicant to remove their clothing. (3) No employee or applicant may be required to provide a urine sample while being observed, directly or indirectly, by another individual. (4) The employer may take additional actions necessary to ensure the integrity of a urine sample if the sample collector or testing laboratory determines that the sample may have been substituted, adulterated, diluted or otherwise tampered with in an attempt to influence test results. The Department of Health and Human Services shall adopt rules governing when those additional actions are justified and the scope of those actions. These rules may not permit the direct or indirect observation of the collection of a urine sample. If an employee or applicant is found to have twice substituted, adulterated, diluted or otherwise tampered with the employee's or applicant's urine sample, as determined under the rules adopted by the department, the employee or applicant is deemed to have refused to submit to a substance abuse test. (5) If the employer proposes to use the type of screening test described in section 682, subsection 7, paragraph A, subparagraph (1), the employer's policy must include: a) Procedures to ensure the confidentiality of test results as required in section 685, subsection 3; and (b) Procedures for training persons performing the test in the proper manner of collecting samples and reading results, maintaining a proper chain of custody and complying with other applicable provisions of this subchapter;

D. The storage of samples before testing sufficient to inhibit deterioration of the sample;

E. The chain of custody of samples sufficient to protect the sample from tampering and to verify the identity of each sample and test result;

F. The substances of abuse to be tested for;

G. The cutoff levels for both screening and confirmation tests at which the presence of a substance of abuse in a sample is considered a positive test result. (1) Cutoff levels for confirmation tests for marijuana may not be lower than 15 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples. (2) The Department of Health and Human Services shall adopt rules under section 687 regulating screening and confirmation cutoff levels for other substances of abuse, including those substances tested for in blood samples under subsection 5, paragraph B, to ensure that levels are set within known tolerances of test methods and above mere trace amounts. An employer may request that the Department of Health and Human Services establish a cutoff level for any substance of abuse for which the department has not established a cutoff level. (3) Notwithstanding subparagraphs (1) and (2), if the Department of Health and Human Services does not have established cutoff levels or procedures for any specific federally recognized substance abuse test, the minimum cutoff levels and procedures that apply are those set forth in the Federal Register, Volume 69, No. 71, sections 3.4 to 3.7 on pages 19697 and 19698;

H. The consequences of a confirmed positive substance abuse test result;

I. The consequences for refusal to submit to a substance abuse test;

J. Opportunities and procedures for rehabilitation following a confirmed positive result;

K. A procedure under which an employee or applicant who receives a confirmed positive result may appeal and contest the accuracy of that result. The policy must include a mechanism that provides an opportunity to appeal at no cost to the appellant; and

L. Any other matters required by rules adopted by the Department of Labor under section 687. An employer must consult

with the employer's employees in the development of any portion of a substance abuse testing policy under this subsection that relates to the employees. The employer is not required to consult with the employees on those portions of a policy that relate only to applicants. The employer shall send a copy of the final written policy to the Department of Labor for review under section 686. The employer may not implement the policy until the Department of Labor approves the policy. The employer shall send a copy of any proposed change in an approved written policy to the Department of Labor for review under section 686. The employer may not implement the change until the Department of Labor approves the change.

**3. Copies to employees and applicants.** The employer shall provide each employee with a copy of the written policy approved by the Department of Labor under section 686 at least 30 days before any portion of the written policy applicable to employees takes effect. The employer shall provide each employee with a copy of any change in a written policy approved by the Department of Labor under section 686 at least 60 days before any portion of the change applicable to employees takes effect. The Department of Labor may waive the 60-day notice for the implementation of an amendment covering employees if the amendment was necessary to comply with the law or if, in the judgment of the department, the amendment promotes the purpose of the law and does not lessen the protection of an individual employee. If an employer intends to test an applicant, the employer shall provide the applicant with a copy of the written policy under subsection 2 before administering a substance abuse test to the applicant. The 30-day and 60-day notice periods provided for employees under this subsection do not apply to applicants.

**4. Consent forms prohibited.** An employer may not require, request or suggest that any employee or applicant sign or agree to any form or agreement that attempts to: A. Absolve the employer from any potential liability arising out of the imposition of the substance abuse test; or B. Waive an employee's or applicant's rights or eliminate or diminish an employer's obligations under this subchapter except as provided in subsection 4-A. Any form or agreement prohibited by this subsection is void.

**4-A. Waivers for temporary employment.** An employment agency, as defined in section 611, may request a written waiver for a temporary placement from an individual already in its employ or on a roster of eligibility as long as the client company has an approved substance abuse testing policy and the individual has not been assigned work at the client company in the 30 days previous to the request. The waiver is only to allow a test that might not otherwise be allowed under this subchapter. The test must otherwise comply with the standards of this subchapter and the employment agency's approved policy regarding applicant testing. The agency may not take adverse action against the individual for refusal to sign a waiver.

**5. Right to obtain other samples.** At the request of the employee or applicant at the time the test sample is taken, the employer shall, at that time: A. Segregate a portion of the sample for that person's own testing. Within 5 days after notice of the test result is given to the employee or applicant, the employee or applicant shall notify the employer of the testing laboratory selected by the employee or applicant. This laboratory must comply with the requirements of this section related to testing laboratories. When the employer receives notice of the employee or applicant's selection, the employer shall promptly send the segregated portion of the sample to the named testing laboratory, subject to the same chain of custody requirements applicable to testing of the employer's portion of the sample. The employee or applicant shall pay the costs of these tests. Payment for these tests may not be required earlier than when notice of the choice of laboratory is given to the employer; and B. In the case of an employee, have a blood sample taken from the employee by licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Health and Human Services to draw blood samples. The employer shall have this sample tested for the presence of alcohol or marijuana metabolites, if those substances are to be tested for under the employer's written policy. If the employee requests that a blood sample be taken as provided in this paragraph, the employer may not test any other sample from the employee for the presence of these substances.

(1) The Department of Health and Human Services may identify, by rules adopted under section 687, other substances of abuse for which an employee may request a blood sample be tested instead of a urine sample if the department determines that a sufficient correlation exists between the presence of the substance in an individual's blood and its effect upon the individual's performance.

(2) No employer may require, request or suggest that any employee or applicant provide a blood sample for substance abuse testing purposes nor may any employee conduct a substance abuse test upon a blood sample except as provided in this paragraph.

(3) Applicants do not have the right to require the employer to test a blood sample as provided in this paragraph.

**5-A. Point of collection screening test.** Except as provided in this subsection, all provisions of this subchapter regulating screening tests apply to noninstrumented



point of collection test devices described in section 682, subsection 7, paragraph A, subparagraph (1). A. A noninstrumented point of collection test described in section 682, subsection 7, paragraph A, subparagraph (1) may be performed at the point of collection rather than in a laboratory. Subsections 6 and 7 and subsection 8, paragraphs A to C do not apply to such screening tests. Subsection 5 applies only to a sample that results in a positive test result. B. Any sample that results in a negative test result must be destroyed. Any sample that results in a positive test result must be sent to a qualified testing laboratory consistent with subsections 6 to 8 for confirmation testing. C. A person who performs a point of collection screening test or a confirmation test may release the results of that test only as follows. (1) For a point of collection screening test that results in a preliminary positive or negative test result, the person performing the test shall release the test result to the employee who is the subject of the test immediately. (2) For a point of collection screening test that results in a preliminary positive test result, the person performing the test may not release the test result to the employer until after the result of the confirmation test has been determined. (3) For a point of collection screening test that results in a preliminary negative test result, the person performing the test may not release the test result to the employer until after the result of a confirmation test would have been determined if one had been performed. (4) For a confirmation test, the person performing the test shall release the result immediately to the employee who is the subject of the test and to the employer.

**6. Qualified testing laboratories required.** No employer may perform any substance abuse test administered to any of that employer's employees. An employer may perform screening tests administered to applicants if the employer's testing facilities comply with the requirements for testing laboratories under this subsection. Except as provided in subsection 5-A, any substance abuse test administered under this subchapter must be performed in a qualified testing laboratory that complies with this subsection. A. [Deleted]. B. The laboratory must have written testing procedures and procedures to ensure clear chain of custody. C. The laboratory must demonstrate satisfactory performance in the proficiency testing program of the National Institute on Drug Abuse, the College of American Pathology or the American Association for Clinical Chemistry. D. The laboratory must comply with rules adopted by the Department of Health and Human Services under section 687. These rules shall ensure that: (1) The laboratory possesses all licenses or certifications that the department finds necessary or desirable to ensure reliable and accurate test results; (2) The laboratory follows proper quality control procedures, including, but not limited to: (a) The use of internal quality controls during each substance abuse test conducted under this subchapter, including the use of blind samples and samples of known concentrations which are used to check the performance and calibration of testing equipment; (b) The internal review and certification process for test results, including the qualifications of the person who performs that function in the testing laboratory; and (c) Security measures implemented by the testing laboratory; and (3) Other necessary and proper actions are taken to ensure reliable and accurate test results.

**7. Testing procedure.** A testing laboratory shall perform a screening test on each sample submitted by the employer for only those substances of abuse that the employer requests to be identified. If a screening test result is negative, no further test may be conducted on that sample. If a screening test result is positive, a confirmation test shall be performed on that sample. A testing laboratory shall retain all confirmed positive samples for one year in a manner that will inhibit deterioration of the samples and allow subsequent retesting. All other samples shall be disposed of immediately after testing.

**8. Laboratory report of test results.** This subsection governs the reporting of test results. A. A laboratory report of test results shall, at a minimum, state: (1) The name of the laboratory that performed the test or tests; (2) Any confirmed positive results on any tested sample. (a) Unless the employee or applicant consents, test results shall not be reported in numerical or quantitative form but shall state only that the test result was positive or negative. This division does not apply if the test or the test results become the subject of any grievance procedure, administrative proceeding or civil action. (b) A testing laboratory and the employer must ensure that an employee's unconfirmed positive screening test result cannot be determined by the employer in any manner, including, but not limited to, the method of billing the employer for the tests performed by the laboratory and the time within which results are provided to the employer. This division does not apply to test results for applicants; (3) The sensitivity or cutoff level of the confirmation test; and (4) Any available information concerning the margin of accuracy and precision of the test methods employed. The report shall not disclose the presence or absence of evidence of any physical or mental condition or of any substance other than the specific substances of abuse that the employer requested to be identified. A testing laboratory shall retain records of confirmed positive results in a numerical or

quantitative form for at least 2 years. B. The employer shall promptly notify the employee or applicant tested of the test result. Upon request of an employee or applicant, the employer shall promptly provide a legible copy of the laboratory report to the employee or applicant. Within 3 working days after notice of a confirmed positive test result, the employee or applicant may submit information to the employer explaining or contesting the results. C. The testing laboratory shall send test reports for samples segregated at an employee's or applicant's request under subsection 5, paragraph A, to both the employer and the employee or applicant tested. D. Every employer whose policy is approved by the Department of Labor under section 686 shall annually send to the department a compilation of the results of all substance abuse tests administered by that employer in the previous calendar year. This report shall provide separate categories for employees and applicants and shall be presented in statistical form so that no person who was tested by that employer can be identified from the report. The report shall include a separate category for any tests conducted on a random or arbitrary basis under section 684, subsection 3. 9. Costs. The employer shall pay the costs of all substance abuse tests which the employer requires, requests or suggests that an employee or applicant submit. Except as provided in paragraph A, the employee or applicant shall pay the costs of any additional substance abuse tests. Costs of a substance abuse test administered at the request of an employee under subsection 5, paragraph B, shall be paid: A. By the employer if the test results are negative for all substances of abuse tested for in the sample; and B. By the employee if the test results in a confirmed positive result for any of the substances of abuse tested for in the sample. 10. Limitation on use of tests. An employer may administer substance abuse tests to employees or applicants only for the purpose of discovering the use of any substance of abuse likely to cause impairment of the user or the use of any scheduled drug. No employer may have substance abuse tests administered to an employee or applicant for the purpose of discovering any other information. 11. Rules. The Department of Health and Human Services shall adopt any rules under section 687 regulating substance abuse testing procedures that it finds necessary or desirable to ensure accurate and reliable substance abuse testing and to protect the privacy rights of employees and applicants.

**684. Employee and applicant testing; Types of tests, Grounds for.**—1. Testing of applicants. An employer may require, request or suggest that an applicant submit to a substance abuse test only if: A. The applicant has been offered employment with the employer; or B. The applicant has been offered a position on a roster of eligibility from which applicants will be selected for employment. The number of persons on this roster of eligibility may not exceed the number of applicants hired by that employer in the preceding 6 months. The offer of employment or offer of a position on a roster of eligibility may be conditioned on the applicant receiving a negative test result. 2. **Probable cause testing of employees.** An employer may require, request or suggest that an employee submit to a substance abuse test if the employer has probable cause to test the employee. A. The employee's immediate supervisor, other supervisory personnel, a licensed physician or nurse, or the employer's security personnel shall make the determination of probable cause. B. The supervisor or other person must state, in writing, the facts upon which this determination is based and provide a copy of the statement to the employee. 3. **Random or arbitrary testing of employees.** In addition to testing employees on a probable cause basis under subsection 2, an employer may require, request or suggest that an employee submit to a substance abuse test on a random or arbitrary basis if: A. The employer and the employee have bargained for provisions in a collective bargaining agreement, wither before or after the effective date of this subchapter, that provide for random or arbitrary testing of employees. A random or arbitrary testing program that would result from implementation of an employer's last best offer is not considered a provision bargained for in a collective bargaining agreement for purposes of this section; B. The employee works in a position the nature of which would create an unreasonable threat to the health or safety of the public or the employee's coworkers if the employee were under the influence of a substance of abuse. It is the intent of the Legislature that the requirements of this paragraph be narrowly construed; or C. The employer has established a random or arbitrary testing program under this paragraph that applies to all employees, except as provided in subparagraph (4), regardless of position. (1) An employer may establish a testing program under this paragraph only if the employer has 50 or more employees who are not covered by a collective bargaining agreement. (2) The written policy required by section 683, subsection 2 with respect to a testing program under this paragraph must be developed by a committee of at least 10 of the employer's employees. The employer shall appoint members to the committee from a cross-section of employees who are eligible

to be tested. The committee must include a medical professional who is trained in procedures for testing for substances of abuse. If no such person is employed by the employer, the employer shall obtain the services of such a person to serve as a member of the committee created under this subparagraph. (3) The written policy developed under subparagraph (2) must also require that selection of employees for testing be performed by a person or entity not subject to the employer's influence, such as a medical review officer. Selection must be made from a list, provided by the employer, of all employees subject to testing under this paragraph. The list may not contain information that would identify the employee to the person or entity making the selection. (4) Employees who are covered by a collective bargaining agreement are not included in testing programs pursuant to this paragraph unless they agree to be included pursuant to a collective bargaining agreement as described under paragraph A. (5) Before initiating a testing program under this paragraph, the employer must obtain from the Department of Labor approval of the policy developed by the employee committee, as required in section 686. If the employer does not approve of the written policy developed by the employee committee, the employer may decide not to submit the policy to the department and not to establish the testing program. The employer may not change the written policy without approval of the employee committee. (6) The employer may not discharge, suspend, demote, discipline or otherwise discriminate with regard to compensation or working conditions against an employee for participating or refusing to participate in an employee committee created pursuant to this paragraph. 4. **Testing while undergoing rehabilitation or treatment.** While the employee is participating in a substance abuse rehabilitation program either as a result of voluntary contact with or mandatory referral to the employer's employee assistance program or after a confirmed positive result as provided in section 685, subsection 2, paragraphs B and C, substance abuse testing may be conducted by the rehabilitation or treatment provider as required, requested or suggested by that provider. A. Substance abuse testing conducted as part of such a rehabilitation or treatment program is not subject to the provisions of this subchapter regulating substance abuse testing. B. An employer may not require, request or suggest that any substance abuse test be administered to any employee while the employee is undergoing such rehabilitation or treatment, except as provided in subsections 2 and 3. C. The results of any substance abuse test administered to an employee as part of such a rehabilitation or treatment program may not be released to the employer. 5. **Testing upon return to work.** If an employee who has received a confirmed positive result returns to work with the same employer, whether or not the employee has participated in a rehabilitation program under section 685, subsection 2, the employer may require, request or suggest that the employee submit to a subsequent substance abuse test anytime between 90 days and one year after the date of the employee's prior test. A test may be administered under this subsection in addition to any tests conducted under subsections 2 and 3. An employer may require, request or suggest that an employee submit to a substance abuse test during the first 90 days after the date of the employee's prior test only as provided in subsections 2 and 3.

**685. Substance abuse tests, action taken.**—Action taken by an employer on the basis of a substance abuse test is limited as provided in this section. 1. **Before receipt of test results.** An employer may suspend an employee with full pay and benefits or may transfer the employee to another position with no reduction in pay or benefits while awaiting an employee's test results. 2. Use of confirmation test results. This subsection governs an employer's use of confirmed positive results and an employee's or applicant's refusal to submit to a test requested or required by an employer in compliance with this subchapter. A. Subject to any limitation of the Maine Human Rights Act 4 or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a test as a factor in any of the following decisions: (1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility; (2) Discharge of an employee; (3) Discipline of an employee; or (4) Change in the employee's work assignment. A-1. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive result except in accordance with the employee provisions of the employer's approved policy. B. Before taking any action described in paragraph A in the case of an employee who receives an initial confirmed positive result, an employer shall provide the employee with an opportunity to participate for up to 6 months in a rehabilitation program designed to enable the employee to avoid future use of a substance of abuse and to participate in an employee assistance program, if the employer has such a program. The employer may take any action described in paragraph A if the employee receives a subsequent

confirmed positive result from a test administered by the employer under this subchapter. C. If the employee chooses not to participate in a rehabilitation program under this subsection, the employer may take any action described in paragraph A. If the employee chooses to participate in a rehabilitation program, the following provisions apply. (1) If the employer has an employee assistance program that offers counseling or rehabilitation services, the employee may choose to enter that program at the employer's expense. If these services are not available from an employer's employee assistance program or if the employee chooses not to participate in that program, the employee may enter a public or private rehabilitation program. (a) Except to the extent that costs are covered by a group health insurance plan, the costs of the public or private rehabilitation program must be equally divided between the employer and employee if the employer has more than 20 full-time employees. This requirement does not apply to municipalities or other political subdivisions of the State or to any employer when the employee is tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. 5 If necessary, the employer shall assist in financing the cost share of the employee through a payroll deduction plan. (b) Except to the extent that costs are covered by a group health insurance plan, an employer with 20 or fewer full-time employees, a municipality or other political subdivision of the State is not required to pay for any costs of rehabilitation or treatment under any public or private rehabilitation program. An employer is not required to pay for the costs of rehabilitation if the employee was tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. (2) No employer may take any action described in paragraph A while an employee is participating in a rehabilitation program, except as provided in subparagraph (2-A) and except that an employer may change the employee's work assignment or suspend the employee from active duty to reduce any possible safety hazard. Except as provided in subparagraph (2-A), an employee's pay or benefits may not be reduced while an employee is participating in a rehabilitation program, provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods. (2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A. (3) Except as provided in divisions (a) and (b), upon successfully completing the rehabilitation program, as determined by the rehabilitation or treatment provider after consultation with the employer, the employee is entitled to return to the employee's previous job with full pay and benefits unless conditions unrelated to the employee's previous confirmed positive result make the employee's return impossible. Reinstatement of the employee must not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. If the rehabilitation or treatment provider determines that the employee has not successfully completed the rehabilitation program within 6 months after starting the program, the employer may take any action described in paragraph A. (a) If the employee who has completed rehabilitation previously worked in an employment position subject to random or arbitrary testing under an employer's written policy, the employer may refuse to allow the employee to return to the previous job if the employer believes that the employee may pose an unreasonable safety hazard because of the nature of the position. The employer shall attempt to find suitable work for the employee immediately after refusing the employee's return to the previous position. No reduction may be made in the employee's previous benefits or rate of pay while awaiting reassignment to work or while working in a position other than the previous job. The employee shall be reinstated to the previous position or to another position with an equivalent rate of pay and benefits and with no loss of seniority within 6 months after returning to work in any capacity with the employer unless the employee has received a subsequent confirmed positive result within that time from a test administered under this subchapter or unless conditions unrelated to the employee's previous confirmed positive test result make that reinstatement or reassignment impossible. Placement of the employee in suitable work and reinstatement may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. (b) Notwithstanding division (a), if an employee who has successfully completed rehabilitation is medically disqualified, the

employer is not required to reinstate the employee or find suitable work for the employee during the period of disqualification. The employer is not required to compensate the employee during the period of disqualification. Immediately after the employee's medical disqualification ceases, the employer's obligations under division (a) attach as if the employee had successfully completed rehabilitation on that date. D. This subsection does not require an employer to take any disciplinary action against an employee who refuses to submit to a test, receives a single or repeated confirmed positive result or does not choose to participate in a rehabilitation program. This subsection is intended to set minimum opportunities for an employee with a substance abuse problem to address the problem through rehabilitation. An employer may offer additional opportunities, not otherwise in violation of this subchapter, for rehabilitation or continued employment without rehabilitation. 3. **Confidentiality.** This subsection governs the use of information acquired by an employer in the testing process. A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services under subsection 2, paragraph C. This paragraph does not prevent: (1) The release of this information when required or permitted by state or federal law, including release under section 683, subsection 8, paragraph D; or (2) The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results. B. Notwithstanding any other law, the results of any substance abuse test require requested or suggested by any employer may not be used in any criminal proceeding.

**686. Written policies; Review; Rulemaking.**—1. Review required. The Department of Labor shall review each written policy change to an approved policy submitted to the department by an employer under section 683, subsection 2. A. The department shall determine if the employer's written policy or change complies with this subchapter and shall immediately notify the employer who submitted the policy or change of that determination. If the department finds that the policy or change does not comply with this subchapter, the department shall also notify the employer of the specific areas in which the policy or change is defective. B. The department may request additional information from an employer when necessary to determine whether an employment position meets the requirements of section 684, subsection 3. The department shall not approve any written policy that provides for random or arbitrary testing of any employment position that the employer has failed to demonstrate meets the requirements of section 684, subsection 3. C. The department shall allow for the use of any federally recognized substance abuse test. 2. **Review procedure.** The Department of Labor shall adopt rules under section 687 governing the procedure for reviews conducted under this section. A. The rules must provide for notice to be given to the employees of any employer who submits a written policy or amendment applicable to employees to the department for review under this section. The employees may submit written comments to the department challenging any portion of the employer's written policy, including the proposed designation of any position under section 684, subsection 3, paragraph B. B. Nothing in this section requires a formal hearing to be held concerning the submission and review of an employer's written policy. C. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act, Title 5, chapter 375, 6 does not apply to reviews conducted under this section except that all determinations by the Department of Labor under this section may be appealed as provided in Title 5, chapter 375, subchapter VII. 7 D. The rules may establish model applicant policies and employee probable cause policies and provide for expedited approval and registration for employers adopting such model policies. The rules adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

**687. Rulemaking.**—1. Office of Substance Abuse. The Office of Substance Abuse shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, 8 as provided in this subchapter. 2. Department of Labor. The Department of Labor shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, as provided in this subchapter. 3. Coordination; deadline. The Department of Health and Human Services and the Department of Labor shall cooperate to ensure any necessary coordination between the rules of both departments. The Department of Health and Human Services and the Department of Labor shall adopt initial rules before December 1, 1989.

**688. Education on substance abuse.**—All employers shall cooperate fully with the Department of

Labor, Office of Substance Abuse, the Department of Health and Human Services, the Department of Public Safety and any other state agency in programs designed to educate employees about the dangers of substance abuse and about public and private services available to employees who have a substance abuse problem.

**689. Violation and remedies.**—This section governs the enforcement of this subchapter

1. **Remedies.** Any employer who violates this subchapter is liable to any employee subjected to discipline or discharge based on that violation for: A. An amount equal to 3 times any lost wages; B. Reinstatement of the employee to the employee's job with full benefits; C. Court costs; and D. Reasonable attorney's fees, as set by the court.

2. **Breach of confidentiality.** In addition to the liability imposed under subsection 1, any person who violates section 684, subsection 4, paragraph C, or section 685, subsection 3: A. For the first offense, is subject to a civil penalty not to exceed \$1,000, payable to the affected employee, to be recovered in a civil action; and B. For any subsequent offense, is subject to a civil penalty of \$2,000, payable to the affected employee, to be recovered in a civil action.

3. **Harassment.** In addition to the liability imposed under subsection 1, any employer who requires or repeatedly attempts to require an employee or applicant to submit to a substance abuse test under conditions that would not justify the test under this subchapter or who without substantial justification repeatedly requires an employee to submit to a substance abuse test under section 684, subsection 3: A. Is subject to a civil penalty not to exceed \$1,000, payable to the affected employee, to be recovered in a civil action; and B. For any subsequent offense against the same employee, is subject to a civil penalty of \$2,000, payable to the affected employee, to be recovered in a civil action.

4. **Enforcement.** The Department of Labor or the affected employee or employees may enforce this subchapter. The department may: A. Collect the judgment on behalf of the employee or employees; and B. Supervise the payment of the judgment and the reinstatement of the employee or employees.

**690. Report.**—The Department of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on March 1, 1990, and annually on that date thereafter. This report shall: 1. **List of employers.** List those employers whose substance abuse testing policies have been approved by the Department of Labor under section 686; 2. **Persons tested.** Indicate whether those employers are testing applicants or employees, or both; 3. **Random or arbitrary testing.** Indicate those employers whose substance abuse testing policies permit random or arbitrary testing under section 684, subsection 3, and describe the employment positions subject to such random or arbitrary testing; 4. **Results.** Provide statistical data relating to the reports received from employers indicating the number of substance abuse tests administered by those employers in the previous calendar year and the results of those tests; and 5. **Description.** Briefly describe the general scope and practice of workplace substance abuse testing in the State.

**53. Director of Labor Standards may assess forfeiture against employers for violations; Rules.**—In addition to any penalties provided in chapter 7, subchapters I to IV, the director may assess a forfeiture against any employer, officer, agent or other person who violates any provision of chapter 7, subchapters I to IV for each violation of those subchapters. The forfeiture may not exceed \$1,000 or the amount provided in law or rule as a penalty for the specific violation, whichever is less. The Attorney General, upon complaint of the director, shall institute a civil action to recover the forfeiture. Any amount recovered must be deposited with the Treasurer of State. The director shall adopt rules to govern the administration of the civil money forfeiture provisions. The rules must include a right of appeal by the employer and a range of monetary assessments with consideration given to the size of the employer's business, the good faith of the employer, the gravity of the violation and the history of previous violations. The rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

**12-170-7.,Maine—Substance abuse testing programs.—Substance abuse testing programs.**—Section 1. **Definitions** -- A. Authorizing Statute—means 26 M.R.S.A. c.7, sub-c. III-A. B. Department—means the Maine Department of Labor, Bureau of Labor Standards. (Note: Any correspondence should be directed to Director, Bureau of Labor Standards, State House Station #45, Augusta, Maine 04333-0045.) C. Department of Human Services Rules—means rules adopted by the Department of Human Services under the authority of, or referenced in, 26 M.R.S.A. c. 7, sub-c., III-

A. D. Director—means the Director of the Bureau of Labor Standards, Maine Department of Labor or designee. E. Employee Assistance Policy (EAP)—means an employee assistance program certified by the Department of Human Services or the Office of Substance Abuse. F. Policy—means an employer's written substance abuse testing policy as it will be presented to the employees or applicants covered. G. Random or Arbitrary—means a method of selecting those to be tested where all potential testees have an equal chance of selection by chance or where testing is based on criteria unrelated to substance abuse such as an anniversary or hiring. H. Point of Collection Testing (POCT)—means an initial screening test performed at the site where the sample is collected using a non-instrumental testing device approved for that purpose by the federal Food & Drug Administration. Section 2.

**Employee Consultation and Employee and Applicant Notification Requirements** -- A. An employer shall consult with the employer's employees in the development of any section of a substance abuse testing policy and/or amendment which refers to employee testing. Consult means a two-way communication between the employer and the employees regarding the proposed substance abuse testing policy. A committee formed to develop a random or arbitrary testing program under part 3 (CC) does not meet this requirement except as it regards the random or arbitrary program. B. An employer shall give, at the time of its submission, individual written notice to employees that it has submitted a substance abuse testing policy and/or amendment to the Department for review. The notice must inform employees that they may submit written comments to the Department, as well as where and how an employee may review the proposed policy if not provided with the notice. The notice must inform employees of the manner and time frame in which they may comment to the Department and must display prominently the address of the Department. This requirement covers all policies even those which do not in any way pertain to employees. C. An employer whose policy includes employee testing shall provide each employee with a copy of the written policy approved by the Department at least 30 days before the policy takes effect. D. An employer whose amendment includes employee testing shall provide each employee with a copy of the written amendment approved by the Department at least 60 days before the amendment takes effect. E. An employer shall provide a copy of the approved written policy to applicants before administering a substance abuse test. At a minimum, each applicant must be notified in writing at the time of application that they may be subject to a substance abuse test if selected for employment or placed on a roster, as well as where they may review the statute and the employer's written policy. F. Nothing in this section is meant to inhibit additional methods of applicant and/or employee involvement. **Section 3. Requirements for Employers' Written Substance Abuse Policy** -A. Policy Format --1. Individual employer policies must be a single document written in a manner that is understandable to a large majority of the employees and applicants. Provisions should be made within the policy for additional information or assistance to be made available to an employee or applicant, if requested. 2. To facilitate prompt review of and action on individually submitted employer policies, a specific format is requested. Failure to comply with the requested format may result in the submission being returned without Department approval. 3. The authorizing statute is very specific in many areas; therefore, it is required that the employer use both the statute and Department of Labor and Human Service's rules in developing a policy. 4. The following outline should be used in developing a policy as a minimum standard. Employers are encouraged to write the policy as a narrative. The sections concerning probable cause testing of employees, random or arbitrary testing of employees, and testing of applicants are optional, but must be included if they are to be a part of the employer's substance abuse testing policy.

a. Covered Establishment

i. Company name

AA. Location

BB. Mailing address

CC. Phone number

ii. Contact regarding substance abuse testing policy

AA. Location

BB. Phone number

b. Scope of Testing

i. **Substances to be tested for:** AA. Specify substances and specify for each as allowed by statute and Department of Human Services rules, 1) test procedure to be used and cut-off limit for positive screening test, 2) test procedure to be used and cut-off limit for positive confirmation test. ii.

**Probable Cause Testing of Employees:** AA. Classifications or position titles of employees that will be tested based on probable cause. An employer may elect to cover all employees under probable cause testing. BB. Classifications or position titles that may make a determination of probable cause.

CC. Method by which determination will be communicated to the employee. iii. **Random or Arbitrary Testing of Employees:** AA. If the employer and the employees have negotiated an agreement covering random or arbitrary testing of employees, the policy shall so state that it is a product of a bargained agreement and identify those classifications or position titles that are subject to random or arbitrary testing, as well as the procedure for selecting those individuals to be tested. The collective bargaining agreement or appropriate sections must be attached to the submission as an exhibit. BB. If the employer does not have a collective bargaining agreement which covers random or arbitrary testing, the policy must show: 1) Those classifications or position titles which are subject to random or arbitrary testing. a) The policy must include for each classification or position title a concise statement as to why the work is of a nature which would create an unreasonable threat to the health or safety of the public or co-workers if the employee were under the influence of a substance of abuse. (NOTE: It is the stated statutory intent that this section be "narrowly construed.") b) A more complete description of each position and a full justification for random or arbitrary testing must be submitted as an attachment provided with the policy. 2) The procedure for selecting those individuals to be tested. CC. An employer having 50 or more employees who are not covered by a collective bargaining agreement may establish a random or arbitrary testing program which applies to all employees. The written policy with respect to the parts of the policy addressing the random or arbitrary testing program must meet the standards below: 1) The employer shall appoint a committee of employees to develop the random or arbitrary testing program. The committee must consist of: a) at least 10 of the employer's employees from a cross-section of employees eligible to be tested; and b) a medical professional training in substance abuse testing procedures. If no such person is employed by the employer, the employer shall obtain the services of a person meeting these qualifications to serve on the committee.vv2) Selection of employees to be tested under the random or arbitrary testing program must be done as follows: a) Selection of employees to be tested must be performed by a person or entity not subject to influence by the employer, such as a Medical Review Officer.vvb) Selection must be from a list of all subject employees provided by the employer. The list may not contain information that would identify the employees to the person or entity making the selection. c) Employees covered under a collective bargaining agreement may not be included in the testing allowed pursuant to this paragraph unless they agree to be included under a collective bargaining agreement. 3) The policy developed by the committee must be approved by the Department of Labor. The employer may not change the policy regarding the random or arbitrary testing program without approval of the committee. The employer may choose not to submit the random or arbitrary testing program for approval and not to establish random or arbitrary testing program. 4) The employer may not discriminate against employees who participate or refuse to participate on the committee. iv. **Testing of Applicants:** AA. Classifications or position titles to be tested. An employer may elect to cover all applicants under applicant testing. c. Consequences of Testing: i. Action to be taken for refusal to submit to a test.

AA. Employee

BB. Applicant

ii. Action to be taken between a test and receipt of test results. iii. Action to be taken based on



confirmed positive result from a test of an employee. AA. Opportunity for rehabilitation BB. Action to be taken upon refusal to use rehabilitation resources. CC. Procedures for returning the employee to the previously held job or position after rehabilitation. iv. Action to be taken based on a subsequent confirmed positive test result. v. Action to be taken based on a confirmed positive result from a test of an applicant. vi. Action to be taken based on an employee's voluntary admission of a substance abuse problem and description of any available assistance and procedure for the employee. d. Testing Procedures: i. Identify sample collection facility or facilities. ii. Method of sample collection. a) Right of the testee to segregate a portion of the sample for testing at a laboratory of their choice. B Procedure regarding removal of clothing. (Note: This should describe the specific procedure to be used at the facility or facilities where sample collection takes place.) c) Statement that the testee will not be observed, directly or indirectly. d) Any actions that will be taken to ensure that the sample has not been substituted, adulterated, diluted or otherwise tampered with must be described. These actions must conform with the Department of Human Services Rules. e) If and how the employer will use point of collect tests. iii. Storage of sample. iv. Chain of custody. v. identify testing facility or facilities. vi. Procedure for notifying employee or applicant of the result. vii. Procedure for an employee or applicant to appeal and contest the accuracy of a confirmed positive result. At least one option for the appeal process must be at no cost to the employee or applicant. e. Description of Rehabilitation Service i. Description of employee assistance program services. ii. Description of any additional rehabilitation services. iii. Procedure to obtain services. vii. Description of any possible employee payment for rehabilitation services allowed under 26 M.R.S.A. Section 685, 2., c. Section 4.

**4. Department of Labor Review Process -- A. Submission.** 1. Employers wishing to establish a substance abuse testing program after January 1, 1990 shall submit to the Director two copies of the following. a. A signed letter of submission from an authorized company official. b. A written policy in compliance with the authorizing statutes and applicable rules adopted by the Departments of Labor and Human Services. c. Additional submissions which are not part of the policy, but which will assist the Department in reviewing the policy as applicable. i. Description of the method the employer used in consulting with employees in the development of the policy, as well as the substance and impact of that consultation, if applicable. ii. Description of the method the employer used to inform employees of the submission of the plan to the Department, manner and time frame that employees may comment to the Department. iii. Description of the method to be used by the employer to notify employees following approval of the policy. At a minimum, this method must provide each employee with a copy of the approved policy, and a notice as to the effective date(s) on which testing may begin, if applicable. iv. Blank samples of any and all forms, information sheets, or other materials used by the employer with their employees and applicants relating to the substance abuse testing program. v. A copy of a collective bargaining agreement or appropriate sections must be included by those employers having a labor-management agreement concerning substance abuse testing. vi. Any additional detailed information to support employer's rationale for determination of any specific classifications or position titles as appropriate for random or arbitrary testing. vii. Certification by the Department of Human Services of compliance of testing laboratories and procedures with the authorizing statute and appropriate Department of Human Services rules. viii. Certification by the Department of Human Services of compliance of the employee assistance program with the authorizing statute and appropriate Department of Human Services or Office of Substance Abuse rules. ix. Signed employer certification that submittal complies with all applicable statutes and regulations including employee notification requirements. (Note: This can be presented as a part of the transmittal letter in Section 4 A, 1 a.) 2. The Department shall notify the employer in writing of the date it has received the employer's submission. **B. Review Process.** 1. The Department review will be to assure compliance with the authorizing statute and applicable rules. 2. The Department shall allow a minimum of ten days to receive employees' written comments before a final approval determination is made. The ten days will start when the employer notifies employees that it has submitted a policy to the Department for consideration, and has made copies available to interested employees or their representative. The comment period will not preclude the Department from starting its review, requesting additional information or clarification, or denying a part or all of a plan that is not in compliance. 3. The Department may consult with the Department of Human Services and/or the Office of Substance Abuse during a review to ensure compliance with their rules or the statute. **C. Notification.** The employer will be notified at the earliest possible date of the need for additional information, clarification, and of the Departments final action. 1. **Denial.** a. The

	<p>Department may deny approval of an entire policy if it is in noncompliance with the authorizing statute and applicable rules and/or is an incomplete submission. b. A portion of a policy may be denied while other significant portions that are in compliance with the authorizing statutes and applicable rules are approved as long as that part denied is not basic to the whole. Whenever possible, the Department will seek to act on an employer's policy as a whole. c. The Department shall notify the employer in writing of its decision and identify the area(s) where the policy was in noncompliance. 2. <b>Approval.</b> a. The Department shall notify the employer in writing as to the date of the approval. b. The employer must wait a minimum of thirty (30) days after employees are notified as required by statute and these rules to start initial testing. Testing of applicants may commence at any time after a policy has been approved. Section 5. <b>Amendment or Discontinuance of Approved Program .</b> A. <b>Amendment.</b> 1. The same procedures that govern the establishment of a substance abuse testing policy will apply to amending an existing approved program except as provided for below. 2. The employer must wait a minimum of sixty (60) days after employees are notified as required by statute and these rules to start testing under the amendment. Testing of applicants may commence at any time after an amendment has been approved. 3. Approved policies will need to comply with statutory or regulatory changes prior to the effective dates of such changes through amendments as appropriate. 4. Employers with approved policies must notify the Department of any changes in EAP services, sample collection and/or testing facilities used. Notification must include certification of the new service provider(s) from the Department of Human Services. If the services, methods, or practices as described in the policy remain unchanged, the change of service provider(s) does not constitute an amendment. If described services, methods, or practices are changed, an amendment is needed. 5. Changes to job titles or classifications used in a policy which do not change the testing status of an employee do not constitute an amendment. Any changes which change the testing status of any employee will be considered an amendment. 6. Changes of address or of the company contact person(s) do not constitute an amendment, although policies must be revised and the Department notified. B. <b>Discontinuance.</b> 1. An employer shall notify the Department and employees in writing if it chooses to discontinue an approved substance abuse testing policy. The notice must include the effective date. 2. The Department shall withdraw approval for any discontinued policy. 3. Discontinuance of a portion of a policy will be treated as an amendment. Section 6. <b>Ongoing Policy Review and Department Responsibilities</b> A. The Department may review any approved policy at any time and may grant limited approval or withdraw approval from the policy, in whole or part, if it is found in noncompliance, or there is insufficient evidence to establish compliance. B. The Department reserves the right to request additional information from an employer with an approved policy at any time. C. The Department may establish a time period for regular review or re-application of existing approved policies. D. The Department shall notify all employers with approved policies and the Department of Human Services of any proposed amendments of these rules.</p>
<p><b>Maryland</b></p>	<p><b>17-205. Job-related alcohol or controlled dangerous substance testing, Employment &amp; preemployment; Licensing requirements, medical laboratories.</b>—(a) A person shall hold a license issued by the Secretary before the person may: (1) Offer or perform medical laboratory tests or examinations in this State; (2) Offer or perform medical laboratory tests or examinations on specimens acquired from health care providers in this State at a medical laboratory located outside this State; or (3) Represent or service in this State a medical laboratory regardless of the laboratory's location. (b) The Secretary shall issue a letter of exception to a laboratory that: (1) Performs only limited medical laboratory tests or examinations; and (2) Meets the exception requirements in regulations adopted by the Secretary pursuant to this subtitle. (c) For the purposes of this section, "limited medical laboratory tests or examinations" means simple medical laboratory procedures as defined in regulations adopted by the Secretary pursuant to this subtitle. (D) If preliminary screening procedures are performed by an operator who is trained under section 17-214(k) of this subtitle, an employer: (1) Is not required to obtain a permit or to obtain a letter of exception from the secretary under this section to perform testing; but (2) Is required before performing preliminary screening procedures, as defined under section 17-214(a) of this subtitle, to register with the secretary in accordance with requirements adopted in regulations by the department of health and mental hygiene.</p> <p><b>17-214. Job-related alcohol or controlled dangerous substance testing, Employment &amp; preemployment; Definitions; Procedures; Disclosure of information; Recordkeeping; Training; Collective bargaining.</b>—(a) In this section the following words have the meanings indicated. (1)</p>

"Alcohol or controlled dangerous substance testing" means a procedure used to determine whether or not a specimen contains a controlled dangerous substance or alcohol. (2) "Certification" means the approval granted by the Department for a laboratory to engage in job-related alcohol or controlled dangerous substance testing. (3) "Controlled dangerous substance" has the meaning stated in Article 27, Section 277 of the Code. (4) "Job applicant" means an individual who: (i) Has applied for a position with an employer; (ii) Is not currently employed by the employer. (5) "Job-related" means any alcohol or controlled dangerous substance testing used by an employer for a legitimate business purpose. (6) "Laboratory" means a facility or other entity that conducts job-related alcohol or controlled dangerous substance testing. (7) "Medical review officer" means a licensed physician with knowledge of drug abuse disorders and drug and alcohol testing. (8) "Preliminary screening procedure" means a controlled dangerous substance test that uses a single-use test device that: (i) Is easily portable and can be administered at a work site or other appropriate collection site; (ii) Meets the requirements of the federal food and drug administration for commercial distribution; and (iii) Meets generally accepted cutoff levels such as those in the federal substance abuse and mental health services administration guidelines for drug-free workplace testing programs. (9) "Single-use test device" means the reagent-containing unit of a test system that: (i) Is in the form of a sealed container or cartridge that has a validity check, a nonresealable closure, or an evidentiary tape that ensures detection of any tampering; (ii) Is self-contained and individually packaged; (iii) Is discarded after each test; and (iv) Does not allow any test component or constituent of a test system to interact between tests. (10) "Specimen" means: (i) Blood derived from the human body; (ii) Urine derived from the human body; (iii) Hair derived from the human body as provided in subsection (b)(2) of this section; or (iv) Saliva derived from the human body. (b) (1) Except as provided in paragraph (2) of this subsection, an employer who requires any person to be tested for job-related reasons for the use or abuse of any controlled dangerous substance or alcohol shall: (i) Have the specimen tested by a laboratory that: 1. Holds a permit under this subtitle; or 2. Is located outside of the State and is certified or otherwise approved under subsection (f) of this section; and (ii) At the time of testing, at the person's request, inform the person of the name and address of the laboratory that will test the specimen. (2) (i) 1. Except as provided in sub-subparagraph 2 of this subparagraph, an employer may use a preliminary screening procedure to test a job applicant for the use or abuse of any controlled dangerous substance. 2. Sub-subparagraph 1 of this subparagraph does not apply to an employer that has entered into a collective bargaining agreement that prohibits the employer from using a preliminary screening procedure to test a job applicant for the use or abuse of any controlled dangerous substances. (ii) If the result of a preliminary screening procedure is positive, the employer shall submit the specimen for testing by a laboratory as required under paragraph (1) of this subsection. (iii) Following voluntary disclosure and documentation by an applicant of the taking of a legally prescribed medication, an employer may hire the applicant pending confirmation of a positive test result by the medical laboratory and review by the employer's medical review officer. (iv) An employer may not use a preliminary screening procedure to test an individual who is not applying for a job with that employer. (v) An employer may designate a medical laboratory licensed to perform job-related testing for controlled dangerous substances to also perform preliminary screening procedures on job applicants for the employer. (3) (i) An employer who requires any person to be tested for job-related reasons for the use or abuse of any controlled dangerous substance may use hair derived from the human body as a specimen in accordance with this paragraph. (ii) An employer may use hair derived from the human body only for pre-employment purposes. (iii) If an employer uses hair derived from the human body as a specimen, the employer may not: 1. Use a specimen that is longer than one and one-half inches measured from the human body; or 2. Use the specimen for any purpose other than testing for controlled dangerous substances. (c) (1) An employer who requires any employee, contractor, or other person to be tested for job-related reasons for the use or abuse of any controlled dangerous substance or alcohol and who receives notice from the laboratory under subsection (b) of this section that an employee, contractor, or other person has tested positive for the use or abuse of any controlled dangerous substance or alcohol shall, after confirmation of the test result, provide the employee, contractor, or other person with: (i) A copy of the laboratory test indicating the test results; (ii) A copy of the employer's written policy on the use or abuse of controlled dangerous substances or alcohol by employees, contractors, or other persons; (iii) If applicable, written notice of the employer's intent to take disciplinary action, terminate employment, or change the conditions of continued employment; and (iv) A statement or copy of the provisions set forth in

subsection (e) of this section permitting an employee to request independent testing of the same sample for verification of the test result. (2) The information required to be provided to the employee, contractor, or other person under paragraph (1) of this subsection shall be delivered to the employee, contractor, or other person: (i) Either in person or by certified mail; and (ii) Within 30 days from the date the test was performed. (d) An employer that uses a preliminary screening procedure to test specimens for the use or abuse of a controlled dangerous substance under this section shall: (1) In using a single-use test device, collect, handle, store, and ship each specimen in a manner that: (i) Maintains the specimen donor's identity and confidentiality and the physical integrity of the specimen; and (ii) Precludes contamination of the specimen; and (2) Maintain a written record of the chain of custody of each specimen from the time that the specimen is collected until the time that the specimen is no longer needed for retesting. (e) (1) A person who is required to submit to job-related testing, under subsection (b) or (c) of this section, may request independent testing of the same specimen for verification of the test results by a laboratory that: (i) Holds a permit under this subtitle; or (ii) If located outside of the State, is certified or otherwise approved under subsection (f) of this section. (2) The person shall pay the cost of an independent test conducted under this subsection. (f) (1) The Department of Health and Mental Hygiene: (i) Shall adopt regulations governing the certification of laboratories that conduct job-related alcohol or controlled dangerous substance testing; and (ii) May adopt regulations governing the oversight of preliminary screening procedures administered by employers. (2) In addition to any other laboratory standards, the regulations shall: (i) Require that the laboratory comply with the guidelines for laboratory accreditation, if any, as set forth by the College of American Pathologists, the Centers for Medicare and Medicaid Services, or any other government agency or program designated to certify or approve a laboratory that is acceptable to the Secretary; (ii) Require that a laboratory performing confirmation tests for controlled dangerous substances or alcohol be inspected and accredited in forensic drug analysis by the College of American Pathologists, the U. S. Health Care Financing Administration (HCFA), or any other government agency or program designated to inspect and accredit a laboratory that is acceptable to the Secretary; (iii) Require that, if the laboratory performs job related drug testing, the laboratory be a participant in a program of proficiency testing of drug screening conducted by an organization acceptable to the Secretary; (iv) Require that the laboratory comply with standards regarding cutoff levels for positive testing that are established by the United States Department of Health and Human Services or established by the Secretary as mandatory guidelines for workplace drug testing programs; and (v) Include procedures for annual recertification and inspection. (g) This section does not apply to: (1) Alcohol or controlled dangerous substance testing of a person under arrest or held by a law enforcement or correctional agency; (2) Alcohol testing procedures conducted by a law enforcement or correctional agency on breath testing equipment certified by the State Toxicologist; or (3) Controlled dangerous substance testing by a laboratory facility of a law enforcement or correctional agency that maintains laboratory testing standards comparable to the standards in this section. (h) This section applies to job-related alcohol and controlled dangerous substance testing of any person, including preemployment applicants, employees, and contractors. (i) (1) Except as provided in paragraphs (2) and (3) of this subsection, in the course of obtaining information for, or as a result of, conducting job-related alcohol or controlled dangerous substance testing for an employer under this section, a laboratory, a physician, including a physician retained by the employer, or any other person may not reveal to the employer information regarding: (i) The use of a nonprescription drug, excluding alcohol, that is not prohibited under the laws of the State; or (ii) The use of a medically prescribed drug, unless the person being tested is unable to establish that the drug was medically prescribed under the laws of the State. (2) The prohibitions against disclosure of information under paragraph (1) of this subsection do not apply to the extent that they prevent a person from complying with the applicable provisions of the federal Commercial Motor Vehicle Safety Act of 1986 and the federal Motor Carrier Safety Regulations. (3) The prohibitions against disclosure of information under paragraph (1) of this subsection do not apply if, prior to the administration of a preliminary screening for controlled dangerous substances, the test operator notifies the applicant that if the preliminary test is positive, the applicant may voluntarily disclose and provide documentation to the operator that the applicant is taking a legally prescribed medication. (j) (1) An employer using preliminary screening procedures to test job applicants under this section shall have a medical review officer review a positive test result after laboratory confirmation of the positive test result. (2) The employer may contract for the services of an outside medical review officer if the employer does not have a medical review officer on staff. (k) (1) An

employer using preliminary screening procedures shall establish a program to train individuals to collect specimens and perform controlled dangerous substance tests in the workplace. (2) The employer may designate an employee or any other individual to be trained, including any individual employed by a medical laboratory designated under subsection (b)(2)(iv) of this section who will perform preliminary screening procedures for the employer. (3) A trainee shall receive appropriate and practical instruction, which includes: (i) A reading of the test manufacturer's package insert sheet; (ii) Observing the test manufacturer's training video or receiving training from the test manufacturer; (iii) Completing the test manufacturer's self-administered test; and (iv) The actual performance of tests and the actual interpretation of the results. (4) (i) The employer shall: 1. Keep a record of the training received by each trainee; and 2. Establish a procedure for training each trainee as having received the minimum training required to properly perform the test. (ii) After the trainee has demonstrated competency in performing the test, the employer shall maintain documentation that indicates that the trainee has been trained under this section. (L) The provisions of a collective bargaining agreement that concern drug testing override and preempt the provisions of this section that authorize an employer to use a preliminary screening procedure to test a job applicant.

**25-111. Motor Carriers, Inspections.** (a) Definitions.—(1) In this section the following words have the meanings indicated. (2) "Hazardous materials inspector" means a person who is assigned by the Department of the Environment and certified by the Department of State Police to perform an inspection authorized under this section. (3) "Incidental driver" means an individual: (i) Who is employed by or contracts with a utility company or is employed by a person who contracts with a utility company; (ii) Whose primary employment by or contractual agreement with the utility company is not as a driver of a motor vehicle; and (iii) Who drives a motor vehicle only as an incidental part of the individual's employment or contractual agreement with the utility company. (4) "Police officer" means: (i) Any uniformed law enforcement officer who is certified or under the direction of a law enforcement officer who is certified by the Department of State Police to perform an inspection authorized under this section; (ii) Any civilian employee of the Department of State Police assigned to enforce any rule or regulation adopted under this section, but only while acting under written authorization of the Secretary of the State Police; (iii) Any civilian employee of the Maryland Transportation Authority Police who is: 1. Acting under the immediate direction and control of a uniformed police officer; 2. Acting under the written authorization of the Secretary of the State Police; and 3. Certified by the Department of State Police to perform an inspection authorized under this section; or (iv) Any civilian employee of a local government who is: 1. Acting under the immediate direction and control of a uniformed police officer; 2. Acting under the written authorization of the Secretary of the State Police; and 3. Certified by the Department of State Police to perform an inspection authorized under this section. (5) "Public Service Commission inspector" means a person who is assigned by the Public Service Commission and certified by the Department of State Police to perform an inspection authorized under this section. (6) "Transportation emergency" means any natural or man-made emergency that disrupts or hinders the free flow of traffic on the State's highways and local streets and roads for more than 8 hours so that public safety is or may be threatened as a result. (7) "Utility emergency" means any natural or man-made emergency that disrupts or severs or has the potential to disrupt or sever gas, electric, telephone, water, sewer, or other utility service to: (i) Any large number of residential or commercial customers in an area or areas of the State; or (ii) Any public or private institutions in an area or areas of the State so that the public health, welfare, or safety is or may be threatened as a result. (8) "Utility company" means an electric company, gas company, telephone company, cable company, or water or sewer utility. (b) Authority to stop and inspect vehicle.—(1) Upon direction by a police officer or by an electronic signal to vehicles equipped with a CVISN transponder, the driver of any vehicle that is subject to any rule or regulation adopted under this section shall stop and submit to an inspection: (i) All applicable driver records, including driver's license, driver hours of service record and certificate of physical examination; (ii) All load manifests, including bills of lading or other shipping documents; and (iii) All cargo and cargo areas. (2) A police officer who is certified by the Department of State Police to perform an inspection authorized under this section, a Public Service Commission inspector, or a hazardous materials inspector may conduct a safety inspection of the vehicle that is subject to a rule or regulation adopted under this section or §22-409 of this article. (c) Consent to inspection.—The operation of a vehicle on any highway in this State constitutes the consent of the driver and the owner of the vehicle to the inspection provided for in this

section. (d) Duty of driver.—(1) The driver of a vehicle shall obey every sign and every direction of a police officer or an electronic signal to a CVISN transponder to stop the vehicle and submit to the required inspection. (2) If a driver fails or refuses to comply with the direction of a police officer or an electronic signal to a CVISN transponder to submit a vehicle to the required inspection, the police officer shall have the authority to take the vehicle and its load into temporary custody for the purpose of inspecting the vehicle, load, its equipment, or documents. (3) The police officer may utilize resources as specified in section 27-111(b) of this article to conduct the safety inspection. (4) In addition to any fine or penalty attributable to the inspection, or other offense, the driver is: (i) subject to a fine and penalty as specified in section 27-101(1) of this article; and (ii) responsible for any additional costs incurred in inspecting the vehicle and its load because of the driver's failure or refusal to comply with the direction of a police officer or an electronic signal to a CVISN transponder. (e) Display of sign restricted.—A sign used to direct vehicles under this section may be displayed only by a police officer who is assigned to enforce this section. (f) Adoption of rules and regulations by Administration.—(1) Except as provided in subsection (i) of this section, the Administration may adopt rules and regulations as are necessary for the safe operation of vehicles that (i) exceed a gross vehicle weight rating of 10,000 pounds; (ii) are required to be marked or placarded for the transportation of hazardous materials; or (iii) are designed to transport 16 or more passengers including the driver over the highways of this State. (2) Any rule or regulation adopted pursuant to this subsection shall: (i) Be formulated jointly by the Motor Vehicle Administration and the Department of State Police; (ii) Duplicate or be consistent with the Federal Motor Carrier Safety Regulations contained in 49 CFR, Parts 390 through 399; (iii) Apply to all vehicles over 10,000 pounds rated gross vehicle weight that are subject to the Federal Motor Carrier Safety Regulations; (iv) Apply to vehicles over 10,000 pounds gross vehicle weight rating that are not subject to the Federal Motor Carrier Safety Regulations, if the rule or regulations adopted by the Motor Vehicle Administration specifically states that it applies to the vehicle; and (v) Be consistent with 49 CFR, Parts 40 and 382, with respect to alcohol and drug testing regulations applicable to drivers required by regulation to possess a commercial driver's license. (3) The rules or regulations adopted under this subsection may require that registrants of motor vehicles subject to this subsection have knowledge of applicable federal and State motor carrier safety regulations. (g) Operator to comply with rules and regulations.—Any motor carrier operating a vehicle that is subject to the rules and regulations adopted under this section shall, at all times when operating the vehicle on a highway in this State, comply with the rules and regulations adopted under this section. (h) Inspection of equipment and records by certain officials.—(1) During normal business hours, a police officer, a hazardous materials inspector, or a Public Service Commission inspector may enter the premises and inspect equipment and review and copy records of motor carriers subject to the rules or regulations adopted under §22-409 or §23-302 of this article, Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations, or Public Service Commission laws and regulations. (2) During normal business hours, trained personnel from the Commercial Vehicle Enforcement Division of the Department of State Police may enter the premises and inspect, review, and copy records of motor carriers subject to the regulations adopted under this section, §22-409 of this article, or §23-302 of this article, including: (i) any record required by this section; (ii) driver qualification files; (iii) hours of service records; (iv) drug and alcohol testing records of drivers required to be tested under this section; and (v) insurance records. (i) Prohibited regulations; limitation on regulation of qualifications or hours of service of drivers permitted.—(1) Except as provided for in paragraph (2) of this subsection, regulations adopted under this section for intrastate motor carrier transportation may not: (i) Apply the provisions of §391.21, §391.23, §391.31 or §391.35 of the Federal Motor Carrier Safety Regulations to: 1. A driver who is a regularly employed driver of a motor carrier for a continuous period that began before July 1, 1986, if the driver continues to be a regularly employed driver of the motor carrier; or 2. The motor carrier, with regard to a driver described under item 1 of this subparagraph, if the motor carrier continues to employ the driver; (ii) Limit a driver's time or hours on duty if: 1. The driver operates only within a 150 air mile radius of the driver's normal work reporting location; 2. The driver returns to the driver's normal work reporting location; 3. The driver is released from work within a period of 16 consecutive hours, not more than 12 of which are dedicated to driving, and is given at least 8 consecutive hours off duty; and 4. Regardless of the number of motor carriers using the driver's services, the driver: A. If the employing motor carrier does not operate motor vehicles every day of the week, has been on duty no more than 70 hours in a period of 7 consecutive days; or B. If the employing motor carrier operates

motor vehicles every day of the week, has been on duty no more than 80 hours in a period of 8 consecutive days; (iii) Require a driver to maintain a record of duty status if the driver is not subject to item (ii) of this paragraph, except that, if a driver is on duty for a period of more than 12 hours, the driver shall maintain a record of the driver's duty status that: 1. For the first 12 hours of time on duty, accounts for all time dedicated to driving; and 2. For all time on duty in excess of 12 hours, conforms to federal regulations; (iv) Apply the provisions of this paragraph or Parts 391 and 395 of the Federal Motor Carrier Safety Regulations to a farmer, or an agent or employee of a farmer, who operates farm equipment or a motor vehicle owned or operated by the farmer in the transportation of supplies to a farm or the transportation of farm products as defined in §10-601 of the Agriculture Article within 150 air miles of the farmer's farm; or (v) Except in the case of bus drivers, apply the provisions of §391.41 (b) (1) through (11) of the Federal Motor Carrier Safety Regulations before October 1, 2023, to any person who: 1. On October 1, 2003, otherwise qualified to operate and operated a vehicle or vehicle combination used in intrastate commerce with a gross vehicle weight rating or gross combination weight rating of 10,001 pounds or more and, after October 1, 2003, remained qualified to operate and continued to operate such a vehicle; 2. Operates only in intrastate commerce; and 3. Has a mental or physical condition which would disqualify the person under the Federal Motor Carrier Safety Regulations and: A. The condition existed on October 1, 2003, or at the time of the first physical examination after that date to which the person submitted as required by regulations adopted by the Administration under subsection (k) of this section; and B. A physician who has examined the person has determined that the condition has not substantially worsened and that no other disqualifying medical or physical condition has developed since October 1, 2003, or the time of the first required physical examination after that date. (2) Nothing contained in this subsection limits regulation of the qualifications or hours of service of a driver of a vehicle: (i) In interstate commerce; (ii) Transporting hazardous materials of a type and quantity requiring placarding under Federal Hazardous Materials Regulations; or (iii) Designed to transport 16 or more passengers, including the driver. (j) Utility and transportation emergencies.—(1) Notwithstanding the provisions of Section 14-107 of the Public Safety Article, the Governor may delegate the power to declare a utility or transportation emergency to the Secretary or the Secretary's designee. (2) (i) The Secretary or the Secretary's designee may declare a utility or transportation emergency. (ii) 1. During the time in which a utility or transportation emergency declared under this subsection exists, the Secretary or the Secretary's designee shall waive the maximum hours-of-service time limits contained in this section, or in regulations adopted under this section for all interstate and intrastate drivers providing direct assistance in restoring utility services affected by a utility emergency. 2. This waiver shall include the hours of duty status accrued by, and shall apply only to, drivers providing direct assistance in restoring utility services affected by a utility emergency in the State, or to drivers of emergency vehicles operated under the direction of State and local governments or their agents when providing direct assistance in clearing and opening State highways and local streets and roads to allow free flow of traffic. (iii) 1. Notwithstanding the other provisions of this subsection and section 14-107 of the public safety article, during a utility emergency an incidental driver shall be exempt from Part 395 of the federal Motor Carrier Safety regulations if the utility company has prefiled, as specified by the secretary or the secretary's designee, a utility emergency response notification plan and an incidental driver safety plan in accordance with this subparagraph. 2. A utility emergency response notification plan must include the utility company's procedure for notifying the secretary or secretary's designee within 4 hours after the utility company responds to a utility emergency. 3. An incidental driver safety plan must include the procedures that the utility company will follow to ensure that an incidental driver will not drive during a utility emergency if the incidental driver has not had sufficient rest to ensure that the incidental driver maintains the ability to drive safely. (3) (i) All declarations issued under this subsection shall indicate the nature of the utility or transportation emergency, the area or areas threatened, and the conditions which have brought it about. (ii) A declaration shall be disseminated by a means calculated to bring its contents to the attention of the general public, in the areas affected by the declaration. (4) Within 10 days of the issuance of any declaration issued under this subsection, the Secretary or the Secretary's designee shall notify the Governor of the nature of the declaration. (5) A utility or transportation emergency declared by the Secretary or the Secretary's designee may not extend for more than 5 days, unless renewed by the Governor pursuant to Section 14-107 of the Public Safety Article. (k) (1) On notification by a utility company that it is responding to a utility emergency, the secretary or secretary's designee shall: (i) Require the utility company to indicate the nature of the

utility emergency, the areas threatened, the conditions which have brought it about, and the duration of the utility company's expected response, not to exceed 5 days; (ii) Determine whether a utility emergency, as defined in this section, existed at the time of the utility company's response and, if so, declare that a utility emergency existed starting at that time; and (iii) If a utility emergency does not exist, notify the utility company that it is not entitled to and may not exercise the relief provided to incidental drivers under subsection (j) of this section. (2) A utility emergency to which a utility company responds may not extend more than 5 days after the date that the utility company first notifies the secretary or secretary's designee of its response unless: (i) the utility company provides a renewal notification to the secretary or secretary's designee; and (ii) the secretary or secretary's designee does not reject the renewal. (1) Physical examinations.—For the purposes of subsection (i) of this section, the Administration shall adopt regulations requiring physical examinations for intrastate commercial motor vehicle drivers.

**6-101. Definitions.**—(a) In this title the following words have the meanings indicated. (e) "Port facility" includes any one or more or combination of: (1) Lands, piers, docks, wharves, warehouses, sheds, transit sheds, elevators, compressors, refrigeration storage plants, buildings, structures, and other facilities, appurtenances, and equipment useful or designed for use in connection with the operation of a port; (2) Every, kind of terminal or storage structure or facility useful or designed for use in handling, storing, loading, or unloading freight or passengers at marine terminals; (3) Every kind of transportation facility useful or designed for use in connection with any of these; and (4) An international trade center constituting a facility of commerce and consisting of one or more buildings, structures, improvements, and areas that the Department considers necessary, convenient, or desirable for the centralized accommodation of functions, activities, and services for or incidental to the transportation of persons by water, the exchange, buying, selling, and transportation of commodities and other property in international and national waterborne trade and commerce, the promotion and protection of this trade and commerce, and governmental services related to them and other federal, state, and municipal agencies and services, including foreign trade zones, offices, marketing and exhibition facilities, terminal and transportation facilities, customhouses, custom stores, inspection and appraisal facilities, parking areas, commodity and security exchanges, and, in the case of buildings, structures, improvements, and areas in which such accommodation is afforded, all the buildings, structures, improvements, and areas, although other parts of the buildings, structures, improvements, and areas might not be devoted to purposes of the international trade center other than the production of incidental revenue available for the expenses and financial obligations of the Department in connection with the international trade center and although other parts of the buildings, structures, improvements, and areas might be rented or leased for the use or occupancy of departments, bureaus, units, or agencies of the United States, this State, or any political subdivision of this State.

**6-102.1. Alcohol Free and Drug-Free Workplace Programs.**—(a) (1) In this section the following words have the meanings indicated. (2) "Cargo" does not include a vessel's machinery or supplies, or the vessel's equipment transported onto or off of the vessel. (3) "Drug" means: (i) A controlled dangerous substance as defined in Section 5-101 of the Criminal Law Article; and (ii) A prescription drug as defined in §21-201 of the Health - General Article, to the extent that the drug affects job performance and worker safety at a marine facility. (4) "Employee" means any individual who is an employee, independent contractor, subcontractor, or other individual who provides labor for compensation at a marine facility for a person. (5) "Marine facility" means a terminal or storage structure or facility used for the purpose of handling, storing, loading, or unloading freight in the port of Baltimore. (6) "Program" means an Alcohol-Free and Drug-Free Workplace Program for a marine facility that meets the requirements of this section. (7) (i) "Safety-sensitive employee" means an employee who operates heavy machinery. (ii) "Safety-sensitive employee" includes, but is not limited to: 1. An operator of a crane, winch, or top loader; and 2. A driver of a hustler or forklift. (b) This section does not apply to: (1) Employees, contractors, independent contractors, or agents of the Maryland Port Administration; (2) Vessel employees, or employees of contractors or subcontractors that attend vessels, who do not load or unload cargo between a vessel and a pier, or from one stowage position to another on a vessel, at a marine facility; or (3) Individuals or employees required by federal or State law to comply with 49 CFR Parts 40 and 382 of the Federal Motor Carrier Safety Regulations. (c) Persons that lease space at a marine facility from the Maryland Port Administration shall



implement a program that: (1) Prohibits the sale, purchase, transfer, use, or possession of alcohol or drugs at a port facility; (2) Provides a plan that includes the nondiscriminatory administration of tests for the presence of alcohol or drugs in accordance with established testing procedures, including random, reasonable cause, post accident, and return-to-work, or post treatment testing of safety-sensitive employees, and pre-employment test for the presence of drugs, of employees; (3) Provides for rehabilitation programs and disciplinary and sanction procedures for individuals who violate the Program; (4) Provides sufficient notice to employees of testing procedures, consent, and other requirements of the Program; (5) Provides adequate security measures for collection, chain of custody, and handling of test material; and (6) Establishes procedures for the reporting, review, and appeal of test results. (d) The Program shall generally comply with the guidelines for a drug- free workplace program established by the Maryland Center for Workplace Safety and Health. (e) A member of a labor organization or other group of employees at a marine facility that is subject under a labor agreement or contract to an alcohol and drug program that generally conforms to the provisions of this section shall be deemed to be in compliance with the requirements, testing procedures, and other provisions of this section.

**10-111. Altering the outcome of a drug or alcohol screening test is prohibited; Penalties for violations.**—(a) (1) In this section the following words have the meanings indicated. (2) "Bodily fluid" means blood, urine, saliva, or other bodily fluid. (3) (i) "Bodily fluid adulterant" means any substance or chemical that is intended, for the purpose of altering the results of a drug or alcohol screening test, to be: 1. consumed by a person; 2. introduced into the body of a person; or 3. added to or substituted for a sample of bodily fluid. (ii) "Bodily fluid adulterant" includes synthetic urine. (4) "Controlled dangerous substance" has the meaning stated in §5-101 of this article. (5) "Drug" has the meaning stated in §5-101 of this article. (6) "Drug or alcohol screening test" means an analysis of a sample of bodily fluid collected from a person for the purpose of detecting the presence of alcohol, drugs, or a controlled dangerous substance in the bodily fluid of the person. (b) A person may not, with intent to defraud or alter the outcome of a drug or alcohol screening test: (1) alter a bodily fluid sample; (2) substitute a bodily fluid sample, in whole or in part, with: (i) a bodily fluid sample of another person or animal; or (ii) any other substance; (3) possess or use a bodily fluid adulterant; (4) sell, distribute, or offer to sell or distribute: (i) any bodily fluid from a human or any animal; or (ii) any bodily fluid adulterant; or (5) transport into the State: (i) any bodily fluid from a human or any animal; or (ii) any bodily fluid adulterant. (c) A person who violates this section is guilty of: (1) for a first violation, a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and (2) for each subsequent violation, a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

**Sec. R..02. Scope of chapter.**—A. This chapter provides the standards and procedures that employers, employees, and the Secretary shall meet when job applicants and employees are required to undergo job-related alcohol and controlled dangerous substances testing. B. This chapter does not apply to: (1) A person who is subject to federal or State commercial motor vehicle statutes or regulations concerning alcohol and controlled dangerous substance testing, to the extent that those statutes or regulations conflict with the requirements of this chapter; (2) An agency of the federal government; (3) Alcohol or controlled dangerous substances testing of an individual under arrest or held by a law enforcement or correctional agency; (4) Alcohol testing conducted by a law enforcement or correctional agency on breath-testing equipment certified by the State toxicologist; or (5) Controlled dangerous substances testing by a laboratory facility of a law enforcement or correctional agency that maintains laboratory testing standards comparable to the standards in Health-General Article, §17-214, Annotated Code of Maryland.

**Sec. R. .03. Chapter definitions.**—A. In this chapter, the following terms have the meanings indicated. B. Terms Defined. (1) "Agent of the employer" means a person other than the employer or a licensed medical laboratory that employs individuals who perform preliminary screening of job applicants for controlled dangerous substances on behalf of the employer. (2) "Chain-of-custody" means a method of tracking an individual's specimen for the purpose of maintaining control and accountability from initial collection through each stage in handling, testing, storing, reporting test results, and final specimen disposition. (3) Confirmation Test. (a) "Confirmation test" means an

analytical procedure performed after a preliminary or screening test and intended to verify or positively identify the presence of a controlled dangerous substance in a specimen. (b) "Confirmation test" is limited to an analytical procedure that employs a combination of gas chromatography and mass spectrometry (GC/MS or GC/MS/MS) or mass spectrometry and mass spectrometry (MS/MS). (4) Controlled Dangerous Substance. (a) "Controlled dangerous substance" means a drug, substance, or immediate precursor as set forth in Schedules I—V, Criminal Law Article, Title 5, Subtitle 4, Annotated Code of Maryland. (b) "Controlled dangerous substance" includes new substances controlled under federal law as provided in Criminal Law Article, §5-202, Annotated Code of Maryland. (5) Employee. (a) "Employee" means an individual who performs work for an employer. (b) "Employee" includes a salaried, contractual, full-time, part-time, temporary, hourly, and on-call employee or a volunteer. (6) "Employer" means a person who employs an individual to perform work. (7) "Forensic testing" means testing performed for a nonclinical purpose and under procedures that produce test results that meet rules of evidence required in a court of law. (8) "Immediate precursor" means a substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland. (9) "Independent test" means a test performed at the request and expense of a job applicant, employee, or contractor to verify a test result obtained on the same specimen. (10) "Job applicant" means an individual who has applied for a position with an employer but is not currently employed by the employer. (11) "Job-related testing" means any alcohol or controlled dangerous substances testing used by an employer for a lawful business purpose. (12) Laboratory. (a) "Laboratory" means a facility, entity, or site that performs job-related alcohol or controlled dangerous substances testing. (b) "Laboratory" does not include a collection site or other site where an employer or agent of the employer performs preliminary screening of job applicants for a controlled dangerous substance using a single-use test device for forensic testing. (13) "Letter of Registration" means the authority in the form of a letter issued by the Secretary granting permission to an employer to perform preliminary screening of job applicants for a controlled dangerous substance. (14) "License" means the authority in the form of a permit issued by the Secretary granting permission for a laboratory to perform job-related alcohol or controlled dangerous substances testing. (15) "Medical review officer" means a licensed physician with knowledge of drug abuse disorders and drug and alcohol testing who is either employed or under contract to an employer that performs preliminary screening of job applicants for a controlled dangerous substance. (16) "Non-negative test result" means the result of a preliminary screening for a controlled dangerous substance that is not negative but that has not been confirmed by a licensed laboratory. (17) "Office of Health Care Quality (OHCQ)" means the Office of Health Care Quality of the Department of Health and Mental Hygiene. (18) "Operator" means an individual employed by the employer or agent of the employer who performs a preliminary screening procedure as defined in §B(19) of this regulation. (19) "Preliminary screening procedure" means a controlled dangerous substance test: (a) Using a single-use test device for forensic testing; and (b) Performed by an employer or agent of the employer on a job applicant. (20) "Secretary" means the Secretary of Health and Mental Hygiene or the Secretary's designee. (21) "Single-use test device for forensic testing" means the reagent-containing unit of a test system that: (a) Is in the form of a sealed container or cartridge possessing a validity check; (b) Possesses a nonresealable closure or an evidentiary tape to ensure detection of tampering; (c) Is self-contained and individually packaged; (d) Is discarded after each test; and (e) Does not allow any test component or constituent of a test system to interact from test to test. (22) Specimen. (a) "Specimen" means material derived from the human body and intended for laboratory testing. (b) "Specimen" is limited to blood, urine, saliva, and hair.

**Sec. R. .04. Secretary, Responsibilities of.**—A. Registration. (1) Requirement. The OHCQ shall register on the Secretary's behalf an employer that conducts a preliminary screening procedure on a job applicant for a controlled dangerous substance. (2) Forms. The OHCQ shall provide to each employer: (a) A registration application form; and (b) A registration renewal form every 2 years after the initial registration. B. Routine Surveys and Complaint Investigation. (1) Requirement. The Secretary or the OHCQ as the Secretary's designee shall: (a) Conduct routine surveys of preliminary screening sites; (b) Conduct surveys of preliminary screening sites as part of a complaint investigation; and (c) Investigate written complaints related to compliance with the standards set forth in this chapter. (2) On-site Surveys. The OHCQ may: (a) Annually conduct routine on-site surveys of preliminary screening sites; (b) Conduct a routine survey any time during a preliminary screening site's normal work hours; and (c) Include as part of a routine survey or complaint investigation: (i) On-

site observation and examination of preliminary screening facilities, equipment, screening devices, specimens, and screening procedures; (ii) On-site examination of documents pertinent to employer registration, preliminary screening performed by the employer or agent of the employer, and operator training; and (iii) On-site interviews of employers and employees involved in performing, supervising, or managing preliminary screening. (3) Sanctions. (a) Imposition. If the Secretary finds that an employer or agent of an employer is not in compliance with a requirement or standard of this chapter, the Secretary may impose one or more of the following sanctions on the employer, agent of the employer, or both: (i) Suspension of a letter or letters of registration; (ii) Revocation of a letter or letters of registration; (iii) A direct plan of correction; (iv) A limitation on preliminary screening; and (v) Required training and technical assistance. (b) Departmental Actions. The Secretary shall carry out actions related to the imposition or lifting of sanctions involving preliminary screenings in the same manner as those involving a laboratory, as set forth in COMAR 10.10.08, including the providing of notice and hearings.

**Sec. R..05. Duties of employer.**—An employer who for job-related reasons requires an individual to be tested for alcohol or controlled dangerous substances shall: A. Have the specimen tested by a laboratory that holds a Maryland license in the discipline of job-related alcohol and controlled dangerous substances testing; and B. At the time of testing and at the individual's request, inform the person of the name and address of the laboratory that will test the specimen.

**Sec. R.06.Types of specimens allowed.**—A. General. An employer requiring job-related alcohol or controlled substances testing may require that: (1) A job applicant provide one or more of the following types of specimen: (a) Blood; (b) Urine; (c) Saliva; and (d) Hair; and (2) An employee or contractor provide only one or more of the following types of specimen: (a) Blood; (b) Saliva; and (c) Urine. B. Specimen Types. An employer requiring job-related alcohol or controlled dangerous substance testing may not require the testing of any specimen other than: (1) Blood, urine, saliva, or hair, for a job applicant; and (2) Blood, saliva, or urine, for an employee or contractor. C. Hair. An employer may require that a job applicant submit a hair specimen for controlled dangerous substances testing if the hair specimen is: (1) Less than or equal to 1 1/2 inches in length measured from the human body; (2) Tested only for preemployment purposes; and (3) Not used for a purpose other than controlled dangerous substances testing.

**Sec. R..07.Procedures for collection and handling of specimen.**—A. Chain of custody. A person collecting a specimen shall employ quality assurance and chain-of-custody procedures that include: (1) Collecting a specimen in a sealed container that has a non-resealable closure or an evidentiary tape that assures detection of any tampering; (2) Collecting, handling, storing, and shipping a specimen in a manner that: (a) Maintains its identity, confidentiality, and physical integrity, and (b) Precludes specimen contamination or adulteration; and (3) Documenting each time a person accesses or transfers the specimen. B. Specimen Quantity. A person collecting a specimen shall collect a quantity sufficient to perform an initial screening test, a confirmation test, and an independent test.

**Sec. R .08. Applicant, employee, and contractor protections; Notice; Copies; Statements.**—  
A. Notice of Positive Test Results. (1) An employer who requires a job applicant, employee, or contractor to be tested for job-related reasons for the use or abuse of a controlled dangerous substance or alcohol and who receives notice that a job applicant, employee, or contractor has tested positive for a controlled dangerous substance or alcohol shall provide to the job applicant, employee, or contractor with a confirmed positive test result: (a) A copy of the laboratory test indicating the test results; (b) A copy or written summary of the employer's policy covering an employee, contractor, or job applicant with a confirmed positive test result; (c) If applicable, written notice of the employer's intent to take disciplinary action, terminate employment, or change the conditions of continued employment; and (d) A statement or copy of the provisions set forth in §B of this regulation permitting a job applicant, employee, or contractor to request independent testing of the same sample for verification of the test result. (2) The employer shall deliver the information required to be provided under §A of this regulation to the job applicant, employee, or contractor: (a) Either in person or by certified mail; and (b) Within 7 days from the date confirmed positive test results are received by the employer. B. Right to an Independent Test. (1) Challenge. A job applicant, employee, or contractor who is required to

submit to job-related alcohol or controlled dangerous substances testing may request that an independent test be performed on the same specimen in a confirmation test by: (a) Notifying the employer and the laboratory that performed the confirmation test of the challenge to that test result; and (b) Requesting that laboratory to submit a sufficient portion of the original specimen to a different laboratory chosen by the job applicant, employee, or contractor and licensed by the Secretary to perform alcohol or controlled dangerous substances testing. (2) Testing Sensitivity. The job applicant, employee, or contractor shall employ as an independent testing laboratory one that will perform the independent test using detection levels for alcohol or controlled dangerous substances equal to or lower than those provided by the laboratory that performed the initial confirmation test. (3) Costs. The job applicant, employee, or contractor shall pay all costs of independent testing including any costs associated with specimen handling and transport.

**Sec. R.09. Confidentiality of test results and information.**—A. General. Except as otherwise provided in an employer's written drug testing policy, in this regulation, or in Health-General Article, §17-214, Annotated Code of Maryland, all information, interviews, reports, statements, memoranda, and test results received or produced as a result of job-related alcohol or controlled dangerous substances testing are confidential and may be released only under a lawful subpoena, court order, or a release signed by the individual tested, or, in the case of a minor, by the individual's parent or legal guardian. B. Nonprescription and Medically Prescribed Drugs. In the course of obtaining information for, or as a result of, conducting job-related alcohol or controlled dangerous substances testing for an employer, a laboratory, a physician, including a physician retained by the employer, or any other person, may not reveal to the employer information regarding the use of a: (1) Nonprescription drug, excluding alcohol, that is not prohibited under the laws of the State; or (2) Medically prescribed drug, unless the individual being tested is unable to establish that the drug was medically prescribed under the laws of the State.

**Sec. R.10. Preliminary screening of job applicants by employer or employer's agent.**—A. In addition to any other applicable requirements of this chapter, an employer or agent of the employer that performs a preliminary preemployment screening procedure for a controlled dangerous substance on a job applicant shall meet the standards set forth in this regulation. B. **Registration Requirement.** An employer or agent of the employer shall register the employer initially and every 2 years thereafter with the OHCQ by: (1) Submitting to the OHCQ a registration form that: (a) Lists the permanent office location of the employer and any agent of the employer in the State; (b) Lists the permanent locations where the employer or agent of the employer performs preliminary screenings; and (c) States whether the employer or agent of the employer performs preliminary screenings at temporary sites, uses mobile screening vehicles, or both; and (2) Submitting to the OHCQ a registration fee of \$50. C. **Single-Use Test Device.** An employer or agent of the employer shall limit screening procedures to those that employ an FDA-cleared or approved single-use test device as defined in Regulation .03B(21) of this chapter. D. **Trained Operator.** To perform a preliminary screening procedure, an employer or agent of the employer shall employ an operator who has been trained for each type of device to be used, including instruction that includes the operator's: (1) Reading the test manufacturer's package insert sheet; (2) Observing the test manufacturer's training video or receiving training: (a) From the test manufacturer; (b) From an individual trained by the manufacturer; or (c) Endorsed by the manufacturer; (3) Completing the test manufacturer's self-administered test; and (4) Performing tests, interpreting test results, and reporting results to job applicants under the supervision of a trained operator. E. **Training Records.** (1) Requirement. An employer or agent of the employer shall establish and maintain training records that document the training required to properly perform a screening procedure. (2) Documentation. An employer or agent of the employer shall: (a) Keep a record of the training received by a trainee; (b) Document that a trainee has demonstrated competency in performing the screening procedure; and (c) Maintain for at least 2 years documentation that the trainee has been trained as set forth in this regulation. F. Quality Assurance. An employer or agent of the employer shall: (1) Limit screening procedures to those that employ an FDA-cleared or FDA-approved single-use test device for forensic testing, as defined in Regulation .03 of this chapter; (2) Perform preliminary screening tests in accordance with the quality standards set forth in COMAR 10.10.03.02C(2) and (3); (3) Collect and handle all specimens and ship non-negative specimens for testing, in a manner that: (a) Maintains the specimen donor's identity and

	<p>confidentiality; and (b) Precludes contamination of and tampering with the specimen; (4) Provide a secure area with limited access to store a non-negative specimen before it is shipped to a laboratory and while it is retained pending: (a) Confirmatory testing; (b) Notice; (c) Any independent testing; and (d) Final disposal; (5) Submit a non-negative specimen subjected to a preliminary screening procedure to a licensed medical laboratory for confirmatory testing within 24 hours of screening; (6) Maintain a written record of the chain-of-custody for a specimen from the time it is collected until it is no longer needed for retesting or confirmatory testing; (7) Have a medical review officer, as defined in Regulation .03B(15) of this chapter, review positive test results resulting from a confirmatory test; and (8) Retain for at least 1 year all records pertaining to preliminary screening. <b>G. Notice and Independent Testing.</b> An employer or agent of the employer who receives notice that a job applicant has tested positive for a controlled dangerous substance shall: (1) Provide to the job applicant the items specified in Regulation .08A of this chapter; and (2) Inform the job applicant of the right to request that an independent test be performed on the same specimen, as set forth in Regulation .08B of this chapter. <b>H. Voluntary Disclosure.</b> (1) For the purposes of facilitating hiring, a job applicant may voluntarily disclose and provide documentation to an operator that the job applicant is using: (a) A nonprescription drug that is not prohibited under the laws of the State; (b) A medically prescribed drug; or (c) Both. (2) An operator may disclose to the employer information involving the use of medically prescribed and nonprohibited nonprescription drugs voluntarily disclosed and documented to the operator by the job applicant. <b>I. Surveys and Complaint Investigations.</b> An employer or agent of an employer shall permit the OHCQ to conduct an on-site survey of a preliminary screening site at any time during the screening site's normal hours of operation as part of a complaint investigation or routine inspection to determine compliance with the applicable requirements and standards set forth in this chapter.</p>
<p>Massachusetts</p>	<p><b>Sec. 19L. Interstate and intrastate motor carriers; Compliance with federal regulations relating to drug and alcohol testing and other recordkeeping requirements; Inspection of records; Penalty for violations.</b>—(a) The registrar shall adopt regulations to ensure compliance by all interstate and intrastate motor carriers with this chapter and with: (1) the regulations of the United States Department of Transportation, Federal Motor Carrier Safety Administration, contained in Title 49 of the Code of Federal Regulations, relative to: (i) proof of financial responsibility; (ii) driver qualification files, including all required forms; (iii) drug and alcohol testing records as applicable; (iv) records of duty status and supporting documents; (v) driver vehicle inspection reports and maintenance records; (vi) hazardous materials records as applicable; and (vii) an accident register and copies of all accident reports required by state or other governmental entities or insurers. (2) sections 2, 3, 9 and 10 of this chapter, relative to operator licensing and registration of commercial vehicles; (3) section 2B of chapter 85, section 31 of this chapter, and any regulation established thereunder relative to transportation of freight, passengers or hazardous materials; (4) chapter 90F, relative to the operation of commercial vehicles; and 5) any other applicable state statute pertaining to the operation of commercial motor vehicles. (b) The department of state police may enter, during regular business hours, the commercial premises owned or leased by a commercial carrier, wherein the records, required to be maintained under the regulations adopted under this section, are stored or maintained and may inspect, in a reasonable manner, the records for the purpose of enforcing the regulations. If the records contain evidence of violations of the regulations, the inspecting officer shall produce and take possession of copies of the records, and if the entity subject to inspection does not possess copying equipment, the inspecting officer shall arrange to have copied, in a reasonable time and manner, the records that contain evidence of the violations, and the costs for the copying shall be assessed against the owner of said records. The department of state police shall coordinate its activities under this section with the federal motor carrier safety administration to ensure compliance with all federal and state laws and regulations. Municipal police officers or municipal police departments shall not conduct terminal audits; routine commercial carrier inspections; or, without probable cause, a random inspection of a commercial carrier. (c) Any carrier found to be in violation of record-keeping regulations established under this section shall be subject to a civil penalty not to exceed \$500 for each offense, and each day of a violation shall constitute a separate offense; but the total of all civil penalties assessed against a violator for all offenses relating to any single violation shall not exceed \$2,500. If it is found, pursuant to a terminal audit, that a serious pattern of safety violations, other than record-keeping requirements or violations of chapter 90F, exists or has occurred, a civil penalty not to exceed \$1,000 may be imposed for each offense; but the maximum fine for each such pattern of safety</p>

	<p>violations shall not exceed \$10,000. If it is found that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, a civil penalty not to exceed \$10,000 for each offense may be imposed. With the exception of record-keeping violations and violations of chapter 90F or such other regulations established under this section relating to a license to operate a commercial motor vehicle, as defined in section 1 of chapter 90F, no civil penalty shall be imposed under this section against an employee of a motor carrier for a violation unless the employee's conduct is found to constitute gross negligence or reckless disregard for safety, in which case the employee shall be subject to a civil penalty not to exceed \$1,000. (d) The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by a court of competent jurisdiction, and all penalties so recovered shall be paid to the Highway Fund of the commonwealth.</p>
<p><b>Minnesota</b></p>	<p><b>181.951. Drug and alcohol testing; Authorized testing; Employer to have written policy; Types of testing allowed; Employers have no legal duty to test.</b>—Subdivision 1. <b>Limitations on testing.</b> (a) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing except as authorized in this section. (b) An employer may not request or require an employee or job applicant to undergo drug or alcohol testing unless the testing is done pursuant to a written drug and alcohol testing policy that contains the minimum information required in section 181.952; and, is conducted by a testing laboratory which participates in one of the programs listed in section 181.953, subdivision 1. (c) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing on an arbitrary and capricious basis. <b>Subd. 2. Job applicant testing.</b> An employer may request or require a job applicant to undergo drug and alcohol testing provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If the job offer is withdrawn, as provided in section 181.953, subdivision 11, the employer shall inform the job applicant of the reason for its action. <b>Subd. 3. Routine physical examination testing.</b> An employer may request or require an employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination. <b>Subd. 4. Random testing.</b> An employer may request or require employees to undergo drug and alcohol testing on a random selection basis only if (1) they are employed in safety-sensitive positions, or (2) they are employed as professional athletes if the professional athlete is subject to a collective bargaining agreement permitting random testing but only to the extent consistent with the collective bargaining agreement. <b>Subd. 5. Reasonable suspicion testing.</b> An employer may request or require an employee to undergo drug and alcohol testing if the employer has a reasonable suspicion that the employee: (1) is under the influence of drugs or alcohol; (2) has violated the employer's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment, provided the work rules are in writing and contained in the employer's written drug and alcohol testing policy; (3) has sustained a personal injury, as that term is defined in section 176.011, subdivision 16, or has caused another employee to sustain a personal injury; or (4) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident. <b>Subd. 6. Treatment program testing.</b> An employer may request or require an employee to undergo drug and alcohol testing if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program. <b>Subd. 7. No legal duty to test.</b> Employers do not have a legal duty to request or require an employee or job applicant to undergo drug or alcohol testing as authorized in this section.</p> <p><b>181.952. Employer drug and alcohol testing policies; Information required; Notice requirements.</b>—Subdivision 1. <b>Contents of the policy.</b> An employer's drug and alcohol testing policy must, at a minimum, set forth the following information: (1) the employees or job applicants subject to testing under the policy; (2) the circumstances under which drug or alcohol testing may be requested or required; (3) the right of an employee or job applicant to refuse to undergo drug and</p>

alcohol testing and the consequences of refusal; (4) any disciplinary or other adverse personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test; (5) the right of an employee or job applicant to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest; and (6) any other appeal procedures available. **Subd. 2. Notice.** An employer shall provide written notice of its drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously nonaffected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant passing drug and alcohol testing. An employer shall also post notice in an appropriate and conspicuous location on the employer's premises that the employer has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in the employer's personnel office or other suitable locations.

**Sec. 181.953. Criteria for laboratory testing.—Subdivision 1. Use of licensed, accredited, or certified laboratory required.** (a) An employer who requests or requires an employee or job applicant to undergo drug or alcohol testing shall use the services of a testing laboratory that meets one of the following criteria for drug testing: (1) is certified by the National Institute on Drug Abuse as meeting the mandatory guidelines published at 54 Federal Register 11970 to 11989, April 11, 1988; (2) is accredited by the College of American Pathologists, 325 Waukegan Road, Northfield, Illinois, 60093-2750, under the forensic urine drug testing laboratory program; or (3) is licensed to test for drugs by the state of New York, department of health, under Public Health Law, article 5, title V, and rules adopted under that law. (b) For alcohol testing, the laboratory must either be: (1) licensed to test for drugs and alcohol by the state of New York, department of health, under Public Health Law, article 5, title V, and the rules adopted under that law; or (2) accredited by the College of American Pathologists, 325 Waukegan Road, Northfield, Illinois, 60093-2750, in the laboratory accreditation program. **Subd. 3. Laboratory testing, reporting, and sample retention requirements.** A testing laboratory that is not certified by the National Institute on Drug Abuse according to subdivision 1 shall follow the chain-of-custody procedures prescribed for employers in subdivision 5. A testing laboratory shall conduct a confirmatory test on all samples that produced a positive test result on an initial screening test. A laboratory shall disclose to the employer a written test result report for each sample tested within three working days after a negative test result on an initial screening test or, when the initial screening test produced a positive test result, within three working days after a confirmatory test. A test report must indicate the drugs, alcohol, or drug or alcohol metabolites tested for and whether the test produced negative or positive test results. A laboratory shall retain and properly store for at least six months all samples that produced a positive test result. **Subd. 4. Prohibitions on employers.** An employer may not conduct drug or alcohol testing of its own employees and job applicants using a testing laboratory owned and operated by the employer, except that, one agency of the state may test the employees of another agency of the state. Except as provided in subdivision 9, an employer may not request or require an employee or job applicant to contribute to, or pay the cost of, drug or alcohol testing under sections 181.950 to 181.954. **Subd. 5. Employer chain-of-custody procedures.** An employer shall establish its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested. The procedures must require the following: (1) possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory; (2) the sample must always be in the possession of, must always be in view of, or must be placed in a secured area by a person authorized to handle the sample; (3) a sample must be accompanied by a written chain-of-custody record; and (4) individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer. **Subd. 6. Rights of employees and job applicants.** (a) Before requesting an employee or job applicant to undergo drug or alcohol testing, an employer shall provide the employee or job applicant with a form, developed by the employer, on which to acknowledge that the employee or job applicant has seen the employer's drug and alcohol testing policy. (b) If an employee or job applicant tests positive for drug use, the employee must be given written notice of the right to explain the positive test and the employer may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the

reliability of, or explanation for, a positive test result. (c) Within three working days after notice of a positive test result on a confirmatory test, the employee or job applicant may submit information to the employer, in addition to any information already submitted under paragraph (b), to explain that result, or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense as provided under subdivision 9. **Subd. 7. Notice of test results.** Within three working days after receipt of a test result report from the testing laboratory, an employer shall inform in writing an employee or job applicant who has undergone drug or alcohol testing of (1) a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test and (2) the right provided in subdivision 8. In the case of a positive test result on a confirmatory test, the employer shall also, at the time of this notice, inform the employee or job applicant in writing of the rights provided in subdivisions 6, paragraph (b), 9, and either subdivision 10 or 11, whichever applies. **Subd. 8. Right to test result report.** An employee or job applicant has the right to request and receive from the employer a copy of the test result report on any drug or alcohol test. **Subd. 9. Confirmatory retests.** An employee or job applicant may request a confirmatory retest of the original sample at the employee's or job applicant's own expense after notice of a positive test result on a confirmatory test. Within five working days after notice of the confirmatory test result, the employee or job applicant shall notify the employer in writing of the employee's or job applicant's intention to obtain a confirmatory retest. Within three working days after receipt of the notice, the employer shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or transfer the sample to another laboratory licensed under subdivision 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that the chain-of-custody procedures in subdivision 3 are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant. **Subd. 10. Limitations on employee discharge, discipline, or discrimination.** (a) An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. (b) In addition to the limitation under paragraph (a), an employer may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the employer unless the following conditions have been met: (1) the employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and (2) the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program. (c) Notwithstanding paragraph (a), an employer may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the employer believes that it is reasonably necessary to protect the health or safety of the employee, coemployees, or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative. (d) An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to subdivision 6 unless the employee was under an affirmative duty to provide the information before, upon, or after hire. (e) An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information. **Subd. 11. Limitation on withdrawal of job offer.** If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the employer may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test.

**181.954. Test results; Confidentiality of information & Privacy issues; Exceptions,**



**Limitations.—Subdivision 1. Privacy limitations.** A laboratory may only disclose to the employer test result data regarding the presence or absence of drugs, alcohol, or their metabolites in a sample tested. **Subd. 2. Confidentiality limitations.** Test result reports and other information acquired in the drug or alcohol testing process are, with respect to private sector employees and job applicants, private and confidential information, and, with respect to public sector employees and job applicants, private data on individuals as that phrase is defined in chapter 13, and may not be disclosed by an employer or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested. **Subd. 3. Exceptions to privacy and confidentiality disclosure limitations.** Notwithstanding subdivisions 1 and 2, evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under chapter 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation, or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee. **Subd. 4. Privilege.** Positive test results from an employer drug or alcohol testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

**181.955. Drug & alcohol testing provisions; Impact on collective bargaining agreements, Employee protections.—Subdivision 1. Freedom to collectively bargain.** Sections 181.950 to 181.954 shall not be construed to limit the parties to a collective bargaining agreement from bargaining and agreeing with respect to a drug and alcohol testing policy that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements for employee protection provided in those sections. **Subd. 2. Employee protections under existing collective bargaining agreements.** Sections 181.950 to 181.954 shall not be construed to interfere with or diminish any employee protections relating to drug and alcohol testing already provided under collective bargaining agreements in effect on the effective date of those sections that exceed the minimum standards and requirements for employee protection provided in those sections.

**181.956. Claim of violations or grievances & Remedies; Civil action for damages; Injunctive relief; Retaliation for asserting rights & remedies prohibited.—Subdivision 1. Exhaustion.** An employee or collective bargaining agent may bring an action under this section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement; provided that, an employee's right to bring an action under this section is not affected by a decision of a collective bargaining agent not to pursue a grievance. **Subd. 2. Damages.** In addition to any other remedies provided by law, an employer or laboratory that violates sections 181.950 to 181.954 is liable to an employee or job applicant injured by the violation in a civil action for any damages allowable at law. If a violation is found and damages awarded, the court may also award reasonable attorney fees for a cause of action based on a violation of sections 181.950 to 181.954 if the court finds that the employer knowingly or recklessly violated sections 181.950 to 181.954. **Subd. 3. Injunctive relief.** An employee or job applicant, a state, county, or city attorney, or a collective bargaining agent who fairly and adequately represents the interests of the protected class has standing to bring an action for injunctive relief requesting the district court to enjoin an employer or laboratory that commits or proposes to commit an act in violation of sections 181.950 to 181.954. **Subd. 4. Other equitable relief.** Upon finding a violation of sections 181.950 to 181.954, or as part of injunctive relief granted under subdivision 3, a court may, in its discretion, grant any other equitable relief it considers appropriate, including ordering the injured employee or job applicant reinstated with back pay. **Subd. 5. Retaliation prohibited.** An employer may not retaliate against an employee for asserting rights and remedies provided in sections 181.950 to 181.954.

**181.957. Drug and alcohol testing provisions, Applicability; Federal preemption; Limitation to exclusions.—Subdivision 1. Excluded employees and job applicants.** Except as provided under subdivision 2, the employee and job applicant protections provided under sections 181.950 to 181.956 do not apply to employees and job applicants where the specific work performed requires those employees and job applicants to be subject to drug and alcohol testing pursuant to: (1) federal

regulations that specifically preempt state regulation of drug and alcohol testing with respect to those employees and job applicants; (2) federal regulations or requirements necessary to operate federally regulated facilities; (3) federal contracts where the drug and alcohol testing is conducted for security, safety, or protection of sensitive or proprietary data; or (4) state agency rules that adopt federal regulations applicable to the interstate component of a federally regulated industry, and the adoption of those rules is for the purpose of conforming the nonfederally regulated intrastate component of the industry to identical regulation.

**Subd. 2. Exclusion limited.** Employers and testing laboratories must comply with the employee and job applicant protections provided under sections 181.950 to 181.956, with respect to employees or job applicants otherwise excluded under subdivision 1 from those protections, to the extent that the provisions of sections 181.950 to 181.956 are not inconsistent with or specifically preempted by the federal regulations, contract, or requirements applicable to drug and alcohol testing.

**181.980. Employee assistance services; Recordkeeping requirements; Access to employee records; Records to be kept separate from personnel file; Disclosure; Civil action to compel compliance.—Subdivision 1. Definitions.** (a) For the purpose of this section, the following terms have the meanings given to them in this subdivision. (b) "Employee assistance services" means services paid for or provided by an employer and offered to employees or their family members on a voluntary basis. The services are designed to assist in the identification and resolution of productivity problems associated with personal concerns. Services include, but are not limited to, assessment; assistance; counseling or referral assistance with medical or mental health problems; alcohol or drug use; or emotional, marital, familial, financial, legal, or other personal problems. (c) "Employer" means a person or entity located or doing business in the state and having one or more employees, but does not include a government entity that is subject to chapter 13. (d) "Employee assistance provider" means an employer, or a person acting on behalf of an employer, who is providing employee assistance services. (e) "Employee assistance records" means the records created, collected, or maintained by an employee assistance provider that relate to participation by an employee or an employee's family member in employee assistance services. Employee assistance records do not include: (1) written or recorded comments or data of a personal nature about a person other than the employee, if disclosure of the information would constitute an intrusion upon that person's privacy; (2) written or recorded comments or data kept by the employee's supervisor or an executive, administrative, or professional employee, provided the written comments or data are kept in the sole possession of the author of the record; (3) information that is not discoverable in a worker's compensation, grievance arbitration, administrative, judicial, or quasi judicial proceeding; or (4) any portion of a written, recorded, or transcribed statement by a third party about the recipient of employee assistance services that discloses the identity of the third party by name, inference, or otherwise.

**Subd. 2. Access.** Upon written request of a person who has received employee assistance services, or a parent or legal guardian of the person if the person is a minor, an employee assistance provider shall provide the requesting person with an opportunity to review and obtain copies of the person's employee assistance records or the pertinent portion of the records specified by the person. An employee assistance provider shall comply with a request under this subdivision no later than seven working days after receipt of the request if the records are located in this state, or 14 working days after receipt of the request if the records are located outside this state. An employee assistance provider may not charge a fee for a copy of the record.

**Subd. 3. Employee assistance records to be kept separate from personnel records.** Employee assistance records must be maintained separate from personnel records and must not become part of an employee's personnel file.

**Subd. 4. Other rights and obligations.** The rights and obligations created by this section are in addition to rights or obligations created under a contract or other law governing access to records.

**Subd. 5. Disclosure.** No portion of employee assistance records, or participation in employee assistance services, may be disclosed to a third person, including the employer or its representative, without the prior written authorization of the person receiving services, or the person's legal representative. This subdivision does not prohibit disclosure: (1) pursuant to state or federal law or judicial order; (2) required in the normal course of providing the requested services; or (3) if necessary to prevent physical harm or the commission of a crime.

**Subd. 6. Remedies.** In addition to other remedies provided by law, the recipient of employee assistance services may bring a civil action to compel compliance with this

	<p>section and to recover actual damages, plus costs and reasonable attorney fees.</p> <p><b>221.011. Motor carriers, Definitions.—Subdivision 1. Scope.</b> For the purposes of this chapter, the terms defined in this section have the meanings given them. <b>Subd. 2a. Commissioner.</b> <b>“Commissioner” means the commissioner of transportation. Subd. 6. Person.</b> “Person” means any individual, firm, copartnership, cooperative, company, association and corporation, or their lessees, trustees, or receivers. “Person” does not include the federal government, the state, or any political subdivision. <b>Subd. 15. Motor carrier.</b></p> <p><b>221.031. Intrastate motor carriers, Operating requirements; Drug and alcohol testing exemption.—Subdivision 1. Powers, duties, reports, limitations.</b> (a) This subdivision applies to motor carriers engaged in intrastate commerce. (b) The commissioner shall prescribe rules for the operation of motor carriers, including their facilities; accounts; leasing of vehicles and drivers; service; safe operation of vehicles; equipment, parts, and accessories; hours of service of drivers; driver qualifications; accident reporting; identification of vehicles; installation of safety devices; inspection, repair, and maintenance; and proper automatic speed regulators if, in the opinion of the commissioner, there is a need for the rules. <b>Subd. 10. Controlled substance and alcohol use and testing exemption.</b> The state of Minnesota, a political subdivision of the state, or any person required to comply with the alcohol and controlled substances testing requirements of Code of Federal Regulations, title 49, part 219, 382, 653, or 654, is exempt from sections 181.950 to 181.957 if the testing also complies with the procedures for transportation workplace drug and alcohol testing programs in Code of Federal Regulations, title 49, part 40.</p> <p><b>221.605. Motor carriers, Compliance with state and federal rules and regulations; Enforcement; Adoption of other criteria.—</b>(a) Interstate carriers and private carriers engaged in interstate commerce shall comply with the federal motor carrier regulations in Code of Federal Regulations, title 49, parts 40, 382, 383, 387, and 390 through 398 and with the rules of the commissioner concerning inspections, vehicle and driver out-of-service restrictions and requirements, and vehicle, driver, and equipment checklists. For purposes of regulating commercial motor vehicles as defined in section 169.781, subdivision 1, the exemption provided in Code of Federal Regulations, title 49, section 396.11, paragraph (d), applies in Minnesota only to driveaway-towaway operations. (b) An interstate carrier or private carrier engaged in interstate commerce who complies with federal regulations governing testing for controlled substances and alcohol is exempt from the requirements of sections 181.950 to 181.957 unless the carrier's drug testing program provides for testing for controlled substances in addition to those listed in Code of Federal Regulations, title 49, section 40.85. Persons subject to this section may test for drugs, in addition to those listed in Code of Federal Regulations, title 49, section 40.85, only in accordance with sections 181.950 to 181.957 and rules adopted under those sections. <b>Subd. 2.</b> The commissioner shall investigate the operations of carriers engaged in interstate commerce in Minnesota and their compliance with federal regulations, this chapter, and the rules of the commissioner, and may institute and prosecute proceedings in the proper district court for their enforcement. <b>Subd. 3.</b> The North American Uniform Driver, Vehicle, and Hazardous Materials Out-Of-Service Criteria developed and adopted by the Federal Highway Administration and the Commercial Vehicle Safety Alliance are adopted in Minnesota.</p>
Mississippi	<p><b>71-7-3. Drug and alcohol testing of employees; Written policy statement; Information required of employers; Notice; Applicant testing, notice; Employee statements; Government employees; Procedures.—</b> (1) For the purposes of this chapter, the election of a public or private employer to conduct drug and alcohol testing is voluntary. If an employer elects voluntarily to follow this chapter, the employer must follow all the terms of this chapter without exception. (2) Any employee who may be required by an employer to submit to a drug and alcohol test shall be provided, at least thirty (30) days prior to the implementation of a drug and alcohol testing program, a written policy statement from the employer which contains: (a) A general statement of the employer's policy on employee drug use which shall include identifying both the grounds on which an employee may be required to submit to a drug and alcohol test and the actions the employer may take against an employee on the basis of a positive confirmed drug and alcohol test result, or other violation of the employer's drug use policy; (b) A statement advising the employee of the existence of this chapter; (c) A general statement concerning confidentiality; (d) Procedures for how employees can confidentially report the use of</p>

prescription or nonprescription medications prior to being tested; (e) Circumstances under which drug and alcohol testing may occur, and a description of which positions will be subject to testing on a reasonable suspicion, neutral selection or other basis; (f) The consequences of refusing to submit to a drug and alcohol test; (g) Information on opportunities for assessment and rehabilitation if an employee has a positive confirmed test result and the employer determines that discipline or discharge are not necessary or appropriate; (h) A statement that an employee who receives a positive confirmed drug and alcohol test result may contest the accuracy of that result or explain it; (i) A list of all drugs for which the employer might test. Each drug shall be described by its brand name, common name, or its chemical name; (j) A statement regarding any applicable collective bargaining agreement or contract. (3) An employer shall post the notice in an appropriate and conspicuous location on the employer's premises and copies of the policy shall be made available for inspection during regular business hours by employees in the employer's personnel office or other suitable locations. (4) The State Board of Health shall develop standard language for those sections of drug and alcohol testing notices described in paragraphs (b), (c) and (d) of subsection (1) of this section. (5) An employer who conducts job applicant drug and alcohol testing shall notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug and alcohol test, that the applicant may be tested for the presence of drugs or their metabolites. (6) An employee or job applicant required to submit to a drug and alcohol test may be requested by an employer to sign a statement indicating that he has read and understands the employer's drug and alcohol testing policy and/or notice. An employee's or job applicant's refusal to sign such a statement shall not invalidate the results of any drug and alcohol test, or bar the employer from administering the drug and alcohol test or from taking action consistent with the terms of an applicable collective bargaining agreement or the employer's drug and alcohol testing policy, or from refusing to hire the job applicant. (7) If the employer is a government employer, the decision of whether to require employees and/or applicants for employment to submit to drug and alcohol tests in accordance with the provisions of this chapter shall be made by the executive head or governing body of the department, agency, institution or political subdivision authorized to employ. However, in the case of any elected public official of the State of Mississippi or of any department, agency, institution or political subdivision thereof, the decision of whether any person who such official is authorized to employ, or any person who any governing board, commission or body upon which or as a member of which such public official has been elected by the people to serve is authorized to employ, shall be required to submit to a drug and alcohol test in accordance with the provisions of this chapter shall be made: (a) By the governing board, commission or body upon which or as a member of which such public official has been elected to serve; or (b) If the elected public official has not been elected to serve upon or as a member of a governing board, commission or body, by the elected official himself.

**71-7-5. Drug and alcohol testing; Standards; Types of tests authorized.**—(1) Except as otherwise provided in Section 71-7-27, all drug and alcohol testing conducted by employers shall be in conformity with the standards established in this section, other applicable provisions of this chapter, and all applicable regulations promulgated pursuant to this chapter. (2) An employer is authorized to conduct the following types of drug and alcohol tests: (a) Employers may require job applicants to submit to a drug and alcohol test as a condition of the employment application and may use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire. (b) An employer may require all employees to submit to reasonable suspicion drug and alcohol testing. There is created a rebuttable presumption that the employer had reasonable suspicion to test for drugs if the specimen provided by the employee tested positive for drugs in a confirmatory drug test. (c) An employer may require all employees to submit to neutral selection drug and alcohol testing pursuant to Section 71-7-9.

**71-7-7. Drug and alcohol testing; Neutral selection or routine basis; Drug rehabilitation programs.**—(1) Subject to the provisions of this chapter and any applicable collective bargaining agreement or contract, any nongovernment employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug and alcohol testing. (2) Subject to the provisions of this chapter, any government employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug and alcohol testing; provided, however, that the employees tested and the criteria for

such testing shall be determined by the government employer, based upon the extent to which the government employer: (a) Is engaged in law enforcement; (b) Has national or state security responsibilities; (c) Has drug interdiction responsibilities; or (d) Has positions which: (i) Authorize employees to carry firearms; (ii) Give employees access to sensitive information; (iii) Authorize employees to engage in law enforcement; (iv) Require employees, as a condition of employment, to obtain a security clearance; or (v) Require employees to engage in activities affecting public health or safety. (3) An employer may require an employee to submit to a drug and alcohol test if the test is conducted as part of a routinely scheduled employee fitness for duty medical examination that is part of the employer's established policy and/or which is scheduled routinely for all members of an employment classification or group. (4) An employer may require an employee to submit to neutral selection or routine drug and alcohol tests if the employee in the course of his employment enters a drug abuse rehabilitation program, and as a follow-up to such rehabilitation, or if previous drug and alcohol testing of the employee within a twelve-month period resulted in a positive confirmed test result, or the drug and alcohol test is conducted in accordance with the terms of an applicable collective bargaining agreement or contract that permits the employer to administer drug and alcohol tests on a neutral selection or routine basis. (5) If an employee is participating in drug abuse rehabilitation, drug and alcohol testing may be conducted by the rehabilitation provider as deemed appropriate by the provider.

**71-7-9. Collection, storage and transportation of specimens; Testing laboratories; Test results; Confirmatory tests; Discipline of employees; Costs.**—(1) The collection of specimens shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable. (2) Specimens shall be collected in a manner reasonably calculated to prevent substitution of specimens and interference with the collection or testing of specimens. (3) Specimen collection shall be documented, and the documentation procedures shall include: (a) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and (b) An opportunity for the employee or applicant to provide any information that he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. The provision of this information shall not preclude the administration of the drug and alcohol test, but shall be taken into account in interpreting any positive confirmed results. (4) Specimen collection, storage and transportation to the testing site will be performed in a manner which will reasonably preclude specimen contamination or adulteration, and specimen testing for drugs shall conform to scientifically accepted analytical methods and procedures. (5) Each confirmation test conducted under this chapter, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory. (6) A specimen for a drug and alcohol test may be taken or collected by any of the following persons: (a) A physician, a registered nurse or a licensed practical nurse; (b) A qualified person employed by a laboratory; or (c) Any person deemed qualified by the State Board of Health. (7) A person who collects or takes a specimen for a drug and alcohol test conducted pursuant to this chapter shall collect an amount sufficient for at least two (2) drug and alcohol tests as defined by federal statutes and regulations. (8) Any drug and alcohol testing conducted or requested by an employer shall occur during or immediately after the regular work period of current employees, and shall be deemed to be performed during work time for purposes of determining compensation and benefits for current employees. (9) Every specimen that produces a positive confirmed result shall be preserved in a frozen state by the laboratory that conducts the confirmation test for a period of ninety (90) days from the time the results of the positive confirmed test are mailed or otherwise delivered to the employer. During this period, the employee who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's expense, at a laboratory chosen by the employee. The laboratory that has performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer. (10) Within five (5) working days after receipt of a positive confirmed test result report from the laboratory that conducted the test, an employer shall, in writing, inform an employee of such positive test result and inform the employee in writing of the consequences of such a report and the options available to him. (11) An employee may request and receive from the employer a copy of the test result report. (12) Within ten (10) working days after receiving notice of a positive confirmed test result, the employee may submit information to an employer explaining the test results, and why the results do not constitute a violation

of the employer's policy. If an employee's explanation of the positive test results is not satisfactory to the employer, a written explanation submitted by the employer as to why the employee's explanation is unsatisfactory, along with the report of positive results, shall be made a part of the employee's medical and personnel records. (13) Except as otherwise provided in Section 71-7-13(10), an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result that has not been verified by a confirmatory test. (14) An employer may not discharge, discipline, discriminate against or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to this chapter unless the employee had an affirmative obligation to provide such information before, upon or after hire. (15) An employer who performs on-site drug and alcohol tests or specimen collection shall establish chain-of-custody procedures to ensure proper record keeping, handling, labeling and identification of all specimens to be tested. (16) The employer shall pay the costs of all drug and alcohol tests to which he requires, or requests, an employee or job applicant to submit. The employee or job applicant shall pay the costs of any additional drug and alcohol tests requested by the employee or job applicant.

**71-7-11. Confirmation drug and alcohol tests; Laboratories to be used.**—Only laboratories shall conduct confirmation drug and alcohol tests. All confirmation tests shall use an alternate method of equal or greater sensitivity than that used on the initial drug and alcohol test. If an initial drug and alcohol test is negative, there shall be no confirmation drug and alcohol test.

**71-7-13. Confirmed positive tests; Confirmed test alone not a “handicap”; Employer's right to test, discipline, or discharge employees; Rehabilitation.**—(1) An employee or job applicant whose drug and alcohol test result is confirmed as positive in accordance with the provisions of this chapter shall not, by virtue of the result alone, be defined as a person with a "handicap." (2) An employer who discharges or disciplines an employee on the basis of a positive confirmed drug and alcohol test in accordance with this chapter shall be considered to have discharged or disciplined the employee for cause. (3) An employee discharged on the basis of a confirmed positive drug and alcohol test in accordance with this chapter shall be considered to have been discharged for willful misconduct. (4) A physician-patient relationship is not created between an employee or job applicant, and an employer or any person performing or evaluating the drug and alcohol test, solely by the establishment or implementation of a drug and alcohol testing program. (5) This chapter does not prevent an employer from establishing reasonable work rules related to employee possession, use, sale or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules. (6) This chapter shall not be retroactive and shall not abrogate any right an employer may have to conduct drug and alcohol tests prior to the effective implementation date of this chapter. A drug and alcohol test conducted by an employer before the effective date of this chapter shall not be subject to this chapter. (7) If an employee refuses to submit to drug and alcohol testing administered in accordance with this chapter, the employer shall not be barred from discharging, or disciplining, or referring the employee to a drug abuse assessment, treatment and rehabilitation program at a site certified by the Department of Mental Health. (8) An employer, in addition to any appropriate personnel actions, may refer any employee found to have violated the employer's policy on drug use to an employee assistance program for assessment, counseling and referral for treatment or rehabilitation as appropriate. Such treatment or rehabilitation shall be at a site certified by the Department of Mental Health. (9) This chapter does not prohibit an employer from conducting medical screening or other tests required by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screenings or tests shall be limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests. (10) An employer may temporarily suspend or transfer an employee to another position after obtaining the results of a positive on-site initial test. An employer may discharge an employee after obtaining the results of a positive confirmed test. (11) Nothing in this chapter shall affect any right of an employer to terminate the employment of any person for reasons not related to a drug and alcohol testing program implemented pursuant to the provisions of this chapter.

**71-7-15. Drug and alcohol testing; Confidentiality of information; Disclosure; Written**

**consent.**—(1) All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by the employer through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this chapter. (2) Any information obtained by an employer pursuant to this chapter shall be the property of the employer. (3) An employer shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by the employer on a need to know basis, information related to drug and alcohol test results unless: (a) The employee or job applicant has expressly, in writing, granted permission for the employer to release such information; (b) It is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or (c) There is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information. (4) The confidentiality provisions provided for in this section shall not apply to other parts of an employee's or job applicant's personnel or medical files. (5) If an employee refuses to sign a written consent form for release of information to persons as permitted in this chapter, the employer shall not be barred from discharging or disciplining the employee.

**71-7-19. Laboratory written test reports; Deadlines; Information required.**—(1) A laboratory shall disclose to the employer a written test result report within five (5) working days after the test. (2) All laboratory reports of a test result shall, at a minimum, state: (a) The name and address of the laboratory that performed the test and the positive identification of the person tested; (b) Any positive confirmed drug and alcohol test results on a specimen which tested positive on an initial test, or a negative drug and alcohol test result on a specimen; provided, however, that reports should not make reference to initial or confirmatory tests when reporting positive or negative results; (c) A list of the drugs tested for; (d) The type of tests conducted for both initial and confirmation tests and the cut-off levels of the tests; and (e) The report shall not disclose the presence or absence of any physical or mental condition or of any drug other than the specific drug and its metabolites that an employer requests to be identified.

**71-7-21. State Board of Health to adopt rules.—The State Board of Health shall adopt rules concerning:** (a) Standards for drug and alcohol testing laboratory certification, suspension and revocation of certification; (b) Body specimens that are appropriate for drug and alcohol testing; (c) Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmatory tests; (d) Guidelines on how to establish cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result; (e) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens being tested; and (f) Retention and storage procedures to ensure reliable results on confirmation tests and retests.

**71-7-23. Chapter violations; Civil actions for damages and injunctive relief; Attorney fees.**— (1) A person alleging a violation of this chapter may bring an action for injunction relief or damages, or both. (2) For the purposes of this chapter, damages shall be limited to the recovery of compensatory damages directly resulting from injury or loss caused by each violation of this chapter. (3) A person or collective bargaining agent may bring an action under this section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement; provided, however, that the person's right to bring an action under this section shall not be affected by a decision of a collective bargaining agent not to pursue a grievance. (4) If a violation of this chapter is found and damages are awarded, reasonable attorney fees may be awarded to the person if the court or arbitrator finds that an employer has knowingly or recklessly violated this chapter.

**71-7-25. Violations of chapter; Civil actions; Deadlines; Limitations of relief; Employer liability; Validity of tests.**—(1) Upon an alleged violation of the provisions of this chapter, a person must institute a civil action in a court of competent jurisdiction within one (1) year of the alleged violation or the exhaustion of any internal administrative remedies available to the person, or be barred from obtaining the relief provided for in subsection (2) of this section. (2) Relief for violations of this chapter shall be limited to: (a) An injunction to restrain the continued violation of this chapter; (b) The reinstatement of the person to the same position held before the unlawful drug and alcohol testing, disciplinary action or discharge, or to an equivalent position; (c) The reinstatement of full employee benefits and seniority rights; (d) Compensation for lost wages, benefits and other remuneration to which the person would have been entitled but for a violation of this chapter; (e) Payment by the employer of reasonable costs. (3) Any employer who complies with the provisions of this chapter shall be without liability from all civil actions arising from any drug and alcohol testing programs or procedures performed in compliance with this chapter. (4) Pursuant to any claim alleging a violation of this chapter, including a claim under this chapter in which it is alleged that an employer's action with respect to a person was based on an incorrect test result, there shall be a rebuttable presumption that the test result was valid if the employer complied with the provisions of this chapter. (5) No cause of action for defamation of character, libel, slander or damage to reputation arises in favor of any person against an employer who has established a program of drug and alcohol testing in accordance with this chapter, unless: (a) Information regarded as confidential is released not in accordance with an information release form signed by the person or otherwise not in accordance with this chapter; (b) The information disclosed was based on an incorrect test result; (c) The incorrect test result was disclosed with malice; and (d) All other elements of an action for defamation of character, libel, slander or damage to reputation as established by statute or common law, are satisfied. (6) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug and alcohol testing.

**71-7-27. Private employers may elect to conduct drug and alcohol testing policies and programs; Procedures; Notice; Rescission of election.**—(1) A private employer may affirmatively elect to conduct an employee drug and alcohol testing policy or program pursuant to the provisions of this chapter. Such election shall be made by including in the written statement of the employer's policy on drug use provided for in Section 71-7-3 (1), and in the job applicant notification provided for in Section 71-7-3 (4), a specific statement that the employer's policy is being implemented pursuant to the provisions of this chapter. In the event a private employer makes such an election, the private employer and its employees and job applicants shall have the rights and obligations available to a private employer and its employees and job applicants under this chapter. A private employer who has made such an election may rescind such election by posting a written and dated notice in an appropriate and conspicuous location on the employer's premises, which notice shall state that the employer's employee drug and alcohol testing policy or program will no longer be conducted pursuant to this chapter. As to employees, the rescission of such election shall become effective no earlier than ten (10) working days after the date of the posted notice. As to job applicants, an employer may rescind such election without notice to such job applicant. (2) Any private employer who does not make such an election or who rescinds an election previously made will be deemed to not be conducting an employee drug and alcohol testing policy or program pursuant to the provisions of this chapter, and in that event the rights and obligations of the employer and its employees and job applicants will not in any way be subject to or affected by the provisions of this chapter, but will instead be governed by applicable principles of contract or common law.

**71-7-29. Nonapplicability to employers subject to federal drug and alcohol testing laws and regulations.**—This chapter shall not apply to any employer who is subject to federal law or federal regulations governing the administering of drug and alcohol tests to any of its employees or applicants for employment.

**71-7-31. Establishing or implementing testing program does not make private employer an agent or instrument of the state.**—A private employer shall not, by virtue of establishing or implementing a program for drug and alcohol testing in accordance with this chapter or otherwise, be deemed to be an agent or instrument of the State of Mississippi or anybody, department, agency, institution or



political subdivision thereof.

**71-7-33. Forbidding use of tobacco products during nonworking hours as condition of employment prohibited.**—It shall be unlawful for any public or private employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

**71-3-207. Implementation of drug-free workplace program; Certification; Premium discounts.**—(1) If an employer implements a drug-free workplace program substantially in accordance with Sections 71-3-201 through 71-3-225, the employer shall qualify for certification for a five percent (5%) premium discount if offered under the employer's workers' compensation insurance policy. (2) For each policy of workers' compensation insurance issued or renewed in the state on or after July 1, 1997, a five percent (5%) reduction in the premium for such policy may be granted by the insurer if the insured certifies to the insurer that it has established and maintains a drug-free workplace program that complies with the requirements of Sections 71-3-201 through 71-3-225. (3) The premium discount provided by this section shall be applied to an insured's workers' compensation insurance pro rata as of the date of receipt of certification by the insurer. (4) The Workers' Compensation Commission shall promulgate appropriate forms and procedures to allow self-certification by an insured to its insurer. Certification by an insured shall be required for each year in which a premium discount is granted. (5) The insured's workers' compensation insurance policy shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount if it is determined that such insured misrepresented the compliance of its drug-free workplace program within the provisions of Sections 71-3-201 through 71-3-225. (6) The Workers' Compensation Commission shall be authorized to promulgate rules and regulations necessary for the implementation and enforcement of this section.

**71-3-209. Drug-free workplace program requirements.**—A drug-free workplace program must contain the following elements: (a) Written policy statement as provided in Section 71-3-211; (b) Comply with the substance abuse testing procedures as provided in Sections 71-7-1 through 71-7-33, Mississippi Code of 1972, if testing is initiated by the employer; (c) Resources of employee assistance providers or other rehabilitation resources, maintained in accordance with Section 71-3-213; (d) Employee education as provided in Section 71-3-215; and (e) Supervisor training in accordance with Section 71-3-217.

**71-3-211. Employers must provide employees with a written policy statement on substance abuse; Contents.**—A drug-free workplace must provide a written policy statement on substance abuse in order to qualify for the provisions of Section 71-3-207. All employees must be given a written policy statement from the employer that contains: (a) A general statement of the employer's policy on substance abuse notifying employees that the unlawful manufacture, sale, distribution, solicitation, possession with intent to sell or distribute, or use of alcohol or other drugs is prohibited in the person's workplace; (b) A statement advising an employee or job applicant of the existence of Sections 71-3-201 through 71-3-225; (c) A general statement concerning confidentiality; (d) A statement advising an employee of the employee assistance program, external employee assistance program, or the employer's resource file of employee assistance programs and other persons, entities or organizations designed to assist employees with personal or behavioral problems; (e) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act if applicable to the employer.

**71-3-213. Private sector drug-free workplace; Requirements; Employee assistance programs; Resource file.**—In order for an employer's workplace to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 71-3-207, the following must be met: (a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternatives to publicize such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program. (b) If an employer does not have an employee assistance

program, the employer must maintain a resource file of employee assistance service providers, alcohol and other drug abuse programs, mental health providers, and other persons, entities or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

**71-3-215. Employee education programs.**—An employer must provide all employees with an education program on alcohol and other drug abuse prior to instituting a private sector drug-free workplace program under Sections 71-3-201 through 71-3-225. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one (1) hour should include, but is not limited to, the following information: (a) The explanation of the disease of addiction for alcohol and other drugs; (b) The effects and dangers of the commonly abused substances in the workplace; and (c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

**71-3-217. Supervisory personnel must receive training prior to implementing program.**—In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 71-3-207, and in addition to the educational program provided in Section 71-3-215, an employer must provide all supervisory personnel a minimum of two (2) hours of training prior to the institution of a drug-free workplace program under Sections 71-3-201 through 71-3-225, and each year thereafter which should include, but is not limited to, the following: (a) Recognition of evidence of employee alcohol and other drug abuse; (b) Documentation and corroboration of employee alcohol and other drug abuse; (c) Referral of alcohol and other drug abusing employees to the proper treatment providers; (d) Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and (e) Explanation of any employee health insurance or HMO coverage for alcohol and other drug problems.

**71-3-219. Drug testing results and information; Privacy; Consent forms.**—(1) All information, interview, reports, statements, memoranda and test results, written or otherwise, received by the employer through a substance abuse program are confidential communications as they pertain to the employee only and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceedings, except as provided in Sections 71-7-1 through 71-7-33, Mississippi Code of 1972. (2) Release of any such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum: (a) The name of the person who is authorized to obtain the information; (b) The purpose of the disclosure; (c) The precise information to be disclosed; (d) The duration of the consent; and (e) The signature of the person authorizing release of the information. (3) Nothing in Sections 71-3-201 through 71-3-225 shall be construed to call for actions that may violate federal or state confidentiality statutes for employee assistance professionals and alcohol and other drug abuse counseling or treatment providers.

**71-3-221. No cause of action for failure to implement program.**—No cause of action shall arise in favor of any person against an employer based upon the failure of an employer to establish a substance abuse program in accordance with Sections 71-3-201 through 71-3-225.

**71-3-223. Law not retroactive; Employer's right to test/implement programs; Reduced insurance rates .**—Nothing in Sections 71-3-201 through 71-3-225 shall be construed to operate retroactively, and nothing in Sections 71-3-201 through 71-3-225 shall abrogate the right of an employer under state law to conduct substance abuse tests, or implement employee substance abuse testing programs. Only those programs that meet the criteria outlined in Sections 71-3-201 through 71-3-225 qualify for reduced workers' compensation insurance rates under Section 71-3-207.

**71-3-225. Severability.**—If any provision of Sections 71-3-201 through 71-3-225 or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of Sections 71-3-201 through 71-3-225 that can be given effect without the invalid provision or application, and to this end the provisions of Sections 71-3-201 through 71-3-225 are severable.

**Sec. 1., Mississippi— Drug and alcohol testing, Private and public employments; State Board of Health rules and regulations .**—Drug and alcohol testing, Private and public employments; State Board of Health rules and regulations.— **PART I. AUTHORITY AND PURPOSE.** The following rules and regulations for drug and alcohol testing of employees and job applicants by public and private employers are duly adopted and promulgated by the Mississippi State Board of Health pursuant to the authority expressly conferred by the laws of the State of Mississippi in House Bill No. 84 of 1994, hereinafter referred to as "the Act". The purpose of these rules and regulations is to promulgate standards and guidelines concerning: 1. Standards for drug and alcohol testing, laboratory certification, suspension and revocation of certification; 2. Body specimens that are appropriate for drug and alcohol testing; 3. Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmatory tests; 4. Guidelines on how to establish cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result; 5. Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens being tested; 6. Retention and storage procedures to ensure reliable results on confirmation tests and retests; 7. Initial drug and alcohol tests and confirmation tests; 8. Establishment of a program to train and certify persons to collect specimens and to conduct on-site drug and alcohol tests in the workplace; 9. Designation as to who is deemed qualified by the State Board of Health to take or collect a specimen for a drug and alcohol test; and 10. Standard language to be included in employer's drug and alcohol testing notices concerning: a. A statement advising the employee of the existence of House Bill No. 84 of 1994; b. A general statement concerning confidentiality; and c. Procedures for how employees can confidentially report the use of prescription or nonprescription medications prior to being tested. **PART II. SCOPE.** In the State of Mississippi, every public and private employer who implements a drug and alcohol testing policy and program, pursuant to the Act, shall do so in accordance with these regulations. Any person or entity who collects specimens for drug and alcohol testing, who conducts initial and/or confirmation tests, or who conducts retests on specimens after a positive confirmation test, pursuant to the Act, shall do so in accordance with these regulations. **PART III. DEFINITIONS.**

Alcohol. Ethyl alcohol. Chain of Custody. Procedures to account for the integrity of each urine specimen and each blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. Confirmation Test. A drug and alcohol test on a specimen to substantiate the results of a prior drug and alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous drug and alcohol test. Department. The Mississippi State Department of Health. Drug. An illegal drug, or a prescription or nonprescription medication. Drug and Alcohol Test. A chemical test administered for the purpose of determining the presence or absence of a drug or alcohol or their metabolites in a person's bodily fluids. Employee. Any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state. Employer. Any individual, organization or government body, subdivision or agency thereof, including partnership, association, trustee, estate, corporation, joint stock company, insurance company or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this state, or which has offered or may offer employment to one or more individuals in this state. Illegal Drugs. Any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or nonprescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate inhalation. Initial Test. An initial drug or alcohol test to determine the presence or absence of drugs or alcohol or their metabolites in specimens. MRO. Medical Review Officer. Medical Review Officer. A

licensed physician responsible for receiving laboratory results generated by an employer's drug and/or alcohol testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information. NIDA. National Institute on Drug Abuse. Nonprescription Medication. A drug that is authorized pursuant to federal or state laws for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries. Prescription Medication. A drug prescribed for use by a duly licensed physician, dentist or other medical practitioner licensed to issue prescriptions. SAMHSA. Substance Abuse and Mental Health Services Administration. **PART IV. THE DRUGS.** 1. An employer may include in its drug and alcohol testing protocols marijuana, cocaine, opiates, amphetamines, phencyclidine, alcohol and other controlled substances. However, if testing for controlled substances other than those specifically named above is conducted, testing for such substances can be done only if the United States Department of Health and Human Services has established an approved protocol and positive threshold for each such substance, which has been adopted by the Mississippi State Department of Health. 2. Urine and/or other body specimens collected under Department regulations may only be used to test for controlled substances designated for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by Department regulations. 3. This section does not prohibit procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of Ph or tests for specific gravity, creatinine concentration or presence of adulterants). **PART V. BODY SPECIMENS APPROPRIATE FOR DRUG AND ALCOHOL TESTING.** 1. Drugs—Urine for initial and confirmation tests. 2. Alcohol—Breath and/or saliva for initial tests; Blood for confirmation tests. **PART VI. COLLECTION OF SPECIMENS; INITIAL TESTING AND ANALYSIS PROCEDURES.** 1. Employers who implement a drug and alcohol testing program pursuant to the Act shall contract with manufacturers, vendors or other providers of drug and alcohol testing devices, or with a certified laboratory, for the purpose of initial on-site drug and alcohol testing of employees in the work place to: a. Train and certify employees of the employer implementing the drug and alcohol testing program in the collecting of specimens and the administering of initial tests; or b. Provide the employer with certified personnel to collect specimens and administer the initial tests. 2. A specimen for a drug and alcohol test may be taken by any of the following persons: a. A physician, a registered nurse or a licensed practical nurse; b. A qualified person employed by a certified laboratory; or c. An employee or an independent contractor of the employer conducting a drug and alcohol testing program pursuant to the Act who has been trained and certified in the collecting of specimens by a manufacturer, vendor, or other provider of drug and alcohol testing devices, or by a certified laboratory. 3. **Initial Test—Drugs.** --- a. The initial test shall use an immunoassay which meets the requirement of the United State Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs.

Initial Test Cutoff  
Levels (NG/ML)

Marijuana Metabolites 50

Cocaine Metabolites 300

Opiate Metabolites 300

Phencyclidine 25

Amphetamines 1,000

25 NG/ML if immunoassay specific for free morphine.

b. These cutoff levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentrations. 4. **Initial Test—Alcohol.** Any detectible level of alcohol found in the breath or saliva specimen of an individual shall be deemed a positive result. 5. Any initial drug or alcohol test yielding a positive result shall be followed by an appropriate confirmation test. **PART VII. CONFIRMATION TEST—LABORATORY ANALYSIS PROCEDURES—REPORTING RESULTS.** 1. Employers who implement a drug and alcohol testing program pursuant to the Act shall contract with a laboratory to conduct confirmation tests on specimens which produce a positive result in testing for drugs or alcohol

in the initial on-site test in the workplace. 2. No laboratory may conduct confirmation drug and alcohol tests unless the director of the laboratory and the laboratory are certified by the Department in accordance with the criteria set forth in Part VIII hereof titled, "Laboratory Certification, Suspension and Revocation of Certification." 3. Laboratories certified by the Department to conduct confirmation drug and alcohol tests are required to have the following: a. Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmation tests. b. Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens being tested; and c. Retention and storage procedures to ensure reliable results on confirmation tests and retests. 4. Results of the confirmation test shall be reported by the laboratory to the employer's Medical Review Officer in accordance with the provisions set forth in paragraph number "9" below. 5. All employers shall have a Medical Review Officer who shall be responsible for receiving and interpreting laboratory results of drug and alcohol tests. Said MRO shall be the sole person authorized to review the results of such tests. 6. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

Confirmation Test

Cutoff Levels

(NG/ML)

Marijuana metabolite 1 15

Cocaine metabolite 2 150

Opiates:

Morphine 300

Codeine 300

Phencyclidine 25

Amphetamines:

Amphetamine 500

Methamphetamine 500

1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.

2 2 Benzoyllecgonine.

7. These cutoff levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentrations. 8. **Confirmation Test—Alcohol.** An ethyl alcohol level of 10mg/dl found in the blood specimen of an individual shall be deemed a positive result. 9. The laboratory shall report confirmation test results to the employer's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before a test result is reported (the results of confirmation tests or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number). 10. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmation test. Only specimens confirmed positive shall be reported positive for a specific drug or alcohol. 11. The laboratory shall send only to the Medical Review Officer the drug or alcohol testing results which, in the case of a report positive for drug or alcohol use, shall be signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports. 12. Unless otherwise instructed by the employer in writing, all records pertaining to a given urine or blood specimen shall be retained by the drug testing laboratory for a minimum of 2 years. 13. Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug, alcohol or their metabolites. 14. Laboratories will preserve positive specimens in such a manner as to ensure that said specimens will be available for any necessary retests in accordance with the Act. **PART VIII.**

**LABORATORY CERTIFICATION, SUSPENSION AND REVOCATION OF**

**CERTIFICATION.** 1. A laboratory applying for a certificate from the Mississippi State Department

of Health shall submit a copy of its certification from SAMHSA or CAPFUDT or its license or certification by an agency of another state, and any other documentation or information required by the Department, to determine that the applicant is currently certified by one of the above named certifying bodies. A certification by one or more of the above named certifying bodies shall, for the purpose of these rules, operate as a certification by the Department. 2. Any suspension or revocation of a laboratory's certification or license by any of the above named certifying bodies shall operate as a suspension or revocation of its certification by the Department. The laboratory shall be notified in writing of any such action taken by the Department and shall have twenty (20) days from the receipt of such written notification to request a hearing on the matter. After any such hearing, the Department shall make a final decision concerning the suspension or revocation of the laboratory's certificate and shall notify the laboratory in writing of same. If the laboratory is aggrieved by the Department's final decision, it may appeal as provided by law. 3. A certificate is not transferable. When there is a change of ownership of the certified laboratory, a new application will be required, and a new number will be issued. 4. Any information required by the Department with respect to customers of laboratories shall be held in confidence and not disclosed to the public. 5. After a suspension or revocation of a laboratory's certification, any recertification or relicensure, by any of the above named certifying bodies will operate as a recertification or relicensure by the Department. **PART IX. STANDARD LANGUAGE.** Any employer in the State of Mississippi who utilizes an employee and/or job applicant drug and alcohol testing program, pursuant to House Bill No. 84 of 1994, shall in its written policy statement and notice to employees include as a part of such written policy statement and notice the following wording: (1) You are hereby advised that (Here insert name of employer) has implemented a drug and alcohol policy and conducts a testing program, pursuant to House Bill No. 84 of 1994, and you are hereby advised of the existence of said Act. (2) All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by (Here insert name of employer) through its drug and alcohol testing program are confidential communications, except under certain circumstances as allowed by the Act. (3) An employee or job applicant shall be allowed to provide notice to (Here insert name of employer) of currently or recently used prescription or nonprescription drugs at the time of the taking of the specimen to be tested, and such information shall be placed in writing upon the employer's drug and alcohol testing custody and control form prior to initial testing.

**2.,Mississippi—Department of Audit, Alcohol and Drug Testing Policy.—[Department of Audit, Alcohol and Drug Testing Policy].—** 1 Scope: The chemical testing program of the Department of Audit will be a key element in providing responsible assurances that all employees of the Department of Audit and its facilities are not under the influence of chemical substances, either legal or illegal, which might impair their performance. Policy: It shall be the policy of the Department of Audit that a chemical testing program exist to provide reasonable assurance that all employees are not under the influence of alcohol or chemical substances, either legal or illegal, which might impair their performance and to insure compliance with this agency's policy to maintain a drug-free workplace. This policy is being adopted pursuant to Mississippi Code Annotated §71-7-1 et. seq., (1972) as Amended. This policy prohibits all employees from consuming alcohol while on duty and from using controlled substances. Employees driving state owned vehicles are prohibited further from using alcohol for a period beginning four (4) hours before going on duty and ending when they go off duty. **Procedure: I. DEFINITIONS --** A. Confirmation Test—A drug and alcohol test on a specimen to substantiate the results of a prior drug and alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous drug and alcohol test. B. Drug—An illegal drug, or a prescription or nonprescription medication. C. Alcohol—Ethyl alcohol. D. Drug and Alcohol Test—A chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person's bodily fluids. E. Employee—Any individual employed by the Department of Audit. F. Special Agents—Employees of the Department of Audit assigned duties as Special Agents in the Investigations Division whether or not armed. Employee Assistance Program (EAP)—A program provided by an employer offering assessment, short-term counseling and referral services to employees, including drug, alcohol and mental health programs. G. Employer—The Department of Audit. H. Initial Test—An initial drug test to determine the presence or absence of drugs or their metabolites in specimens. I. Chain-of-Custody—Procedures and associated documents to account for the integrity of each specimen by tracking its handling and

storage from the point of specimen collection to final disposition of the specimen. J. Collection Site—A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine, breath, and/or blood to be analyzed for the presence of drugs or alcohol. K. Collection Site Person—A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen(s) provided by those individuals. A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection and certifies completion. In any case where: (a) a collection is observed, or(b) collection is monitored by non-medical personnel, the collection site person must be a person of the same gender as the donor. L. Department of Audit Property—The term is applied in its broadest sense and includes, but not limited to, all land, property, buildings, structures, cars, and trucks. M. Follow-up Testing—Chemical testing at unannounced intervals to ensure that an individual that has received a confirmed positive drug/alcohol test, or has been identified as a drug or alcohol abuser, or has been involved as a principal subject in a drug/alcohol related event is maintaining abstinence from the abuse of drugs or alcohol. N. Illegal Drugs—Those drugs included in Schedules I through V of the Controlled Substance Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law. O. Cut-Off Level—The value or concentration level established by the Department of Audit for designating a drug/alcohol test result as positive. The cut-off levels in effect are:

**Substance  
Initial Screen Levels  
Confirm Levels**

**Marijuana Metabolite 50 ng/ml**

**15 ng/ml**

**Cocaine Metabolite 300 ng/ml**

**150 ng/ml**

**Opiate Metabolite 300 ng/ml**

**300 ng/ml**

**Phencyclidine 25 ng/ml**

**25 ng/ml**

**Amphetamines 1000 ng/ml**

**500 ng/ml**

**Alcohol 0.04 % BAC**

**0.04% BAC**

P. Confirmed Positive Test—The result of a confirmatory test that has established the presence of drugs, drug metabolites, or alcohol in a specimen at or above the cut-off level and that has been deemed positive by the Medical Review Officer (MRO) after evaluation. A confirmed positive test for alcohol can also be obtained as a result of a confirmation of blood alcohol levels with a second breath analysis without a MRO evaluation. Q. Medical Review Officer—A licensed physician responsible for receiving laboratory results generated by the Department of Audit drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant

biomedical information. R. Offense—Term used by this directive as one or more of the following which may result in management action or involve sanctions/disciplinary actions prescribed by this directive: 1. A confirmed positive drug or alcohol test result. 2. Use, possession or sale of illegal drugs on or off Department of Audit property. 3. The consumption of alcohol on Department of Audit property. 4. An arrest connected with illegal substance use or abuse, including offenses identified by Department of Audit investigations. 5. Conviction of a drug related incident. 6. When a Department of Audit mandated EAP referral results in a determination by the EAP provider that the individual's condition constitutes a hazard to himself/herself or other, and referral has been reported to Department of Audit management. S. Permanent Record Book—A permanently bound book in which identifying data on each specimen collected at a collection site is permanently recorded in the sequence of collection. T. Negative Test Results—Term used to describe the results of urinalysis, breath analysis or blood test of an individual which does not show a presence of chemicals at concentration levels that are prohibited by the Department of Audit. U. Positive Test Results—The results of urinalysis, breath analysis or blood test of an individual which show a presence of drug metabolites and/or alcohol at concentration levels that are prohibited by the Department of Audit. V. Valid Prescription—A prescription for medication which is written by a licensed health professional and is written specifically for the individual who is taking the medication. W. Alcohol and Drug Policy Coordinator—The person within the Department of Audit whose responsibility it is to organize, maintain, and supervise all aspects of the program. **II. THE DRUGS** --- A. The Department of Audit includes in its drug and alcohol testing protocols: marijuana, cocaine, opiates, amphetamines, phencyclidine, alcohol and other controlled substances. However, if testing for controlled substances other than those specifically named above is conducted, testing for such substances can be done only if the United States Department of Health and Human Services has established an approved protocol and positive threshold for each such substance, which has been adopted by the Mississippi Department of Audit. B. Urine and/or blood specimens collected under Department of Health regulations may only be used to test for controlled substances designated for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by Department of Audit regulations. C. This section does not prohibit procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of Ph or tests for specific gravity, creatinine concentration or presence of adulterants). --- **III. BODY SPECIMENS APPROPRIATE FOR DRUG AND ALCOHOL TESTING.** A. Drugs—Urine for initial and confirmation tests. B. Alcohol—Breath and/or saliva for initial tests or confirmation tests. Under DOT regulations covered employees have breath used for both initial and confirmation tests. ---**IV. COLLECTION OF SPECIMENS; INITIAL TESTING AND ANALYSIS PROCEDURES.** A. The Department of Audit shall contract with manufacturers, vendors or other providers of drug and alcohol testing devices, or with a certified laboratory, for the purpose of initial on-site drug and alcohol testing of employees in the work place to: 1. Train and certify employees of the employer implementing the drug and alcohol testing program in the collecting of specimens and the administering of initial tests; or 2. Provide the employer with certified personnel to collect specimens and administer the initial tests. 3. employees will be tested by a certified laboratory. B. A specimen for a drug and alcohol test may be taken by any of the following persons: 1. A physician, a registered nurse or a licensed practical nurse; 2. A qualified person employed by a certified laboratory; or 3. An employee or an independent contractor of the employer conducting a drug and alcohol testing program who has been trained and certified in the collecting of specimens by a manufacturer, vendor, or other provider of drug and alcohol testing devices, or by a certified laboratory. C. Initial Test—Drugs. 1. The initial test shall use an immunoassay which meets the requirement of the United State Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs.

**Initial Test Cutoff Levels  
(NG/ML)**

**Marijuana Metabolites 50**

**Cocaine Metabolites 300**



**Opiate Metabolites 300 \***

**Phencyclidine 25**

**Amphetamines 1.000**

**\* 25 NO/ML if immunoassay specific free morphine.**

2. These cutoff levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentrations. D. Initial Test—Alcohol. A detectable level of .04% BAC of alcohol found in the breath specimen of an individual shall be deemed a positive result. E. Any initial drug or alcohol test yielding a positive result shall be followed by an appropriate confirmation test. **V. CONFIRMATION TEST-LABORATORY ANALYSIS PROCEDURES-REPORTING RESULTS** ---A. Department of Audit shall contract with a laboratory to conduct confirmation tests on specimens which produce a positive result in testing for drugs or alcohol in the initial on-site test in the workplace. B. No laboratory may conduct confirmation on drug and alcohol tests unless the director of the laboratory and the laboratory are certified by the Department of Health. C. Laboratories certified by the Department of Health to conduct confirmation drug and alcohol tests are required to have the following: 1. Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmatory tests. 2. Chain of Custody procedures to ensure proper identification, labeling and handling of specimens being tested; and, 3. Retention and storage procedures to ensure reliable results on confirmation tests and retests. D. Results of the confirmation test shall be reported by the laboratory to the Medical Review Officer in accordance with the provisions set forth in paragraph number "I" below. E. A Medical Review Officer shall be responsible for receiving and interpreting laboratory results of drug and alcohol tests. Said MRO shall be the sole person authorized to review the results of such tests. F. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (CO/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis is. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

**Confirmation Test Cutoff Levels  
(NG/ML)**

**Marijuana metabolite 15**

**Cocaine metabolite 150**

**Opiates:**

**Morphine 300**

**Codeine 300**

**Phencyclidine 25**

**Amphetamines:**

**Amphetamine 500**

**Methamphetamine 500**

**1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.**

**2 Benzoyllecgonine.**

G. These cutoff levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentrations. H. Confirmation Test—Alcohol. A detectable alcohol level of .04% BAC found in the blood specimen of an individual shall be deemed a positive result. I. The laboratory shall report test results to the Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmation tests, or quality control date), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned

by the employer, and the drug testing laboratory specimen identification number (accession number). J. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmation test. Only specimens confirmed positive shall be reported positive for a specific drug or alcohol. K. The laboratory shall send only to the Medical Review Officer the drug or alcohol testing results which, in the case of a report positive for drug or alcohol use, shall be signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports. L. Unless otherwise instructed by the employer in writing, all records pertaining to a given urine or blood specimen shall be retained by the drug testing laboratory for a minimum of 2 years. M. Because some analyses deteriorate or are lost during freezing and/or storage, quantization for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug, alcohol or their metabolites. N. Laboratories will preserve positive specimens in such a manner as to ensure that said specimens will be available for any necessary retests in accordance with the Act. **VI. CHEMICAL TESTING WILL OCCUR UNDER THE FOLLOWING CONDITIONS:** A. Pre-employment—Drug/alcohol testing of any person seeking a position of Special Agent will be conducted only after an offer of employment is made, such offer being contingent upon a negative test result. B. For Cause—For cause testing applies to all employees. Testing will be based upon observed behavior abnormalities, substantial degradations of the level of work site safety when worker's behavior is considered a contributing factor; or after credible information is obtained indicating abuse of drugs or alcohol. C. Post Accident/Incident—Testing as soon as possible, but not more than 24 hours, following any occurrence involving a state owned vehicles, discharge of a firearm, and/or physical violence regardless if there was resulting personal injury or property damage. D. Annual Testing—Annual drug/alcohol testing will be performed for all Special Agents of the Department of Audit on a date(s) to be set by the Investigations Division Director. E. Follow-up Testing—Testing on an unannounced basis to verify continued abstention from the abuse of substances while participating in a follow-up monitoring program. F. Implementation of Policy Testing—All current Special Agents of the Department of Audit will be tested within six months of the date this policy becomes effective.

**VII. PROVISIONS FOR TESTING ---** A. Stringent quality controls shall be maintained by test personnel to ensure all scientific and technical guidelines for drug and alcohol testing established by the National Institute on Drug Abuse (NIDA). The testing staff shall have trained collection/testing personnel. A certified State Department of Health laboratory shall conduct confirmation drug/alcohol tests of any presumptive positive test results on employees. B. Privacy will be afforded whenever possible to individuals providing urine samples. Privacy shall be provided by use of a restroom stall, or similar enclosure, so that the individual is not directly observed while providing the sample. The collector may remain in the collection room while the specimen is being provided. Collection personnel of the same gender but different department as the tested individual shall be used when a direct observation specimen has been determined to be necessary to ensure specimen integrity. **Rationalization for direct observation include:** 1. The individual's initial urine specimen fell outside the normal temperature range as specified in applicable test procedures; and the individual declines to provide a measurement of oral body temperature; 2. The individual, on a previous occasion, provided a specimen which was determined by the laboratory to have a specific gravity below established acceptable test levels as specified in applicable test procedures; 3. The individual's conduct is observed by the collector site person as clearly and unequivocally attempting to substitute or adulterate the specimen; or, 4. The individual is being tested as part of a rehabilitation program or on return to service after evaluation and/or treatment for a confirmed positive test result. C. Objective evidence indicating an individual purposely attempted to circumvent the chemical testing process may be used as a basis for disciplinary action, up to and including termination. D. Once an individual has reported to the collection site for a drug test, the individual is required to remain at the collection site until: 1. A specimen is collected from the individual which meets the testing requirements; 2. Individuals who cannot provide a specimen when first requested to do so should remain in the test area, consuming liquids until able to do so. The specimen must be provided on the scheduled day. 3. Permission to leave has been obtained from the Medical Review Officer. This must be documented in the permanent Record Book. E. On occasion, circumstances may warrant an individual being allowed to defer testing until a time beyond the standard two hour limit. If the individual cannot report to the collection site within the required time frame a deferral must be requested and approved by the

applicable department director. Failure to appear without a deferral will be considered refusal to participate in testing. F. Refusal by an employee to participate in testing may result in disciplinary action, up to and including termination. The following actions constitute refusal: 1. Declining to sign required test related documents (i.e., permanent record book, consent to test form, etc.); 2. Not participating in a specific test process required by the test program; 3. Failure to appear for testing within the required time frames (without approved deferrals); and, 4. Failure to provide a specimen on the scheduled day. VIII. TESTING ---A. Pre-employment Testing: 1. Preemployment testing shall be conducted for all individuals to whom an offer of employment as a Special Agent is made, and to employees requesting promotions and/or a new employment position as a Special Agent. 2. As a condition of final approval once an offer of employment for a position as a Special Agent has been made, an applicant must consent to a pre-employment drug and/or alcohol test and to a background check of the applicant's previous employers to determine whether the applicant has tested positive for drugs or alcohol or has otherwise violated the drug and alcohol policies of a previous employer. 3. Individuals with confirmed positive drug test results, as determined through the chemical testing process, will not be employed or reconsidered for employment for a period of three (3) years in any position with the State Auditor's Office. Individuals with a confirmed positive alcohol test will not be employed or reconsidered for a period of one (1) year in any position with the State Auditor's Office. Individuals whose background check reveals drug/alcohol abuse with a previous employer, may be denied employment and reconsideration for employment for a period of one (1) year in any position with the State Auditor's Office. Current employees who test positive when applying for a Special Agent position will be handled according to the guidelines of this Drug and Alcohol Testing Policy.

B. Testing For Cause/Reasonable Suspicion: 1. Testing for cause may be required on occasion and all Department of Audit employees are subject thereto. Due to the sensitive nature of for cause testing, specific criteria have been established to determine when for cause testing is warranted. Every attempt is made to rely on objective evidence which can be substantiated prior to requiring an individual to participate in a for cause test. Testing for cause may consist of drug and alcohol testing or alcohol testing alone as deemed appropriate by the Audit Department Director and shall be based on one of the following: a. Direct observation indicating actual or potential substance abuse; b. Observed aberrant behavior; pattern of abnormal conduct, or physical symptoms of being under the influence of drugs or alcohol; c. Information received from a credible source as indicating the abuse of drugs or alcohol; d. Arrest or conviction for a drug or alcohol related offense; or the identification of an employee as the focus of a criminal or Department of Audit internal affairs investigation into illegal possession, use or trafficking; e. Admission of illegal drug use; f. The initiation of for cause testing by responsible management may result from ongoing observations of poor performance may consist of chronic tardiness or absenteeism, emotional outbursts, poor interface with coworkers, continuing mistakes, etc. g. Testing for cause of covered Department of Audit employees must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech or body odors of an employee consistent with drug or alcohol use. 2. The Audit Department Director will review all requests for testing. a. If the request is concurred with, the individual in question will be notified by the individual's supervisor or other appropriate management. The individual will be informed of the reason for testing. The individual will be given an opportunity to provide information deemed appropriate, prior to conduct of the for cause test. b. The Director may deny the request based on a lack of justification by the requesting supervisor or if the request appears to be based on reasons outside the scope of this directive. 3. Documentation supporting a for cause test request must be provided to the Director for inclusion in the individual's personnel file. Documentation can be provided after the fact in order to facilitate timely testing; however, documentation must be submitted within one (1) working day (excluding weekends and Department of Audit holidays or non-work days) of the for cause test. 4. Individuals being tested for cause will be suspended with pay pending outcome of the test. If the test results are negative, the tested individual may be reinstated. Positive test results will be handled in accordance with Section X. 5. Employees who are Special Agents should be tested within two (2) hours of the determination to test, but in no event later than eight (8) hours after that determination. If it takes more than two (2) hours for the test, documentation must be maintained explaining the delay and, no alcohol test shall be conducted more than eight (8) hours after the decision is made. A written record must be made of the observation leading to cause for testing and it must be made within twenty-four (24) hours of the observed behavior or before the results of the

controlled substances tests are released, whichever earlier. **C. Post Accident/Incident Testing** ---Post accident/incident testing may be required by the Audit Department Director when the initial evaluation of an event indicates a failure in individual performance may have caused the event to occur. In non-firearm or non-physical violence events, if the initial post accident evaluation by responsible authority indicates the individual's performance did not contribute to the cause of the event and the individual involved does not demonstrate any signs of impairment, testing is not mandated. Post-accident/incident testing shall be based on one of the following as minimum: 1. After accidents/incidents at the office or vehicle accidents resulting in serious personal injury or property damage, or near accidents where serious personal injury or property damage could have occurred; 2. An accident involving discharge of a firearm and/or physical violence; 3. For employees driving state owned vehicles, testing is required for the driver in any accident including if such accident involves the loss of human life or if the driver receives a citation for a moving traffic violation arising from the accident. A test for alcohol is to be administered within eight (8) hours following the accident. If a test is not administered within two (2) hours, the applicable department director must prepare and maintain a written statement of reason(s) for the delay. Drug testing must be performed within twenty-four (24) hours following the accident. **D. Annual Chemical Testing:** 1. All Special Agents of the Department of Audit shall be subject to annual drug and alcohol testing. Testing shall be conducted once a year over a twelve month calendar period at a date(s) to be set by the Investigations Division Director. Disciplinary actions and follow-up testing, if applicable, associated with positive testing results of this population are to be determined by the Audit Department Director with recommendations from the Investigations Division Director. 2. Individuals participating in annual testing are allowed to return to work immediately following testing provided no other reasons exist to question the individual's ability to perform their assigned duties. 3. Individuals that are not currently available for testing due to approved absence (e.g., personal or medical leave, holiday, differing shift assignment/work location, etc.) will be rescheduled for testing. If the individual cannot report within two hours of notification, a deferral must be requested and approved by the Investigations Division Director. Failure to appear without a deferral will be considered a refusal to participate in testing and subject to disciplinary action as otherwise provided in this policy directive. **E. Follow-Up Testing**---1. Participation in follow-up testing will be mandated for individuals when: a. The individual has self referred or has been referred by responsible management to the EAP for rehabilitation/counseling for substance or alcohol abuse and the EAP determined follow-up testing is a necessary part of the individual's rehabilitation or that the individual's condition constituted a hazard to himself or others, or b. The individual is being monitored after testing positive for cause or annual testing. Individuals arrested or convicted for a drug or alcohol related offense, or who are the focus of a criminal investigation into illegal possession, use or trafficking may be required to participate in follow-up testing. 2. Verification of continued abstinence from illegal drugs or for the abuse of alcohol shall be accomplished through an intensive testing schedule. Participating individuals shall be tested at a frequency of at least once every month for four (4) months following reinstatement, and at least once every two (2) months for the next eight (8) months. During this period of follow-up testing, individuals will be subject to "for cause" testing. 3. Disciplinary action for individuals testing positive for substance abuse during the follow-up testing will be addressed in accordance with Section XI. 4. Individuals who have the presence of alcohol identified during follow-up alcohol testing will be handled in accordance with Section XIII. 5. All Special Agents will be subject to unannounced follow-up testing for a period of 60 months. **IX. USE, SALE, OR POSSESSION:** A. The Department of Audit prohibits the sale, use or possession of illegal drugs and the consumption of alcohol on Department property, whether leased, rented, or owned, or while employees are engaged in work on or off Department property. B. Nothing in the chemical testing policy shall affect the Department of Audit's right to discharge or discipline employees for reasons unrelated to this policy. Any individual determined to have been involved in the sale, use, or possession of illegal drugs while on Department property or during working hours is eligible to be terminated. Any suspected illegal substances found on Department of Audit property will be secured and turned over to the appropriate law enforcement authority and may result in criminal prosecution. Any employee indicted by a state or federal authority for sale, use, or possession of illegal drugs, or for alcohol related crimes will be suspended without pay. Any employee convicted in a state or federal court for sale, use, or possession of illegal drugs, or for alcohol related crimes will be terminated. **X. ACTIONS TAKEN FOR POSITIVE TEST RESULTS:** A. Individuals whose drug or alcohol test results are confirmed

positive, as defined by this policy, shall be considered in violation of this program. Lacking any other evidence to indicate the use, sale, or possession of illegal drugs or alcohol on Department of Audit property or during working hours, a confirmed positive test result shall be presumed to be an indication of off-the-job drug or alcohol use. B. Any permanent status employee who tests positive in this or any other testing program must be referred to a Substance Abuse Professional or "SAP." The SAP must be a doctor, therapist or a counselor trained and qualified to evaluate and treat substance abuse (including alcohol abuse) problems. Before an employee can return to work or again drive a state owned vehicle, the individual must be evaluated by the SAP to determine if rehabilitation counseling or other treatment is needed by the individual. If so, the employee must satisfactorily complete the treatment program and pass a return to duty drug and alcohol test. If the employee returns to work position, the employee is subject to periodic and unannounced follow-up drug and alcohol testing in addition to the particular employer's normal alcohol and drug testing program. C. When a positive test result has been returned by the confirmatory laboratory, the MRO shall perform evaluation duties set forth in the NIDA regulations and guidelines. The MRO shall review all medical records made available by the tested employee when a positive test could have resulted from legally prescribed medication. In addition, the MRO shall give the individual an opportunity to discuss the test results. Evidence to justify a positive test result may include, but is not limited to:

1. A valid prescription; or 2. A verification from the individual's physician certifying a valid prescription. If the MRO determines there is no valid justification for the positive test result, such result will then be considered a confirmed positive test result. The MRO immediately shall notify the Audit Department Director upon determining a confirmed positive test result exists. D. In the event of a confirmed positive test result the Director must perform the following: 1. Notify the individual's supervisor that a positive test result has occurred. 2. Initiate immediate actions to suspend the employee, if applicable. E. The individual's supervisor, or other appropriate management, will inform the employee that they are suspended with pay, if applicable, pending management review. F. The Director will: 1. Notify the individual of their right to appeal the testing process, and 2. If appropriate, coordinate actions to schedule the individual for EAP referral and evaluation. G. Sanctions and Department of Audit disciplinary actions associated with violations of this policy differ based on specific circumstances. The influencing factors include: 1. Self-referral positive versus pre-employment, for cause or random test positive, 2. Management referral versus self-referral, 3. Illegal drug versus alcohol, legal prescription drug or over-the-counter substance abuse, and 4. Drug/alcohol abuse within the Department of Audit property versus outside the Department of Audit property or away from work. **XI. SANCTIONS/DISCIPLINARY ACTIONS INVOLVING ILLEGAL DRUGS OR ALCOHOL----**

A. When an individual self-refers or is referred by responsible management to the EAP for drug and/or alcohol related matters, the EAP is required to determine if the individual's condition constitutes a hazard to himself/herself or others. Such a determination requires the EAP notify the Department of Audit through the site EAP Coordinator. 1. The following sanctions/disciplinary actions will be taken should an individual self-refer or be referred by responsible management under the conditions noted above: a. Employee will be suspended pending EAP evaluation. Special Agents will turn in their badge and firearm to the Investigations Department Director; b. Upon release by the EAP for work/reinstatement, the individual will be subjected to a re-entry drug and alcohol test and follow-up testing in accordance with Section VII (E). c. A re-entry agreement must be signed by the employee. (See Attachment I.) 2. Repetitive self-referral which results in required EAP provider notification to Department of Audit or referral by responsible management for drug and/or alcohol related matters may result in termination. B. The following sanctions/disciplinary actions will be taken should an individual test positive during drug/alcohol testing: **1. Pre-employment---**Potential Special Agents will be denied employment. Individuals in this classification will not be reconsidered for employment for a minimum of three (3) years if the positive was for drugs or if the individual refused to participate in the testing program, and for a minimum of one (1) year if the positive was for alcohol. **2. Employee First Annual/For Cause Positive---**The following actions will be taken: a. The individual may be suspended for a minimum of fourteen (14) calendar days with pay pending EAP evaluation. Special Agents will turn in their badge and firearm to the Investigations Division Director; b. Upon release by the EAP and return to work/reinstatement, the employee will be subjected to a re-entry drug and alcohol test and follow-up testing in accordance with Section VIII (E). c. The employee must sign a re-entry agreement (See Attachment I). d.

Employees that test positive during their probationary period (first 12 months following date of employment) will be subject to termination of employment. 3. Employee Second Annual/For Cause Positive---A second positive will result in the following: a. The employee may be terminated; b. The individual will be denied re-employment for a period of three years from the second positive test date. Re-employment may be denied beyond the three (3) year period based on other relevant evidence.

**XII. SANCTIONS/DISCIPLINARY ACTIONS INVOLVING LEGAL PRESCRIPTION OR OVER-THE-COUNTER DRUGS---**A. Individuals suspected of legal prescription or over-the-counter drug abuse will be required to meet with the MRO for consultation. B. Based on results of the MRO consultation, the following actions may be taken: 1. The employee will be suspended if the employee is impaired, or the ability to perform assigned duties is questionable. Special Agents will turn in their badge and firearm to the Investigations Division Director; 2. Drug testing for legal prescription or over-the-counter drug abuse may be required to aid in determining the extent of abuse. **3. EAP referral may be required---**4. The employee may be required to sign a re-entry agreement (similar to Attachment I) if testing/evaluation indicates prescription or over-the-counter drug abuse. **5. Follow-up testing may be required. 6. The employee may be terminated. XIII. ACTIONS TAKEN WHEN THERE IS PRESENCE OF ALCOHOL---**A. Individuals who have the presence of alcohol identified during pre-employment alcohol testing will be subject to re-testing before the pre-employment processing is continued. B. Individuals who have the presence of alcohol identified during random, for cause, or follow-up testing will be subject to the following actions: 1. The individual's department director will be informed of the situation. 2. A decision will be made by individual's department director and the Audit Department Director as to whether the individual will be suspended. Special Agents may be required to turn in their badge and firearm to the Investigations Department Director; 3. The individual's department director in conjunction with the Audit Department Director and the MRO will evaluate test results to determine if the individual may have been above the established cut-off level while on duty. This evaluation may result in action being initiated to review the individual's duties during the work period concerned to determine if any safety related or sensitive tasks were performed during said questionable period. The presence of alcohol is defined as a reading between .005 and .039 BAC. **XIV. APPEALS---**A. All employees shall be provided an opportunity to appeal the determination of a confirmed positive drug or alcohol test. B. Under state law all employees not subject to DOT guidelines, are given the opportunity to obtain additional confirmation of a confirmed positive breathalyser alcohol tests results by requesting a Blood Alcohol Test (BAT). C. Employee Notice---1. Notification of negative drug or alcohol test results will not routinely be made. 2. Notification of confirmed, positive drug or alcohol test results including results from requests for BAT shall be made by the Audit Department Director, or his designee, within five (5) working days after the test results are received from the Medical Review Officer. In cases where the individual is no longer available, the notification will be attempted via registered mail. An employee may request and receive from the employer a copy of the test result report. **D. Appeal Request---**1. Individuals shall have the right to appeal a confirmed, positive test result. 2. The appeal must be written and submitted to the Audit Department Director. Requests for appeal should be submitted within ten (10) working days of the notice of the confirmed positive test result to allow for timely resolution for the affected individual. E. Appeal Review---1. Upon receipt of an appeal request the Audit Department Director must notify members of the Appeals Board and it should be convened. 2. The Director or his designee must notify the Appeals Board and schedule a specific review time and date. The review should be scheduled as soon as possible after the request for appeal review, but no later than fourteen (14) days. **F. Scope of Appeal Review---**1. The review process provides for a review of the specific circumstances related to the positive test results of the individual requesting appeal review. 2. The review will result in a determination that the test process and subsequent MRO conclusion, was or was not properly executed in accordance with governing procedures. 3. Decisions made by the Appeals Board are final. The individual will be notified in writing of the Appeals Board determination. 4. If the decision is made to nullify the test results, all documentation indicating that a positive test was received including subsequent actions will be removed from the individual's records. 5. If the Appeals Board cannot reach a conclusion, the appeal will be referred to the Audit Department Director for resolution. The review does not challenge the technical process or medical expertise used to make the decision that a test was positive. **G. Appeals Board Composition ---**1. The Appeals Board will consist of five voting members. Members will be representatives of management that serve in section director positions or higher. One member shall be

the Administrative Services Director who will serve as the chairman. Board members can be selected from any department within the Department of Audit provided the member does not have direct management responsibility for the individual requesting the appeal review. The Audit Department Director will select the Board members with the advice of the Staff Attorney. The Audit Department Director will not be a member. 2. The Audit Department Director or his designee shall act as recording secretary for the Appeals Board. 3. Individuals directly responsible for the implementation of Chemical Testing Program are excluded from participating on the Appeals Board as a voting member. 4. The Staff Attorney will be present as a non-voting member at all Appeals Board meetings as an advisor to the Board. **XV. PROTECTION OF INFORMATION**---A. Personal information collected and maintained in accordance with the Chemical Testing shall be protected from disclosure. Confidentiality of this information shall be assured by making it available only to those individuals with an established need to know. The Department of Audit having access to such information shall not disclose it to persons other than those listed below, without written approval and authorization of the subject individual: 1. Medical Review Officer, 2. Appropriate law enforcement officials under court order, 3. The Subject of the information or his/her representative, when authorized in writing by the subject, 4. Department of Audit duly authorized employees who have a need to access to the information in performing assigned duties, 5. Department of Audit employees performing audits of the Chemical Testing Program, 6. Department of Audit employees deciding matters on review or appeal, or 7. Other persons pursuant to a court order. NOTE: Access to EAP records not directly associated with determining an individual's fitness for duty may require direct interaction with the EAP provider. These records may be considered medically confidential and require consent of both the Subject individual and the EAP provider prior to release. **XVI. MAINTENANCE OF RECORDS**---A. Records associated with the implementation of the Chemical Testing Program shall be maintained in accordance with this directive to assure document protection and retrieval. Specific records, retention periods and responsibility for retention are reflected in appropriate record retention policies. The record keeping system shall include sufficient documents to meet the operational and statistical reporting needs of the Chemical Testing Program. Records include, but are not limited to: 1. Records of confirmed, positive test results as verified by the Medical Review Officer, 2. Records of personnel actions taken as a result of receiving verified, confirmed, positive test results, 3. Records of personnel made ineligible for employment for three years or longer as a result of Chemical Testing violations, 4. Program performance data, associated analyses and trending information, and records of any corrective actions taken as a result of this data collection, 5. Records associated with training, curriculum, and attendance, 6. Records of program audits including close-out data of any follow-up corrective actions, and 7. Other documents deemed necessary by the Department of Audit/facility or duly authorized employees for deficient compliance with this program. **XVII. NOTICE AND ACKNOWLEDGMENT**---The Department of Audit will provide each employee notice of the Alcohol and Drug Testing Policy (Attachment III). Each employee will be asked to sign the acknowledgment statement to the effect that they have reviewed the policy and have read and understand it. An employee's refusal to sign, however, will not affect the actions the employer takes with regard to testing that employee. The signed acknowledgment should be placed in the employee's personnel file. **XVIII. EMPLOYEE INFORMATION AND TRAINING**---Supervisory personnel who may be involved in making reasonable suspicion testing determinations must receive required training in making those determinations pursuant to Federal and State statutes. In addition, all employees are being provided information about the effects and consequences of alcohol and controlled substance use/abuse on personal health, safety in the work environment as well as information regarding manifestations and causes that may indicate controlled substance use/abuse. Information being provided also discusses available methods of intervening when an alcohol or controlled substance problem is suspected. The information is summarized in Attachment II to this Policy. Employees should direct any questions regarding this information to their supervisor, the Administrative Services Director, or the Alcohol and Drug Program Coordinator. **XIX. ALCOHOL AND DRUG PROGRAM COORDINATOR**---A. The Alcohol and Drug Program Coordinator will be selected by the Audit Department Director. B. The Coordinator will be responsible for the following: 1. Organize the program for the Department of Audit. 2. Insure the program complies with this policy directive. 3. Act as liaison between the Audit Department Director and the Medical Review Officer. 4. Perform any task related to the program as directed by the Audit Department Director.

Missouri

**288.046. Unemployment Compensation; Worker misconduct; Workplace policy on alcohol and controlled substances; Application of chapter; Rejection of and abrogation of previous case law interpretations of “misconduct connected with work”.**—1. In applying provisions of this chapter, it is the intent of the general assembly to reject and abrogate previous case law interpretations of "misconduct connected with work" requiring a finding of evidence of impairment of work performance, including but not limited to, the holdings contained in Baldor Electric Company v. Raylene Reasoner and Missouri Division of Employment Security, 66 S. W.3d 130 (Mo. App. E. D. 2001). 2. In determining whether misconduct connected with work has occurred, neither the state, any agency of the state, nor any court of the state of Missouri shall require a finding of evidence of impairment of work performance.

**288.045. Unemployment Compensation; Worker misconduct; Workplace policy on alcohol and controlled substances; Testing; Exceptions; Specimen collections and testing, Procedures; Confirmation testing; Notice of workplace policy.**—1. If a claimant is at work with a detectible amount of alcohol or a controlled substance as defined in section 195.010, RSMo, in the claimant's system, in violation of the employer's alcohol and controlled substance workplace policy, the claimant shall have committed misconduct connected with the claimant's work. 2. A test conducted by a laboratory certified by the United States Department of Health and Human Services, or another certifying organization so long as the certification requirements meet the minimum standards of the United States Department of Health and Human Services, and the laboratory's trial packet shall be included in the administrative record and considered as evidence. 3. The claimant must have previously been notified of the employer's alcohol and controlled substance workplace policy by conspicuously posting the policy in the workplace, by including the policy in a written personnel policy or handbook, or by statement of such policy in a collective bargaining agreement governing employment of the employee. The policy, public posting, handbook, collective bargaining agreement or other written notice provided to the employee must state that a positive test result may result in suspension or termination of employment. 4. Test results shall be admissible if the employer's policy clearly states an employee may be subject to random preemployment, reasonable suspicion or post-accident testing. An employer may require a preemployment test for alcohol or controlled substance use as a condition of employment, and test results shall be admissible so long as the claimant was informed of the test requirement prior to taking the test. A random, preemployment, reasonable suspicion or post-accident test result, conducted under this section, which is positive for alcohol or controlled substance use shall be considered misconduct. The application of this section for alcohol and controlled substance testing, relating only to methods of testing, criteria for testing, chain of custody for samples or specimens and due process for employee notification procedures shall not apply in the event that the claimant is subject to the provisions of any applicable collective bargaining agreement, so long as said agreement contains methods for alcohol or controlled substance testing that meet or exceed the minimum standards established in this section. Nothing in this chapter is intended to authorize any employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with Missouri or United States constitution, law, statute or regulation, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act. 6. All specimen collection for drugs and alcohol under this chapter shall be performed in accordance with the procedures provided for by the United States Department of Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40. Any employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by regulations of the United States Department of Transportation. "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites. "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results. 7. The employee may request that a confirmation test on the specimen be conducted. "Confirmation test" means a second analytical procedure used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy. In the event that a confirmation test is requested, such shall be obtained from a separate, unrelated certified laboratory and shall be at the employee's expense only if said test



	<p>confirms the original, positive test results. For purposes of this section, "confirmation test" shall be a split specimen test. 8. Use of a controlled substance as defined under section 195.010, RSMo, under and in conformity with the lawful order of a healthcare practitioner, shall not be deemed to be misconduct connected with work for the purposes of this section. 9. This section shall have no effect on employers who do not avail themselves of the requirements and regulations for alcohol and controlled drug testing determinations that are required to affirm misconduct connected with work findings. 10. Any employer that initiates an alcohol and drug testing policy after January 1, 2005, shall ensure that at least sixty days elapse between a general one-time notice to all employees that an alcohol and drug testing workplace policy is being implemented and the effective date of the program. 11. Notwithstanding any provision of this chapter to the contrary, any claimant found to be in violation of this section shall be subject to the cancellation of all or part of the claimants wage credits as provided by subsection 2 of section 288.050.</p> <p><b>302.275. School bus drivers; Failure of pass a drug, alcohol or chemical test; Notice to director of department revenue; Deadline; Information required; Employer's failure to comply as infraction.</b>—Any employer of a person licensed pursuant to section 302.272 to operate a school bus, as that term is defined in section 301.010, RSMo, shall notify the director of the department of revenue within ten days of discovering that the person has failed to pass any drug, alcohol or chemical test administered pursuant to the requirements of any federal or state law, rule or regulation regarding the operation of a school bus. The notification shall consist of the person's name and any other relevant information required by the director. The director shall determine the manner in which the notification is made. Any employer, or any officer of an employer, who knowingly fails to comply with the notification requirement of this section or who knowingly provides a false notification shall be guilty of an infraction.</p> <p><b>302.276. School bus drivers; Failed drug, alcohol or chemical test; Suspension of bus permit.</b>—If the director of the department of revenue receives notification of a failed drug, alcohol or chemical test pursuant to section 302.275 and the director makes a determination that such test was failed, then the director shall suspend the school bus permit, issued pursuant to section 302.272 of such person for a period of one year from the date the determination is made. Any person who operates a school bus, as defined in section 301.010, RSMo, after having the person's permit suspended pursuant to this section shall be punished in accordance with section 302.321.</p>
<p><b>Nebraska</b></p>	<p><b>48-1903. Test results; use; requirements.</b>—Any results of any test performed on the body fluid or breath specimen of an employee, as directed by the employer, to determine the presence of drugs or alcohol shall not be used to deny any continued employment or in any disciplinary or administrative action unless the following requirements are met: (1) A positive finding of drugs by preliminary screening procedures has been subsequently confirmed by gas chromatography-mass spectrometry or other scientific testing technique which has been or may be approved by the department; and (2) A positive finding of alcohol by preliminary screening procedures is subsequently confirmed by either: (a) Gas chromatography with a flame ionization detector or other scientific testing technique which has been or may be approved by the department; or (b) A breath-testing device operated by a breath-testing-device operator. Nothing in this subdivision shall be construed to preclude an employee from immediately requesting further confirmation of any breath-testing results by a blood sample if the employee voluntarily submits to give a blood sample taken by qualified medical personnel in accordance with the rules and regulations adopted and promulgated by the department. If the confirmatory blood test results do not confirm a violation of the employer's work rules, any disciplinary or administrative action shall be rescinded. Except for a confirmatory breath test as provided in subdivision (2)(b) of this section, all confirmatory tests shall be performed by a clinic, hospital, or laboratory which is certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, 42 U.S.C. 263a.</p> <p><b>48-1904. Specimens; preservation.</b>—Except for breath test specimens as provided in subdivision (2)(b) of section 48-1903, all specimens which result in a finding of drugs or alcohol shall be refrigerated and preserved in a sufficient quantity for retesting for a period of at least one hundred eighty days.</p>

**48-1905. Specimens; chain of custody.**—Except for breath test specimens as provided in subdivision (2)(b) of section 48-1903, a written record of the chain of custody of the specimen shall be maintained from the time of the collection of the specimen until the specimen is no longer required.

**48-1906. Test results; release or disclosure; when.**—The employer or its, his, or her agents shall not release or disclose the test results to the public, except that such results shall be released as required by law or to the employee upon request. Test results may be released to those officers, agents, or employees of the employer who need to know the information for reasons connected with their employment.

**48-1907. Sections, how construed.**—Nothing in sections 48-1901 to 48-1906 shall be construed to establish any rule, right, or duty not expressly provided for in such sections.

**48-1908. Body fluids; prohibited acts; penalty.**—(1) It shall be unlawful to provide, acquire, or use body fluids for the purpose of altering the results of any test to determine the presence of drugs or alcohol. (2) Any employee who violates subsection (1) of this section may be subjected to the same discipline as if the employee had refused the directive of the employer to provide a body fluid or breath sample. (3) Any person, including an employee, who violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

**48-1909. Body fluids; tampering; penalty.**—(1) No person shall tamper with or aid or assist another in tampering with body fluids at any time during or after the collection or analysis of such fluids for the purpose of altering the results of any test to determine the presence of drugs or alcohol. (2) Any employee who violates subsection (1) of this section may be subjected to the same discipline as if the employee had refused the directive of the employer to provide a body fluid or breath sample. (3) Any person, including an employee, who violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

**48-1910. Refusal to submit to test; effect.**—Any employee who refuses the lawful directive of an employer to provide a body fluid or breath sample as provided in section 48-1903 may be subject to disciplinary or administrative action by the employer, including denial of continued employment.

**75-363. Certain intrastate motor carriers; Application of federal motor carrier safety regs.; Controlled Substances and Alcohol Use and Testing; Exceptions.**—(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts, subparts, and sections referred to by such parts, subparts, and sections in existence and effective as of January 1, 2009, are adopted as Nebraska law. (2) Except as otherwise provided in this section, the regulations shall be applicable to: (a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and (b) All motor carriers transporting persons or property in intrastate commerce to include: (i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds; (ii) All vehicles of such motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation; (iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and (iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license. (3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations: (a) Part 382—Controlled Substances And Alcohol Use And Testing; (b) Part 385—Safety Fitness Procedures; (c) Part 386--Rules Of Practice For Motor Carrier, Broker, Freight Forwarder, And Hazardous Materials Proceedings; (d) Part 387—Minimum Levels of Financial Responsibility for Motor Carriers; (e) Part 390—Federal Motor Carrier Safety Regulations; General; (f) Part 391—Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors; (g) Part 392—Driving Of Commercial Motor Vehicles; (h) Part 393—Parts And Accessories Necessary For Safe Operation; (i) Part 395—Hours Of Service Of Drivers; (j) Part 396—Inspection, Repair, And Maintenance; (k) Part 397—Transportation Of Hazardous Materials; Driving And

Parking Rules; and (l) Part 398—Transportation Of Migrant Workers. (4) The provisions of subpart E—Physical Qualifications And Examinations of 49 C.F.R. part 391—Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996. (5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less or to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less if the equipment is not required to be placarded pursuant to section 75-364. 1 The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 and operated solely in intrastate commerce: (a) All of part 391; (b) Section 395.8 of part 395; and (c) Section 396.11 of part 396. (6) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390 or any nonprofit entity, operating solely in intrastate commerce, organized for the purpose of furnishing electric service. (7) Part 395—Hours Of Service Of Drivers shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362 2, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive: (a) More than twelve hours following eight consecutive hours off duty; or (b) For any period after having been on duty sixteen hours following eight consecutive hours off duty. No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive, nor shall any driver of a commercial motor vehicle drive, for any period after: (i) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day of the week; or (ii) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week. (8) Part 395—Hours Of Service Of Drivers, as adopted in subsections (3) and (7) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year. (9) 49 C.F.R. 390.21—Marking Of Commercial Motor Vehicles shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce. (10) 49 C.F.R. 392.9a Operating Authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce. (11) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

**75-365. Regulation definitions, Applicability; Report to federal agency & copy of report.—**

(1) Definitions contained in the regulations referred to in sections 75-363 and 75-364 shall only apply to such regulations. (2) When the regulations referred to in sections 75-363 and 75-364 require that any person submit a report to the United States Department of Transportation or any other federal agency, that person shall also submit a copy of the report to the Nebraska State Patrol.

**75-366. Motor carrier laws; Enforcement.—**For the purpose of enforcing Chapter 75, article 3, any officer of the carrier enforcement division of the Nebraska State Patrol or any officer of the Nebraska State Patrol may, upon demand, inspect the accounts, records, and equipment of any carrier or shipper. The carrier enforcement division shall enforce the provisions of Chapter 75, article 3. To promote uniformity of enforcement, the carrier enforcement division shall cooperate and consult with the Public Service Commission and the Division of Motor Carrier Services. For the purpose of enforcing sections 75-363 and 75-364, any officer of the carrier enforcement division of the Nebraska State Patrol or any officer of the Nebraska State Patrol shall have the authority of special agents of the Federal Motor Carrier Safety Administration.

**75-367. Violation as misdemeanor.—**Any person who violates any of the provisions adopted under section 75-363 or 75-364 shall be guilty of a Class III misdemeanor.

**28-106. Penalties for misdemeanors; Fines and sentences.**—(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor ...

Maximum—not more than one year imprisonment, or one thousand dollars fine, or both

Minimum—none

Class III misdemeanor ...

Maximum—three months imprisonment, or five hundred dollars fine, or both

Minimum—none

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services: (a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor; (b) If the sentence is to be served concurrently or consecutively with a term for conviction of a felony; or (c) If the Department of Correctional Services has certified as provided in section 28-105 as to the availability of facilities and programs for short-term prisoners and the sentence is for a term of six months or more.

**60-4,153. Commercial driver's licenses, Verification of driving record prior to issuance, reissuance or renewal of a license .**—Prior to the issuance of any original or renewal commercial driver's license or the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, the Department of Motor Vehicles shall, within twenty-four hours prior to issuance if the applicant does not currently possess a valid commercial driver's license issued by this state and within ten days prior to the issuance or reissuance for all other applicants: (1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant; (2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and (3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled for cause in the three-year period ending on the date of application, or (c) has been convicted of operation of a motor vehicle while under the influence of or while impaired by alcohol or a controlled substance, a traffic violation arising in connection with a fatal traffic accident, reckless driving, racing on the highways, failure to render aid or provide identification when involved in an accident which resulted in a fatality or personal injury, or perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law, rule, or regulation related to the operation of a motor vehicle.

**60-4,159. Commercial driver's licenses; Licensee convicted of violating a state law or local ordinance other than a parking violation must notify his/her employer in writing of a conviction; Notice of loss of driving privilege or disqualification from driving a commercial motor vehicle; Failure to give notice .**—(1) Any person possessing a commercial driver's license issued by the Department of Motor Vehicles shall, within ten days of the date of conviction, notify the department of all convictions for violations of state law or local ordinance related to motor vehicle traffic control, except parking violations, when such convictions occur in another state. (2) Any person possessing a commercial driver's license issued by the department who is convicted of violating any state law or local ordinance related to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction. (3) Any person possessing a commercial driver's license issued by the department whose commercial driver's license is suspended, revoked, or canceled by any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact. (4) Any person who fails to

provide the notifications required in subsection (1), (2), or (3) of this section shall, upon conviction, be guilty of a Class III misdemeanor.

**60-4,168. Commercial driver's licenses, Licensee convicted of violating a state law or local ordinance; Disqualification from driving a commercial motor vehicle for driving under the influence of a controlled substance or for manufacturing, distributing, or dispensing a controlled substance .—**(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from driving a commercial motor vehicle for one year upon his or her first conviction, after April 1, 1992, in this or any other state for: (a) Driving a commercial motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance or, beginning September 30, 2005, driving any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance; (e) Beginning September 30, 2005, driving a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from driving a commercial motor vehicle; or (2) Except as provided in subsection (3) of this section, if any of the offenses described in subsection (1) of this section occurred while a person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from driving a commercial motor vehicle for three years. (3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she: (a) Is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents; or (b) Beginning September 30, 2005, used a commercial motor vehicle in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance. (6) For purposes of this section, controlled substance has the same meaning as in section 28-401. (7) For purposes of this section, conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law, in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

**60-6,196. Motor vehicle operators, Unlawfully driving under the influence of alcohol or drugs.—**(1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle: (a) While under the influence of alcoholic liquor or of any drug; (b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or (c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. (2) Any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subsection (1) of this section shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

**60-6,197. Motor vehicle operators, Unlawfully driving under the influence of alcohol or drugs; Implied consent to drug and alcohol testing by a peace officer; Refusal to submit to testing.—**(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine. (2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196. (3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her

blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative revocation procedures provided in sections 60-498.01 to 60-498.04 and upon conviction shall be punished as provided in sections 60-6,197.02 to 60-6,197.08. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative revocation procedures provided in sections 60-498.01 to 60-498.04 and shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08. (4) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (3) of this section and section 60-498.02 upon return. (5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged. (6) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

**Sec. R. 001. Breath-testing devices; Preliminary screening.**—001.01 The following scientific testing is approved by the Department of Health and Human Services Regulation and Licensure as equivalent to the Intoxilyzer Model 4011AS, when operated in accordance with the techniques as set forth in 177 NAC 1 for a respective breath testing device, and including the provisions for maintenance calibration, verification, and repair of the devices. 001.01A Infrared absorption analysis using the Intoxilyzer Model 4011AS. Checklist technique as found in Attachment 3, attached and incorporated herein by reference, is approved for this method. 001.01B Infrared absorption analysis using the Intoximeter Model 3000. Checklist technique as found in Attachment 13, attached and incorporated herein by reference, is approved for this method. 001.01C Infrared absorption analysis using the Intoxilyzer Model 5000. Checklist technique as found in Attachment 15, attached and incorporated herein by reference, is approved for this method. 001.02 Preliminary screening procedures are not limited to the devices and techniques listed above in 001.01. Preliminary screening devices and techniques which may be used are listed below. 001.02A Fuel cell devices which provide a numerical read-out of the breath alcohol content listed in part 008.04 of 177 NAC 1, and meet part 002.05 of 177 NAC 1 are approved devices. 001.02B Infrared absorption devices which provide a numerical read-out of the breath alcohol content and meet part 002.05 of 177 NAC 1 are approved devices.

**Sec. R. 002. Breath-testing devices; Breath sample confirmation testing; Operators must have a valid permit** ---002.01 The breath-testing device, Intoxilyzer 4011AS, or scientific testing equivalents, which may be used for breath sample confirming tests are listed in subsection 001.01. Other breath-testing devices as approved in 177 NAC 1, parts 002.05 and 007.04 are approved devices. 002.02 Breath sample confirming tests shall be performed by a breath-testing-device operator. Breath Testing Device operators shall have a valid Class B permit as set forth in 177 NAC 1. Application for Class B permits shall be made to The Department of Health and Human Services Regulation and Licensure on forms provided by the Department.

**Sec. R. 003. Techniques approved for confirmatory alcohol testing on blood samples**—003.01 The following scientific testing techniques are approved by the Department of Health and Human Services Regulation and Licensure for confirmatory alcohol testing on blood samples and performed in accordance with the provisions of 177 NAC 1 for a respective approved method. 003.01A Headspace analysis for alcohol content in blood using a gas chromatograph and by following the technique in part 006.04A1 of 177 NAC 1. Automated Headspace analysis is an approved modification of the technique. 003.01B Direct injection analysis for alcohol content in blood using a

gas chromatograph and by following the technique in part 006.04A2 of 177 NAC 1. 003.02 Blood sample confirming tests shall be performed by persons having a valid Class A permit as set forth in 177 NAC 1, and shall be performed in a clinic, hospital, or laboratory licensed pursuant to the Federal CLIA provisions of 1967 with subsequent amendments, or by a laboratory accredited by the College of American Pathologists. Application for Class A Permits shall be made to The Department of Health and Human Services Regulation and Licensure on forms provided by the Department. 003.03 Approved methods as prescribed in 177 NAC 1 in parts 002.05 and 006 may be used for confirmation testing on blood samples when performed as specified in 003.02 above.

**Sec. R. 004. Techniques approved for confirmatory preliminary positive findings by preliminary screening procedures.**—004.01 The following scientific testing techniques are approved by the Department of Health and Human Services Regulation and Licensure for the purpose of confirming preliminary positive findings by preliminary screening procedures: 004.01A Gas chromatography with a mass spectrometer detector. 004.02 The scientific testing techniques shall be performed in a clinic, hospital, or laboratory licensed pursuant to the Federal CLIA provisions of 1967 with subsequent amendments, or a laboratory accredited by the College of American Pathologists.

**Sec. R. 002. Testing of blood or urine for alcohol content; Test results, Reporting of.**— 002 REPORT OF ALCOHOL TEST RESULTS FOR MEDICO-LEGAL PURPOSES 002.01 Breath Test Results. Report of Breath Test Results of a test for alcohol content of breath shall be reported as hundredths or thousandths of a gram of alcohol per 210 liters of breath on the checklist. Test results shall not be rounded upward. For example, an analysis producing a result of .138 shall be reported as .13 or as .138. 002.01A No digital result shall be reported on the checklist unless the device has received a sufficient breath sample and completely executes its prescribed program and prints a test record card to indicate that the program has been completed. 002.01B Prescribed Program. When a breath testing device fails to print a record card or the record card indicates an incomplete or deficient sample, this indicates that the device has not completed its prescribed program. Such deficient sample does not constitute a completed test or sufficient sample of breath and would be considered to be a refusal. Such deficient sample does not constitute a completed test, but is scientifically probative up to the amount indicated by the testing device at the time that the breath testing procedure stopped. 002.01C The completed checklist as found in these rules and regulations shall be the official record of breath test results. 002.01D The printing of a test record card indicates that the prescribed program of the evidentiary breath testing device has been completed. 002.01D1 Preliminary breath testing devices are not required to produce a printed test record. When a sufficient breath sample is provided, the results of a preliminary breath test may be reported as a digital readout or as a pass or fail. 002.01E Record Requirements in Performance of Tests. The testing records must show adherence to the approved method, and techniques. 002.02 Blood Test Results. Results of a test of blood for alcohol content shall be reported in terms of hundredths or thousandths of a gram of alcohol per 100 milliliters of blood. Rounding upward of the test results shall not occur. For example, an analysis producing a result of .138 shall be reported as .13 or as .138.

**Sec. R. 003. Testing permits; Issuance of; Duplicate permits; Applications; Name changes .**—003 PERMITS 003.01 Permit Issuance. The permit shall be issued by the Department, and shall state the class of permit, and the approved method. The Department shall keep record of all permits issued. 003.02 Duplicate permits. The department may issue a duplicate permit, when a written request is received from the permit holder. 003.03 Application. The applications shall be Attachment 8, Attachment 9, or Attachment 10, attached and incorporated herein by reference. 003.04 Name Change. The department may reissue a permit, when a permit holder changes his or her name and a written request is received from the permit holder.

**Sec. R. 004. Permits; Revocation for noncompliance.**—004 REVOCATION OF PERMITS 004.01 Class A, B, or C permits are nonexpiring permits. Class A, B, or C permits may be revoked by the Department whenever the Department determines a permit holder is in noncompliance with these rules and regulations.

**Sec. R. 005.—Collection of blood specimens, Procedures.**—005 BLOOD SPECIMEN

COLLECTION AND PRESERVATION 005.01 Blood specimens shall be taken by personnel authorized by law. The antiseptic solution used shall be non-alcoholic. 005.02 Blood specimens shall be collected in clean containers and stoppered. The container shall contain an anticoagulant-preservative substance. 005.03 Specimen containers shall be labeled and shall show the following information on the label: name of person tested, date and time of specimen collection, and initials of person collecting the specimen. 005.04 While not in transit to be tested, or while not under examination, all blood specimens shall be refrigerated as soon as practical. **Sec. R. 006. Class A permits; Permit holder qualifications; Issuance of.**—006 CLASS A PERMITS ---006.01 Qualifications for Class A Permit Holder. A Class A permit holder shall have knowledge of the chemistry of alcohol and other substances of proper concern in body fluid alcohol tests and the ability to perform satisfactory tests for alcohol as demonstrated by: 006.01A Twelve semester hours of academic work in chemistry from a recognized college or university, or 006.01B Two years of experience consisting of performance of routine laboratory tests in a usual and customary laboratory organization. 006.02 Issuance of Class A Permits. 006.02A Applications for Class A permits shall be made on Attachment 8, attached and incorporated herein by reference. 006.03 Initial Performance Evaluation Studies Prior to Permit Issuance. A performance evaluation study for permit issuance shall consist of four audit samples. Satisfactory performance of analyses on the audit samples is defined as the ability to produce acceptable data on all samples. 006.03A Unacceptable data is defined, for the purpose of section 006 of these regulations, as an error in the analysis of an audit sample greater than a 10.00% deviation. Percent deviation shall be computed as the total deviation from the mean value, divided by the mean value, and multiplied by 100. 006.03B Results on audit samples shall be reported to the third decimal point. 006.03C A prospective permit holder shall be allowed two attempts to produce acceptable data. 006.04 List of Approved Methods for Class A Permits. 006.04A1d(1) contain a gas sampling valve, 006.04A1d(2) contain a temperature controlled oven for the column(s), 006.04A1d(3) contain a flame ionization detector or a thermal conductivity detector, 006.04A1d(4) provide separation, detection, and measurement of alcohol free from acetone, and 006.04A1d(5) produce a recorded graphic presentation of the measured amount of alcohol. 006.04A1e Calculation based upon the standard sample value is to be used to determine the final alcohol concentration of the test. 006.04A2 The determination of alcohol content in blood specimens by direct injection into a gas chromatograph is an approved method and must be performed in a manner to include at least the following technique: 006.04A2a Using several test tubes, prepare to test by placing a measured amount of an internal standard into each of the test tubes designated for the sample of the person to be tested, the standard sample, and the quality control sample. Additional samples of persons to be tested do not require additional quality control and standard samples if all tests are performed together in the same test run. Test runs started again at a different time require quality control and standard samples to again be included in the run. 006.04A2b To each of the designated test tubes in the preceding part 006.04A2a, add a measured amount of the sample of the person to be tested, the standard sample, and the quality control sample to their respective test tubes. 006.04A2c Close the test tubes and mix contents. 006.04A2d Inject measured amounts of contents of each test tube into any gas chromatograph having the following minimum specifications: 006.04A2d(1) contain a temperature controlled oven for the column(s), 006.04A2d(2) contain a flame ionization detector or a thermal conductivity detector, 006.04A2d(3) provide separation, detection, and measurement of alcohol free from acetone, and 006.04A2d(4) produce a recorded graphic presentation of the measured amount of alcohol. 006.04A2e Calculation based upon the standard sample value and the internal standard is to be used to determine the final alcohol concentration of the test. 006.04A3 Automated Headspace Gas Chromatography. The automated headspace analysis for alcohol content in blood specimens using a gas chromatograph is an approved method and must be performed in a manner to include at least the following technique. 006.04A3a Using several headspace vials, prepare to test by placing a measured amount of an internal standard into each of the headspace vials designated for the sample of the person to be tested, the standard sample, and the quality control sample. Additional samples of persons to be tested do not require additional quality control and standard samples if all tests are performed together in the same test run. Test runs started again at a different time require quality control and standard samples to again be included in the run. 006.04A3b To each of the designated headspace vials in the preceding part 006.04A3a, add a measured amount of the sample of the person to be tested, the standard sample, and the quality control sample to their respective headspace vials. 006.04A3c Seal the cap of the headspace vials and mix the contents. 006.04A3d Inject a uniform amount of contents



of each headspace vial into any automated gas chromatograph having the following minimum specifications. 006.04A3d(1) The autosampler has the following minimum specifications: 006.04A3d(1)(a) contain a temperature controlled heating unit, 006.04A3d(1)(b) provides a constant volume injected, 006.04A3d(1)(c) provides equilibration at the same time and temperature for all standards, samples, and quality control samples. 006.04A3d(2) The gas chromatograph has the following minimum specifications. 006.04A3d(2)(a) contains a temperature controlled oven for the column(s). 006.04A3d(2)(b) contains a flame ionization detector or a thermal conductivity detector, 006.04A3d(2)(c) provides separation, detection, and measurement of alcohol free from acetone, and 006.04A3d(2)(d) produces a recorded graphic presentation of the measured amount Of alcohol.

006.04A3e Calculation based upon the standard sample values and the internal standard values are to be used to determine the final alcohol concentration of the test. 006.04B Enzymatic Alcohol Dehydrogenase. 006.04B1 The DuPont Company method utilizing alcohol dehydrogenase to determine the alcohol content of blood with the use of an automatic clinical analyzer (ACA) is an approved method and must be performed in a manner to include at least the following technique: 006.04B1a Maintain the laboratory stored reagent packs containing the alcohol dehydrogenase (ADH) at 2 to 8 degrees C, or as specified on reagent pack, prior to use for the test. Reagent packs shall not be used beyond their expiration date. 006.04B1b Whole blood specimens must be treated with trichloroacetic acid to produce a protein-free supernatant fluid for testing. Hemolyzed specimens must be treated also with trichloroacetic acid. 006.04B1c Fill a sample cup of the automatic clinical analyzer (ACA) with the supernatant fluid from step 006.04B1b, and cover sample cup. Attach identification card to the sample cup. 006.04B1d Place sample kit into the ACA input tray followed by a reagent pack. 006.04B1e Repeat steps 006.04B1c and 006.04B1d using a quality control sample and a standard sample. Additional samples of persons to be tested do not require additional quality control and standard samples if all tests are performed together in the same test run. Test runs started again at a different time require quality control and standard samples to again be included in the run. 006.04B1f Arrange the sample tray sequence in this order: standard/reagent pack, sample of person to be tested/reagent pack, quality control/reagent pack, standard/reagent pack, and end of run kit. 006.04B1g Release pack follower and press operate button. 006.04B1h Convert the ACA recorded result of mg/dcl to hundredths of a gram per 100 milliliters for the final alcohol concentration of the test. If a trichloroacetic acid protein-free supernatant was used for testing, use the appropriate multiplication factor to report the final alcohol concentration of the test 006.04B2 The Sigma Chemical Company method utilizing alcohol dehydrogenase to determine alcohol content in blood specimens is an approved method and must be performed in a manner to include at least the following technique: 006.04B2a Maintain the laboratory stored vials of alcohol dehydrogenase (ADH) below 0 degrees C, or as specified on reagent pack, prior to use for the test. 006.04B2b Prepare a protein-free supernatant fluid from the whole blood specimen of the person to be tested using trichloroacetic acid solution. 006.04B2c Mix together in a test tube or vial measured amounts of ADH, specified buffer, and the supernatant fluid from 006.04B2b. Incubate this mixture in a capped vial for at least 10 minutes at any temperature between 22 and 37 degrees C. 006.04B2d As steps 006.04B2b, and 006.04B2c are performed for the test, also perform steps 006.04B2b and 006.04B2c for a blank, a standard sample and a quality control sample. Additional samples of persons to be tested do not require additional quality control and standard samples if all tests are performed together in the same test run. Test runs started again at a different time require quality control and standard samples to again be included in the run. 006.04B2e Following the incubation specified in step 006.04B2c, read and record absorbances at 340 nm in a spectrophotometer and calculate alcohol test concentration in hundredths of a gram per 100 milliliters. Any spectrophotometer capable of transmitting light at a wavelength of 340 nm, and of having a wavelength calibration within 12 nm is satisfactory, provided that: 006.04B2e(1) If a spectrophotometer is used with a band width less than 10 nm and a 1-cm cuvette is used, the final alcohol concentration of the test may be calculated by directly using the change in absorbance, or 006.04B2e(2) If a spectrophotometer is used with a band-width between 10 nm and 20 nm, a calibration curve must be prepared by the usual laboratory procedure. This calibration curve is to be used to determine the final alcohol concentration of the test. 006.04B3 The Calbiochem Company method utilizing alcohol dehydrogenase to determine alcohol content in blood specimens is an approved method and must be performed in a manner to include at least the following technique: 006.04B3a Maintain the laboratory stored vials of alcohol dehydrogenase (ADH) at 2 to 8 degrees C, or as specified on reagent pack, prior to use for the test. 006.04B3b Prepare a 1:50 protein-free

supernatant fluid from the blood specimen, if hemolyzed, of the person to be tested by using perchloric acid solution. For nonhemolyzed specimens prepare a 1:50 dilution with saline. 006.04B3c Mix together in a test tube or vial measured amounts of ADH and the supernatant fluid or the saline dilution from step 006.04B3b. Stopper the test tube or vial and mix contents and incubate by allowing to stand for at least 8 minutes but not more than 15 minutes. 006.04B3d As steps 006.04B3b and 006.04B3c are performed for the test, also perform steps 006.04B3b and 006.04B3c for a blank, a standard sample and a quality control sample. Additional samples of persons to be tested do not require additional quality control and standard samples if all tests are performed together in the same test run. Test runs started again at a different time require quality control and standard samples to again be included in the run. 006.04B3e Following the incubation specified in step 006.04B3c, read and record absorbances at 340 nm in a spectrophotometer and calculate alcohol test concentration in hundredths of a gram per 100 milliliters. Any spectrophotometer capable of transmitting light at a wavelength of 340 nm, and of having a wavelength calibration within 12 nm is satisfactory, provided that: 006.04B3e(1) If a spectrophotometer is used with a band-width less than 10 nm and a 1-cm cuvette is used, the final alcohol concentration of the test may be calculated by directly using the change in absorbance, or 006.04B3e(2) If a spectrophotometer is used with a band-width between 10 nm and 20 nm, a calibration curve must be prepared by the usual laboratory procedures. 006.04B4 The Roche Diagnostics Company method utilizing alcohol dehydrogenase to determine the alcohol content in whole blood with the use of the automatic analyzer is an approved method and must be performed in a manner to include at least the following technique: 006.04B4a Maintain the laboratory stored reagent cassette containing alcohol dehydrogenase (ADH) at 2-8 degrees C, or as specified on the reagent cassette packaging. 006.04B4b Using calibrator solutions provided by Roche Diagnostics, calibrate the automatic analyzer to obtain a calibration curve. Calibration is required each time a reagent cassette is changed. Calibration may also be required if Quality Control values fall outside the expected limits. Calibrators are to be stored at 2 to 8 degrees C and shall not be used beyond the expiration date. 006.04B4c Whole blood collected in sodium fluoride tubes are visibly hemolyzed serum must be treated with 6% trichloroacetic acid (TCA) and centrifuged to obtain a protein free filtrate prior to analysis. 006.04B4d Remove the supernatant from the centrifuged whole blood/TCA mixture. Place in a COBAS cup for analysis in the sample rack. Place low and high level Quality Control (QC) material in the appropriate cups in the QC rack. 006.04B4e Place the QC rack and sample racks in the analyzer. Analysis will begin automatically as soon as the rack is introduced into the analyzer. 006.04B4f The analyzer calculates the alcohol content of the sample by comparing the result to the calibration curve stored in the instrument. Results are automatically printed by the analyzer. Multiply the result to compensate for the dilution used. The result is printed in mg/dl. Convert the result to gm/dl by moving the decimal point three places to the left. 006.04B4g After obtaining the printed result as outlined in step 006.04Bf of these regulations, compare the control values of the two levels of QC material to the posted two (2) standard deviation ranges for each control. Repeat the analysis if either of the two controls (or both) are outside the posted deviation ranges. Both levels of QC material must be analyzed with each run of Legal Alcohol specimens to assure a valid alcohol analysis. 006.04C Radiative Energy Attenuation Utilizing The Abbott TDx or TDxFLx Analyzer. 006.04C1 The radiative energy attenuation method utilizing alcohol dehydrogenase is an approved method to determine alcohol content in blood specimens, and must be performed in a manner to include at least the following technique: 006.04C1a Select an assay carousel for the Abbott Tdx or TDxFLx Analyzer. 006.04C1b Place the number of needed cuvettes and sample cartridges in the carousel beginning with position one and continuing sequentially. Do not skip a position. Lock cuvette into carousel. 006.04C1c Introduce at least 0.050 ml volume of specimen into the sample cartridge. 006.04C1d Remove reagent bottle caps and place the alcohol reagent pack into the TDx or TDxFLx Analyzer. 006.04C1e Place the loaded assay carousel on the spindle. Close the door, and press "RUN" button. 006.04C1f When using the TDxFLx Analyzer, at the prompt enter the appropriate ID for each sample and press store. 006.04C1g At the completion of the test run, obtain the print-out data. 006.04C1h Also upon completion of analysis, remove the carousel and discard its contents. If the reagent pack is not to be used immediately again, remove and store it at 2 to 8 degrees C. 006.04C1i A calibration curve shall be prepared at least monthly using a calibration carousel and at least 6 REA ethanol calibrators. The TDx or TDxFLx Analyzer calculated calibration curve or a data reduction system calibration curve shall be used to determine the final alcohol concentration in

test specimens included in test runs. 006.04C1j An acceptable calibration curve shall meet all of the following three requirements. The requirements are: (1) a percent fluorescence intensity (polarization) error no greater than  $\pm 1.0$ , (2) a root mean squared error no greater than 1.0, and (3) the low, medium, and high controls printout readings within  $\pm .0075$ ,  $\pm .010$ , and  $\pm .020$  of the stated value on their respective vials. 006.04C1k Each test run shall include a low, medium, and high control. If runs contain more than twelve specimens, the controls shall be placed after the last specimens for a chemical test on the carousel. 006.04D Radiative Energy Attenuation Utilizing the Abbott ADx Analyzer 006.04D1 The radiative energy attenuation method utilizing alcohol dehydrogenase is an approved method to determine alcohol content in blood specimens, and must be performed in a manner to include at least the following technique: 006.04D1a Select an ADx carousel for the Abbott ADx Analyser. 006.04D1b Remove an alcohol cartridge from the reagent pack and invert several times. Remove vial caps and place the reagent cartridge into the carousel position "R" of the ADx Analyzer. 006.04D1c Load the appropriate number of sample cartridges and cuvettes for samples and controls to be analyzed in the run with this reagent cartridge, immediately after the reagent cartridge. Do not skip a position. Lock cuvettes into carousel. 006.04D1d Introduce at least 0.050 milliliter volume of specimen into cartridge. 006.04D1e Place loaded and locked carousel on the spindle. Close the door and press run. Enter sample identification information. 006.04D1f At the completion of the test run, obtain the printout of data including the initial intensity (blank) and the percent fluorescence intensity (polarization) and results. 006.04D1g Also, upon completion of the test run, remove the carousel and unlock the carousel. Remove the alcohol reagent cartridge and recap vials. If the reagent cartridge is not to be used immediately again, remove and store at 2 to 8 degrees C. Discard contents of the carousel. 006.04D1h A calibration curve shall be prepared at least monthly using an ADx access carousel and at least six (6) REA ethanol calibrators. An ADx Analyzer calculated calibration curve shall be used to determine the final alcohol concentration in test specimens in a test run. 006.04D1i An acceptable calibration curve shall meet all of the following three requirements. The requirements are: (1) a percent fluorescence intensity (polarization) error no greater than the  $\pm 1.0$ , (2) a root mean squared error no greater than 2.0, and (3) the low, medium, and high controls printout readings within  $\pm .0075$ ,  $\pm .010$ , and  $\pm .020$  of the stated value on their respective vials. 006.04D1j Each test run shall include a low, medium, and high control. If a run contains more than twelve specimens, the controls shall be placed after the last specimens for a chemical test on the carousel. 006.05 Operating Procedures for Class A Permit. A Class A permit holder for the determination of alcohol content in blood shall: 006.05A Be responsible for maintaining the legal continuity of all specimens received. 006.05B Conduct all tests with an inclusion of a quality control sample in the test run. The quality control sample result shall be used to: 006.05B1 Determine standard deviation data computed as shown:

Standard Deviation=

**Standard Deviation =**

$$\sqrt{\frac{\text{sum } (X - \bar{X})^2}{N - 1}}$$

**where:**

**N = number of measurements**

**X = value of single measurement**

**$\bar{X}$  = mean of all X's**

*Formula*

006.05B2 Determine if test results are to be reported. No test results shall be reported if a quality control sample result is greater than +/- three standard deviations. 006.05C Make periodic reports of standard deviation data to the Department as requested. 006.05D Ongoing Performance Evaluation Studies for Permit Holders. Ongoing performance evaluation studies shall be in effect with acceptable performance for test results to be valid. An ongoing performance evaluation study shall be enrollment in the College of American Pathologists' Whole Blood Alcohol/Volatiles survey program or a survey program at the department's discretion. Unacceptable performance is defined as two or more values outside of the acceptable ranges in two successive survey shipments. Copies of proficiency testing evaluations shall be provided to the Department as requested. 006.05D1 Reporting of test results of alcohol content in blood of individuals shall not occur by a permit holder who has been notified of unacceptable performance in proficiency testing. 006.05D2 A permit holder shall be allowed two attempts to produce acceptable performance after being notified of unacceptable performance. 006.05D3 A permit holder shall not resume reporting of test results for alcohol content in blood of individuals until the Department notifies a permit holder that he/she is again in an acceptable performance status following an acceptable performance. 006.05E Maintain the following records: 006.05E1 The permit to perform chemical tests. 006.05E2 Records of specimen receipts, tests performed and results. 006.05E3 The method and description of technique steps in use by the permit holder. 006.05E4 Records of quality control results and related data as prescribed in part 006.05D of this subsection. 006.05E5 A current copy of these rules and regulations. 006.05E6 Records of maintenance performed on instrument. 006.06 Inspection, Maintenance, and Repair of Laboratory Instruments for Class A Methods. 006.06A Maintenance of instruments shall be performed as prescribed in the operators manual that is intended for an instrument which may be utilized to produce results with a technique in this regulation. Maintenance shall be performed by a person trained to do maintenance or a manufacturer's representative. 006.06B When inspection of an instrument reveals the need for repair, the repair shall be performed by a manufacturer's representative, or by a person trained for repair. 006.06C Malfunctions of instruments, maintenance activities, and repair occurrences shall be recorded and shall show the name of the person and the agency or business organization performing maintenance activities and repair work. 006.06D A Class A permit holder shall document that instrument maintenance has occurred with at least the frequency recommended by the manufacturer.

**Sec. R. 007. Class B permits, Application for.**—007 CLASS B PERMITS ---007.01 Application for Class B Permit. 007.01A Application for a Class B Permit shall be made on a form prescribed by the Department as shown in Attachment 9, attached and incorporated by reference. 007.01B The Class B permit applicant shall attend an eight hour class that includes basic principles of the instrument, the

method and technique, evidentiary uses, and legal matters. The class shall include performance evaluation studies and a written examination. 007.01C To earn a Class B permit, the applicant shall achieve at least 70% on a written examination from the Department. 007.01D Performance Evaluation Studies. A performance evaluation study for permit issuance shall consist of two samples. Satisfactory performance of analyses on the audit samples is defined as the ability to produce acceptable data on all samples. 007.01D1 Unacceptable data is defined, for the purpose of section 007 of these regulations, as an error in the analysis of an audit sample greater than a 10% deviation for solutions above .070. Percent deviation shall be computed as the total deviation from the mean value divided by the mean value and multiplied by 100. For solution values of .070 or less, the results must be within +/- .01 of the target value. 007.01D2 An applicant shall be allowed two attempts to produce acceptable data. 007.02 Operating Rules for Class B Permit. To determine the alcohol content in breath, a Class B permit holder shall: 007.02A Ascertain that maintenance and calibration checks have been performed on devices prior to testing by reviewing the maintenance records listed below: 007.02A1 the current 40-day maintenance and calibration check performed on the testing device, including 007.02A2 the results of the Department's report of the periodic 190 day device check sample. 007.02B Maintain or have access to the following records: 007.02B1 the permit to perform chemical tests, 007.02B2 a current copy of these rules and regulations, 007.02B3 checklist technique forms, test record cards, or tapes produced by testing device, and 007.02B4 the record of testing devices' repairs. 007.02C Use the appropriate checklist to record the test.

**Sec. R. 008. Class B permit holders; Approved methods, breath testing instruments, calibration devices and internal reference standards.**—008.01 All evidentiary breath testing devices that have been evaluated and approved by the National Highway Traffic Safety Administration (NHTSA) and published on the Conforming Products Lists of Evidential Breath Measuring Devices are approved devices in the State of Nebraska. Prior to use of a NHTSA approved device, the checklist technique and operating procedures for that device must be included in these regulations. 008.01A Approved evidentiary breath testing methods and instruments, except preliminary breath testing devices, are listed below. These are the instruments that may be operated by the Class B permit holder.

- a. Intoxilyzer, all models
- b. Intoximeter Model 3000
- c. DataMaster, all models

008.01B Infrared absorption analysis using the Intoxilyzer Model 4011AS. Checklist technique as found in Attachment 3, attached and incorporated herein by reference, is approved for this method. 008.01C Infrared absorption analysis using the Intoximeter Model 3000. Checklist technique, as found in Attachment 13, attached and incorporated herein by reference, is approved for this method. 008.01D Infrared absorption analysis using the Intoxilyzer Model 5000, including all devices under the Model 5000 name. Checklist technique, as found in Attachment 15, attached and incorporated herein by reference, is approved for the Model 5000. 008.01E Infrared absorption analysis using the Model DataMaster and all instruments under the DataMaster name. Checklist technique, as found in Attachment 2, attached and incorporated herein by reference, is approved for the DataMaster. 008.02 All calibration equipment that has been approved by the National Highway Traffic Safety Administration and published on the Conforming Product List of Calibrating Units for Breath Alcohol Testers is approved for calibration and verification of calibration of breath testing devices. 008.03 Approved reference standards and their use in calibration verification of evidentiary breath testing devices are described below and shall be used by a Class B permit holder with the applicable instrument. 008.03A DataMaster with Internal Reference standard consisting of a known quartz filter used as a known standard specific to each instrument is an approved reference standard. Prior to placement into service at a testing site, the DataMaster device with the internal quartz standard shall have the calibration checked with an alcohol breath simulator solution. 008.03A1 Following the DataMaster calibration check, an internal calibration analysis shall be performed. The results of this internal calibration check must be within +/- 5% of the target value. 008.03A1a If the internal check is not within +/- 5%, the instrument will abort the test and "Calibration Error" is displayed and printed on the test record card. 008.03A2 The DataMaster is then to be rechecked for calibration with a breath alcohol simulator solution. 008.03A3 Attachment 5, attached and incorporated herein by reference, shall be used for certifying the accuracy of the internal quartz standard used for calibration checks.

008.03B 4011 AS—INTOXILYZER REFERENCE STANDARD, manufactured by CMI, Inc., and consisting of a beam attenuator accessory is an approved reference standard provided the target value of the reference standard has been verified according to the following steps and certified prior to placement into service at a testing site. 008.03B1 The testing device used to certify the beam attenuator reference standard shall have its calibration checked with an alcohol breath simulator solution. 008.03B2 Following the Intoxilyzer calibration verification check, ten analyses shall be performed on the beam attenuator reference standard. The average of the ten analyses shall be the assigned target value for that beam attenuator reference standard. 008.03B3 Following the preceding step, the Intoxilyzer is to be rechecked for calibration with the alcohol breath simulator solution. 008.03B4 Attachment 7, attached and incorporated herein by reference, shall be used for certifying the accuracy of the beam attenuator. 008.03C INTOXILYZER MODEL 5000 INTERNAL REFERENCE standard consisting of filters of predetermined values which correspond to the calibration setting of the instrument is an approved reference standard. 008.03C1 Prior to placement into service, the Intoxilyzer breath testing device with the internal reference standard(s) shall have the calibration checked with an alcohol breath simulator solution. 008.03C2 Following the Intoxilyzer 5000 calibration check, an internal calibration analysis shall be performed. The result of this internal calibration check must indicate that all predetermined target values are within +/- 5% of the target values. 008.03C2a If any of the internal standards are not within +/- 5% of the target values, the instrument will abort the test and indicate the error by displaying and printing an error message. 008.03C3 The Intoxilyzer 5000 is to be rechecked for calibration with an alcohol breath simulator solution. 008.03C4 Attachment 12, attached and incorporated herein by reference, shall be used for certifying the accuracy of the internal calibration reference standards. 008.04 Alcohol breath simulator solutions. Testing device calibration and calibration verification shall be performed using solutions as follows: 008.04A The alcohol breath simulator solutions must be prepared with a certificate of Analysis as shown in Attachment 1, attached and incorporated herein by reference. 008.04B Alcohol breath simulator solution can be used for twenty analyses when used with devices that do not use vapor recirculation. The solutions may be used for 200 analyses for devices that use vapor recirculation. 008.04C Alcohol breath simulator solution may be stored at ambient room temperature. It shall be stored in a tightly stoppered device or other tightly stoppered container. The useful life of an alcohol breath simulator solution is 24 months.

**Sec. R. 010.—Calibration verification of breath testing devices.—**010 CALIBRATION VERIFICATION. Calibration verification of evidentiary breath testing devices may be performed in any of three ways: a certified alcohol breath simulator solution, internal standards, or a beam attenuator. 010.01 When calibration verification checks are performed with certified alcohol breath simulator solutions, all approved evidentiary breath testing instruments shall be able to produce results within +/- .010 of the target value of the certified simulator solution. 010.02 When calibration verification checks are performed by means of approved internal standard(s), all approved evidentiary breath testing instruments shall be able to produce results within +/- 5% of the target values of the standard(s). This tolerance shall be verified by the normal prescribed program and operation of the testing devices. 010.03 When calibration verification checks are performed for the Intoxilyzer 4011AS with a beam attenuator, the result of such verification must be an instrument reading to be within +/- 0.010 of the target value of the beam attenuator reference standard. 010.04 If the instrument calibration cannot be verified to be accurate within the above cited limits, the instrument will be taken out of service and repairs made.

**Sec. R. 011. Class B breath testing devices, Repairs.—**011.01 When inspection of a testing device reveals the need for repair, the repair shall be performed only by a manufacturer's representative, or an individual trained for repair, or a person trained for repair and responsible at a site for scheduled maintenance of testing devices. 011.02 Repair of a testing device includes the removal of the malfunctioning part(s) and the installation of the repair part(s). The removal or installation of all parts or electronic boards shall be recorded. 011.03 Calibration verification procedures shall be performed on a testing device following its repair, before it is returned to service. 011.04 The records to be maintained for repair activities shall include the type of malfunction of a testing device, the nature of the repair, the date of the repair, and shall show the name of the person performing these activities or the name of the person's agency or business organization. 011.05 The repair records, or copies of the

	<p>repair records, for a testing device shall be made available to the Department upon request.</p> <p><b>Sec. R. 012. Class C permits.</b>—012.01 Qualifications For Class C Permit Holders. Permit holder qualifications to operate approved devices to perform preliminary breath tests are: 012.01A Have knowledge of calibration and use of the testing device. 012.01A1 Evidence of knowledge shall be a passing grade of at least 70% on a written examination which shall be taken by every applicant and successfully passed prior to issuance of a permit, be prepared and administered by the Department, and consist of questions regarding calibration and use of the testing device. 012.01B Have demonstrated ability and competence to the satisfaction of the Department by completing a two and one half hour class and the satisfactory performance of analyses on audit samples. 012.01B1 Unacceptable performance on audit samples is defined as an error in the analyses greater than +/- 0.015 of the target value. 012.01B2 A prospective permit holder shall be allowed two attempts to achieve acceptable results of audit samples. 012.02 Issuance of Class C Permit. 012.02A Application for a Class C Permit shall be made on Attachment 10, attached and incorporated herein by reference. 012.02B A Class C Permit is valid for all approved preliminary breath test instruments. 012.03 List of Approved Methods and Devices for Class C Permits. Fuel cell analysis is the approved method of analysis for the following preliminary breath testing devices, and the checklist technique as found in Attachment 4, attached and incorporated herein by reference, is approved for the following preliminary breath testing devices.</p> <p>a. Alco-Sensor, all models.  b. Intoxilyzer, all models that use fuel cell analysis  c. Lifeloc, all models that use fuel cell analysis</p> <p>012.04 Maintenance, and Repair of Preliminary Breath Testing Devices. 012.04A The periodic fuel cell replacement, recognized by inspection when it is not possible to adjust the calibration up to the desired value, shall be performed by a manufacturer's representative or person trained by manufacturer. 012.04B The periodic electrical battery replacement, recognized when the light display indicates a low battery, may be performed by a permit holder. 012.04C Repair of a testing device shall be performed by a manufacturer's representative or a person trained by the manufacturer. 012.04D Malfunctions of testing devices, maintenance, and repair occurrences shall be recorded and shall show the name of the agency or business organization performing these activities. 012.05 Calibration of Testing Devices. All preliminary breath test devices are to be calibrated, or calibration verified, every 30 days, and a record kept of the activity.</p> <p><b>Sec. R. 013 Blood or breath tests, Fatal accident report.</b>—<b>013 BLOOD OR BREATH TESTS FOR FATALITY ACCIDENT REPORTS</b>---013.01 Tests performed for purposes of fatality accident reporting shall be performed by either a Class A permit holder or a Class B permit holder according to these rules and regulations. 013.02 The provisions of these rules and regulations apply to all samples and tests prescribed in Nebraska Revised Statutes sections 60-6,101 to 60-6,107 for determining alcohol content of blood in certain persons involved in fatality accidents.</p> <p><b>Sec. R. 014. Blood or breath tests, Fatal accident reports.</b>—<b>014 BLOOD OR BREATH TESTS FOR BOATING WHILE INTOXICATED</b> ---014.01 Chemical tests performed for purposes of the determination of the alcohol content in blood or breath of any person operating any motorboat or vessel or manipulating any water skis, surfboard, or similar device while intoxicated shall be performed by either a Class A permit holder or a Class B permit holder, as authorized by Nebraska Revised Statutes Section 37-1254. 014.02 The provisions of these rules and regulations apply to all preliminary breath testing conducted pursuant to the provisions of Nebraska Revised Statutes Section 37-1254. Any violation of the provisions of Nebraska Revised Statutes Section 37-1254 shall be established by blood or breath tests conducted by either a Class A permit holder or a Class B permit holder with all provisions of this Rule, 177 NAC 1, pertaining to either a Class A or Class B permit applying thereto.</p>
Nevada	<p><b>284.406. Policy concerning use of alcohol or drugs by state employees.</b>—It is the policy of this state to ensure that its employees do not: 1. Report for work in an impaired condition resulting from the use of alcohol or drugs; 2. Consume alcohol while on duty; or 3. Unlawfully possess or consume</p>

any drugs while on duty, at a work site or on state property.

**284.4062. Employee who consumes or is under the influence of alcohol or drugs or who possesses controlled substance on duty is subject to disciplinary action; state agency required to refer certain employees to employee assistance program.**—

1. Except as otherwise provided in subsection 3, an employee who: (a) Consumes or is under the influence of alcohol while on duty, unless the alcohol is an integral part of a commonly recognized medication which the employee consumes pursuant to the manufacturer's instructions or in accordance with a lawfully issued prescription; (b) Possesses, consumes or is under the influence of a controlled substance while on duty, at a work site or on state property, except in accordance with a lawfully issued prescription; or (c) Consumes or is under the influence of any other drug which could interfere with the safe and efficient performance of his duties, unless the drug is an integral part of a commonly recognized medication which the employee consumes pursuant to the manufacturer's instructions or in accordance with a lawfully issued prescription, is subject to disciplinary action. An appointing authority may summarily discharge an employee who, within a period of 5 years, commits a second act which would subject him to disciplinary action pursuant to this subsection. 2. A state agency shall refer an employee who: (a) Tests positive for the first time in a screening test; and (b) Has committed no other acts for which he is subject to termination during the course of conduct giving rise to the screening test, to an employee assistance program. An employee who fails to accept such a referral or fails to complete such a program successfully is subject to further disciplinary action. 3. Subsection 1 does not apply to: (a) An employee who consumes alcohol in the course of his employment while hosting or attending a special event. (b) A peace officer who possesses a controlled substance or consumes alcohol **within** the scope of his duties.

**284.4063. Grounds for disciplinary action: Failure to notify supervisor after consuming certain drugs; failure or refusal to submit to screening test; failure of screening test.**—

Except as otherwise provided in subsection 5 of NRS 284.4065, an employee who: 1. Fails to notify his supervisor as soon as possible after consuming any drug which could interfere with the safe and efficient performance of his duties; 2. Fails or refuses to submit to a screening test as requested by a state agency pursuant to subsection 1 or 2 of NRS 284.4065; or 3. After taking a screening test which indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested by his appointing authority, that he had taken the controlled substance as directed pursuant to a current and lawful prescription issued in his name, is subject to disciplinary action.

**284.4064. Appointing authority authorized to require employee who has consumed drug to obtain clearance from physician; inquiry regarding use of alcohol or drug by employee; preventing employee from continuing work.**—

1. If an employee informs his appointing authority that he has consumed any drug which could interfere with the safe and efficient performance of his duties, the appointing authority may require the employee to obtain clearance from his physician before he continues to work. 2. If an appointing authority reasonably believes, based upon objective facts, that an employee's ability to perform his duties safely and efficiently: (a) May be impaired by the consumption of alcohol or other drugs, it may ask the employee whether he has consumed any alcohol or other drugs and, if so: (1) The amount and types of alcohol or other drugs consumed and the time of consumption; and (2) If a controlled substance was consumed, the name of the person who prescribed its use. (b) Is impaired by the consumption of alcohol or other drugs, it shall prevent the employee from continuing work and transport him or cause him to be transported safely away from his place of employment in accordance with regulations adopted by the director.

**284.4065. Screening tests: General provisions.**—

1. Except as otherwise provided in subsection 2, an appointing authority may request an employee to submit to a screening test only if the appointing authority: (a) Reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs which are impairing his ability to perform his duties safely and efficiently; (b) Informs the employee of the specific facts supporting its belief pursuant to paragraph (a), and prepares a written record of those facts; and (c) Informs the employee in writing: (1) Of whether the test will be for alcohol or drugs, or both; (2) That the results of the test are not admissible in any criminal proceeding against him; and (3) That he may refuse the test, but that his refusal may result in his dismissal or in other disciplinary action being taken against him. 2. An appointing



authority may request an employee to submit to a screening test if the employee: (a) Is a law enforcement officer and, during the performance of his duties, he discharges a firearm, other than by accident; or (b) During the performance of his duties, drives a motor vehicle in such a manner as to cause bodily injury to himself or another person or substantial damage to property. For the purposes of this subsection, the director shall, by regulation, define the term "substantial damage to property." 3. An appointing authority may place an employee who submits to a screening test on administrative leave with pay until it receives the results of the test. 4. An appointing authority shall: (a) Within a reasonable time after an employee submits to a screening test to detect the general presence of a controlled substance or any other drug, allow the employee to obtain at his expense an independent test of his urine or blood from a laboratory of his choice which is certified by the Department of Health and Human Services. (b) Within a reasonable time after an employee submits to a screening test to detect the general presence of alcohol, allow the employee to obtain at his expense an independent test of his blood from a laboratory of his choice. (c) Provide the employee with the written results of his screening test within 3 working days after it receives those results. 5. An employee is not subject to disciplinary action for testing positive in a screening test or refusing to submit to a screening test if the appointing authority fails to comply with the provisions of this section. 6. An appointing authority shall not use a screening test to harass an employee.

**284.4066. Screening tests: Applicants for positions affecting public safety required to take screening test; appointing authority authorized to consider results.—**1. Each appointing authority shall, subject to the approval of the commission, determine whether each of its positions of employment affect the public safety. The appointing authority shall not hire an applicant for such a position unless he submits to a screening test to detect the general presence of a controlled substance or any other drug. Notice of the provisions of this section must be given to each applicant for such a position at or before the time of application. 2. An appointing authority may consider the results of a screening test in determining whether to employ an applicant. If those results indicate the presence of a controlled substance, the appointing authority shall not hire the applicant unless he provides within 72 hours after being requested by the appointing authority, proof that he had taken the controlled substance as directed pursuant to a current and lawful prescription issued in his name. 3. An appointing authority shall, at the request of an applicant, provide him with the results of his screening test.

**284.4067. Screening tests: Requirements for administration; use; results.—**1. A screening test: (a) To detect the general presence of a controlled substance or any other drug, must be conducted by an independent laboratory that is certified by the Department of Health and Human Services. (b) To detect the general presence of alcohol or of a controlled substance or any other drug, must be administered in such a manner as to protect the person tested from any unnecessary embarrassment. 2. Except as otherwise provided in subsection 3, a sample of urine provided for use in a screening test must not be used for any test or purpose without the prior written consent of the person providing the sample. The appointing authority shall ensure that the person retains possession and control of his sample until it is appropriately tagged and sealed with tamper-proof tape. 3. If the results of a screening test indicate the presence of any drug which could impair the ability of a person to perform the duties of employment safely and efficiently: (a) The laboratory shall conduct another test of the same sample of urine to ascertain the specific substances and concentration of those substances in the sample; and (b) The appointing authority shall provide the person tested with an opportunity to have the same sample tested at his expense by a laboratory of his choice certified by the Department of Health and Human Services.

**284.4068. Screening tests: Results confidential; admissibility of results; security; disclosure.—**The results of a screening test taken pursuant to NRS 284.4061 to 284.407, inclusive, are confidential and: 1. Are not admissible in a criminal proceeding against the person tested; 2. Must be securely maintained by the appointing authority or his designated representative separately from other files concerning personnel; and 3. Must not be disclosed to any person, except: (a) Upon the written consent of the person tested; (b) As required by medical personnel for the diagnosis or treatment of the person tested, if he is physically unable to give his consent to the disclosure; (c) As required pursuant to a properly issued subpoena; (d) When relevant in a formal dispute between the appointing authority

	<p>and the person tested; or (e) As required for the administration of a plan of benefits for employees.</p> <p><b>284.4069. Training for supervisors.</b>— The department shall provide training in the provisions of NRS 284.4061 to 284.407, inclusive, to employees of appointing authorities whose duties include the supervision of other employees.</p> <p><b>284.407. Regulations.</b>—The director shall adopt such regulations as are necessary to carry out the purposes of NRS 284.406 to 284.4069, inclusive.</p>
<p><b>New Hampshire</b></p>	<p><b>318-C:2. Drug Dealer Liability Act, Purpose of.</b>—The purpose of this chapter is to: I. Provide a civil remedy for damages to persons in a community injured as a result of illegal drug use. These persons include parents, employers, insurers, governmental entities, and others who pay for drug treatment or employee assistance programs, as well as infants injured as a result of exposure to drugs in utero ( "drug babies"). The chapter will enable them to recover damages from those persons in the community who have joined the illegal drug market. II. Shift, to the extent possible, the cost of the damage caused by the existence of the illegal drug market in a community to those who illegally profit from that market. III. Establish the prospect of substantial monetary loss as a deterrent to those who have not yet entered into the illegal drug distribution market. IV. Establish an incentive for drug users to identify and seek payment for their own drug treatment from those dealers who have sold drugs to the user in the past.</p> <p><b>318-C:3. Drug Dealer Liability Act, Legislative findings and declarations.</b>—The legislature finds and declares all of the following: I. Every community in the country is affected by the marketing and distribution of illegal drugs. A vast amount of state and local resources are expended in coping with the financial, physical, and emotional toll that results from the existence of the illegal drug market. Families, employers, insurers, and society in general bear the substantial costs of coping with the marketing of illegal drugs. Drug babies and parents, particularly those of adolescent illegal drug users, suffer significant non-economic injury as well. II. Although the criminal justice system is an important weapon against the illegal drug market, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of illegal drugs. The persons who have joined the illegal drug market should bear the cost of the harm caused by that market in the community. III. The threat of liability under this chapter serves as an additional deterrent to a recognizable segment of the illegal drug network. A person who has non-drug related assets, who markets illegal drugs at the workplace, who encourages friends to become users, among others, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time casual dealer who has not yet made substantial profits. This act provides a mechanism for the cost of the injury caused by illegal drug use to be borne by those who benefit from illegal drug dealing. IV. This chapter imposes liability against all participants in the illegal drug market, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. The small dealers increase the number of users and are the people who become large dealers. These small dealers are most likely to be deterred by the threat of liability. V. A parent of an adolescent illegal drug user often expends considerable financial resources, typically in the tens of thousands of dollars, for the child's drug treatment. Local and state governments provide drug treatment and related medical services made necessary by the distribution of illegal drugs. The treatment of drug babies is a considerable cost to local and state governments. Insurers pay large sums for medical treatment relating to drug addiction and use. Employers suffer losses as a result of illegal drug use by employees due to lost productivity, employee drug-related workplace accidents, employer contributions to medical plans, and the need to establish and maintain employee assistance programs. Large employers, insurers, and local and state governments have existing legal staffs that can bring civil suits against those involved in the illegal drug market, in appropriate cases, if a clear legal mechanism for liability and recovery is established. VI. Drug babies, who are clearly the most innocent and vulnerable of those affected by illegal drug use, are often the most physically and mentally damaged due to the existence of an illegal drug market in a community. For many of these babies, the only hope is extensive medical and psychological treatment, physical therapy, and special education. All of these potential remedies are expensive. These babies, through their legal guardians and through court appointed guardians ad litem, should be able to recover damages from those in the community who have entered and participated in the</p>

marketing of the types of illegal drugs that have caused their injuries. VII. (a) In theory, civil actions for damages for distribution of illegal drugs can be brought under existing law. They are not. Several barriers account for this. Under existing tort law, only those dealers in the actual chain of distribution to a particular user could be sued. Drug babies, parents of adolescent illegal drug users, and insurers are not likely to be able to identify the chain of distribution to a particular user. Furthermore, drug treatment experts largely agree that users are unlikely to identify and bring suit against their own dealers, even after they have recovered, given the present requirements for a civil action. (b) Recovered users are similarly unlikely to bring suit against others in the chain of distribution, even if they know the user. A user is unlikely to know other dealers in the chain of distribution. Unlike the chain of distribution for legal products, in which records identifying the parties to each transaction in the chain are made and shared among the parties, the distribution of illegal drugs is clandestine. Its participants expend considerable effort to keep the chain of distribution secret. VIII. Those involved in the illegal drug market in a community are necessarily interrelated and interdependent, even if their identities are unknown to one another. Each new dealer obtains the benefit of the existing illegal drug distribution system to make illegal drugs available to him or her. In addition, the existing market aids a new entrant by the prior development of people as users. Many experts on the illegal drug market agree that all participants are ultimately likely to be indirectly related. That is, beginning with any one dealer, given the theoretical ability to identify every person known by that dealer to be involved in illegal drug trafficking, and in turn each of such others know to them, and so on, the illegal drug market in a community would ultimately be fully revealed. IX. Market liability has been created with respect to legitimate products by judicial decision in some states. It provides for civil recovery by plaintiffs who are unable to identify the particular manufacturer of the product that is claimed to have caused them harm, allowing recovery from all manufacturers of the product who participated in that particular market. The market liability theory has been shown to be destructive of market initiative and product development when applied to legitimate markets. Because of its potential for undermining markets, this chapter expressly adopts a legislatively crafted form of liability for those who intentionally join the illegal drug market. The liability established by this chapter grows out of, but is distinct from, existing judicially crafted market liability. X. The prospect of a future suit for the costs of drug treatment may drive a wedge between prospective dealers and their customers by encouraging users to turn on their dealers. Therefore, liability for those costs, even to the user, is imposed under this chapter as long as the user identifies and brings suit against his or her own dealers. XI. Allowing dealers who face a civil judgment for their illegal drug marketing to bring suit against their own sources for contribution may also drive a wedge into the relationships among some participants in the illegal drug distribution network. XII. While not all persons who have suffered losses as a result of the marketing of illegal drugs will pursue an action for damages, at least some individuals, guardians of drug babies, government agencies that provide treatment, insurance companies, and employers will find such an action worthwhile. These persons deserve the opportunity to recover their losses. Some new entrants to retail illegal drug dealing are likely to be deterred even if only a few of these suits are actually brought.

**318-C:4 Drug Dealer Liability Act, Definitions.**—As used in this chapter: I. "Illegal drug" means any drug which is a schedule I-IV drug under RSA 318-B. II. "Illegal drug market" means the support system of illegal drug related operations, from production to retail sales, through which an illegal drug reaches the user. III. "Illegal drug market target community" is the area described under RSA 318-C:9. IV. "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this chapter. V. "Level 1 offense" means possession of ounce or more, but less than 4 ounces, or distribution of less than one ounce of an illegal drug other than marijuana, or possession of one pound or more or 25 plants or more, but less than 4 pounds or 50 plants, or distribution of more than pound but less than one pound of marijuana. VI. "Level 2 offense" means possession of 4 ounces or more, but less than 8 ounces, or distribution of one ounce or more, but less than 2 ounces, of an illegal drug other than marijuana, or possession of 4 pounds or more or 50 plants or more but less than 8 pounds or 75 plants or distribution of one pound or more but less than 5 pounds of marijuana. VII. "Level 3 offense" means possession of 8 ounces or more, but less than 16 ounces, or distribution of 2 ounces or more, but less than 4 ounces, of an illegal drug other than marijuana, or possession of 8 pounds or more or 75 plants or more, but less than 16 pounds or 100 plants, or distribution of 5 pounds or more but less than 10 pounds of marijuana. VIII. "Level 4 offense" means possession of 16 ounces

or more or distribution of 4 ounces or more of an illegal drug other than marijuana, or possession of 16 pounds or more or 100 plants or more or distribution of 10 pounds or more of marijuana. IX. "Participate in the illegal drug market" means to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. "Participate in the illegal drug market" does not include the purchase or receipt of an illegal drug for personal use only. X. "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or foreign country. XI. "Period of illegal drug use" means, in relation to the individual drug user, the time of the individual's first use of an illegal drug to the accrual of the cause of action. The period of illegal drug use is presumed to commence 2 years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence. XII. "Place of illegal drug activity" means, in relation to the individual drug user, each house of representatives' legislative district in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the individual's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence. XIII. "Place of participation" means, in relation to a defendant in an action brought under this chapter, each house of representatives' legislative district in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market.

**318-C:5. Drug Dealer Liability Act; Participation in illegal drug market, Liability.—**

I. A person who knowingly participates in the illegal drug market within this state is liable for civil damages as provided in this chapter. A person may recover damages under this chapter for injury resulting from an individual's use of an illegal drug. II. A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the illegal drug market, if the participation is in furtherance of an official investigation.

**318-C:6. Drug Dealer Liability Act; Damages, Action for recovery of.—**I. One or more of the following persons may bring an action for damages caused by an individual's use of an illegal drug: (a) A parent, legal guardian, child, spouse, or sibling of the individual drug user. (b) An individual who was exposed to an illegal drug in utero. (c) An employer of the individual drug user. (d) A medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user. (e) A person injured as a result of the willful, reckless, or negligent actions of an individual drug user. II. A person entitled to bring an action under this section may seek damages from a person convicted of a drug offense or a person who knowingly distributed, or knowingly participated in the chain of distribution of, the illegal drug that was actually used by the individual drug user and that was the proximate cause of the recoverable losses. II-a. No governmental entity may bring an action against a person until after that person has been convicted of a criminal act related to the possession, manufacture, or distribution of drugs. III. A person entitled to bring an action under this section may recover all of the following damages: (a) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the illegal drug use. (b) Non-economic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other non-pecuniary losses proximately caused by an individual's use of an illegal drug. (c) Reasonable attorney fees. (d) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

**318-C:7. Drug Dealer Liability Act; Action for damages, Limited recovery—**I. An individual drug user shall not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this paragraph. An individual drug user may bring an action for damages caused by the use of an illegal drug only if all of the following conditions are met: (a) The individual personally discloses to narcotics enforcement authorities, more than 6 months before filing the action, all of the

information known to the individual regarding all that individual's sources of illegal drugs; (b) The individual has not used an illegal drug within the 6 months before filing the action; and (c) The individual continues to remain free of the use of an illegal drug throughout the pendency of the action. II. A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, an illegal drug that was actually used by the individual drug user. III. A person entitled to bring an action under this section may recover only the following damages: (a) Economic damages, including, but not limited to, the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's illegal drug use. (b) Reasonable attorney fees. (c) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

**318-C:8. Drug Dealer Liability Act; Damages, Third-party cases.**—A third party shall not pay damages awarded under this chapter, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

**318-C:9. Drug Dealer Liability Act; Offense level and target community.**—A person whose participation in the illegal drug market constitutes the following level offense shall be considered to have the following illegal drug market target community: I. For a level 1 offense, the New Hampshire house of representatives' legislative district in which the defendant's place of participation is situated. II. For a level 2 offense, the target community described in paragraph I plus all New Hampshire house of representative's legislative districts with a border contiguous to that target community. III. For a level 3 offense, the target community described in paragraph II plus all New Hampshire house of representatives' legislative districts with a border contiguous to that target community. IV. For a level 4 offense, the state.

**318-C:10. Drug Dealer Liability Act, Joint actions.**—I. Two or more persons may join in one action under this chapter as plaintiffs if their respective actions have at least one place of illegal drug activity in common and if any portion of the period of illegal drug use overlaps with the period of illegal drug use for every other plaintiff. II. Two or more persons may be joined in one action under this chapter as defendants if those persons are liable to at least one plaintiff. III. A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

**318-C:11. Drug Dealer Liability Act; Drug users and comparative responsibility.**—I. An action by an individual drug user is governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff. II. The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence. III. Comparative responsibility shall not be attributed to a plaintiff who is not an individual drug user.

**318-C:12. Drug Dealer Liability Act; Multiple defendants and right of action for contributions—**A person subject to liability under this chapter has a right of action for contribution against another person subject to liability under this chapter. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this chapter and existing law against a person against whom a defendant has asserted a right of contribution.

**318-C:13. Drug Dealer Liability Act; Proof of participation in illegal drug market; Criminal drug convictions.**—I. Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence. Except as otherwise provided in this chapter, other elements of the cause of action shall be shown by a preponderance of the evidence. II. A person against whom recovery is sought who has a criminal conviction pursuant to RSA 318-B or other state drug laws or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public

	<p>Law 91-513, 84 Stat. 1236, codified at 21 U.S.C. 801 et seq., is estopped from denying participation in the illegal drug market. Such a conviction is also prima facie evidence of the person's participation in the illegal drug market during the 2 years preceding the date of an act giving rise to a conviction. III. The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person.</p> <p><b>318-C:14. Drug Dealer Liability Act; Prejudgment attachments; Judgments, Execution of.</b>—I. A plaintiff under this chapter, subject to paragraph II, may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award. II. Any assets sought to satisfy a judgment under this chapter that are named in a forfeiture action or have been seized for forfeiture by any state or federal agency may not be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.</p> <p><b>318-C:15 [Drug Dealer Liability Act; Claims, Statute of limitations.</b>—I. Except as otherwise provided in this section, a claim under this chapter shall not be brought more than 2 years after the cause of action accrues. A cause of action accrues under this chapter when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm. II. For a plaintiff, the statute of limitations under this section is tolled while the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery under this chapter or as otherwise provided by law. For a defendant, the statute of limitations under this section is tolled until 6 months after the individual potential defendant is convicted of a criminal drug offense or as otherwise provided by law. III. The statute of limitations under this chapter for a claim based on participation in the illegal drug market that occurred prior to the effective date of this chapter does not begin to run until the effective date of this chapter.</p> <p><b>318-C:16. Drug Dealer Liability Act; Government entities, Representation; Stay of action</b>—I. A prosecuting attorney may represent the state or a political subdivision of the state in an action brought under this chapter. II. Upon the filing of an action under this chapter, the plaintiff shall give immediate notice in writing and provide a copy of the writ to the attorney general. The attorney general shall notify the United States Department of Justice or other appropriate federal agency of such action. III. On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.</p> <p><b>318-C:17. Drug Dealer Liability Act, Impact on other law.</b>—The provisions of this chapter are not intended to alter the law regarding intra-family tort immunity.</p> <p><b>Sec. 318-C:18. Drug Dealer Liability Act, Severability of provisions.</b>—If any provision of this chapter or the application of any provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to any other person or circumstance shall not be affected by that invalidation.</p>
<p><b>New Jersey</b></p>	<p><b>18A:16-2. Physical examinations; requirement.</b>—(a) Every board of education shall require all of its employees, and may require any candidate for employment, to undergo a physical examination, the scope whereof shall be determined under rules of the state board, at least once in every year and may require additional individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal, physical or mental health. Any such examination may, if the board so requires, include laboratory tests or fluoroscopic or X-ray procedures for the obtaining of additional diagnostic data. (b) A board of education may include testing for usage of controlled dangerous substances as they are defined in N.J.S.2C:35-2 as part of any physical examination which is required of a candidate for employment who has received a conditional offer of employment. Any testing shall be conducted by a physician or institution designated by the board of education and the costs shall be paid by the board. The Department of</p>

Education, in consultation with the Department of Health, shall develop guidelines for school boards which elect to require the testing.

**2C:35B-2. Drug Dealer Liability Act; Legislative findings; Purpose.**—2. The Legislature finds and declares: a. Although the criminal justice system is an important weapon in the battle against controlled dangerous substances, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of controlled dangerous substances. The persons who have joined the marketing of controlled dangerous substances should bear the cost of the harm caused by that market in the community. b. The threat of liability under this act serves as an additional deterrent to a recognizable segment of the network for marketing controlled dangerous substances. Because of this threat, a person who has assets unrelated to the sale of controlled dangerous substances, who markets controlled dangerous substances at the workplace, who encourages friends to become users, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time, casual dealer who has not yet made substantial profits. c. This act is intended to provide a mechanism whereby the costs of the injuries caused by illegal drug use will be borne by those who benefit from illegal drug dealing. d. This act imposes liability against all participants in the marketing of controlled dangerous substances, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. Small dealers increase the number of users and ultimately are the people who become large dealers. It is these small dealers who are most likely to be deterred by the threat of liability.

**2C:35B-3. Drug Dealer Liability Act; Definitions.**—3. As used in this act: a. "Marketing of controlled dangerous substances" means the illegal distributing, dispensing, or possessing with intent to distribute, a specified controlled dangerous substance. b. "Individual user of controlled dangerous substance" means the individual whose illegal use of a specified controlled dangerous substance is the basis of an action brought under this act. c. "Level 1 offense" means: (1) possessing with intent to distribute less than four ounces of a specified controlled dangerous substance as defined in this section; (2) distributing or dispensing less than one ounce of a specified controlled dangerous substance as defined in this section; (3) possessing with intent to distribute 25 or more but less than 50 marijuana plants; (4) possessing with intent to distribute less than four pounds of marijuana, or (5) distributing or dispensing more than 28.5 grams of marijuana. d. "Level 2 offense" means: (1) possessing with intent to distribute four ounces or more but less than eight ounces of a specified controlled dangerous substance as defined in this section; (2) distributing or dispensing one ounce or more but less than two ounces of a specified controlled dangerous substance as defined in this section; (3) possessing with intent to distribute 50 or more but less than 75 marijuana plants; (4) possessing with intent to distribute four pounds or more but less than eight pounds of marijuana, or (5) distributing or dispensing more than one pound but less than five pounds of marijuana. e. "Level 3 offense" means: (1) possessing with intent to distribute eight ounces or more but less than 16 ounces of a specified controlled dangerous substance as defined in this section; (2) distributing or dispensing two ounces or more but less than four ounces of a specified controlled dangerous substance as defined in this section; (3) possessing with intent to distribute 75 or more but less than 100 marijuana plants; (4) possessing with intent to distribute eight pounds or more but less than 16 pounds of marijuana, or (5) distributing or dispensing more than five pounds but less than 10 pounds of marijuana. f. "Level 4 offense" means: (1) possessing with intent to distribute 16 ounces or more of a specified controlled dangerous substance as defined in this section; (2) distributing or dispensing four ounces or more of a specified controlled dangerous substance as defined in this section; (3) possessing with intent to distribute 100 or more marijuana plants; (4) possessing with intent to distribute 16 pounds or more of marijuana, or (5) distributing or dispensing more than 10 pounds of marijuana. g. "Participate in the illegal marketing of controlled dangerous substances" means to transport, import into this State, distribute, dispense, sell, possess with intent to distribute, or offer to distribute a controlled dangerous substance, in violation of any of the provisions of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in the marketing of controlled dangerous substances" does not include the purchase or receipt of a controlled dangerous substance for personal use only. h. "Person" means any natural person, association, partnership, corporation or other entity. i. "Period of illegal use" means, in relation to the individual user of a controlled dangerous substance, the time of the individual's first

illegal use of a controlled dangerous substance to the accrual of the cause of action. j. "Place of illegal activity" means, in relation to the individual user of a specified controlled dangerous substance, each county in which the individual illegally possess or uses a specified controlled dangerous substance. k. "Place of participation" means, in relation to a defendant in an action brought under this act, each county in which the defendant participates in the marketing of controlled dangerous substances. l. "Specified controlled dangerous substance" means heroin, cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine, phenyl-2-propanone (P2P) and any other controlled dangerous substance specified under the provisions of N.J.S. 2C:35-5 as being unlawful to manufacture, distribute, or dispense, or to possess or have under a person's control with intent to manufacture, distribute or dispense.

**2C:35B-4. Drug Dealer Liability Act; Knowing participation in illegal marketing of controlled dangerous substances; Liability for injuries from illegal use.**—4. A person who knowingly participates in the illegal marketing of controlled dangerous substances within this State is liable for damages, as provided in this act, for injury resulting from an individual's illegal use of a controlled dangerous substance.

**2C:35B-5. Drug Dealer Liability Act; Illegal use of a controlled dangerous substance; Employers may bring action for damages.**—5. a. Any of the following persons may bring an action for damages caused by an individual's illegal use of a controlled dangerous substance: (1) A parent, legal guardian, child, spouse, or sibling of the controlled dangerous substance user. (2) An individual who was exposed to a controlled dangerous substance in utero. (3) An employer of the controlled dangerous substance user. (4) A medical facility, insurer, employer, or other nongovernmental entity that funded a drug treatment program or employee assistance program for the controlled dangerous substance user or that otherwise expended money on behalf of the controlled dangerous substance user. (5) A person injured as a result of the reckless or negligent actions of an individual user of a controlled dangerous substance. No public entity, and no public agency other than a public hospital, shall have a cause of action under this act. b. A person entitled to bring an action under this act may seek damages against: (1) A person who illegally distributed or dispensed a controlled dangerous substance to the individual user of the controlled dangerous substance; or (2) A person who knowingly participated in the illegal marketing of controlled dangerous substances, if all of the following apply: (a) The defendant's place of participation is situated in the same county as the individual user's place of illegal activity; (b) The defendant participated in the marketing of the same type of controlled dangerous substances as those used by the individual user; (c) The defendant was previously convicted of an offense in the State of New Jersey for that type of controlled dangerous substance; and (d) The defendant participated in the marketing of controlled dangerous substances at any time during the period the individual user unlawfully used the controlled dangerous substance. c. A person entitled to bring an action under this section may recover all of the following damages: (1) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the use of a controlled dangerous substance. (2) Noneconomic damages, including but not limited to physical and emotional pain, suffering, physical impairment, physical impairment, emotional distress, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of a controlled dangerous substance. (3) Punitive damages. (4) Reasonable attorney fees. (5) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

**2C:35B-6. Drug Dealer Liability Act; Action for damages; Limitations as to recovery.**—6. a. An individual user of a controlled dangerous substance may bring an action for damages caused by the use of a controlled dangerous substance only if all of the following conditions are met: (1) The individual personally discloses to narcotics enforcement authorities all of the information known to the individual regarding all that individual's sources of controlled dangerous substances. (2) The individual has not used a controlled dangerous substance within the 30 days before filing the action. (3) The individual continues to remain free of the use of an illegal controlled substance throughout the pendency of the action. b. An individual user entitled to bring an action under this section may seek damages only from a person who transported, imported into this State, distributed, dispensed, sold,



possessed with intent to distribute, or offered to distribute, in violation of any of the provisions of chapter 35 of Title 2C of the New Jersey Statutes, the controlled dangerous substance actually used by the individual user of a controlled dangerous substance. c. An individual user entitled to bring an action under this section may recover only the following damages: (1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's use of a controlled dangerous substance. (2) Reasonable attorney fees. (3) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

**2C:35B-7. Drug Dealer Liability Act; Third parties not to pay damages or provide defense on behalf of insured.—7.** a. A third party shall not pay damages awarded under this act, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification. b. A cause of action authorized pursuant to this act may not be assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

**2C:35B-8. Drug Dealer Liability Act; Marketing; Presumption of liability for damages; Percentages.—8.** A person whose participation in the marketing of controlled dangerous substances is grounds for liability pursuant to this act shall be rebuttably presumed to be liable for damages incurred by the plaintiff in the following percentages: a. For a level 1 offense, 25 percent of the damages; b. For a level 2 offense, 50 percent of the damages; c. For a level 3 offense, 75 percent of the damages; and d. For a level 4 offense, 100 percent of the damages.

**2C:35B-9. Drug Dealer Liability Act; Joint actions.—9.** a. Two or more persons may join in one action under this act as plaintiffs if their respective actions have at least one market for controlled dangerous substances in common and if any portion of the period of use of a controlled dangerous substance overlaps with the period of use of a controlled dangerous substance for every other plaintiff. b. Two or more persons may be joined in one action under this act as defendants if those persons are liable to at least one plaintiff.

**2C:35B-10. Drug Dealer Liability Act; Actions & Comparative responsibility.—10.** a. An action by an individual user of a controlled dangerous substance is governed by the principles of comparative responsibility. Comparative responsibility attributed to an individual user does not bar the user's recovery but diminishes the award of damages proportionately, according to the measure of responsibility attributed to the user. The burden of proving comparative responsibility is on the defendant, who shall prove comparative responsibility by clear and convincing evidence. b. Comparative responsibility shall not be attributed to a plaintiff who is not an individual user of a controlled substance, unless that plaintiff knowingly gave the individual user money for the purchase of the controlled dangerous substance.

**2C:35B-11. Drug Dealer Liability Act; Right of action for contribution.—11.** A person subject to liability under this act has a right of action for contribution against another person subject to liability under this act. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this act and other laws against a person whom a defendant has asserted a right of contribution.

**2C:35B-12. Drug Dealer Liability Act; Proof of liability, Evidence; Impact of other laws.—12.** a. Proof of liability in an action brought under this act shall be shown by clear and convincing evidence. b. A person against whom recovery is sought who has been convicted of a violation of N.J.S. 2C:35-5, Manufacturing, Distributing or Dispensing, or an equivalent offense under federal law or the law of any other state, is stopped from denying illegal participation in the market for controlled dangerous substances. If such conviction was based upon the same type of controlled dangerous substance as that used by the individual user, the conviction also constitutes prima facie evidence of the person's participation in the marketing of controlled dangerous substance user pursuant to this act. c. The absence of a criminal conviction for a violation of N.J.S. 2C:35-5 or an equivalent offense under federal law or the law of any other state does not bar recovery by a plaintiff bringing suit pursuant to

subsection b. of section 5 of this act.

**2C:35B-13. Drug Dealer Liability Act; Ex parte prejudgment attachment order.**—13. A plaintiff under this act may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. Any claim of the State authorized pursuant to chapter 35A and 64 of Title 2C of the New Jersey Statutes shall have priority over an order issued pursuant to this section.

**2C:35B-14. Drug Dealer Liability Act; Cause of action, Accrual of; Deadline for filing claim.**—14. a. A cause of action accrues under this act when a person has reason to know of the harm from use of a controlled dangerous substance that is the basis for the cause of action and has reason to know that the use of a controlled dangerous substance is the cause of the harm. b. Except as provided in subsection a. of this section, a claim under this act shall not be brought more than one year after the defendant distributes, dispenses, or possesses with intent to distribute, the controlled dangerous substance or more than one year after the defendant is convicted of a crime involving controlled dangerous substances, whichever is the later.

**2C:35B-15. Drug Dealer Liability Act; Stay of action pending completion of criminal investigation or prosecution**—15. On motion by a governmental agency involved in an investigation or prosecution involving a controlled dangerous substance, an action brought under this act shall be stayed until the completion of any underlying criminal investigation or prosecution.

**2C:35B-16. Drug Dealer Liability Act; Judgments, Satisfaction of**—16. Any judgment resulting from a cause of action brought pursuant to this act shall be satisfied only after the satisfaction of any assessment, fine, fee, penalty or restitution imposed by law and enumerated in section 13 of P.L. 1991, c.329 (2C:46-4.1).

**2C:35B-17. Drug Dealer Liability Act; Applicability.**—17. No cause of action shall arise based on any act by a defendant which occurred prior to the effective date of this act.

**2C:36-10. Prohibited act, Defrauding administration of a drug test given as a condition of employment or continued employment.**—a. As used in this act, "defraud the administration of a drug test" means to submit a substance that purports to be from a person other than its actual source, or purports to have been excreted or collected at a time other than when it was actually excreted or collected, or to otherwise engage in conduct intended to produce a false or misleading outcome of a test for the presence of a chemical, drug or controlled dangerous substance, or a metabolite of a drug or controlled dangerous substance, in the human body. It shall specifically include, but shall not be limited to, the furnishing of urine with the purpose that the urine be submitted for urinalysis as a true specimen of a person. b. Any person who offers for sale or rental, or who manufactures, sells, transfers, or gives to any person, any instrument, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test, is guilty of a crime of the third degree. c. Any person who knowingly defrauds the administration of a drug test that is administered as a condition of employment or continued employment as a law enforcement officer, corrections officer, school bus driver, operator of a motorbus, employee of a rail passenger service, firefighter, provider of emergency first-aid or medical services, or any other occupation that requires the administration of a drug test as a condition of employment or continued employment by law, rule or regulation of the State or a local agency, public authority, or the federal government, is guilty of a crime of the third degree. d. Any person who knowingly defrauds the administration of a drug test that is administered as a condition of monitoring a person on bail, in custody or on parole, probation or pretrial intervention, or any other form of supervision administered in connection with a criminal offense or juvenile delinquency matter, is guilty of a crime of the third degree. e. Any person who knowingly possesses any instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test is guilty of a crime of the fourth degree. f. Any person who knowingly defrauds the administration of a drug test which is administered as a condition of any employment or continued employment not specified in subsection c. of this section is guilty of a crime of the fourth degree.

**New Mexico**

**65-3-14.** Motor carrier safety; Drug and alcohol testing program; Reporting of a positive test required.—A. A motor carrier shall have an in-house drug and alcohol testing program that meets the requirements of 49 C.F.R. part 382 or be a member of a consortium, as defined in 49 C.F.R. 382.107, that provides testing that meets the requirements of C.F.R. part 382. B. At the time of registration or renewal of registration of a commercial motor vehicle, a motor carrier shall certify to the department and to the motor vehicle division of the taxation and revenue department that the motor carrier is in compliance with the requirements of Subsection A of this section. If the motor carrier is a member of a consortium, the motor carrier shall provide the names of the persons who operate the consortium. C. When a medical review officer of a motor carrier's testing program or of the consortium to which the motor carrier belongs determines that a positive test result is valid, the officer shall report the findings to the motor vehicle division of the taxation and revenue department. The motor vehicle division shall enter the positive test results in the commercial driver's license information system pursuant to the New Mexico Commercial Driver's License Act.

**R. 1.7.8.8.** Employees in safety-sensitive positions covered under the “Omnibus Transportation Employee Testing Act of 1991”; Plans; Notice.—A. Employees in safety-sensitive positions within the meaning of the Omnibus Transportation Employee Testing Act of 1991 ( "Act" [49 U.S.C. Section 31-03-06] are exempt from and are not covered by the provisions of 1.7.8.7 NMAC and 1.7.8.9 NMAC through 1.7.8.20 NMAC. B. Agencies with employees covered by the Act shall develop plans or a plan and submit it to the Director and implement such plans or plan for drug and alcohol abuse testing of employees covered by the Act. C. The plans or plan shall contain at the least: (1) the positions covered; (2) testing requirements for drugs and alcohol; (3) the collection of specimen; (4) reporting and explanation of test results; (5) confidentiality; (6) training; (7) rehabilitation and sanctions; and (8) record retention. D. Agencies with employees covered by the Act shall advise the Board by January 1 of each year of those positions covered by the Act.

**R. 1.7.8.9 Safety-sensitive positions; Designation of by Board; Lists.**—A. Only those positions specifically designated by the Board as such shall be considered to be safety-sensitive positions for purposes of 1.7.8 NMAC. B. The Director shall maintain a list of positions designated by the Board as being safety-sensitive. C. The Board shall review at least annually the positions designated as safety-sensitive and after proper notice add or delete positions as being safety-sensitive on its own initiative or following a request.

**R. 1.7.8.10. Drug and alcohol abuse awareness program.**—A. Each agency shall appoint a Drug Abuse Coordinator who shall be responsible for the agency's drug and alcohol abuse program. B. The Drug Abuse Coordinator shall administer the drug and alcohol abuse awareness program to inform employees about: (1) the dangers of drug and alcohol abuse; (2) available counseling, rehabilitation, and employee assistance programs; and (3) the sanctions that may be imposed upon employees as provided in 1.7.8.19 NMAC. C. The Drug Abuse Coordinator shall ensure that the agency has contracted or made arrangements with a Medical Review Officer to perform the duties required by 1.7.8 NMAC.

**R. 1.7.8.11. Drug and alcohol testing; Procedures.**—A. All external candidates for safety-sensitive positions are required to submit to drug testing after an offer of employment is made and prior to final selection for appointment. B. Prior to assuming a safety-sensitive position from a nonsafety-sensitive position, employees shall be required to submit to drug testing. C. Agencies that require employees in safety-sensitive positions to undergo regular physical examinations shall require such employees to undergo drug testing as part of those physical examinations. D. Each agency shall require employees to undergo drug and/or alcohol testing if the agency has a reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to: (1) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty such as liquor on breath, slurred speech, unsteady walk, or impaired coordination; or (2) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty. E. Before an employee is required to submit to reasonable suspicion drug and/or alcohol testing, a supervisor must secure the approval of the next level supervisor unless the requesting supervisor is the agency head. The supervisor must prepare a memorandum within 24 hours after the specimen collection stating

what gave rise to the reasonable suspicion and submit the memorandum to the drug abuse coordinator. F. At least ten percent (10%) of employees in safety-sensitive positions shall be required to undergo drug testing on a yearly basis. (1) The director or a contractor shall identify the employees on a random selection basis. (2) At the discretion of the director, employees may be excused from random drug testing if: (a) they have previously requested referral in accordance with the provisions of Subsection B of 1.7.8.19 NMAC; (b) the selection for random drug testing is made during the first 30 calendar days following the request for referral; or (c) they are on an authorized absence.

**R. 1.7.8.12. Drug testing; Specimen collection procedures.**—A. Unless otherwise specified in 1.7.8 NMAC, urine specimens for drug testing shall be collected by an independent laboratory or under the direction of an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists in Forensic Urine Drug Testing. The collection shall be in accordance with the September 1988 edition of the Urinalysis Collection Handbook for Federal Drug Testing Programs of the National Institute on Drug Abuse. Any and all consent forms used in, or related to, the collection of urine specimens under 1.7.8 NMAC shall be approved by the Director. Forms and logbooks specified or recommended in the Urinalysis Collection Handbook for Federal Drug Testing Programs may not be used at all, may be used in a different form, may contain different information, or may involve different procedures than those used under 1.7.8 NMAC. B. Breath specimens shall be collected by any appropriately certified person or a medical or laboratory facility selected by the Director. C. Blood specimens shall be collected by or under the direction of an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the College of American Pathologists.

**R. 1.7.8.13. Drug testing; Types of tests; Classes of drugs and cut-off levels; Lab reports and handling of specimen.**—A. The initial and confirmatory drug tests, shall be performed in accordance with DHHS/DOT testing guidelines and by an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The laboratory shall have the capability, on the same premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered. B. The following initial cutoff levels shall be used when screening specimens on the initial drug tests to determine whether they are negative for these five drugs or classes of drugs:

(1) Marijuana metabolites 50 (ng/ml) (2) Cocaine metabolites 300 (ng/ml) (3) Opiate metabolites 1 2,000 (ng/ml) (4) Phencyclidine 25 (ng/ml) (5) Amphetamines 1,000 (ng/ml)

C. All specimens identified as positive on the initial drug test shall be confirmed by the laboratory at the cutoff values listed below for each drug. All confirmations shall be by quantitative analysis:

(1) Marijuana metabolites 1 15 (ng/ml) (2) Cocaine metabolites 2 150 (ng/ml)  
(3) Opiates:  
(a) Morphine 2,000 (ng/ml) (b) Codeine 2,000 (ng/ml) (4) Phencyclidine 25 (ng/ml)  
(5) Amphetamines  
(a) Amphetamine 500 (ng/ml) (b) Methamphetamine 500 (ng/ml)  
(6) 1 Delta—9-tetrahydrocannabinol—9-carboxylic acid  
(7) 2 Benzoylecgonine

D. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug. E. The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

**R. 1.7.8.14. Alcohol testing; Types of tests; Procedures.**—A. A test for alcohol shall be administered

by breath or blood. A test for any indication of alcohol in the 30 to 180 calendar day period following an employee's request to be referred to alcohol rehabilitation in accordance with the provisions of Paragraph (1) of Subsection B of 1.7.8.19 NMAC may be performed by urinalysis. B. A test for alcohol by blood shall be performed by an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the College of American Pathologists. C. A test result of a blood-alcohol content (BAC) level of .06 or more shall be deemed positive for alcohol. For employees who have been required to undergo alcohol rehabilitation in accordance with the provisions of Paragraph (1) of Subsection D of 1.7.8.19 NMAC, any indication of alcohol at any level for the 30 to 180 calendar day period following an employee's request to be referred for rehabilitation shall be considered a positive test result.

**R. 1.7.8.15. Drug and alcohol test results; Reports; Recordkeeping requirements;**

**Confidentiality.**—A. Drug and alcohol test results shall be reported only to the Drug Abuse Coordinator or designee. B. The test report shall contain the specimen number assigned by the agency, the laboratory accession number and results of the tests. All specimens negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive. Results may be transmitted to the Drug Abuse Coordinator by various means including certified mail with return receipt requested, courier service, and/or electronic mail in a secure area (e.g., teleprinter, facsimile, or computer). Certified copies of all analytical results and chain-of-custody forms shall be available from the laboratory when requested by appropriate authority. C. The Drug Abuse Coordinator shall advise candidates and employees in writing of the test results. The Drug Abuse Coordinator may also advise candidates and employees verbally of the test results. D. All records pertaining to a given urine specimen shall be retained by the laboratory for a minimum of two years. E. Only those members of management who need to know shall be made aware of the test results. Breach of confidentiality may be grounds for disciplinary action.

**R. 1.7.8.16. Test results; Positive tests; Review; Explanation or challenge of.**—A. Candidates for employment who test positive for drugs may, within 2 workdays of being advised of the test results, submit a written request to the agency's drug abuse coordinator for a review of the test results by the medical review officer. The test results of all employees who test positive for drugs and/or alcohol shall be referred by the agency's drug abuse coordinator to the medical review officer. (1) If the candidate does not request a review of the test results within two work days, the candidate waives review by the medical review officer and any retesting of the sample and consents to rejection for selection. (2) The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications and/or medical or dental treatment. The medical review officer shall also review the results of any retest done according to the provisions of 1.7.8.17 NMAC. (a) Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the state to order a reanalysis of the original sample and such retests are authorized to be performed only at an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. (b) Prior to making a final decision to verify a positive test result, the medical review officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the medical review officer and the candidate or employee may be in person or by telephone. (c) The medical review officer shall advise the appropriate drug abuse coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the medical review officer shall not attempt to resolve that factual conflict, but shall report it along with his or her medical conclusions to the drug abuse coordinator for the agency. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol, but shall simply report such claims to the drug abuse coordinator for the agency, all with his or her medical opinion as to the possibility that such occurrence could have affected the test results. B. Based upon the medical review officer's report and

such other inquiries or facts as the agency may consider, the agency shall determine whether the candidate's or employee's explanations or challenges of the confirmed positive test results are satisfactory. (1) If the candidate's or employee's explanations or challenges of the positive test results are unsatisfactory to the agency: (a) a written explanation as to why the explanation is unsatisfactory, along with the test results, shall be provided to the candidate or employee within 11 calendar days of the agency's determination; and (b) such records shall be kept confidential by the agency and shall be retained for one year. (2) If the candidate's or employee's explanations or challenges of the positive test results are satisfactory to the agency: (a) the agency shall notify the candidate or employee of the agency's determination within 11 calendar days of the determination; and (b) such records shall be kept confidential by the agency and shall be retained for one year.

**R. 1.7.8.17. Review of positive test results; Retesting procedures; Costs.**—A. Candidates who have sought review of their positive drug tests by the Medical Review Officer and all employees who tested positive for drugs may elect to have, at their expense, an aliquot of the original urine specimen retested by another independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists in Forensic Urine Drug Testing. The drug testing laboratory shall arrange for the shipment of the aliquot to the laboratory of the candidates or employees' choosing. The agency shall pay for the retest if the retest is negative. B. Employees who test positive for alcohol by blood may elect to have, at their expense, a tube of the original blood sample retested by another independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the College of American Pathologists. The laboratory shall arrange for the shipment of the blood sample to the laboratory of the employee's choosing. The agency shall pay for the retest if the retest is negative.

**R. 1.7.8.18. Drug and alcohol testing; Confidentiality of lab reports and test results.**—No laboratory reports or test results shall appear in the employee's employment history unless they are a part of a disciplinary action taken in accordance with the provisions of 1.7.8 NMAC, but shall be placed in a special locked file maintained by the Drug Abuse Coordinator. Files relating to laboratory reports or test results maintained by the Drug Abuse Coordinator are confidential within the meaning of 1.7.1.12 NMAC.

**1.7.8.19.—Employees and candidates having positive test results; Sanctions; Rehabilitation.**—A. Candidates for Employment: (1) A candidate for employment in a safety-sensitive position who tests positive for drugs and who does not seek review by the Medical Review Officer or who is unable to satisfactorily explain the positive test results shall be rejected for selection. (2) An employee for transfer or promotion to a safety-sensitive position who tests positive for drugs and is unable to satisfactorily explain the positive test results shall be subject to disciplinary action including dismissal if the employee occupies a safety-sensitive position. If the employee is not in a safety-sensitive position, the employee shall be treated in accordance with the provisions of Subsection D of 1.7.8.19 NMAC. B. **Voluntary Self-Identification by Employees:** (1) The Drug Abuse Coordinator shall refer those employees who request such a referral prior to selection for drug or alcohol testing to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Any costs for counseling or rehabilitation shall be borne by the employee. (2) The agency may grant administrative leave to an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial voluntary self-identification only. (3) Employees in safety-sensitive positions who have requested referral shall be assigned to nonsafety-sensitive duties while in an employee assistance program, counseling, or a drug or alcohol rehabilitation program. (4) Employees are subject to drug and/or alcohol testing at the discretion of the Drug Abuse Coordinator at any time between 30 calendar days and 180 calendar days of requesting referral. (a) Employees in safety-sensitive positions who test positive during this time period or fail to successfully complete such program are subject to disciplinary action including dismissal. (b) Employees in non-safety-sensitive positions who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal. The agency may allow the employee to use annual leave, sick leave, or leave without pay for additional counseling or rehabilitation by the agency after considering all factors relevant to the

	<p>employee's condition and job performance history. (5) For employees who have been required to undergo an alcohol rehabilitation program, any indication of alcohol at any level during the 30 calendar day to 180 calendar day period following the request for referral shall be considered a positive test result. C. <b>Safety-Sensitive Positions:</b> Employees in safety-sensitive positions who have not requested referral to an employee assistance program, counseling, or a drug or alcohol rehabilitation program and test positive on a required drug or alcohol test shall be subject to disciplinary action including dismissal if they do not have a satisfactory explanation for the positive test results. D. <b>Nonsafety-Sensitive Positions:</b> (1) Employees in nonsafety-sensitive positions who test positive on a reasonable suspicion drug or alcohol test required by Subsection D of 1.7.8.11 NMAC and do not have a satisfactory explanation for the positive test results shall be referred to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Employees are subject to drug or alcohol testing at the discretion of the Drug Abuse Coordinator at any time between 30 calendar days and 180 calendar days of the first positive test. Any such employee who tests positive for drugs or alcohol between 30 calendar days and 180 calendar days of the first positive test or has a second positive test without a satisfactory explanation or who fails to enter and successfully complete a program shall be subject to disciplinary action including dismissal. (2) The agency may grant an employee administrative leave to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial reasonable suspicion referral only. E. <b>Refusal to Cooperate in Testing Procedure:</b> Any employee who refuses or fails without good cause to cooperate in the drug or alcohol testing procedure by refusing or failing to complete the specified forms, by refusing or failing to submit a urine, blood, or breath specimen, or otherwise refuses or fails to cooperate shall be subject to disciplinary action including dismissal. F. <b>Possession of Drugs or Alcohol:</b> (1) Employees who illegally sell, purchase, or transfer drugs or any substance in Schedules I and II of the Controlled Substances Act NMSA 1978, Sections 30-31-1 to 30-31-41 (Repl. Pamp. 1994), while on duty shall be subject to disciplinary action including dismissal and reported to the local law enforcement agency. (2) Employees who, while on duty, possess drugs or any substance in Schedules I and II of the Controlled Substances Act NMSA 1978, Sections 30-31-1 to 30-31-41 (Repl. Pamp. 1994) without a valid prescription or as otherwise authorized by law shall be subject to disciplinary action including dismissal and reported to the local law enforcement agency. (3) Employees who consume alcohol while on duty shall be subject to disciplinary action including dismissal. G. <b>Application of Other Sanctions:</b> Nothing in 1.7.8 NMAC shall prevent or limit the imposition of other or additional sanctions that may be applicable under any of these Rules merely because an incident involves drug or alcohol abuse.</p> <p><b>R. 1.7.8.20. Drug and alcohol testing; Pilot program to evaluate impairment testing.</b>—The Board may authorize a pilot program to evaluate impairment testing. Such pilot programs may authorize variances from provisions of 1.7.8 NMAC, including random drug testing for participants in the pilot program.</p>
<p><b>North Carolina</b></p>	<p><b>95-232.Procedural requirements for the administration of controlled substance examinations.</b>—</p> <p>(a) An examiner who requests or requires an examinee to submit to a controlled substance examination shall comply with the procedural requirements set forth in this section. (b) Collection of samples: the collection of samples for examination or screening shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable. Samples shall be collected in a manner reasonably calculated to prevent substitution of samples and interference with the collection, examination, or screening of samples. Samples for prospective or current employees may be collected on-site or at an approved laboratory. (c) Screening test of samples: (1) Prospective employees: a preliminary screening procedure that utilizes a single-use test device may be used for prospective employees. (2) Current employees: the screening test of samples for current employees shall only be performed by an approved laboratory. (c1) Confirmation test of samples: if a screening test for a prospective employee produces a positive result, an approved laboratory shall confirm that result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method, unless the examinee signs a written waiver at the time or after they receive the preliminary test result. All screening tests for current employees that produce a positive result shall be confirmed by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method. (d) Retention of samples: a portion of every sample that produces a confirmed positive examination result shall be preserved by</p>

the laboratory that conducts the confirmatory examination for a period of at least 90 days from the time the results of the confirmed positive examination are mailed or otherwise delivered to the examiner. (e) Chain of custody: the examiner or his agent shall establish procedures regarding chain of custody for sample collection and examination to ensure proper record keeping, handling, labeling, and identification of examination samples. (f) Retesting of positive samples: the examinee shall have the right to retest a confirmed positive sample at the same or another approved laboratory. The examiner, through the approved laboratory, shall make confirmed positive samples available to the affected examinee, or a designated agent, during the time which the sample is required to be retained. The examinee must request release of the sample in writing specifying to which approved laboratory the sample is to be sent. The examinee incurs all reasonable expenses for chain of custody procedures, shipping, and retesting of positive samples related to this request.

**95-233. No duty to examine.**—Nothing in this Article shall be construed to place a duty on examiners to conduct controlled substance examinations.

**95-234. Controlled substance examinations; Penalty for violations**—(a) Any examiner who violates the provisions of this Article shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per affected examinee with the maximum not to exceed one thousand dollars (\$1,000) per investigation by the Commissioner of Labor or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider: (1) The appropriateness of the penalty for the size of the business of the employer charged; and (2) The gravity of the violation. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. Section 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and which final determination shall be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter 150B. (b) The amount of the penalty when finally determined may be recovered in a civil action brought by the Commissioner in the General Court of Justice. (c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation. (e) The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for carrying out the provisions of this Article. The rules adopted shall promote individual dignity and privacy while not posing an undue burden on employers.

**95-235. Certain federal agencies exempted.**—The provisions of this Article shall not apply to a controlled substance examination required by the United States Department of Transportation or the United States Nuclear Regulatory Commission.

**20-37.19. Commercial motor vehicle operators subject to federal drug and alcohol testing requirements; Employer requirements; Employers must report on confirmed positive test results and when employee refuses to participate in required drug or alcohol testing**—(a) Each employer shall require the applicant to provide the information specified in G.S. 20-37.18(c). (b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period: (1) In which the driver has had his commercial driver license suspended, revoked, or cancelled by any state, is currently disqualified from driving a commercial vehicle, or is subject to an out-of-service order in any state; or (2) In which the driver has more than one driver license. (c) The employer of any employee or applicant who tests positive or of any employee who refuses to participate in a drug or alcohol test required under 49 C.F.R. Part 382 and 49 C.F.R. Part 655 must notify the Division in writing within five business days following the employer's receipt of confirmation of a positive drug or alcohol test or of the employee's refusal to participate in the test. The notification must include the driver's name, address, drivers license number, social security number, and results of the drug or alcohol test or documentation from the employer of the refusal by the employee to take the test.



**20-37.20A. Commercial motor vehicle operators subject to federal drug and alcohol testing requirements; Confirmed positive test results; Notice of disqualification on driving record—** Upon receipt of notice pursuant to G.S. 20-37.19(c) of positive result in an alcohol or drug test of a person holding a commercial drivers license, and subject to any appeal of the disqualification pursuant to G.S. 20-37.20B, the Division shall place a notation on the driving record of the driver. A notation of a disqualification pursuant to G.S. 20-17.4(l) shall be retained on the record of a person for a period of three years following the end of any disqualification of that person.

**20-37.20B. Commercial motor vehicle operators subject to federal drug and alcohol testing requirements; Confirmed positive test results; Appeal of disqualification for testing positive in a drug or alcohol test—** Following receipt of notice pursuant to G.S. 20-37.19(c) of a positive test in an alcohol or drug test, the Division shall notify the driver of the pending disqualification of the driver to operate a commercial vehicle and the driver's right to a hearing if requested within 20 days of the date of the notice. If the Division receives no request for a hearing, the disqualification shall become effective at the end of the 20-day period. If the driver requests a hearing, the disqualification shall be stayed pending outcome of the hearing. The hearing shall take place at the offices of the Division of Motor Vehicles in Raleigh. The hearing shall be limited to issues of testing procedure and protocol. A copy of a positive test result accompanied by certification by the testing officer of the accuracy of the laboratory protocols that resulted in the test result shall be prima facie evidence of a confirmed positive test result. The decision of the Division hearing officer may be appealed in accordance with the procedure of G.S. 20-19(c6).

**20-17.4. Disqualifications from driving a commercial motor vehicle; Driving while impaired; Refusing to submit to testing; Driving after consuming alcohol; Testing positive for drugs or alcohol.—**(a) One Year.—Any of the following disqualifies a person from driving a commercial motor vehicle for one year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license: (1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle. (2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired. (3) A first conviction of G.S. 20-166, hit and run. (4) A first conviction of a felony in the commission of which a commercial motor vehicle was used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license. (5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2. (6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A. (7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was either operating a commercial motor vehicle or while the person was holding a commercial drivers license. (8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle. (9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle. (a1) Ten-Day Disqualification.—A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days. (b) Modified Life.—A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years. (b1) Life Without Reduction.—A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle. (c) Life.—A

person is disqualified from driving a commercial motor vehicle for life if that person either uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance or is the holder of a commercial drivers license at the time of the commission of any such felony. (d) Less Than a Year.—A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, arising from separate incidents occurring within a three-year period, committed in a commercial motor vehicle or while holding a commercial drivers license. This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a “serious violation” includes violations of G.S. 20-140(f) and G.S. 20-141(j3). (e) Three Years.—A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded. (f) Revocation Period.—A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked, suspended, or cancelled. (g) Violation of Out-of-Service Order.—Any person convicted for violating an out-of-service order, except as described in subsection (h) of this section, shall be disqualified as follows: (1) A person is disqualified from driving a commercial vehicle for a period of 90 days if convicted of a first violation of an out-of-service order. (2) A person is disqualified for a period of one year if convicted of a second violation of an out-of-service order during any 10-year period, arising from separate incidents. (3) A person is disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents. (h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and Passenger Offenses.—Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or used to transport more than 15 passengers, including the driver, shall be disqualified as follows: (1) A person is disqualified for a period of 180 days if convicted of a first violation of an out-of-service order. (2) A person is disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents. (i) Disqualification for Out-of-State Violations.—The Division shall withdraw the privilege to operate a commercial vehicle of any resident of this State or person transferring to this State upon receiving notice of the person's conviction or Administrative Per Se Notice in another state for an offense that, if committed in this State, would be grounds for disqualification, even if the offense occurred in another jurisdiction prior to being licensed in this State where no action had been taken at that time in the other jurisdiction. The period of disqualification shall be the same as if the offense occurred in this State. (j) Disqualification of Persons Without Commercial Drivers Licenses.—Any person convicted of an offense that requires disqualification under this section, but who does not hold a commercial drivers license, shall be disqualified from operating a commercial vehicle in the same manner as if the person held a valid commercial drivers license. (k) Disqualification for Railroad Grade Crossing Offenses.—Any person convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows: (1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection. (2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection. (3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection. (l) Disqualification for Testing Positive in a Drug or Alcohol Test.—Upon receipt of notice of a positive drug or alcohol test, or of refusal to participate in a drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division must disqualify a CDL holder from operating a commercial motor vehicle for a minimum of 30 days and until receipt of proof of successful completion of assessment and treatment by a substance abuse professional in accordance with 49 C.F.R. Section 382.503. (m) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard.—The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. Section 383.52.

R. .0101.[Controlled substances testing; Definitions].—

As used in G.S. 95, Article 20 and this Chapter:

(1) "All actions" means procedures performed on the sample to detect, identify, or measure controlled substances. Examples include, but are not limited to, "examinations and screening for controlled substances" "controlled substances testing," "drug testing," "screening," "screening test," "confirmation," and "confirmation test".

(2) "Chain of custody" means the process of establishing the history of the physical custody or control of the sample from the time the examiner provides the container for the sample to the examinee through the later of:

(a) The reporting of the negative result to the examiner;

(b) The 90 day period specified in G.S. 95-232(d); or

(c) The completion of the retesting described in G.S. 95-232(f).

(3) "On-site" means any location, other than an approved laboratory, at which a screening test is performed on prospective employees. For example, "on-site" locations include, but are not limited to, the examiner's place of business or a hospital, physician's office, or third-party commercial site operated for the purpose of collecting samples to be used in controlled substance examinations.

(4) "Sample" means the examinee's urine, blood, hair or oral fluids obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing.

(5) "Employer or person charged" means an examiner found by the Commissioner to have violated G.S. 95, Article 20.

(6) "Preliminary screening procedure" means a controlled substance examination that uses a single-use test device that:

(a) Is portable and can be administered on-site;

(b) Meets the requirements of the U.S. Food and Drug Administration for commercial distribution contained in Title 21, Part 807 of the Code of Federal Regulations; and

(c) Meets the generally accepted cutoff levels contained in the Mandatory Guidelines for Federal Workplace Drug Testing Programs adopted by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration in 69 FR 19644.

(7) "Single-use test device" means the reagen-containing unit of a test system that: (a) Is in the form of a sealed container or cartridge that has a validity check, a nonresealable closure, or an evidentiary tape that ensure detection of any tampering; (b) Is self-contained and individually packaged; (c) Is discarded after each test; and (d) Does not allow any test component or constituent of a test system to interact between tests.

**13 NCAC 20.0201. Time periods; Computation of**—In computing any period of time described in G.S. Chapter 95, Article 20 or this Chapter, the day of the triggering act or event shall not be counted. If the last day of the period falls on a Saturday, Sunday or a legal holiday, it shall not be counted and the period shall end at the close of the next day which is not a Saturday, Sunday, or a legal holiday. The Commissioner shall use Rule 6 of the NC Rules of Civil Procedure, G.S. 1A-1, Rule 6(a), as a guide in interpretation of this Rule. "Legal holiday" means the legal holidays observed by the Superior Courts of North Carolina. A list of legal holidays is available from the Administrative Office of the

Courts and each local Clerk of Superior Court in North Carolina.

**13 NCAC 20.0202. Screening tests; Applicability of statutes, rules.**—The provisions of G.S. 95, Article 20 and this Chapter regarding the collection and handling of samples apply whenever an on-site screening test is performed.

**13 NCAC 20.0203. Screening testing & positive results; Confirmation of results**—For confirmation of positive results or for retesting of confirmed positive results, the approved laboratory shall use gas chromatography with mass spectrometry (GC/MS) or the examiner shall bear the burden of proof to show that the substitute testing method used is an equivalent scientifically accepted method.

**13 NCAC 20.0301. Collection and transportation of samples to laboratory; Examiner choice of methods** .—In collecting and transporting the sample to the approved laboratory, the examiner may: (1) Collect and transport the sample itself; or (2) Send the examinee to the approved laboratory for the collection; or (3) Contract with a third party to collect and transport the sample. Examples of a third party include physicians, medical clinics, hospitals, or consortia established to negotiate rates for these services.

**13 NCAC 20.0304. Use of contractor for collection, screening, or confirmation testing; Contractor's procedures & compliance**—If the examiner contracts with a third party for collection, screening, or confirmation testing, the examiner shall ensure that the contractor's procedures comply with requirements of G.S. 95, Article 20 and this Chapter. Compliance with the requirements of the United States Department of Health and Human Services (DHHS), 59 Federal Register No. 110, pages 29908 through 29931 (June 9, 1994), for all aspects of the controlled substance examination shall meet the requirements of G.S. 95, Article 20 and this Chapter. Compliance with the requirements of the College of American Pathologists' (CAP) Forensic Urine Drug Test Inspection Checklist shall meet the requirements of G.S. 95, Article 20 and this Chapter for screening, confirmation and retesting of confirmed samples. If the examiner adopts alternative procedures, the examiner shall ensure that the alternative procedures meet the requirements of G.S. 95, Article 20 and this Chapter. However, nothing in the DHHS or CAP requirements shall be interpreted to: (1) require the examiner to use the services of a medical review officer; or (2) allow the examiner to conduct on-site screening for current employees

**13 NCAC 20.0305. Controlled substance examinations; Examiner to follow procedural instructions of approved laboratory**—The examiner shall follow procedural instructions of the approved laboratory regarding the controlled substance examination, unless the examiner follows equally reliable procedures which it has previously adopted in writing. The examiner shall bear the burden of proof to show these alternative procedures are equally reliable. Examples of procedural instructions include, but are not limited to, instructions regarding: (1) Collection of samples; (2) Reasonable and sanitary conditions for collection; (3) Chain of custody; (4) Preservation of examinees' individual dignity; (5) Prevention of substitution or adulteration of samples; (6) Prevention of interference with the collection, examination, or screening of samples; (7) On-site screening; (8) Confirmation of positive tests; and (9) Any other action to be taken with regard to the collection, labeling, packaging, transportation, screening, documentation, or preservation of samples used for controlled substance examinations.

**13 NCAC 20.0306. Retesting of confirmed positive sample; Lab instructions**—If the examinee chooses to have the confirmed positive sample retested, the examiner and, where applicable, the examiner's agent (the original testing laboratory) shall follow the retesting laboratory's instructions in facilitating the retest of the positive sample.

**13 NCAC 20.0401. Notice requirements; Notice to examinees of rights, responsibilities.**—At the time of the provision of the sample, the examiner shall provide examinees with written notice of their rights and responsibilities under the Controlled Substance Examination Regulation Act.

	<p><b>13 NCAC 20.0402. Notice of positive results &amp; of retesting rights &amp; responsibilities</b>—Within 30 days from the time that the results are mailed or otherwise delivered to the examiner, the examiner shall give notice to the examinee, in writing: (1) Of any positive result of a controlled substance examination; and (2) Of the examinee's rights and responsibilities regarding retesting under G.S. 95-232(f).</p> <p><b>13 NCAC 20.0501. Controlled substance exams; Confidentiality of information.</b>—In order to preserve individual dignity and privacy, examiners and their agents shall keep information confidential relating to examinees' controlled substance examinations, unless otherwise authorized by law or this Chapter.</p> <p><b>13 NCAC 20.0502. Confidential information; Examples of</b>—Examples of confidential information include: controlled substance examination results or information provided by examinees about their medical histories and lawful prescription drug use.</p> <p><b>13 NCAC 20.0503. Disclosure of information deemed confidential.</b>—Examiners and their agents may release information which would otherwise be confidential under this Chapter in the following circumstances: (1) to the examinee or to any other person upon written authorization signed by the examinee; (2) to laboratories performing screening, confirmation tests, or retests of confirmed positive results; (3) for employment-related reasons. Examples of employment-related reasons include: performance evaluations, discipline and provision of references; or (4) to a government agency, court or other tribunal having jurisdiction over any claim or proceeding involving the examinee and the examiner.</p> <p><b>13 NCAC 20.0601. Examinations; Payment of expenses.</b>—The examiner shall pay expenses related to all controlled substance examinations except examinee-requested retests. The examinee shall pay all reasonable expenses for retests of confirmed positive results.</p> <p><b>13 NCAC 20.0602. "Reasonable expenses" defined.</b>—"Reasonable expenses for retesting" means: (1) the actual cost of the retest charged by the approved laboratory; (2) fees assessed by the approved laboratory for expenses associated with the retest. Examples of laboratory expenses include chain of custody procedures and shipping; (3) a maximum of fifteen dollars (\$15.00) for the examiner's expenses, if any, to comply with chain of custody procedures related to the retest. The amount of fifteen dollars (\$15.00) for the expenses described in this Item shall be deemed to be a reasonable amount. The examiner may charge more than fifteen dollars (\$15.00) for the expenses described in this item if the examiner proves the actual cost of expenses greater than fifteen dollars (\$15.00); and (4) the actual cost of any shipping expenses the examiner incurs related to the retest.</p>
<p><b>North Dakota</b></p>	<p><b>65-01-11. Workers' compensation claims; Employer claim employee not entitled to benefits; Burden of proof; Reasonable suspicion drug and alcohol testing.</b>—If the bureau or an employer claims that an employee is not entitled to the benefits of the North Dakota Workers' Compensation Law by reason of the fact that the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving such exemption or forfeiture is upon the bureau or upon the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in 49 CFR 383.51 or a level of an illegally used controlled substance sufficient to cause impairment found by a test required by a physician, qualified technician, chemist, or registered nurse and performed as required by the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level in part 40, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the</p>

	<p>employee was impaired, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.</p> <p><b>12.1-11-07. Defrauding a urine test that is used to determine presence of a controlled substance as misdemeanor (1 of 2 Versions; Eff. until 8/1/2009) .—</b>A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance.</p> <p><b>12.1-11-07. Defrauding a urine test that is used to determine presence of a controlled substance as misdemeanor (2 of 2 Versions; Eff. 8/1/2009) —</b> A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance. A person is guilty of a class A misdemeanor if that person knowingly possesses, distributes, or assists in the use of a device, chemical, or real or artificial urine advertised or intended to be used to alter the outcome of a urine test.</p> <p><b>Sec. 19-04-09. Manufacturing, advertising, selling or distributing a device intended to defraud a urine test that is designed to determine the presence of a controlled substance as misdemeanor—</b> A person is guilty of a class A misdemeanor if that person willfully manufactures, advertises, sells, or distributes any substance or device that is intended to defraud a urine test designed to detect the presence of a chemical substance or a controlled substance.</p>
<p><b>Ohio</b></p>	<p>4112.02. Discrimination prohibited; Disability does not include illegal use of a controlled substance; Law prohibiting discrimination does not prohibit employer testing for controlled substances to ensure a person is successfully rehabilitated or no longer engaging in use of a controlled substance; Employers can prohibit the illegal use of controlled substance or use of alcohol at the workplace by all employees; Testing for illegal use of a controlled substance does not include a medical examination.— (Q)(1)(a) Except as provided in division (Q)(1)(b) of this section, for purposes of divisions (A) to (E) of this section, a disability does not include any physiological disorder or condition, mental or psychological disorder, or disease or condition caused by an illegal use of any controlled substance by an employee, applicant, or other person, if an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use. (b) Division (Q)(1)(a) of this section does not apply to an employee, applicant, or other person who satisfies any of the following: (i) The employee, applicant, other person has successfully completed a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance, or the employee, applicant, or other person otherwise successfully has been rehabilitated and no longer is engaging in that illegal use. (ii) The employee, applicant, other person is participating in a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance. (iii) The employee, applicant, other person is erroneously regarded as engaging in the illegal use of any controlled substance, but the employee, applicant, other person is not engaging in that illegal use. (2) Divisions (A) to (E) of this section do not prohibit an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee from doing any of the following: (a) Adopting or administering reasonable policies or procedures, including, but not limited to, testing for the illegal use of any controlled substance, that are designed to ensure that an individual described in division (Q)(1)(b)(i) or (ii) of this section no longer is engaging in the illegal use of any controlled substance; (b) Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by all employees; (c) Requiring that employees not be under the influence of alcohol or not be engaged in the illegal use of any controlled substance at the workplace; (d) Requiring that employees behave in conformance with the requirements established under "The Drug-Free Workplace Act of 1988," 102 Stat. 4304, 41 U.S.C.A. 701, as amended; (e) Holding an employee who engages in the illegal use of any controlled substance or who is an alcoholic to the same qualification standards for employment or job performance, and the same behavior, to which the employer, employment agency, personnel placement service, labor organization, or joint labor-management committee holds other employees, even if any unsatisfactory performance or behavior is related to an employee's illegal use of a controlled substance or alcoholism; (f) Exercising</p>

other authority recognized in the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101, as amended, including, but not limited to, requiring employees to comply with any applicable federal standards. (3) For purposes of this chapter, a test to determine the illegal use of any controlled substance does not include a medical examination. (4) Division (Q) of this section does not encourage, prohibit, or authorize, and shall not be construed as encouraging, prohibiting, or authorizing, the conduct of testing for the illegal use of any controlled substance by employees, applicants, or other persons, or the making of employment decisions based on the results of that type of testing.

**Sec. 4123.54. Workers' compensation, in the case of injury or death of an employee; Chemical tests to determine if employee being intoxicated or under the influence of a controlled substance was a proximate cause of injury or death; Employee refusal to submit to testing; Impact on eligibility for benefits; Notice; When work is performed in another state**—(A) Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not: (1) Purposely self-inflicted; or (2) Caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance not prescribed by a physician was the proximate cause of the injury, is entitled to receive, either directly from the employee's self-insuring employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, the compensation for loss sustained on account of the injury, occupational disease, or death, and the medical, nurse, and hospital services and medicines, and the amount of funeral expenses in case of death, as are provided by this chapter. (B) For the purpose of this section, provided that an employer has posted written notice to employees that the results of, or the employee's refusal to submit to, any chemical test described under this division may affect the employee's eligibility for compensation and benefits pursuant to this chapter and Chapter 4121. of the Revised Code, there is a rebuttable presumption that an employee is intoxicated or under the influence of a controlled substance not prescribed by the employee's physician and that being intoxicated or under the influence of a controlled substance not prescribed by the employee's physician is the proximate cause of an injury under either of the following conditions: (1) When any one or more of the following is true: (a) The employee, through a qualifying chemical test administered within eight hours of an injury, is determined to have an alcohol concentration level equal to or in excess of the levels established in divisions (A)(2) to (7) of section 4511.19 of the Revised Code; (b) The employee, through a qualifying chemical test administered within thirty-two hours of an injury, is determined to have one of the following controlled substances not prescribed by the employee's physician in the employee's system that tests above the following levels in an enzyme multiplied immunoassay technique screening test and above the levels established in division (B)(1)(c) of this section in a gas chromatography mass spectrometry test: (i) For amphetamines, one thousand nanograms per milliliter of urine; (ii) For cannabinoids, fifty nanograms per milliliter of urine; (iii) For cocaine, including crack cocaine, three hundred nanograms per milliliter of urine; (iv) For opiates, two thousand nanograms per milliliter of urine; (v) For phencyclidine, twenty-five nanograms per milliliter of urine. (c) The employee, through a qualifying chemical test administered within thirty-two hours of an injury, is determined to have one of the following controlled substances not prescribed by the employee's physician in the employee's system that tests above the following levels by a gas chromatography mass spectrometry test: (i) For amphetamines, five hundred nanograms per milliliter of urine; (ii) For cannabinoids, fifteen nanograms per milliliter of urine; (iii) For cocaine, including crack cocaine, one hundred fifty nanograms per milliliter of urine; (iv) For opiates, two thousand nanograms per milliliter of urine; (v) For phencyclidine, twenty-five nanograms per milliliter of urine. (d) The employee, through a qualifying chemical test administered within thirty-two hours of an injury, is determined to have barbiturates, benzodiazepines, methadone, or propoxyphene in the employee's system that tests above levels established by laboratories certified by the United States department of health and human services. (2) When the employee refuses to submit to a requested chemical test, on the condition that that employee is or was given notice that the refusal to submit to any chemical test described in division (B)(1) of this section may affect the employee's eligibility for compensation and benefits under this chapter and Chapter 4121. of the Revised Code. (C) (1) For purposes of division (B) of this section, a chemical test is a qualifying chemical test if it is

administered to an employee after an injury under at least one of the following conditions: (a) When the employee's employer had reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician; (b) At the request of a police officer pursuant to section 4511.191 [4511.19.1] of the Revised Code, and not at the request of the employee's employer; (c) At the request of a licensed physician who is not employed by the employee's employer, and not at the request of the employee's employer. (2) As used in division (C)(1)(a) of this section, "reasonable cause" means, but is not limited to, evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. These facts and inferences may be based on, but are not limited to, any of the following: (a) Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance, such as but not limited to slurred speech, dilated pupils, odor of alcohol or a controlled substance, changes in affect, or dynamic mood swings; (b) A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance such as frequent absenteeism, excessive tardiness, or recurrent accidents, that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors; (c) The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance; (d) A report of use of alcohol or a controlled substance provided by a reliable and credible source; (e) Repeated or flagrant violations of the safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors. (D) Nothing in this section shall be construed to affect the rights of an employer to test employees for alcohol or controlled substance abuse. (E) For the purpose of this section, laboratories certified by the United States department of health and human services or laboratories that meet or exceed the standards of that department for laboratory certification shall be used for processing the test results of a qualifying chemical test. (F) The written notice required by division (B) of this section shall be the same size or larger than the certificate of premium payment notice furnished by the bureau of workers' compensation and shall be posted by the employer in the same location as the certificate of premium payment notice or the certificate of self-insurance. (G) If a condition that pre-existed an injury is substantially aggravated by the injury, and that substantial aggravation is documented by objective diagnostic findings, objective clinical findings, or objective test results, no compensation or benefits are payable because of the pre-existing condition once that condition has returned to a level that would have existed without the injury. (H) Whenever, with respect to an employee of an employer who is subject to and has complied with this chapter, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. The agreement shall be in writing and shall be filed with the bureau of workers' compensation within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with this chapter, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and the employee's dependents under the laws of this state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and the employee's dependents under the laws of that state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment without regard to the place where the injury was sustained or the disease contracted. If any employee or the employee's dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state, the amount awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employee or the employee's dependents by the bureau. If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, the



employee and the employee's dependents are not entitled to receive compensation or benefits under this chapter, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state, and the rights of the employee and the employee's dependents under the laws of the other state are the exclusive remedy against the employer on account of the injury, disease, or death. (I) Compensation or benefits are not payable to a claimant during the period of confinement of the claimant in any state or federal correctional institution, or in any county jail in lieu of incarceration in a state or federal correctional institution, whether in this or any other state for conviction of violation of any state or federal criminal law.

**153.03. State agencies can not award a public improvement contract unless the terms require contractors and subcontractors to participate in a specified drug-free workplace program; Terms defined; Testing and training requirements; Contract statement requirements; Verification of program.**—(A) As used in this section: (1) "Contracting authority" means any state agency or other state instrumentality that is authorized to award a public improvement contract. (2) "Bidder" means a person who submits a bid to a contracting authority to perform work under a public improvement contract. (3) "Contractor" means any person with whom a contracting authority has entered into a public improvement contract to provide labor for a public improvement. (4) "Subcontractor" means any person who undertakes to provide any part of the labor on the site of a public improvement under a contract with any person other than the contracting authority, including all such persons in any tier. (5) "Construction manager" means a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement. (6) "Labor" means any activity performed by a person that contributes to the direct installation of a product, component, or system, or that contributes to the direct removal of a product, component, or system. (7) "Public improvement contract" means any contract that is financed in whole or in part with money appropriated by the general assembly, or that is financed in any manner by a contracting authority, and that is awarded by a contracting authority for the construction, alteration, or repair of any public building, public highway, or other public improvement. (8) "State agency" means every organized body, office, or agency established by the laws of this state for the exercise of any function of state government. (B) A contracting authority shall not award a public improvement contract to a bidder unless the contract contains both of the following: (1) The statements described in division (E) of this section; (2) Terms that require the contractor to be enrolled in and be in good standing in the drug-free workplace program of the bureau of workers' compensation or a comparable program approved by the bureau that requires an employer to do all of the following: (a) Develop, implement, and provide to all employees a written substance use policy that conveys full and fair disclosure of the employer's expectations that no employee be at work with alcohol or drugs in the employee's system, and specifies the consequences for violating the policy. (b) Conduct drug and alcohol tests on employees in accordance with division (B)(2)(c) of this section and under the following conditions: (i) Prior to an individual's employment or during an employee's probationary period for employment, which shall not exceed one hundred twenty days after the probationary period begins; (ii) At random intervals while an employee provides labor or onsite supervision of labor for a public improvement contract. The employer shall use the neutral selection procedures required by the United States department of transportation to determine which employees to test and when to test those employees. (iii) After an accident at the site where labor is being performed pursuant to a public improvement contract. For purposes of this division, "accident" has the meaning established in rules the administrator of workers' compensation adopts pursuant to Chapters 4121. and 4123. of the Revised Code for the bureau's drug-free workplace program, as those rules exist on the effective date of this section. (iv) When the employer or a construction manager has reasonable suspicion that prior to an accident an employee may be in violation of the employer's written substance use policy. For purposes of this division, "reasonable suspicion" has the meaning established in rules the administrator adopts pursuant to Chapters 4121. and 4123. of the Revised Code for the bureau's drug-free workplace program, as those rules exist on the effective date of this section. (v) Prior to an employee returning to a work site to provide labor for a public improvement contract after the employee tested positive for drugs or alcohol, and again after the employee returns to that site to provide labor under that contract, as required by either the employer, the construction manager, or conditions in the contract. (c) Use the following types of tests when conducting a test on an employee under the conditions described in

division (B)(2)(b) of this section: (i) Drug and alcohol testing that uses the federal testing model that the administrator has incorporated into the bureau's drug-free workplace program; (ii) Testing to determine whether the concentration of alcohol on an employee's breath is equal to or in excess of the level specified in division (A)(1)(d) or (h) of section 4511.19 of the Revised Code, which is obtained through an evidentiary breath test conducted by a breath alcohol technician using breath testing equipment that meets standards established by the United States department of transportation, or, if such technician and equipment are unavailable, a blood test may be used to determine whether the concentration of alcohol in an employee's blood is equal to or in excess of the level specified in division (A)(1)(b) or (f) of section 4511.19 of the Revised Code. (d) Require all employees to receive at least one hour of training that increases awareness of and attempts to deter substance abuse and supplies information about employee assistance to deal with substance abuse problems, and require all supervisors to receive one additional hour of training in skill building to teach a supervisor how to observe and document employee behavior and intervene when reasonable suspicion exists of substance use; (e) Require all supervisors and employees to receive the training described in division (B)(2)(d) of this section before work for a public improvement contract commences or during the term of a public improvement contract; (f) Require that the training described in division (B)(2)(d) of this section be provided using material prepared by an individual who has credentials or experience in substance abuse training; (g) Assist employees by providing, at a minimum, a list of community resources from which an employee may obtain help with substance abuse problems, except that this requirement does not preclude an employer from having a policy that allows an employer to terminate an employee's employment the first time the employee tests positive for drugs or alcohol or if an employee refuses to be tested for drugs, alcohol, or both. (C) Any time the United States department of health and human services changes the federal testing model that the administrator has incorporated into the bureau's drug-free workplace program in a manner that allows additional or new products, protocols, procedures, and standards in the model, the administrator may adopt rules establishing standards to allow employers to use those additional or new products, protocols, procedures, or standards to satisfy the requirements of division (B)(2)(c) of this section, and the bureau may approve an employer's drug-free workplace program that meets the administrator's standards and the other requirements specified in division (B)(2) of this section. (D) A contracting authority shall ensure that money appropriated by the general assembly for the contracting authority's public improvement contract or, in the case of a state institution of higher education, the institution's financing for the public improvement contract, is not expended unless the contractor for that contract is enrolled in and in good standing in a drug-free workplace program described in division (B) of this section. Prior to awarding a contract to a bidder, a contracting authority shall verify that the bidder is enrolled in and in good standing in such a program. (E) A contracting authority shall include all of the following statements in the public improvement contract entered into between the contracting authority and a contractor for the public improvement: (1) "Each contractor shall require all subcontractors with whom the contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a subcontractor providing labor at the project site of the public improvement." (2) "Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a lower-tier subcontractor providing labor at the project site of the public improvement." (3) "Failure of a contractor to require a subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach." (4) "Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower-tier subcontractor provides labor at

the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach." (F) In the event a construction manager intends and is authorized to provide labor for a public improvement contract, a contracting authority shall verify, prior to awarding a contract for construction management services, that the construction manager was enrolled in and in good standing in a drug-free workplace program described in division (B) of this section prior to entering into the public improvement contract. The contracting authority shall not award a contract for construction manager services to a construction manager if the construction manager is not enrolled in or in good standing in such a program.

**Sec. 153.031.State agencies can not award a public improvement contract unless the terms require contractors and subcontractors to participate in a specified drug-free workplace program; Legislative intent, Limitations** —The general assembly intends the drug-free workplace programs required by section 153.03 of the Revised Code to be limited to the constructing, altering, or repairing of public improvements of the state and to be of assistance in ensuring that such public improvements are constructed, altered, or repaired in a manner that protects the safety of the citizens of this state.

**R. 123:1-76-03. Drug testing; Procedures for collection and testing; Reporting of test results.—**

(A) All procedures and protocols for collection and testing of an employee's breath for alcohol shall conform to the methods and procedures set forth in federal regulations, governing collective bargaining agreements or, in the absence of such regulations or agreements, by the director of the department of administrative services. The threshold concentration level for a positive test will be that established by federal regulations, governing collective bargaining agreements or, in the absence of such regulations or agreements, by the director of the department of administrative services. (B) Test results shall be reported to the agency head, or a person officially designated by the agency head to receive information for the agency, within twenty-four hours of the receipt of the result by the drug-free workplace services program. (C) The agency head, or a person officially designated by the agency head to provide such information, shall provide to the Department of Administrative Services' drug-free workplace program a monthly statistical summary of all alcohol breath testing information including the number of employees tested and the results of that testing. This information shall be forwarded no later than fourteen calendar days after the end of the month covered by the summary.

**R. 123:1-76-04.Drug testing; Techniques to be used; Methodology.—**(A) The initial drug testing protocol for state employees and applicants for state employment shall use an assay technique which meets federal department of health and human services requirements. Drug classes and cutoff levels be those established by the federal department of health and human services. (B) Initial test methodology and test levels for other drugs shall be added to the testing protocol as deemed necessary by the director of the department of administrative services or as required by federal law.

**123:1-76-05.Specimens; Collection and handling procedures.—** (A) The individual to be tested shall be instructed to report to the collection site as soon as possible after the testing order is given, but no later than thirty-two hours, or as required by federal law. (B) The collection site person shall request the individual to present photo identification or other confirming identification. If identity cannot be established, the collection site person shall not proceed with the collection. (C) The individual shall be asked to remove any garments which might conceal substances/items which could be used to tamper with or adulterate the urine specimen. (D) The individual shall be instructed to wash and dry his/her hands prior to urination and shall not have access to any water or other materials which could adulterate the urine specimen. (E) The individual shall provide the specimen in the privacy of a stall or a partitioned area that allows for individual privacy. (F) The collection site person shall receive the specimen, measure its temperature and color and visually inspect for contaminants. (G) The specimen shall be sealed and labeled in the presence of both the individual and the collection site person. The labels shall contain the date, the individual's specimen number and any other identifying information provided or required by the department of administrative services. (H) The individual tested shall initial the I.D. label on the specimen certifying that it is the specimen collected

from him/her. (I) The collection site person shall enter into the record book all information identifying the specimen and shall sign the book. (J) The individual tested shall sign the statement in the record book certifying that the specimen is, in fact, the specimen he/she provided. (K) The collection site person shall complete the chain of custody form and ship the specimen to the testing laboratory in a sealed, secure container. (L) The laboratory shall use the chain of custody procedures to maintain control and accountability of all specimens from receipt through completion of testing. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled and transferred. (M) Laboratory personnel shall inspect each specimen package for evidence of tampering, etc. (N) Specimens shall be tested by grouping them into batches, with each batch containing an appropriate number of standards for calibrating the instrumentation and a minimum of ten percent controls or as stipulated by federal department of health and human services regulations and guidelines.

**R. 123:1-76-06. Positive initial test results; Confirmation of results.**—(A) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques or any other procedure(s) required by federal law. The cutoff levels shall be those established by the federal department of health and human services. Confirmatory test methods and testing levels for other drugs meeting certification criteria of the federal department of health and human services shall be added to the testing protocol as deemed necessary by the director of the department of administrative services or as required by federal law.

**R. 123:1-76-07. Test results; Reports.**—(A) The laboratory shall report test results to the agency head or the person designated by the agency head to receive test results. All test results shall be certified as accurate by the responsible person at the laboratory. Results may not be transmitted by telephone, but transmission by other electronic means (computer, teleprinter or facsimile) shall be permissible. All specimens which test negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive for a specific drug or drugs. (B) The medical review officer may, at his/her discretion, request that the laboratory provide quantitation of test results. The medical review officer will not normally report quantitation of test results, but will only report whether the test was positive or negative unless prior written approval to provide other information is authorized by federal regulations or, if none apply, by the director of the department of administrative services. (C) Each agency shall provide to the administrator of the drug-free workplace services program a statistical summary of drug testing information, and any other documentation pertaining to the testing process upon request or as required by federal law.

**R. 123:1-76-08. Recordkeeping; Specimen retention.**—(A) All records pertaining to a given alcohol or drug test shall be maintained as required by federal law. (B) All positive urine specimens shall be retained in frozen storage as required by federal law to permit any authorized retest.

**R. 123:1-76-09. Drug testing; Job applicants for state service .**—(A) Every vacancy announcement for testing designated positions for the state service shall state: "All final applicants tentatively selected for this position will be required to submit to urinalysis to test for illegal drug use prior to appointments. An applicant with a positive test shall not be offered employment." (B) Each applicant shall be notified that appointment to the position will be contingent upon a negative test result. Failure of the vacancy announcement to contain this statement shall not preclude applicant testing if advance written notice is provided applicants in some other manner. (C) The agency drug program coordinator or other designated agency person shall direct applicants to the appropriate collection site. The test must be undertaken as soon after notification as possible, and no later than thirty-two hours after notice to the applicant. (D) Applicants shall be advised of the opportunity to offer an explanation or submit medical documentation of legally prescribed medications which may explain a positive test result to the medical review officer. Such information will be reviewed only by the medical review officer in his/her determination of the validity of a positive confirmatory test result. (E) Any agency of state government shall decline to extend a final offer of employment to any applicant with a verified positive test result and such applicant will not be reconsidered for state employment for a period of one year.

**R. 123:1-76-10. Reasonable suspicion of an employee under the influence of drugs or alcohol; Testing .**—(A) Where there is reasonable suspicion to believe that an employee, when appearing for duty or on the job, is under the influence of, or his/her job performance is impaired by, alcohol or other drugs, the employee may be required to submit a urine specimen for testing for the presence of drugs or a breath sample for testing for the presence of alcohol. (B) Such reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of, or is using or abusing, alcohol and/or other drugs. Examples of reasonable suspicion shall include, but need not be limited to, slurred speech, disorientation, and abnormal conduct or behavior. (C) Reasonable suspicion must be documented in writing according to procedures prescribed in applicable federal regulations, any applicable collective bargaining agreement covering the employee or, in the absence of any such regulations or agreement, by procedures developed by the director of the department of administrative services. (D) Reasonable suspicion testing shall also include incident-based accident or unsafe practice testing wherein employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to themselves, to others, or the overall operation of the agency may be subject to testing. Such incident-based reasonable suspicion testing shall be for conditions and situations and according to procedures prescribed by applicable collective bargaining agreements covering the employee or, in the absence of any such agreement, according to conditions and procedures developed by the director of the department of administrative services. Employees subject to federal testing procedures will submit to federal post-accident testing as required by federal regulations. (E) The employee shall be asked to provide the urine sample or submit to a breath test for alcohol in accordance with criteria delineated in the applicable collective bargaining agreement for the employee or, in the absence of any such agreement, according to criteria developed by the director of the department of administrative services or as required by federal regulations. (F) Supervisors and managers shall be trained to address the abuse of alcohol or other drugs by employees, to recognize facts that give rise to reasonable suspicion, and the proper procedures for documenting facts and circumstances to support a finding of reasonable suspicion as required by collective bargaining agreements or, in the absence of any such agreements, by the director of the department of administrative services. Failure to receive such training shall not, however, invalidate otherwise proper reasonable suspicion testing. (G) Employees shall be given the opportunity as required by applicable collective bargaining agreements or, in the absence of such agreements, as stipulated by the director of the department of administrative services to offer an explanation or submit medical documentation of legally prescribed medications or exposure to toxic substances which may explain a positive test result. Such information shall be reviewed only by the medical review officer in his/her determination of the validity of a positive confirmatory test and shall be released to the employer only to explain a test result.

**Sec. R. 123:1-76-11. Employee use of illegal drugs; Evidence of; Disciplinary actions .**—(A) An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to: (1) Direct observation; (2) Evidence obtained from a workplace-related arrest or criminal conviction; (3) A verified positive test result; or, (4) An employee's voluntary admission. (B) On the first occasion in which an employee has a confirmed positive alcohol or other drug test resulting from reasonable suspicion testing, the employee may be required to enroll in and successfully complete a substance abuse program certified by the Ohio department of alcohol and drug addiction services. (C) Disciplinary action taken against an employee found to use illegal drugs may include the full range of disciplinary actions, including removal. The severity of the action chosen will depend on the circumstances of each case and the requirements of any governing collective bargaining agreements and employing agency work rules, policies and procedures. (D) Any employee who refuses to submit to a properly ordered drug test shall be subject to disciplinary actions as stipulated in the governing collective bargaining agreement or, in the absence of any such agreement, the relevant agency work rules, policies and procedures. (E) Attempts by an employee to alter or substitute the specimen provided for drug testing shall be deemed a refusal to take the drug test when required and shall subject the employee to the same disciplinary actions as required for refusing to submit to a properly ordered test.

**R. 123:1-76-12. Employee notice of conviction of federal or state criminal drug statute; Agency**

**notice; Failure to report; Disciplinary action; Assistance programs**—As required by the Federal Drug-Free workplace Act of 1988, each employee in an agency receiving federal grant funds shall be required to notify his/her agency head or the agency head's designee, within five calendar days after he/she is convicted of a violation of any federal or state criminal drug statute, provided such conviction occurred at the workplace or any location where the employee is working at the time of the incident which led to the conviction. Each agency shall be required to notify any federal agency with which it has a contract or grant, within ten calendar days after receiving notice from the employee, of the fact of such conviction. Any employee's failure to report such a conviction will subject such employee to disciplinary action, up to and including termination. An agency head or his/her designee may send the employee to the employee assistance program for referral and treatment, or may take appropriate personnel action against such an employee, up to and including termination. Whatever the case, such action shall be taken within thirty calendar days of the employer's notification of the employee's conviction.

**R. 123:1-76-13. Positive drug test results; Appeals; Retesting at employee's expense**—(A) Employees who have a positive drug test result may ask for a retest of the original specimen according to procedures and specifications of applicable federal regulations, or in the absence of such regulations, any governing collective bargaining agreement or, in the absence of such agreement, according to procedures and specifications of the director of the department of administrative services. The laboratory performing such a retest shall be certified by the federal department of health and human services. (B) Any such retest shall be at the expense of the employee. (C) An employee request for a retest shall not delay the imposition of appropriate disciplinary action or referral to an alcohol and/or drug abuse rehabilitation program.

**R. 123:1-76-14. Drug-free workplace services program; Information and training programs and other resources; Copy of policy and procedures to be furnished to employees; Employee acknowledgment of program**—(A) The administrator of the drug-free workplace services program shall provide, or arrange to have provided, information and training programs concerning the impact of alcohol and other drug abuse on job performance, as well as information concerning the employee assistance program and any other resources available for employee assistance in dealing with a substance abuse program. (B) All bargaining unit and new employees within bargaining units shall be furnished a copy of the state's drug-free workplace policy and drug testing procedures as specified by their respective collective bargaining agreements or as required by federal law. (C) All other employees subject to the state drug-free workplace policy and drug testing procedures shall be furnished a copy of such document and such procedures as required by the director of the department of administrative services or as required by federal law. (D) The drug-free workplace services program shall develop and implement, or arrange to have implemented, a training and education program for supervisors and managers to provide knowledge and skills essential for their recognizing and addressing alcohol and other drug abuse among agency employees and to facilitate their participation in the implementation and administration of drug testing and other drug-free workplace programs within the agency in which they work. (E) Each agency shall be required to document to the administrator of the drug-free workplace services program that it has distributed copies of the Drug-Free Workplace Policy, including any drug testing procedures stipulated by collective bargaining agreements and agency rules deriving from such agreements, to all employees. All employees shall sign an acknowledgment that they have read and understand the policy and work rules pertaining to it. This acknowledgement shall be kept in the employees' file. Agencies shall review the policy annually with employees and distribute the policy and applicable work rules to all new employees within thirty calendar days of their initial employment by the state, or within the time specified by the applicable collective bargaining agreement.

**R. 4123-17-58. Drug-free workplace (DFWP) discount program.**—Pursuant to division (E) of section 4123.34 of the Revised Code, the administrator may grant a discount on premium rates to an eligible employer that meets the drug-free workplace (DFWP) program requirements under the provisions of this rule. (A) **As used in this rule:** (1) "Drug-free workplace program" or "DFWP program" means the bureau's rate program which offers a premium discount to eligible employers for implementing a program addressing workplace use and abuse of alcohol and other drugs, including prescription, over-the-counter, and illegal drug abuse. (2) "Prescription drug abuse" means the use of

over-the-counter drugs or medications prescribed by a licensed medical practitioner by someone other than the person for whom they were prescribed or for purposes other than those for which they were prescribed or manufactured. (3) "Accident" means an unplanned, unexpected, or unintended event which occurs on the employer's property, during the conduct of the employees business, or during working-hours, or which involves employer-supplied motor vehicles or motor vehicles used in conducting the employees business, or within the scope of employment, and which results in any of the following: (a) A fatality of anyone involved in the accident; (b) Bodily injury requiring off-site medical attention away from the employer's place of employment; (c) Vehicular damage in apparent excess of a dollar amount stipulated in the employer's DFWP policy; or (d) Non-vehicular damage in apparent excess of a dollar amount stipulated in the employees DFWP policy. As used in this rule, "accident" does not have the same meaning as provided in division (C) of section 4123.01 of the Revised Code, and the definition of this rule is not intended to modify the definition of a compensable injury under the workers' compensation law. (4) "Reasonable suspicion" means evidence that an employee is using drugs or alcohol in violation of the company's DFWP policy, drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. Such facts and inferences may be based on, but are not limited to, any of the following: (a) Observable phenomena, such as direct observation of drug or alcohol use, possession or distribution, or the physical symptoms of being under the influence of drugs or alcohol, such as but not limited to slurred speech, dilated pupils, odor of alcohol or marijuana, changes in affect, dynamic mood swings, etc.; (b) A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance (e.g., frequent absenteeism, excessive tardiness, recurrent accidents) which appears to be related to substance abuse and does not appear to be attributable to other factors; (c) The identification of an employee as the focus of a criminal investigation into unauthorized drug possession, use, or trafficking; (d) A report of alcohol or other drug use provided by a reliable and credible source; (e) Repeated or flagrant violations of the company's safety or work rules, which are determined by a supervisor to pose a substantial risk of physical injury or property damage and which appear to be related to substance abuse or substance use that may violate the employer's DFWP policy, and do not appear attributable to other factors. (5) "Random selection" means drug testing of an employee selected from a pool of employees made regardless of whether any suspicion of illegal drug use exists. This testing is made without advanced notice to the employee and is based on an equal probability of selection. Random selection testing is based upon an objective and non-discretionary computer program operated and maintained by an outside contractor to identify and test a specified percentage of the total workforce over the course of a year. All employees, including those previously selected for testing, have an equal chance of being selected each time the testing process occurs, such that some employees may be selected more than once for random selection testing while other employees may not be selected at all. (6) "Safety-sensitive position or function" means any job position or work-related function or job task designated as such by the employer, which through the nature of the activity could be detrimental or dangerous to the physical well-being of the employee, co-workers, customers or the general public through a lapse in attention or judgment. The safety-sensitive position or function may include positions or functions where national security or the security of employees, co-workers, customers, or the general public may be seriously jeopardized or compromised through a lapse in attention or judgment. (7) "Supervisor" means an employee who supervises others in the performance of their jobs, has the authority and responsibility to initiate reasonable suspicion testing when it is appropriate, and has the authority to recommend or perform hiring or firing procedures. (8) "Ohio Department of Alcohol and Drug Addiction Services" or "ODADAS" means the state agency an employer may contact to provide technical assistance or referral to available community resources for employers interested in developing a DFWP program. ODADAS shall maintain a list of DFWP developmental consultant programs meeting specified criteria and offering training to assist employers in developing a DFWP program. Such training shall be experience equivalency for purposes of this rule. (9) "Experience equivalency" means consultation and training services offered through a program which facilitates the development of an employer's DFWP program and may qualify the employer to receive a higher discount based on the program level implemented in conjunction with this experience equivalency credit. The criteria for a program to be an experience equivalency shall include: (a) All primary consultants for the organization shall have a minimum of ten hours annual continuing education in drug-free workplace issues; (b) The organization shall have provided drug-free workplace policy and operational procedures development consultation and training for a period

of at least two years; and (c) For purposes of this rule, the organization shall provide a certificate only to an employer that completes a minimum of fifteen hours of face-to-face consultation and training and a minimum of twenty additional hours developing the employer's drug-free workplace policy and program operations. (10) "Employee assistance plan" means an employer's plan of action and designated appropriate resources to assist employees who: (a) Seek help on their own for an alcohol or drug problem; (b) Are referred by management for a possible problem with alcohol or drugs; or (c) Have a positive alcohol or drug test. (11) "Employee assistance program" or "EAP" means a cost-effective program to assist employees and their families in dealing with problems affecting their work performance. An EAP identifies and helps resolve problems by applying short-term counseling, referral, and follow-up services, as determined by the contractual arrangement with the employer. In addition, the EAP provides such services as management training and consultation; prevention and education programs; crisis intervention; benefits analysis; and organizational development. A qualified EAP is one recognized by industry standards which employs certified personnel and operates in compliance with core-technology specific to the EAP discipline. An "employee assistance program" is to be distinguished from an "employee assistance plan," which is used generically by employers offering a composition of assistance services for employees but which do not adhere to the core technology of the EAP field, as defined by the employee assistance professional association (EAPA) and the employee assistance society of North America (EASNA). (12) "Drug and alcohol testing" means a range of tests that may be utilized to address employee use or abuse of alcohol and other drugs that affect workplace safety. These tests include pre-employment or new hire testing to screen from the workforce persons with existing substance use or abuse problems that may affect workplace safety; post-accident testing, for employees who may have caused or contributed to an accident due to use or abuse of alcohol or other drugs; reasonable suspicion testing, which utilizes observations from trained supervisors to identify employees whose behavior suggests use or abuse of alcohol or other drugs that may endanger the employee or other employees; and random drug testing to identify employees who use alcohol or other drugs in contravention of the employer's DFWP policy, with such testing likely to deter substance abuse because employees will not know whether or when they might be tested. The nine FIVE drugs that are included in the drug testing are amphetamines, cannabinoids, (THC), cocaine (including crack), opiates, and phencyclidine (PCP). (13) "Consortia" means an entity established to provide more cost-effective services to employers to help the employers meet the DFWP program requirements. Consortia may involve varied pools of employers and their employees, wherein employer education, supervisor training, and drug and alcohol testing may be offered at a reduced cost to the employers who choose to participate. Consortia for drug and alcohol testing purposes may involve contracts with laboratories certified by the department of health and human services and will operate in concert with established protocols and procedures that are consistent with federal guidelines for testing. (14) "Vendor" means any person or organization that provides service to employers participating in the DFWP program for purposes of employers meeting DFWP program requirements. (B) **Application process.** The bureau shall provide application and renewal forms for use in the DFWP program and shall have final authority to approve a state fund employer to receive a discount based on its participation in this program. An employer's participation in a DFWP program shall be on a program year basis, as shall renewal of participation in a DFWP program. Only state fund employers requesting consideration for the DFWP program discount should submit an application. The bureau shall evaluate each application to determine the employees eligibility to receive a discount under the DFWP program, the employer's eligibility for a specific program level, and the applicable discount per cent. (1) A private employer may apply either by August first for the program year beginning July first of that year to June thirtieth of the following year, or by December first for the program year beginning January first of the following year to December thirty-first of that year. The progress report and renewal deadlines are March thirty-first for a program year that begins on July first, and September thirtieth for a program year that begins on January first. (2) A public employer taxing district may apply by December first prior to the program year beginning January first of the following year to December thirty-first of that year. The progress report and renewal deadlines are September thirtieth for a program year beginning January first. (3) An employer may withdraw its application for enrollment in the DFWP program under this rule at any time prior to receiving the discount on its premium. When an employer becomes aware that it is unable to meet the program requirements associated with its approved DFWP program level by the required implementation date, the employer shall notify the bureau of its inability and shall withdraw from the



program. The employer shall return any monetary benefits associated with any discount received, including interest, which shall be calculated as provided in division (E) of section 4123.41 of the Revised Code. (C) **Eligibility requirements.** The DFWP program under this rule is available in the form of technical assistance and support to all private and public employers. However, eligibility for the discount is limited to state fund employers, with the percent of discount based on an employer's participation in one or more alternate rating programs. A state fund employer seeking a discount shall apply on a bureau application form to implement a DFWP program and shall satisfy all of the eligibility requirements of this rule. The bureau shall review the application to determine whether the employer is eligible to receive a discount for participation in the DFWP program, determine whether the employer is eligible for the level of program applied for, and determine and approve the discount percentage for the level of program for which the employer is determined to be eligible. An employer that is found to be ineligible for participation in the DFWP program may reapply in a subsequent program year. It is recognized that an employer may implement a DFWP program that exceeds the minimum requirements for the discount level approved by the bureau. For all levels of a DFWP program, the employer shall meet the following requirements: (1) If an employer participates in any other alternate rating program offered by the bureau, or receives a discount, credit, or benefit for participation in group rating, retrospective rating, or the premium discount program in the same policy year as the DFWP program, the employer may participate in the DFWP program and may receive the discount provided for under this rule. The employer may receive only the maximum discount, credit, or benefit for whichever program amount is greater for the given policy or program year, or as specifically defined below, as follows: (a) An employer participating in both the premium discount program under rule 4123-17-70 of the Administrative Code and the DFWP program may receive a premium discount equal to the greater of the premium discount program discount or the DFWP program discount as earned individually for the given policy or program year. (b) An individual employer participating in both group rating under rules 4123-17-61 to 4123-17-68 of the Administrative Code and the DFWP program may receive a premium discount applied against the individual employer's group rated premium; provided, however, that the applicable DFWP premium discount shall not reduce the employer's premium to an amount less than the premium amount that would be paid if the employer's group experience modification equaled a fifty per cent credit. (c) An employer participating in both retrospective rating under rules 4123-17-41 to 4123-17-54 of the Administrative Code and the DFWP program may only receive a premium discount equal to the maximum of either the discount under the DFWP program or the difference between the employer's premium calculated as an individual employer and calculated in the retrospective rating program. (d) An employer that has an existing substance-free program that has been in place for four or more years at the time of application is not eligible for a discount under this rule. (e) An employer not eligible for a discount under this rule may implement a DFWP program and is encouraged to do so. The bureau and ODADAS will identify available resources for support and technical assistance. (2) The employer shall be current as of March thirty-first for the application year beginning July first, or September thirtieth for the application year beginning January first, and subsequent renewal years (not more than forty-five days past due) on any and all premiums, assessments, penalties or monies otherwise due to any fund administered by the bureau, including amounts due for retrospective rating at the time of the application deadline. (3) The employer cannot have cumulative lapses in workers' compensation coverage in excess of fifty- nine days within the eighteen months preceding the application or renewal deadline. (4) The employer shall be in an active or reinstated policy status the first day of the policy year for the DFWP program. (5) An employer in the DFWP program shall continue to meet all eligibility requirements during the year of participation in the program, when applying for renewal, and during each subsequent year of participation in the program, regardless of the level of the employer's DFWP program. (D) **General program requirements.** In signing the application form, the chief executive officer or designated management representative of the employer shall certify that the employer shall meet at a minimum, the program requirements associated with the level DFWP program for which the employer has applied. This certification is required for the employer to be considered for the discount associated with implementing the specific level DFWP program, and the signature certifies that the employer shall return any monetary benefits associated with any discount received, including interest, based on failure to implement or meet the DFWP program level requirements for which it has applied and been approved. (1) An employer approved by the bureau for a DFWP program that does not have an existing substance-free workplace program at the time of

application or that has a program in place for less than one year, may receive a maximum of five years of discount under this rule. (2) An employer that has an existing substance-free workplace program at the time of application may receive a maximum of four years of discount under this rule. E) **Program requirements**—all program levels. To receive a discount for implementing and operating a DFWP program, an employer shall fully implement, at a minimum, the following program components by the applicable dates. (1) **Policy**—The DFWP program shall include a written policy statement, which, at a minimum, shall consist of the following: (a) Articulate all the elements of the level DFWP program which the employer is implementing; (b) State management's incentive for creating a substance-free workplace (e.g., concern for employee safety and health, productivity, accident prevention, and loss control); (c) Identify a DFWP program administrator and indicate the person's role or responsibilities with regard to the DFWP program; (d) Communicate the DFWP program and policy through initial presentation to all employees prior to the program implementation and/or on a repetitive basis annually through employee education sessions; (e) Clearly state that the program applies to all employees, including all levels of management; (f) Contain appropriate references to collective bargaining agreements and show how the DFWP program works in concert with these agreements to promote a safer workplace for all employees; (g) Address the use or abuse of alcohol, prescription medications, over-the-counter medications, or illegal drugs. The policy should include which drug or alcohol tests will be used, at what cutoff levels and what testing procedures and protocols will be applied; and a clear statement that supervisors will be trained regarding their responsibilities related to various testing prior to the implementation of any testing; (h) Include a commitment to rehabilitation; (i) Describe how referrals may be made for testing, assessment, and employee assistance; (j) Be in compliance with all federal and state laws or regulations; (k) State what is prohibited and the consequences for employees of a violation of this policy; (l) State the consequences, if any, for an employee's refusal to submit to a medical examination or a drug or alcohol test in conjunction with the operation of the employer's DFWP program; (m) State the consequences for any employee attempting to adulterate a specimen or otherwise manipulate the drug or alcohol testing process; (n) State that law enforcement authorities may be contacted and requested to come onto the employer's property when appropriate in conjunction with a referral for criminal prosecution; (o) Contain a statement that nothing in the policy alters the employment-at-will status as it affects any other employment issues with the employer; (p) State that an employee's violation under the DFWP policy shall not be reported to law enforcement officials unless required by a regulatory body or by criminal law provisions; and (q) Include a discussion of confidentiality of the program records to ensure the privacy rights of individuals. (2) **Employee education**—The DFWP program shall include employee education, which, at a minimum, shall consist of the following: (a) A total of at least two hours annually for all current employees prior to implementation of the DFWP program, and at least annually thereafter for each program year in which the employer operates a DFWP program, and with at least one hour for all new employees within the employee's first four weeks of employment; (b) Inform employees about the content of the DFWP program as delineated in the written policy, a copy of which will be presented, discussed and acknowledged by each employee's signature on an appropriate form; (c) Stress management's commitment to the program; (d) Include the disease model for alcohol and other drugs, the signs and symptoms associated with substance use and abuse, and the effects and dangers of commonly used drugs in the workplace; (e) Share a list of helping resources in the community for employees to utilize for themselves or their families; and (f) Be presented by a qualified educator or a presenter supervised by a qualified educator holding one of the following credentials: (i) Substance abuse professional (SAP); (ii) Certified employee assistance professional (CEAP); (iii) Certified chemical dependency counselor (CCDCIII); (iv) Ohio certified prevention specialist (OCPS); or (v) Ohio certified prevention consultant (OCPC). (3) **Supervisor training**—The DFWP program shall include supervisor training, which, at a minimum, shall consist of the following: (a) At least four hours of initial training for all current and new supervisors (with at least two hours of training within six weeks of a current employee becoming a supervisor or from the date of hire of a supervisor), in addition to the annual two hours of employee education, for a total of six hours annually offered within two or more sessions; (b) In subsequent program years, a minimum of two hours of refresher training for supervisors who have received the initial four hours of training, which is in addition to the annual two hours of employee education, for a total of four hours; (c) A discussion of a supervisor's responsibilities in relationship to the employer's DFWP program, including but not limited to how to recognize a possible alcohol or other drug problem; how to document behaviors that demonstrate an

alcohol or other drug problem; how to confront employees with the problem in terms of their observed behaviors; how to initiate reasonable suspicion testing; how to make an appropriate referral for assistance; how to follow up with employees reentering the work setting after a positive drug test; and how to handle DFWP program responsibilities in a manner that is consistent with any pertinent collective bargaining agreements; and (d) Be presented by a qualified trainer or a presenter supervised by a qualified trainer holding one of the credentials provided in paragraphs (E)(2)(f)(i) to (E)(2)(f)(v) of this rule. (4) **Drug and alcohol testing**—The DFWP program shall include drug and alcohol testing which, at a minimum, shall consist of a five-panel drug screen with gas chromatography/mass spectrometry (GC/MS) and alcohol testing consistent with federal standards. The employer shall implement and pay for drug and alcohol testing as follows, with the stipulation that all categories of testing shall be clearly described and defined in the employer's written policy. (a) Pre-employment/new-hire testing: at one hundred per cent (drug test required), with testing to be conducted before or within the first ninety days of employment; (b) Post-accident: All employees who may have caused or contributed to an on-the-job accident, as defined in paragraph (A)(3) of this rule, shall submit to a drug or alcohol test. This test will be administered as soon as possible after necessary medical attention is received, or within eight hours for alcohol and within thirty-two hours for other drugs. (c) Reasonable suspicion testing based on documentation and concurrence among the trained observing supervisor and a second trained supervisor, wherever possible. (d) Follow-up testing, for any employee with a positive test, commencing with a return-to-duty test as the first in a minimum of four tests over the period of a year from the date of return to duty for such employee where the employer brings the employee back to work or returns the employee to a safety-sensitive position or function after a positive test; no set maximum during the first year that begins with the date of return to duty. A maximum number of tests after the first year from date of return to work are to be determined by agreement between the employee, the substance abuse professional assessing or treating the employee, and the employer. For the purposes of the DFWP program, the forms of testing to be utilized will be urinalysis (EMIT screen, also referred to as a drug screen, plus GUMS confirmation) for a panel of nine FIVE drugs, and breath or saliva with a confirmatory evidential breath test (EBT) for alcohol. However, if an EBT is not available or reasonably accessible, a blood test should be made available to the employee to determine the presence of alcohol. The employer is required to document and maintain on file the reason the EBT was not administered. To ensure the integrity of testing and for the safety of employees, participating companies must adopt the procedures (they may exclude split specimen unless required by a regulating body) and chain-of-custody guidelines recommended by the federal department of health and human services (DHHS) and required by the federal department of transportation. Employers shall ensure that DHHS certified laboratories process the test results, and that a qualified medical review officer is responsible for evaluating all test results. Supervisors shall receive training regarding their responsibilities related to various testing prior to implementation of testing. Cut-off levels shall be clearly stated in the written policy, along with the procedures or protocols, such as chain of custody, that define the testing process. (5) **Employee assistance**—The DFWP program shall include an employee assistance plan as defined in paragraph (A)(10) of this rule for levels 1 and 2 DFWP programs, or an EAP as defined in paragraph (A)(11) of this rule for a level 3 DFWP program. Upon an employee's positive test, in addition to any corrective action deemed appropriate, the employer shall explain to the employee what a substance abuse assessment is and, by way of referral, shall provide a list containing names and addresses of qualified substance abuse assessment resources who can administer an assessment. The specifics of the employee assistance plan as well as any requirements for which the employer contracts with a provider are dependent upon the level DFWP program which the employer implements. (6) **Other**—The DFWP program may contain other provisions related to specific program requirements that do not fall into one of the five basic program components. (7) An employer may use a vendor for any of the following: to develop its DFWP program policy under paragraph (E)(1) of this rule; for an educator or presenter supervised by an educator for employee education under paragraph (E)(2) of this rule; for a trainer or presenter supervised by an educator for supervisor training under paragraph (E)(3) of this rule; for drug and alcohol testing under paragraph (E)(4) of this rule; or for employee assistance under paragraph (E)(5) of this rule. (a) For an employer to use the services of a vendor under this rule, the vendor, if required by law to possess workers' compensation coverage, either: (i) Shall be a current participant in the bureau's DFWP program under this rule; (ii) Shall have completed all of the vendor's years of eligible discount in the DFWP program and shall still maintain a DFWP program comparable

to the DFWP program under this rule; or (iii) If the vendor has applied to the DFWP program under this rule but the bureau has determined the vendor to be ineligible for the program based upon the provisions of paragraph (C)(1)(e) of this rule, shall develop and maintain a DFWP program comparable to the DFWP program under this rule. (b) If the vendor has applied to the DFWP program under this rule but the bureau has determined the vendor to be ineligible for the program based upon any of the provisions of paragraphs (C)(2), (C)(3), or (C)(4) of this rule, the employer may not use the vendor in the DFWP program to develop its DFWP program or meet any of the DFWP program requirements under this rule. (8) The bureau may establish and administer consortia for the purpose of more effective program administration and reduced costs for employers participating in the DFWP program under this rule. Consortia will allow the bureau to develop pools to offer groups of employers and their employees the employee awareness information for the employer education requirement of paragraph (E)(2) of this rule, the skill building training requirement of paragraph (E)(3) of this rule, and to pool random testing and other drug and alcohol testing services for the drug testing requirements of paragraph (E)(4) of this rule. The bureau will develop the criteria that will govern how the consortia will operate. (F) **Additional level-specific program requirements.** In addition to the general requirements of paragraph (E) of this rule applicable to all employers participating in the DFWP program and receiving a discount, this paragraph of this rule describes additional specific program requirements for the various levels of the DFWP program. (1) **Level 1 DFWP program.** To receive a discount for a level 1 DFWP program, an employer shall meet all of the general requirements of paragraph (E) of this rule. (2) **Level 2 DFWP program.** To receive a discount for a level 2 DFWP program, an employer shall apply for level 2 DFWP program and, after the first full program year, shall have had a level 1 DFWP program in place for at least one year, shall demonstrate to the satisfaction of the bureau proficiency and readiness to implement a level 2 DFWP program through a documented safety program that is already in place, or shall either have an existing comparable level 1 substance-free workplace program in place, or demonstrate its proficiency and readiness to implement a level 2 DFWP program through documented experience equivalency from a program offering employer DFWP development training that has met the criteria specified in paragraph (A)(9) of this rule and is on the list maintained by ODADAS, or shall be a participant in a consortium that meets the requirements established by the bureau pursuant to paragraph (6)(13) of this rule. The employer shall fully implement the program components detailed in paragraph (E) of this rule, and in addition shall implement the following: (a) In addition to the drug and alcohol testing DFWP program requirements of paragraph (E)(4) of this rule, the employer shall include random drug testing of ten per cent of the employer's workforce each program year, as shall be clearly described and defined in the employer's DFWP policy. For public employers, random drug testing applies only to safety-sensitive positions or functions, as defined by the employer in the DFWP policy and paragraph (A)(5) of this rule. (b) In addition to the employee assistance plan DFWP program requirements of paragraph (E)(5) of this rule, the employer shall have pre-established a relationship for assessment which allows for a three-way exchange of information, with the appropriate consent, among the employee, employer, and provider. A first positive drug or alcohol finding shall result in a direct referral for assessment rather than just providing a list of names and addresses of qualified substance abuse assessment resources, unless otherwise defined within the DFWP policy for specific employment positions. In addition, the employer shall identify in the policy who will pay for the services associated with an assessment. (c) The employer shall implement the first five steps of the bureau's ten step business plan under rule 4123-17-70 of the Administrative Code during the first program year in which it operates a level 2 DFWP program. (3) **Level 3 DFWP program.** To receive a discount for a level 3 DFWP program, an employer shall apply to implement a level 3 DFWP program; shall have conducted a DFWP program at level 1, 2, or 3 for two full years, and shall have met the renewal requirements. The employer shall fully implement the program components detailed in paragraph (E) of this rule, and in addition shall implement the following: (a) In addition to the drug and alcohol testing DFWP program requirements of paragraph (E)(4) of this rule, the employer shall include random drug testing of twenty-five per cent of the employer's entire workforce each program year. For public employers, random drug testing applies only to safety-sensitive positions or functions, as defined by the employer in the DFWP policy and paragraph (A)(5) of this rule. (b) In addition to the employee assistance plan DFWP requirements of paragraphs (E)(5) and (F)(2)(b) of this rule, the employer shall offer employees health care coverage which includes chemical dependency counseling and treatment services. (c) At level 3, the employer shall implement

both the five steps of the bureau's ten step business plan under rule 4123-17-70 of the Administrative Code and the remaining five steps. (G) **Progress reporting and renewal requirements.** If the bureau determines that an employer is eligible to implement a DFWP program, the employer shall comply with the following requirements for initial participation, and renewal of annual participation in the DFWP program. In order to qualify for renewal, an employer shall have implemented all of the program requirements associated with the DFWP program level for which a discount was obtained by the appropriate implementation date. (1) The employer shall permit the bureau or its designee access to the employer's job sites for on-site audit of the employer's DFWP program components, related records and documentation. The employer shall sign a "release of information form" for compliance monitoring and cost-benefit analysis purposes which authorizes the bureau to have access to various aggregate information from drug testing laboratories, medical review officers and the employee assistance plan or employee assistance program. (2) By the end of the first quarter of the program year or a subsequent date established by the bureau, for the first year of an employer's DFWP program, the chief executive officer or designated management representative of the employer shall certify on a form provided by the bureau a statement that the employer has fully implemented and is operating its DFWP program in accordance with the program level requirements for which the employer has applied or is receiving the discount. (3) The employer shall submit to the bureau a DFWP program progress report on a form provided by the bureau providing information regarding its DFWP program FOR the program year. The progress report shall include information related to drug and alcohol testing and may also include additional information related to other DFWP program components as requested on the progress form. If the employer is applying for renewal, the employer shall include the DFWP program level that is requested for the next year. The reports shall be certified by the chief executive officer or designated management representative of the employer. (a) **Policy**—The employer shall certify that it has developed a DFWP policy that meets or exceeds the program requirements associated with the level of DFWP program for which the employer is receiving a discount. The employer shall submit a copy of the written policy with the certification form. The employer shall maintain the following information on site for audit purposes: (i) A copy of the written policy; and (ii) Copies of signed acknowledgments from all employees regarding receipt of a copy of the employer's DFWP program policy. (b) **Employee education**—The employer shall maintain on site statistics regarding the number of employees educated under the DFWP program, the names and qualifications of all educators who presented the DFWP program employee education sessions, and the names and qualifications of persons supervising any of these educators. In addition, the employer shall maintain the following information on site for audit purposes: Original attendance sheets, signed by each employee who attended DFWP program employee education, indicating the date and number of hours of each session. (c) **Supervisor training**—The employer shall maintain on site statistics regarding the number of supervisors trained under the DFWP program, the names and qualifications of all trainers who presented the DFWP program supervisor training, and the names and qualifications of persons supervising any of these trainers. In addition, the employer shall maintain the following information on site for audit purposes: Original attendance sheets, signed by each supervisor who attended DFWP program supervisor training, indicating the date and number of hours of each session. (d) **Drug and alcohol testing**—The employer shall report statistics regarding the number of employees tested under the employer's DFWP program. The employer shall maintain on site for audit purposes copies of all billings from medical review officers and laboratories. The following statistics shall be reported: (i) Total number of employees employed by the company; (ii) Number of safety-sensitive positions or functions for both private employers and public employers; (iii) Program year and dates or periods of time in which the testing occurred; (iv) Number of new hires and percentage tested; (v) Aggregate reporting of the number of employees tested for each category of testing required in the employer's DFWP program, including the number and per cent of employees tested for pre-employment/new hire, reasonable suspicion, post-accident, government required, random (if applicable), and other testing if applicable; number of positive versus negative tests for each category; and (vi) Names of medical review officers and names, addresses, phone numbers, and contact persons for all labs or collectors utilized by the employer for drug and alcohol testing under the DFWP program. (e) **Employee assistance**—The employer shall maintain on site the following information regarding its employee assistance plan or EAP under the DFWP program the name of the organization that provided the employee assistance services, and the name and telephone number of the contact person. (f) **Other**—An employer implementing a level 2 DFWP program shall report its progress in

implementing the first five steps of the bureau's ten step business plan, and an employer implementing a level 3 DFWP program shall report its progress in implementing all ten steps of the ten step business plan. An employer implementing a level 2 or level 3 DFWP program shall maintain records on site of its implementation of either the first five steps or all ten steps of the bureau's ten step business plan, as applicable. (H) **Disqualification from program and reapplication.** The bureau may cancel an employer's participation in the DFWP program for the employees failure to fully implement a DFWP program in compliance with the approved program level. The bureau shall send written notice of cancellation to the employer, and shall require the employer to reimburse the bureau for any discounts received inappropriately, plus interest, as provided in paragraphs (B)(3) and (D) of this rule. (1) If the bureau cancels an employer from the DFWP program under this rule for failure to meet the program requirements, the employer may reapply for the DFWP program for the next program period, unless the employer has received a discount and has failed to reimburse the bureau for the discount plus interest. The bureau may deny the application based on circumstances of the initial program period. (2) When an employer becomes aware that it is unable to fully implement its DFWP program by the required implementation date, the employer shall notify the bureau immediately. The employer's failure to notify the bureau of its inability to fully implement the DFWP program may disqualify the employer from re-applying for the program in the future, even after the required repayment of any discount that may have been received. (I) **Discount requirements.** An employer participating in the DFWP program or meeting renewal performance standards under this rule shall be eligible to receive discounts as provided for in this rule. (1) The discount for an employer implementing a DFWP program shall be as follows: (a) For an employer implementing a level 1 DFWP program, six per cent; (b) For an employer implementing a level 2 DFWP program, twelve per cent; (c) For an employer that has operated a DFWP program at level 1, level 2 or level 3 (the latter without a level 3 discount) for a total of no less than two full years; upon implementing a level 3 DFWP program, the employer is eligible for fifteen per cent for the first year of a level 3 DFWP program, twenty per cent for the second year of a level 3 DFWP program, and twenty per cent for the third year of a level 3 DFWP, if the employer is eligible to receive five years of discount. (2) The discount will be applied to the employer's pure premium, not to the administrative assessments, disabled workers' relief fund assessments, or other assessments. The discount will not alter the employer's actual total modification calculation under rule 4123-17-03 of the Administrative Code. (3) The application of the discount associated with the level of the DFWP program approved by the bureau for each employer shall occur effective July first or January first of the appropriate program year for private employers, and January first of the appropriate program year for public employers. (4) An employer is limited to four continuous years, if eligible for four years of discount, or five continuous years, if eligible for five years of discount, to complete its maximum participation in the discount program under this rule; except that an employer which drops out of the DFWP program without receiving a discount or which repays any discount that was received, plus interest, may be considered for four or five years of discount, based on eligibility. (5) An employer which has completed its eligible four years or five years of participation in the DFWP program under this rule is ineligible to reapply. (J) An employer may appeal enrollment rejection and renewal rejection to the bureau's adjudicating committee pursuant to rule 4123-14-06 of the Administrative Code. (K) **Hold harmless statement.** Nothing in this rule requires an employer to implement any policies or practices in developing a DFWP program that conflict or interfere with existing collective bargaining agreements. Rather, the bureau suggests that the employer and employees engage in a collaborative effort to be successful in improving workplace safety by implementing a DFWP program that includes employee input and support. Where there are legal issues related to development and implementation of a DFWP program, it is the employer's responsibility to consult with its legal counsel to resolve these issues. An employer shall certify in its application to the bureau that it shall hold the state of Ohio harmless for responsibility or liability under the DFWP program. (L) Pursuant to section 4121.37 of the Revised Code, the administrator may establish a program of safety grants for education, assistance, and research for eligible employers who participate in the safety grant program. The safety grant program may include grants to an employer participating in the drug-free workplace discount program under this rule or to an employer with a program comparable to the DFWP program under this rule for the employer to provide for employee and supervisor education and training as required under paragraphs (E)(2) and (E)(3) of this rule. (1) The bureau shall determine whether the employer is eligible for the safety grant program grants under this rule. The bureau may limit participation in the safety grant program based upon the

	<p>availability of bureau resources for the program and upon the merits of the employer's proposal. The safety grant program is available only to a private state fund employer or a public employer taxing district that shall pay workers' compensation premiums to the state insurance fund, shall have active coverage on the date of agreement to participate in the safety grant program, and shall be a participant in the drug-free workplace discount program under this rule or an employer with a program comparable to the DFWP program under this rule at the time of application for the safety grant program. (2) The bureau will assess whether the employer is eligible to receive a safety grant under this rule. The bureau and employer shall enter into a written agreement detailing the rights, obligations, and expectations of the parties for performance of the safety grant program. (3) The bureau may meet with the owner or chief executive officer of the employer to evaluate the employer's progress in the safety grant program. The employer shall provide the bureau access to records or personnel to conduct research into the effectiveness of the safety grant program. (4) An employer who complies with the requirements of the safety grant program under this rule shall be eligible to receive a grant from the bureau as provided in the written agreement. (a) The bureau may establish by written agreement with the employer the maximum amount of the safety grant program grant. (b) The bureau may establish by written agreement with the employer a requirement for matching funds from the employer in a ratio to be determined by the bureau. (c) The bureau shall monitor the employer's use of the safety grant program grant and may recover the entire grant if the bureau determines that the employer has not used the grant for the purposes of the safety grant program or has otherwise violated the written agreement on the safety grant program. (5) The bureau shall evaluate the research data from the safety grant program on a periodic basis. The bureau may publish reports of the research to assist employers in maintaining a drug-free workplace.</p>
<p><b>Oklahoma</b></p>	<p><b>R. 310:638-1-3. Drug and alcohol testing rules; Testing facilities, Qualifications</b>—(a) Drug screen testing facilities. (1) Drug screen testing facilities not certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists shall meet the provisions of this Chapter for the matrices for which they test for drugs of abuse in order to be eligible for licensure as a testing facility. (2) Drug screen testing facilities certified for forensic urine drug testing by the United States Department of Health and Human Services, accredited for forensic urine drug testing by the College of American Pathologists, or licensed by a State acceptable to the Department shall be deemed to meet the requirements of OAC 310:638 Subchapter 5 and shall be eligible for licensure as a testing facility. (b) Drug confirmation testing facilities. All facilities performing drug confirmation testing using urine as the testing matrix shall be certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists in order to be eligible for licensure as a testing facility. Facilities performing confirmation testing using hair as the testing matrix, shall have passed an inspection performed by the Department or be licensed by another State acceptable to the Department. (c) Notification requirements. All testing facilities licensed by the Department based on certification by the United States Department of Health and Human Services, accreditation by the College of American Pathologists, or licensed by another State accepted by the Department shall notify the Department in writing within ten (10) days of the loss of such certification, accreditation, or licensure.</p> <p><b>R. 310:638-1-4. Drug and alcohol testing rules; Types of specimens appropriate for testing.</b>—(a) Drugs. (1) Initial tests. Urine or hair shall be used for the initial test for all drugs. (2) Confirmation tests. Urine or hair shall be used for the confirmation test for all drugs. (b) Alcohol. (1) Initial tests. Breath or saliva shall be used for the initial test for alcohol. Blood may be used for initial testing as described in OAC 310:638-7-4(b)(4). (2) Confirmation tests. Breath or blood shall be used for the confirmation test for alcohol. (3) Rehabilitation/post-rehabilitation tests. For alcohol testing which meets the criteria at 310:638-7-8(a), urine may be used as the specimen for initial and/or confirmation testing.</p> <p><b>R. 310:638-1-5. Drug and alcohol testing rules; Types of drugs approved for testing in urine</b>—(a) A licensed testing facility may test for any drug or class of drugs or their metabolites included in Schedule I, II, or III of the Controlled Substances Act (21 U.S.C. §801, et seq.) provided testing for such substances has been approved by the Commissioner of Health. (b) The following drugs or their metabolites have been approved for testing by the Commissioner of Health:</p>

- (1) marijuana;
- (2) opiates:
  - (A) codeine;
  - (B) heroin;
  - (C) morphine;
- (3) semi-synthetic and synthetic narcotics:
  - (A) hydrocodone;
  - (B) hydromorphone;
  - (C) meperidine;
  - (D) methadone;
  - (E) oxycodone;
  - (F) propoxyphene;
- (4) cocaine;
- (5) phencyclidine;
- (6) amphetamines:
  - (A) amphetamines;
  - (B) methamphetamines;
  - (C) methylenedioxyamphetamine;
  - (D) methylenedioxymethamphetamine;
  - (E) phentermine;
- (7) barbiturates:
  - (A) amobarbital;
  - (B) butalbital;
  - (C) pentobarbital;
  - (D) secobarbital
- (8) benzodiazepines:
  - (A) diazepam;
  - (B) chlordiazepoxide;
  - (C) alprazolam;
  - (D) clorazepate; and
- (9) methaqualone.

(c) If the United States Department of Health and Human Services has established an approved protocol and positive threshold for a substance not listed in (b) of this Section, testing for such a substance shall be deemed to be approved by the Commissioner of Health. (d) Drugs other than those listed shall be tested by scientifically established methods at scientifically established detection levels.

**R. 310:638-1-5.1. Drug and alcohol testing rules; Types of drugs approved for testing in hair—**

(a) A licensed testing facility may test for any drug or class of drugs or their metabolites included in Schedule I, II or III of the Controlled Substances Act (21 U.S.C. §801 et seq.) provided testing for such substances has been approved by the Commissioner of Health. (b) The following types of drugs or their metabolites have been approved for testing by the Commissioner of Health:

- (1) marijuana;
- (2) opiates:
  - (A) codeine;
  - (B) heroin;
  - (C) morphine;
- (3) cocaine;
- (4) phencyclidine;
- (5) amphetamines:
  - (A) amphetamines;
  - (B) methamphetamine.

(c) If the United States Department of Health and Human Services has established an approved



protocol and positive threshold for a substance not listed in (b) of this Section, testing for such a substance shall be deemed to be approved by the Commissioner of Health. (d) Drugs other than those listed shall be tested by scientifically established methods at scientifically established detection levels.

**R. 310:638-1-6. Drug and alcohol testing rules; Initial drug screening tests, Urine; Cutoff levels.**—(a) The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these drugs or their metabolites:

- (1) marijuana metabolites: 50 ng/ml
- (2) cocaine metabolites: 300 ng/ml
- (3) opiates and metabolites: 2000 ng/ml; opiates and metabolites include the following:
  - (A) codeine;
  - (B) heroin;
  - (C) morphine;
- (4) semi-synthetic and synthetic narcotics: 300 ng/ml
  - (A) hydrocodone;
  - (B) hydromorphone;
  - (C) meperidine (immunoassay unavailable, initial test level of 1000 ng/ml shall be used for meperidine)
  - (D) methadone;
  - (E) oxycodone;
  - (F) propoxyphene;
- (5) phencyclidine: 25 ng/ml
- (6) amphetamines: 1,000 ng/ml; amphetamines include the following:
  - (A) amphetamines;
  - (B) methamphetamines;
  - (C) methylenedioxyamphetamine (immunoassay unavailable);
  - (D) methylenedioxymethamphetamine (immunoassay unavailable);
  - (E) phentermine;
- (7) barbiturates: 300 ng/ml; barbiturates include the following:
  - (A) amobarbital;
  - (B) butalbital;
  - (C) pentobarbital;
  - (D) secobarbital;
- (8) benzodiazepines: 300 ng/ml; benzodiazepines include the following:
  - (A) diazepam;
  - (B) chlordiazepoxide;
  - (C) alprazolam;
  - (D) clorazepate; and
- (9) methaqualone: 300 ng/ml.

(b) These test levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentrations. (c) Drugs other than those listed shall be tested by scientifically established methods at scientifically established detection levels.

**R. 310:638-1-6.1. Drug and alcohol testing; Initial drug screening tests, Hair; Cutoff levels**—(a) The following initial cutoff levels shall be used when screening hair specimens to determine whether they are negative for these drugs or their metabolites:

- (1) marijuana: 10pg/10 mg of hair
- (2) cocaine: 5 ng/10 mg of hair
- (3) opiates and metabolites: 5 ng/10 mg of hair; opiates and metabolites include the following:
  - (A) codeine;
  - (B) heroin;
  - (C) morphine;

- (4) phencyclidine: 3 ng/10 mg of hair
- (5) amphetamines: 5 ng/10 mg of hair; amphetamines include the following:
  - (A) amphetamines;
  - (B) methamphetamines.

(b) These test levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentrations. (c) Drugs other than those listed shall be tested by scientifically established methods at scientifically established detection levels.

**R. 310:638-1-7. Drug and alcohol testing rules; Drug confirmation testing, Urine; Cutoff levels—**

(a) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS), or an equivalent accepted method of equal or greater accuracy as approved by the Commissioner of Health, at the following cutoff levels for these drugs or their metabolites. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the testing facility record as "greater than the highest standard curve value."

- (1) marijuana metabolites: 15 ng/ml (Delta-9-tetrahydrocannabinol-9-carboxylic acid)
- (2) cocaine metabolites: 150 ng/ml (Benzoylecgonine)
- (3) opiates and metabolites: 2000 ng/ml; opiates and metabolites include the following:
  - (A) codeine;
  - (B) morphine;
  - (C) heroin (10 ng/ml for tests for 6-Acetylmorphine when the morphine concentration exceeds 2000 ng/mL);
  - (4) semi-synthetic and synthetic narcotics: 300 ng/ml
    - (A) hydrocodone;
    - (B) hydromorphone;
    - (C) meperidine; (confirmatory test level of 500 ng/ml shall be used for meperidine)
    - (D) methadone;
    - (E) oxycodone;
    - (F) propoxyphene;
  - (5) phencyclidine: 25 ng/ml
  - (6) amphetamines: 500 ng/ml; amphetamines include the following:
    - (A) amphetamines;
    - (B) methamphetamines; (Specimen must also contain amphetamine at a concentration of greater than 200 ng/mL)
    - (C) methylenedioxyamphetamine;
    - (D) methylenedioxymethamphetamine;
    - (E) phentermine.
  - (7) barbiturates: 300 ng/ml; barbiturates include the following:
    - (A) amobarbital;
    - (B) butalbital;
    - (C) pentobarbital;
    - (D) secobarbital;
  - (8) benzodiazepines: 300 ng/ml; benzodiazepines include the following:
    - (A) diazepam;
    - (B) chlordiazepoxide;
    - (C) alprazolam;
    - (D) clorazepate; and
  - (9) methaqualone: 300 ng/ml.

(b) These test levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentration.

**R. 310:638-1-7.1. Drug and alcohol testing rules; Drug confirmation testing, Hair; Cutoff levels;**

**Procedures.**—(a) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS), liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS), mass spectrometry/mass spectrometry (MS/MS), or an equivalent accepted method of equal or greater accuracy as approved by the Commissioner of Health, at the following cutoff levels for these drugs or their metabolites. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the testing facility record as "greater than the highest standard curve value."

- (1) marijuana metabolites: 1 pg/10 mg of hair (Delta-9-tetrahydrocannabinol-9-carboxylic acid);
- (2) cocaine: must be at or above 5 ng/10 mg of hair and/or metabolites as follows:
  - (A) benzoylecgonine at 1 ng/10 mg of hair;
  - (B) cocaethylene at 1 ng/10 mg of hair;
- (3) opiate and metabolites: 5 ng/10 mg of hair; opiate and metabolites include the following:
  - (A) codeine;
  - (B) 6-monoacetylmorphine (heroin metabolite);
  - (C) morphine;
- (4) phencyclidine: 3 ng/10 mg of hair;
- (5) amphetamines: 5 ng/10 mg of hair; amphetamines include the following:
  - (A) amphetamines.
  - (B) methamphetamines.

(b) These test levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentrations. (c) All hair specimens undergoing confirmation shall be decontaminated using an approved wash procedure which has been published in the peer reviewed literature which at least, has an initial fifteen (15) minute organic solvent wash followed by multiple (at least three) thirty (30) minute aqueous washes and one final one hour aqueous wash. (d) After hair is washed, the drug entrapped in the hair shall be released either by digestion (chemical or enzymatic) or by multiple solvent extractions. The resulting digest or pooled solvent extracts shall then be confirmed by approved methods. (e) All confirmation analysis methods must eliminate the melanin fraction of the hair before analysis. If a non-digestion method is used, the laboratory must present published data in the peer reviewed literature from a large population study which indicates that their method of extraction does not possess a statistically significant hair color bias. (f) Additional hair samples may be collected to reconfirm the initial report. The recollected sample shall be retested as specified, however, the confirmation analysis shall be performed even if the screening test is negative. A second positive report shall be made if the drug concentration in the digest by confirmation methods exceeds the limit of quantitation of the testing laboratory's method. A second test shall be offered to anyone disputing a positive hair test result. (g) To assist the Review Officer in the interpretation of results, officers may order sectioning of a hair sample (e.g. segmenting hair into 0.5 inches sections, which is about one months growth, each analyzed separately). The sectioning may occur on the original and any subsequent sample submitted for testing.

**R. 310:638-1-8.1. Drug and alcohol testing; Hair specimen collection, Procedures.**—(a) Designation of collection site. Each hair drug testing program shall have one (1) or more designated collection sites which have all necessary personnel, material, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of hair specimens to a licensed drug testing facility. (b) Security. While security is important with any collection, in the case of hair, only the temporary storage area in the designated collection site needs to be secure. (c) Chain of custody. Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of hair specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens. (d) Access to authorized personnel only. The hair collection site shall be off limits to unauthorized personnel during the actual collection of specimens. (e) Privacy. Procedures for collecting hair shall be performed on one individual at a time to prevent substitutions or interference with the collection of reliable samples. (f) Integrity and identity of specimen. Precautions shall be

taken to ensure that the root end of a hair specimen is indicated for the testing facility who performs the testing. The maximum length of hair that shall be tested is 3.9 cm distal from the skin. This length may be changed if a review officer requests the testing of proximal segments to assist their evaluation of testing data. The collection of pubic hair is not permitted. The information on the hair specimen container and on the chain of custody form shall identify the individual from whom the specimen was collected. The following minimum precautions shall be taken when collecting a hair specimen to ensure specimens are obtained and correctly identified. (1) When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other employer official who can positively identify the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection. (2) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken. (3) The collection site person shall note any unusual behavior or appearance on the chain of custody form. (4) Hair shall be cut as close to the scalp as possible. Upon taking the specimen from the individual, the collection site person shall determine that it contains approximately 1/2 inch of hair when fanned out on a ruler (e.g. about 40 mg of hair). (5) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to the specimen container being sealed with a tamper resistant seal and labeled with the individual's specimen number and other required information. (6) The collection site person shall label the container which contains the hair with the date, the individual's specimen number, and any other identifying information provided or required by the drug testing program. (7) The individual shall initial the container for the purpose of certifying that it is the specimen collected from the individual. (8) The collection site person shall indicate on the chain of custody form all information identifying the specimen. The collection site person shall sign the chain of custody form next to the identifying information or the chain of custody on the specimen container. (9) The individual shall be asked to read and sign a statement certifying that the specimen identified as having been collected from the individual is in fact the specimen the individual provided. (10) The collection site person shall complete the chain of custody form. (g) Collection control. To the maximum extent possible, collection site personnel shall keep the individual's specimen container within sight both before and after collection. After the specimen is collected, it shall be properly sealed and labeled. An approved chain of custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens. (h) Transportation to the testing facility. Collection site personnel shall arrange to transport the collected specimens to the drug testing facility. The specimens shall be placed in containers which shall be securely sealed to eliminate the possibility of undetected tampering. The collection site personnel shall ensure that the chain of custody documentation is sealed separately from the specimen and placed inside the container sealed for transfer to the drug testing facility.

**R. 310:638-1-9. Drug and alcohol testing rules; Review officers, Training and qualifications**—(a) The Review Officer is a person responsible for receiving testing facility results generated by an employer's drug and alcohol testing program and who has knowledge of substance abuse disorders and has appropriate training to interpret and evaluate an individual's positive test result together with the individual's medical history and any other relevant biomedical information. (b) The Review Officer shall possess the following minimum qualifications: (1) Be licensed to practice medicine and surgery or osteopathic medicine or hold an earned doctoral degree from an accredited institution in clinical chemistry, forensic toxicology, or a similar biomedical science; and (2) Have completed at least twelve (12) hours of training appropriate for Review Officers provided by the Medical Review Officer Certification Council, American Association of Medical Review Officers, or another organization approved by the Commissioner of Health.

**R. 310:638-1-10. Drug and alcohol testing rules; Collection site personnel, Training and qualifications**—(a) Collection procedures and training shall clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process,

carefully ensuring the modesty and privacy of the donor. (b) A collection site person shall have successfully completed documented training to carry out this function or shall be a licensed medical professional or technician who acknowledges in writing he or she has been provided instructions for collection as described at OAC 310:638-1-8 or 310:638-1-8.1. (1) A non-medical collection site person shall receive appropriate training in collection procedures as described at OAC 310:638-1-8 or 310:638-1-8.1 and shall demonstrate proficiency in the application of these collection procedures prior to serving as a collection site person. A medical professional, technologist, or technician licensed or otherwise approved to practice in the jurisdiction in which the collection takes place is not required to receive such training if that person acknowledges in writing the receipt of instructions for collection as described at OAC 310:638-1-8 or 310:638-1-8.1. (2) Collection site persons shall be provided with detailed, clear instructions on the collection of specimens in compliance with OAC 310:638-1-8 or 310:638-1-8.1. Employer representatives and donors subject to testing shall also be provided standard written instructions setting forth their responsibilities.

**R. 310:638-3-1. Drug and alcohol testing rules; Testing facilities; Facilities eligible for licensure**—(a) Intrastate licensure. Testing facilities located within the State of Oklahoma shall be licensed by the Department in accordance with this Chapter in order to provide laboratory services to an employer to test for the presence or absence of drugs or alcohol. (b) Interstate licensure. Testing facilities located outside the State of Oklahoma which are certified for forensic urine drug testing by the United States Department of Health and Human Services, accredited for forensic urine drug testing by the College of American Pathologists or licensed by a State acceptable to the Department are eligible for licensure in accordance with this Chapter to provide laboratory services to an employer to test for the presence or absence of drugs or alcohol.

**R. 310:638-3-2. Drug and alcohol testing rules; Testing facilities; Licensure fees.**—The fee for licensure of each testing facility shall be one hundred fifty dollars (\$150.00) annually. Licenses shall be renewed annually provided the provisions of this Chapter are met.

**R. 310:638-3-3. Drug and alcohol testing rules; Testing facilities; Procedures for licensure**—(a) Application for licensure shall be made on a form prescribed by the Commissioner of Health by the director of the applicant testing facility. (1) A separate application shall be completed for each testing facility location, except that a testing facility which is not at a fixed location, that is, a testing facility that moves from testing site to testing site, shall complete a single application using the address of its designated primary site. (2) Each van or other mobile unit providing laboratory services to an employer to test for the presence or absence of drugs or alcohol shall complete a separate application using the address of the designated primary site or home base. (b) The license fee shall be paid at the time of application for each application completed and filed. The license fee is non-refundable. (c) Prior to licensure, in addition to the completed application and licensure fee, each drug screen testing facility shall provide: (1) Proof of enrollment and satisfactory performance in an approved proficiency testing program in accordance with OAC 310:638-5-10; (2) The names and qualifications of all technical staff in accordance with OAC 310:638-5-2; (3) The name and address of the testing facility(s) utilized for confirmation testing. (d) Prior to licensure, in addition to the completed application and licensure fee, each testing facility seeking licensure based on certification by the United States Department of Health and Human Services, accreditation by the College of American Pathologists or licensed by a State acceptable to the Department, shall submit proof of current certification, accreditation, or licensure and shall be deemed to meet licensure requirements. (e) Upon satisfying the requirements for licensure, the testing facility shall be issued the appropriate class of license for initial screening for drugs and/or alcohol or confirmatory testing for drugs and/or alcohol or both.

**R. 310:638-3-4. Drug and alcohol testing rules; Testing facilities; Interim licensure procedures.**—(a) Upon adoption of this Chapter interim licensure may be granted to testing facilities until the initial application and inspection process is completed. Testing facilities requesting interim licensure shall indicate their intention in writing within sixty (60) days following the effective date of this Chapter. Requests for interim licensure shall include the following: (1) Name and address of the testing facility; (2) Name and qualifications of the testing facility director; (3) Evidence of satisfactory performance on proficiency testing. (b) Interim licensure shall be valid for a period not to exceed one

hundred eighty (180) days. If the Department is in the process of evaluating a testing facility's application, the interim licensure shall be extended by the Department until a determination of approval or denial is made. (c) Interim licensure may be granted to testing facilities performing drug and alcohol confirmation testing provided such testing facilities submit evidence they have enrolled in appropriate proficiency testing and are in a mandatory preapplication period prior to being granted certification for forensic urine drug testing by the United States Department of Health and Human Services or accreditation for forensic urine drug testing by the College of American Pathologists. Such interim licensure shall be granted until a determination of approval or denial is made by the certifying or accrediting body.

**R. 310:638-3-5. Drug and alcohol testing rules; Testing facilities and licensing; Transfer of ownership.**—(a) The license for a testing facility is not transferable or assignable. (b) If an entity is considering acquisition of a licensed testing facility, an application for licensure with the one hundred fifty dollar (\$150.00) fee shall be filed with the Department prior to the effective date of the change. (c) No license shall be transferred from one location to another unless the Department is notified. If a testing facility is considering relocation, the testing facility shall notify the Department thirty (30) days prior to the intended relocation. The Department shall provide written notification to the testing facility amending the annual license to reflect the new location. (d) Upon the effective date of a change of ownership or upon cessation of operation of a testing facility, the current license shall be returned to the Department. The testing facility shall advise the Department in writing at the time of cessation of operation where testing facility records shall be archived and how such records shall be accessed.

**R. 310:638-3-6. Drug and alcohol testing rules; Testing facilities and licensing; Enforcement**—(a) Revocation, suspension, or nonrenewal of license. The license of a testing facility may be revoked, suspended, or nonrenewed upon the filing of an individual proceeding in accordance with Chapter 2 of this Title. (b) Factors to consider. The following factors shall be considered in determining whether revocation, suspension, or nonrenewal is necessary: (1) Unsatisfactory performance in analyzing and reporting the results of drug or alcohol tests; (2) Unsuccessful performance in proficiency testing or testing facility inspections; (3) Failure to conduct confirmatory testing of a positive drug or alcohol test obtained on the initial screening test; (4) Conviction of any criminal offense committed as an incident to operation of the testing facility; (5) Loss of certified, licensed or accredited status by the certifying, licensing or accrediting body, or failure to notify the Department of loss of certification, licensure or accreditation as required by this Chapter; (6) Failure to detect the presence or absence of a drug or drugs in blind performance test specimens if an employer chooses to submit such specimens; (7) Failure to comply with any provision of the Act or this Chapter; (8) Any other cause which materially affects the ability of the testing facility to ensure full reliability and accuracy of drug or alcohol tests and the accurate reporting of results. (c) Period and terms. The period and terms of revocation, suspension, or nonrenewal shall be determined by the Commissioner of Health and shall depend on the facts and circumstances of the revocation, suspension, or nonrenewal and the need to ensure accurate and reliable drug and alcohol testing of the employees. (d) Following revocation, suspension, or nonrenewal of license. Upon revocation, suspension, or nonrenewal of the intrastate license a testing facility located in Oklahoma shall cease all drug and alcohol testing. Upon revocation, suspension, or nonrenewal of the interstate license a testing facility located outside the State of Oklahoma shall cease all drug and alcohol testing for Oklahoma employers. Revocation, suspension, or nonrenewal of the license may be appealed in accordance with the Oklahoma Administrative Procedures Act (75 O.S. Sections 309 et seq.) (e) Reinstatement of testing facility license. Following the termination or expiration of any suspension, revocation, or nonrenewal, a testing facility may apply for reinstatement. Upon submission of evidence satisfactory to the Commissioner of Health that the testing facility is in compliance with this Chapter and any conditions imposed as part of the suspension, revocation, or nonrenewal, the Commissioner of Health may reinstate the testing facility. If the license issued to a testing facility has been suspended, revoked, or nonrenewed because of unsuccessful performance in proficiency testing, the reinstatement shall only occur after the testing facility has demonstrated satisfactory performance on three consecutive proficiency testing events.

**R. 310:638-3-7. Drug and alcohol testing rules; Testing facilities and licensing; Inspections.**—(a)

Notice of intent for interim licensure and completed applications received by the Department for initial licensure, licensure renewal, or for licensure reinstatement shall constitute consent for an on-site inspection during normal operating hours by representatives of the Department. (b) Testing facilities as well as collection sites associated with a testing facility are subject to inspection during normal operating hours any time an on-site inspection is deemed necessary by the Commissioner of Health to protect the health and welfare of the public.

**R. 310:638-5-1. Drug and alcohol testing rules; Drug testing facilities; Compliance**—Drug screen testing facilities shall comply with applicable Federal, State, and local laws.

**R. 310:638-5-2. Drug and alcohol testing rules; Drug testing facilities; Personnel**.—The drug screen testing facility shall contract with, or employ, the following personnel to perform, supervise, and report urine drug screen tests: (1) **Director**. The drug screen testing facility shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the drug screen testing facility. The director shall possess the following minimum qualifications: (A) A bachelor's degree from an accredited institution in the chemical, biological, or physical sciences or medical technology; and (B) Subsequent to graduation have had two (2) or more years of full-time drug testing experience. (2) **Director responsibilities**. The director shall be engaged in, and be responsible for, the management of the drug screen testing facility even where another individual has overall responsibility for an entire multispecialty testing facility. (A) The director shall be responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the drug screen testing facility. The director shall ensure the continued competency of drug screen testing facility personnel by documenting their inservice training, reviewing their work performance, and verifying their skills. (B) The director shall be responsible for the drug screen testing facility having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by the director whenever procedures are first placed into use, or changed, or when a new individual assumes responsibility for direction of the drug screen testing facility. Copies of all procedures and dates on which they are in effect shall be maintained. (C) The director shall be responsible: (i) for maintaining a quality assurance program to ensure the proper performance and reporting of all test results; (ii) for maintaining acceptable analytical performance for all controls and standards (iii) for maintaining quality control testing; and (iv) for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system. (D) The director shall be responsible for assuring all necessary action is taken to maintain satisfactory operation and performance of the drug screen testing facility in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. The director shall ensure that sample results are not reported until all corrective actions have been taken and he or she can ensure that the test results provided are accurate and reliable. (3) **General supervisor**. A qualified general supervisor shall be on the premises during all hours in which tests are performed. The general supervisor shall be responsible for day-to-day operations and supervision of analysts. The general supervisor shall possess the following minimum qualifications: (A) A high school diploma or equivalent and documented training by the manufacturer, or other qualified person, in the operation and maintenance of the test system utilized, to include the instrumentation, test reagents, calibration and quality control materials, and any other equipment or supplies required in the performance of the drug screen testing procedure; and (B) Have training and experience in the theory and practice of the procedures used in the drug screen testing facility, resulting in a thorough understanding of: (i) quality control practices and procedures; (ii) the review, interpretation, and reporting of test results; (iii) maintenance of chain of custody; and (iv) proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results. (4) **Test validation**. The drug screen testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the drug screen testing facility's test reports. A drug screen testing facility may designate more than one person to perform this function. This individual(s) shall be any employee who is qualified as director or general supervisor. (5) **Other personnel**. Other technical or nontechnical staff shall have the necessary training and skills for the tasks assigned, and shall perform only those procedures that require a degree of skill commensurate with their training, education, and

technical ability. (6) **Training.** The drug screen testing facility shall make available continuing education programs to meet the needs of facility personnel. (7) **Personnel records.** Personnel records shall include at least the following: (A) verification of education; (B) initial skills orientation program; (C) resume of training and experience; (D) documentation of continuing education; (E) certification or license, if any; (F) references; (G) job descriptions; (H) records of performance evaluation and advancement; (I) incident reports; and (J) results of tests which establish employee competency.

**R. 310:638-5-3. Drug and alcohol testing rules; Drug testing facilities; Security; Chain of custody—**(a) Drug screen testing facilities shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to testing facility processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of federal or state agencies, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, time of entry, and purpose of entry shall be maintained. (b) Drug screen testing facilities shall use internal chain of custody procedures to maintain control and accountability of specimens from receipt through completion of screening, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Authorized drug screen testing facility personnel shall be responsible for each urine or hair specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received. (c) When specimens are received, drug screen testing facility personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles and containers within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and containers and the agency's chain of custody forms shall be immediately reported to the employer and shall be noted on the drug screen testing facility's chain of custody form which shall accompany the specimens while they are in the drug screen testing facility's possession. (d) Specimen bottles shall normally be retained within the drug screen testing facility's accession area until all analyses have been completed. Aliquots and the drug screen testing facility's chain of custody forms shall be used by drug screen testing facility personnel for conducting initial screening tests. (e) Urine specimens shall be tested for adulteration.

**R. 310:638-5-4. Drug and alcohol testing rules; Drug testing facilities; Methods of analysis; Specimen storage.—**(a) **Methods of analysis.** (1) Licensed drug screen testing facilities shall have the capability of performing initial screening for the following classes of drugs or their metabolites: marijuana and cocaine, using an immunoassay which meets the requirements of the United States Food and Drug Administration for commercial distribution or another approved screening procedure or if prepared in-house by the testing facility, documented evidence shall exist indicating that the antibody meets acceptable performance criteria. (2) Initial screening shall be completed within forty-eight (48) hours following receipt of the specimen by the testing facility. If the initial screening cannot be completed within forty-eight (48) hours, the specimen shall not be accepted or shall be sent to another testing facility for screening. (3) If the drug screen testing facility is not certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists all specimens that do not test negative shall be forwarded to an appropriate testing facility for confirmation. (4) All confirmatory urine drug testing shall be performed by a testing facility that is certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists. (5) No positive urine drug screen shall be reported to the Review Officer until the positive initial screen has been confirmed as required. If the employer operates a drug screen testing facility, the employer shall not base any employment decision on a positive urine drug screen until the positive initial test has been confirmed and reviewed. (6) No positive hair drug screen shall be reported to the Review Officer until the positive initial screen has been decontaminated and confirmed by the same laboratory. (b) **Specimen storage.** (1) Urine specimens that do not receive an initial test within twenty-four (24) hours of arrival at the drug screen



testing facility shall be placed in secure refrigeration units where the temperatures do not exceed 6 ° C. Urine testing facilities shall have emergency power equipment or other appropriate storage shall be available in case of a prolonged power failure. (2) The drug screen testing facility shall log in the split specimen, with the split specimen bottle seal remaining intact. The drug screen testing facility shall store this sample securely as in 310:638-5-4(b)(1). (3) If the result of the primary specimen is negative, the drug screen testing facility may discard the split specimen. If the result of the test of the primary specimen is positive, the drug screen testing facility shall forward the split specimen, using appropriate chain of custody procedures, to a qualified testing facility for confirmation testing. The drug screen testing facility shall ensure the confirmatory testing facility retains the split specimen in properly secured frozen storage (-20 ° C or less) for a minimum of one (1) year. (4) Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

**R. 310:638-5-5. Drug and alcohol testing; Drug testing facilities; Test results; Internal review and certification.**—(a) The drug screen testing facility shall report positive test results to the employer's Review Officer within an average of five (5) working days after receipt of the specimen by the drug screen testing facility. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the employer, and the drug screen testing facility specimen identification number.(b) The drug screen testing facility shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported as positive for a specific drug. (c) The Review Officer may request from the drug screen testing facility and the drug screen testing facility shall provide quantitation of test results. The Review Officer shall not disclose quantitation of test results to the employer but shall report only whether the test was positive or negative. (d) The drug screen testing facility may transmit results to the Review Officer by electronic means, i.e., teleprinters, facsimile, or computer, in a manner designed to ensure confidentiality of the information. Results shall not be provided verbally by telephone. The drug screen testing facility shall ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system. (e) The drug screen testing facility shall send to the Review Officer the positive drug test results, which shall be signed by the individual responsible for the day-to-day management of the drug screen testing facility or the individual responsible for attesting to the validity of the test reports. (f) All results reported to the employer shall be by the same source.

**R. 310:638-5-6. Drug and alcohol testing rules; Drug testing facilities; Recordkeeping requirements; Procedure manual**—(a) **Records.** The drug screen testing facility shall maintain and make available for at least two (2) years documentation of all aspects of the testing process. (1) The required documentation shall include: (A) personnel files on all individuals authorized to have access to specimens; (B) chain of custody documents; (C) quality assurance/quality control records; (D) procedure manuals; (E) all test data, including calibration curves and any calculations used in determining test results; (F) reports; (G) performance records on proficiency testing; (H) performance on certification inspections; and (I) hard copies of computer-generated data or another read-only computerized data storage system that produces exact duplicates of the reported result. (2) The drug screen testing facility shall maintain documents for any specimen under legal challenge for an indefinite period. (b) **Procedure manual.** Each drug screen testing facility shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

**R. 310:638-5-7. Drug and alcohol testing rules; Drug testing facilities; Instruments and equipment.**—(a) Volumetric pipettes and measuring devices shall be certified for accuracy or be

checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and diluters shall be checked for accuracy and reproducibility before being placed in service and periodically thereafter. (b) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance. (c) There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

**Sec. R. 310:638-5-8. Drug and alcohol testing rules; Drug testing facilities; Standards and controls.**—(a) Drug screen testing facility standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: (1) when received; (2) when prepared or opened; (3) when placed in service; and (4) expiration date. (b) Purchase, storage, and use of all drug standards shall conform to all Federal, State, and local laws.

**R. 310:638-5-9. Drug and alcohol testing rules; Drug testing facilities; Quality assurance; Quality control**—(a) **Quality assurance.** Drug screen testing facilities shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs. (b) **Quality control.** (1) Each analytical run of specimens to be screened shall include: (A) Urine or hair specimens certified to contain no drug; (B) Urine or hair specimens fortified with known standards; and (C) Positive controls with the drug or metabolite at or near the threshold (cutoff). (2) In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values shall be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of ten (10) percent of all test samples shall be quality control specimens. The drug screen testing facility's quality control samples, prepared from fortified urine or hair samples of determined concentration shall be included in the run and shall appear as normal samples to drug screen testing facility analysts. One (1) percent of each run, with a minimum of at least one sample, shall be the drug screen testing facility's own quality control samples.

**R. 310:638-5-10. Drug and alcohol testing rules; Drug testing facilities; Proficiency testing**—(a) **Enrollment and performance.** (1) Each drug screen testing facility and each hair drug screening and confirmation testing facility shall enroll and demonstrate satisfactory performance in a Department approved proficiency testing program established by an independent group which contains those drugs and metabolites for which urine or hair is routinely screened. (2) The drug testing facility shall satisfactorily perform in one proficiency testing event prior to initial licensure and demonstrate continued satisfactory performance to maintain licensure. (3) The drug testing facility shall authorize the proficiency testing service to send results to the Oklahoma State Department of Health for review. The drug testing facility shall maintain records which shall document the handling, processing and examination of all proficiency testing samples for a minimum of two (2) years from the date of testing. (4) The drug testing facility shall ensure that proficiency testing samples are analyzed at least three (3) times each year using the same techniques as those employed for screening unknown specimens. (5) The proficiency testing samples shall be included with the routine sample run and tested with the same frequency as unknown samples by the individuals responsible for testing unknown specimens. (6) The drug testing facility shall not engage in discussions or communications concerning proficiency testing results with other drug testing facilities nor shall they send proficiency testing samples or portions of the samples to another drug testing facility for analysis. (b) **Satisfactory performance.** (1) The drug testing facility shall maintain an overall testing event score of at least eighty (80) percent for proficiency testing performance to be considered satisfactory. (2) Failure to participate in a

proficiency testing event shall result in a score of zero (0) percent for the testing event. (c) **Unsuccessful performance.** Failure to achieve satisfactory performance in two (2) consecutive testing events, or two (2) out of three (3) consecutive testing events, shall be determined to be unsuccessful performance.

**R. 310:638-7-1. Drug and alcohol testing rules; Alcohol testing facilities, Qualifications.**—(a) Testing facilities conducting alcohol screening tests shall meet the requirements of this subchapter to be eligible for licensure as an alcohol testing facility. b) Testing facilities conducting blood alcohol or urine alcohol confirmation testing shall be certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists and meet the provisions of this subchapter to be eligible for licensure as an alcohol testing facility.

**R. 310:638-7-2. Drug and alcohol testing rules; Alcohol testing facilities; Notice requirements.**— All alcohol testing facilities licensed by the Department based on certification by the United States Department of Health and Human Services or accreditation by the College of American Pathologists shall notify the Department in writing within ten (10) days of the loss of such certification or accreditation.

**R. 310:638-7-3. Drug and alcohol testing rules; Alcohol testing facilities; Locations for alcohol screening device and evidential breath testing (EBT) devices**—(a) Each testing facility shall conduct alcohol testing in a location that affords visual and aural privacy to the individual being tested, sufficient to prevent unauthorized persons from seeing or hearing test results. All necessary equipment, personnel, and materials for alcohol testing shall be provided at the location where testing is conducted. (b) A testing facility may use a mobile collection facility, e.g., a van equipped for alcohol testing, that meets the requirements of OAC 310:638-7-3(a). (c) In unusual circumstances, e.g., when it is essential to conduct a test outdoors at the scene of an accident, a test may be conducted at a location that does not fully meet the requirements of OAC 310:638-7-3(a). In such a case the testing facility or testing personnel shall provide visual and aural privacy to the employee to the greatest extent practicable. (d) The testing personnel shall supervise alcohol device testing of only one (1) employee at a time. The testing personnel shall not leave the alcohol testing location while the testing procedure for a given employee is in progress.

**R. 310:638-7-4. Drug and alcohol testing rules; Alcohol testing facilities; Initial screening tests.**— (a) **Cutoff level for initial alcohol screening tests.** An alcohol concentration of 0.02 or greater shall be considered a positive initial test for alcohol and shall be confirmed as required. A positive result obtained utilizing an alcohol screening device which meets the requirements at OAC 310:638-7-4(b) shall be considered a positive initial test for alcohol and shall be confirmed as required. (b) **Alcohol screening device and initial blood tests.** (1) All alcohol screening devices with the exception of evidential breath testing devices (EBT) shall comply with the requirements specified in the National Highway Traffic Safety Administration's Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (59 FR 7372). (2) Evidential breath testing devices shall comply with the National Highway Traffic Safety Administration's Model Specifications for Evidential Breath Testing Devices (58 FR 48705) and be included on the Conforming Products List (59 FR 18839). (3) All alcohol screening device and initial blood testing shall follow the manufacturer's instructions for test system operation and test performance. (4) Enzyme blood tests for alcohol initial testing shall be used only under limited circumstances when an alcohol screening device, EBT, or appropriately trained breath alcohol technician (BAT) is not readily available to conduct alcohol testing by another method. Blood alcohol testing is not intended to be an equal alternative method to saliva or breath testing which an employer may choose as a matter of preference. (c) **Procedures for alcohol screening device tests.** (1) When the employee enters the alcohol testing location, the testing personnel shall require the individual to provide positive identification, e.g., through use of a photo I.D. card or identification by an employer representative. (2) Alcohol testing facilities shall use internal chain of custody procedures to maintain control and accountability of specimens from receipt through completion of screening, reporting of results, during storage (if applicable), and continuing until final disposition of specimens. Each chain of custody/test report form shall include a unique sequential test

identification number. (3) There shall be a log book that is used to identify every test conducted unless an EBT is used. The log book shall include the unique sequential test identification number and the date of the test. The log book or the chain of custody form shall include the test identification number, date and time of the test, name of the testing personnel, location of the test, and test result. If the test is conducted using a disposable alcohol screening device, the log book or chain of custody form shall also contain the manufacturer's lot number and expiration date for each device used. Log books, chain of custody forms, and test results shall be maintained in a confidential manner secured from unauthorized review. (4) The testing personnel shall explain the testing procedure to the employee, and the test shall then be conducted according to the manufacturer's instructions and the results recorded on the chain of custody/test report form. (5) The testing personnel and employee shall sign a statement certifying the performance and results of the alcohol screening test. (6) In any case in which the result of the screening test is an alcohol concentration of less than 0.02, no further testing is authorized. The testing personnel shall transmit the result of less than 0.02 to the employer in a confidential manner, and the employer shall receive and store the information so as to ensure that confidentiality is maintained. (7) If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed as described at OAC 310:638-7-6 or OAC 310:638-7-7. (d) Procedures for enzyme initial alcohol blood tests. (1) Blood used for initial alcohol tests shall be collected as specified at OAC 310:638-7-7(a), however, at least three (3), five (5) milliliter samples of blood shall be collected. One (1) sample shall be used for the test performance and two (2) samples shall remain unopened and securely stored under refrigeration at two (2) to eight (8) degrees centigrade for possible confirmation testing. Collection control and transportation of specimens to the testing facility shall comply with OAC 310:638-7-7(b) & (c). (2) The enzyme initial alcohol test shall be performed as specified by the test manufacturer's instructions and the results shall be recorded on the chain of custody/test report form. If the result of this analysis is an alcohol concentration of less than 0.02, the alcohol testing facility shall transmit the test result to the employer as negative. If the alcohol concentration is 0.02 or greater, a blood alcohol confirmation test shall be performed as described at OAC 310:638-7-7.

**R. 310:638-7-5. Drug and alcohol testing rules; Alcohol testing facilities; Confirmation tests—**

All positive initial alcohol screening tests shall be confirmed using breath analyzed by an EBT or blood analyzed by gas chromatography (GC). A test performed on blood and analyzed by gas chromatography shall be considered a confirmed alcohol test. An alcohol concentration of 0.02 or greater shall be considered a positive confirmation test for alcohol.

**R. 310:638-7-6. Drug and alcohol testing rules; Alcohol testing facilities; Breath alcohol confirmation tests—**

(a) The breath alcohol technician. (1) The breath alcohol technician (BAT) shall be trained to proficiency in the operation of the EBT(s) the BAT is using and in the alcohol testing procedures of this chapter. (2) Proficiency shall be demonstrated by successful completion of a course of instruction which, at a minimum, provides the following: (A) Training in the principles of EBT methodology, operation and calibration checks; (B) The fundamentals of breath analysis for alcohol content; and (C) Procedures required in this chapter for obtaining a breath sample, and interpreting and recording EBT results. (3) Only courses of instruction for operation of EBTs that are equivalent to the United States Department of Transportation model course, as determined by the National Highway Traffic Safety Administration (NHTSA), shall be used to train BATs to proficiency. (4) The course of instruction shall provide documentation that the BAT has demonstrated competence in the operation of the specific EBT(s) the BAT shall use. (5) Any BAT who shall perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of the EBT. (6) The BAT shall receive additional training, as needed, to ensure proficiency, concerning new or additional devices or changes in technology that the BAT will use. (7) The alcohol testing facility or its agent shall establish documentation of the training and proficiency test of each BAT it uses to test employees and maintain the documentation as required at OAC 310:638-7-11(a)(3). (8) A BAT, who is a qualified supervisor of an employee, may conduct the alcohol confirmation test for that employee only if another BAT is unavailable to perform the test in a timely manner. (9) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are

deemed to be qualified as BATs. The officer shall have been certified by a state or local government to use the EBT that is to be used for the test. (b) **Devices for breath alcohol confirmation tests.** For confirmation tests, alcohol testing facilities shall use EBTs that meet the following requirements: (1) EBTs shall have the capability of providing, independently or by direct link to a separate printer, a printed result of each breath test; (2) EBTs shall be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the employee before each test and being printed out along with the test result. (3) EBTs shall be capable of printing out the manufacturer's name for the device, the device's serial number, and the time of the test. (4) EBTs shall be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level. (5) EBTs shall be capable of testing an air blank prior to each collection of breath; and (6) EBTs shall be capable of performing an external calibration check. (c) **Quality assurance plans for EBTs.** (1) In order to be used in confirmation alcohol testing an EBT shall have a quality assurance plan (QAP) developed by the manufacturer. (2) The QAP shall designate the method or methods to be used to perform external calibration checks of the device, using only calibration devices on the NHTSA "Conforming Products List of Calibrating Units for Breath Alcohol Tests." (3) The QAP shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental conditions, e.g., temperature, altitude, humidity, and contexts of operation, e.g., stationary or mobile use. (4) The QAP shall specify the tolerances on an external calibration check within which the EBT is regarded to be in proper calibration. (5) The QAP shall specify inspection, maintenance, and calibration requirements and intervals for the device. (6) The alcohol testing facility shall comply with the quality assurance plan for each EBT it uses for alcohol screening or confirmation testing. (7) The alcohol testing facility shall ensure that external calibration checks of each EBT are performed as provided in the QAP. (8) The alcohol testing facility shall take an EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT specified in the QAP. The EBT shall not be used for alcohol testing until it has been serviced and had an external calibration check resulting in a reading within the tolerances for the EBT. (9) The alcohol testing facility shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a manufacturer's representative as required. The alcohol testing facility shall also ensure that each BAT or other individual who performs an external calibration check of an EBT has demonstrated proficiency in conducting such a check of the model of EBT in question. (10) The alcohol testing facility shall maintain records of the external calibration checks of EBTs as required at OAC 310:6387-11(c). (11) When the alcohol testing facility is not using the EBT at an alcohol testing site, the employer shall store the EBT in a secure space. (d) **Chain of custody.** Alcohol testing facilities shall use internal chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage (if applicable), and continuing until final disposition of specimens. Each chain of custody/test report form shall include a unique test identification number. (e) **Procedures for confirmation tests.** (1) If the BAT conducting the confirmation test is not the person who conducted the screening test, the BAT shall follow the procedures at OAC 310:638-7-4(c)(1). (2) The BAT shall instruct the employee not to eat, drink, put any object or substance in the 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 shall not be less than fifteen (15) minutes. The confirmation test shall be conducted within twenty (20) minutes of the completion of the screening test. The BAT shall 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 that it is for the employee's benefit. The BAT shall also explain that the test shall be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the chain of custody/test report form. (3) Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument. (4) Before the confirmation test is administered for each employee, the BAT shall ensure that he or she and the employee read the sequential number displayed on the EBT and confirm that the number matches the number on the chain of custody/test report form. (5) Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check

of external calibration is conducted and the EBT is found to be within tolerance limits. (6) An individually sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions. (7) The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained. (8) In the event that the screening and confirmation test results are not identical, the confirmation test result shall be deemed to be the final result. (9) If the EBT provides a printed result, but does not print the results directly onto the chain of custody/test report form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the chain of custody/test report form in the designated space, using a method that shall provide clear evidence of removal, e.g., tamper-evident tape. The printout shall include the test result and the sequential number. (10) If the EBT prints the test results directly onto the chain of custody/test report form, the BAT shall show the employee the result displayed on the EBT. The printout shall include the test result and the sequential number. (11) The testing personnel and employee shall sign a statement included on the chain of custody/test report form certifying the performance and results of the alcohol confirmation test. (12) If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the "Remarks" section. Both the employee and the BAT shall initial or sign the notation. The test shall be invalid and the employer and employee shall be so advised. (13) The BAT shall transmit all results to the employer in a confidential manner. (14) An employer shall designate at least one (1) employer representative for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BATs to the employer concerning the alcohol testing results of employees shall be to a designated employer representative. The employer shall store the information so as to ensure confidentiality is maintained. (15) Such transmission shall be in writing, in person, or by electronic means, but the BAT shall ensure immediate transmission to the employer of results that require the employer to prevent the employee from performing a safety sensitive function. (f) **Refusal to test and uncompleted tests.** (1) Refusal by an employee to sign the certification statement, to provide breath, to provide an adequate amount of breath, or otherwise not cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the "Remarks" section of the chain of custody/test report form. The testing process shall be terminated and the BAT shall immediately notify the employer. (2) If a confirmation test cannot be completed, or if an event occurs that invalidates the test, the BAT shall, if practicable, begin a new confirmation test, as applicable, using a new chain of custody/test report form with a new sequential test number. (g) **Inability to provide an adequate amount of breath.** (1) The following procedures shall be completed in any case in which an employee is unable, or alleges an inability, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition. (2) The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the employer. (3) If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the chain of custody/test report form and immediately inform the employer. (4) If the employee attempts and fails to provide an adequate amount of breath, the employer shall proceed as follows: (A) The employer shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability to provide an adequate amount of breath. (B) If the physician determines that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the employer a written statement of the basis for this conclusion. (C) If the physician is unable to make the determination set forth at OAC 310:638-7-6(g)(2)(i), the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The physician shall provide a written statement of the basis for this conclusion to the employer. (h) **Invalid tests.** A breath alcohol test shall be invalid under the following circumstances: (1) The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid; (2) The BAT does not observe the minimum fifteen (15) minute waiting period prior to the confirmation test, as provided at OAC 310:638-7-6(e)(2); (3) The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration

of the test, as provided at OAC 310:638-7-6(e)(3); (4) The BAT does not sign the chain of custody/test report form as required; (5) The BAT fails to note on the "Remarks" section of the chain of custody/test report form that the employee failed or refused to sign the form following the recording or printing on, or attachment to, the form of the test result; (6) An EBT fails to print a confirmation test result; or (7) The sequential test number of alcohol concentration displayed on the EBT is not the same as the sequential test number of alcohol concentration on the printed result.

**R. 310:638-7-7. Drug and alcohol testing rules; Alcohol testing facilities; Blood alcohol confirmation tests.**—(a) Collection procedures for blood alcohol tests. Personnel who collect blood for alcohol tests shall be licensed, certified, or otherwise authorized to withdraw blood in accordance with Federal, State, and local laws. (1) Blood shall be withdrawn in accordance with accepted medical practices using at least the following items: (A) A suitable clean, sterile, dry tube with inert closure, containing the appropriate anticoagulant(s) and preservative(s) for alcohol analysis by gas chromatography; (B) A chain of custody form; (C) A label for the tube; (D) A sterile, non-alcoholic swab; and (E) An appropriate, disposable blood extraction device. (2) Blood shall be withdrawn by venipuncture, after appropriate preparation of the puncture site, and with necessary precautions to maintain asepsis and avoid contamination of specimens. Puncture site preparation and skin cleansing shall be performed without the use of alcohol or other volatile organic disinfectants. (3) At least two (2), five (5) milliliter samples of blood shall be collected directly in or immediately deposited into suitable tubes as described at OAC 310:638-7-7(a). The collection personnel shall immediately label the tube as required by chain of custody procedures and transport to the testing facility as specified at OAC 310:638-7-7(c). (4) Collection personnel shall use blood alcohol collection materials in accordance with the supplier's instructions, and as required to meet the specimen requirements of the testing facility. Collection personnel shall not use collection materials after their expiration date. Collection personnel shall not re-use a blood extraction device. (b) **Collection control.** Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon collection of specimens. Handling and transportation of blood specimens from one (1) authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens. (c) **Transportation to the testing facility.** Collection site personnel shall arrange to transport the collected specimens to the alcohol testing facility. The specimens shall be placed in containers designed to minimize the possibility of damage during transport, e.g., specimen boxes or padded mailers; and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the tube, the collection site supervisor shall sign and enter the date specimens were sealed in the container for transfer. The collection site personnel shall ensure that the chain of custody documentation is placed in each container sealed for transfer to the alcohol testing facility. (d) **Methods of analysis and result reporting.** The alcohol testing facility shall analyze an unopened sample for its alcohol concentration using gas chromatography. If the result of this analysis is an alcohol concentration of less than 0.02, the alcohol testing facility shall transmit the test result to the employer as negative. If the alcohol concentration is 0.02 or greater, the alcohol testing facility shall transmit the quantitative result to the Review Officer. One (1) sample shall remain unopened and refrigerated at two (2) to eight (8) degrees centigrade for at least one (1) year for further confirmation or the challenge of results by the employee. The alcohol testing facility shall transmit the results of alcohol confirmation tests to the employer in a confidential manner, and the employer shall receive and store the information so as to ensure that confidentiality is maintained.

**R. 310:638-7-8. Drug and alcohol testing rules; Alcohol testing facilities; Rehabilitation/post-rehabilitation urine alcohol testing**—(a) **Criteria for urine alcohol testing.** Urine shall be considered an appropriate specimen for alcohol testing only when monitoring an employee's compliance with program requirements during the course of a substance abuse rehabilitation program and for a defined time period after completion of such a substance abuse rehabilitation program. The period of time an employee shall be subject to urine alcohol testing after completion of a substance abuse rehabilitation program shall be specified by the employer's written policy or as part of a written agreement between employer and employee. Urine shall not be considered an appropriate specimen for alcohol testing under any other conditions. (b) **Cutoff levels for urine alcohol testing.** A urine alcohol concentration of 0.02 or greater shall be considered a positive initial test for alcohol. A urine

alcohol concentration of 0.02 or greater shall be considered a positive confirmation test for alcohol. (c) **Urine specimen collection procedures.** Urine for rehabilitation/post-rehabilitation alcohol testing shall be collected as required for urine drug testing as described at OAC 310:638-1-8 by collection site personnel who meet the qualifications and training requirements at OAC 310:638-1-10. (d) **Urine alcohol tests.** (1) All initial urine alcohol screening tests shall be performed using gas chromatography or an enzyme assay which meets the requirements of the United States Food and Drug Administration for commercial distribution or another approved screening procedure. A test performed on urine and analyzed by gas chromatography shall be considered a confirmed urine alcohol test. (2) All specimens identified as positive on the initial test shall be confirmed using gas chromatography, or an equivalent accepted method of equal or greater accuracy approved by the Commissioner of Health. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the testing facility record as "greater than the highest standard curve value." (3) If the urine alcohol testing facility is not certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists the urine alcohol testing facility shall meet the requirements at OAC 310:638-5-1 through OAC 310:638-5-9 for drug screen testing facilities with the exception of OAC 310:638-5-4(a)(1) for initial urine alcohol testing.

**R. 310:638-7-9. Drug and alcohol testing rules; Alcohol testing facilities; Test results; Internal review and certification.**—(a) The testing facility shall report positive test results to the employer's Review Officer within an average of five (5) working days after receipt of the specimen by the testing facility. Before any test result is reported, including the results of initial tests, confirmatory tests, or quality control data, it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall quantify the concentration of alcohol (ethanol), whether positive or negative, the cutoff, the specimen number assigned by the employer, and the testing facility specimen identification number. (b) The testing facility shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported as positive. (c) The Review Officer shall not disclose quantitation of test results to the employer but shall report only whether the test was positive or negative. (d) The testing facility may transmit results to the Review Officer by electronic means, i.e., teleprinters, facsimile, or computer, in a manner designed to ensure confidentiality of the information. Results shall not be provided verbally by telephone. The testing facility shall ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system. (e) The testing facility shall send to the Review Officer positive alcohol test results, which shall be signed by the individual responsible for the day-to-day management of the testing facility or the individual responsible for attesting to the validity of the test reports. (f) All results reported to the employer shall be by the same source

**R. 310:638-7-10. Drug and alcohol testing; Alcohol testing facilities; Proficiency testing.**—(a) **Enrollment and performance.** (1) The testing facility performing blood and/or urine alcohol testing shall enroll in and demonstrate satisfactory performance in an approved proficiency testing program for the blood and/or urine alcohol testing method(s) it performs. (2) The testing facility performing blood and/or urine alcohol testing shall satisfactorily perform at least one (1) proficiency testing event prior to initial licensure and demonstrate continued satisfactory performance to maintain licensure. (3) The testing facility performing blood and/or urine alcohol testing shall authorize the proficiency testing service to send results to the Oklahoma State Department of Health for review. The testing facility shall maintain records which shall document the handling, processing and examination of all proficiency testing samples for at least two (2) years from the date of testing. (4) The testing facility performing blood and/or urine alcohol testing shall ensure that proficiency testing samples are analyzed at least three (3) times each year using the same techniques as those employed for screening unknown specimens. (5) The proficiency testing samples shall be included with the routine sample run and tested with the same frequency as unknown samples by the individuals responsible for testing unknown specimens. (6) The testing facility performing blood and/or urine alcohol testing shall not engage in discussions or communications concerning proficiency testing results with other testing facilities nor shall they send proficiency testing samples or portions of the samples to another testing facility for analysis. (b) **Satisfactory performance.** (1) The testing facility performing blood and/or urine alcohol testing shall maintain an overall testing event score of at least eighty (80) percent for



	<p>proficiency testing performance to be considered satisfactory. (2) Failure to participate in a proficiency testing event shall result in a score of zero (0) percent for the testing event. (c) <b>Unsuccessful performance.</b> Failure to achieve satisfactory performance in two (2) consecutive testing events, or two (2) of three (3) consecutive testing events, shall be determined to be unsuccessful performance.</p> <p><b>R. 310:638-7-11. Drug and alcohol testing rules; Alcohol testing facilities; Recordkeeping requirements.</b>—(a) <b>EBTs and BATs.</b> Each alcohol testing facility or its agent shall maintain the following records for at least two (2) years: (1) Records of the inspection and maintenance of each EBT used in employee testing; (2) Documentation of the alcohol testing facility's compliance with the QAP for each EBT it uses for alcohol testing; (3) Records of the training and proficiency testing of each BAT used in employee testing; (4) Records of tests performed. Records shall include copies of chain of custody forms and test results. These records shall be maintained in a confidential manner secured from unauthorized review. (b) <b>Other screening and confirmatory testing.</b> Each alcohol testing facility or its agent shall maintain the following records for at least two (2) years: (1) Records of the inspection and maintenance of each device/instrument used in employee testing; (2) Records of proficiency testing results; (3) Records of tests performed, including log books, copies of chain of custody forms, and test reports. These records shall be maintained in a confidential manner secured from unauthorized review. (c) <b>Calibration records.</b> Each alcohol testing facility or its agent shall maintain for at least five (5) years records pertaining to the calibration of each device/instrument used in alcohol testing, including records of the results of external EBT calibration checks.</p> <p><b>E.O. 2004-38. State government workplaces; Executive Order No. 2004-38, Drug-free workplaces .</b>—I, Brad Henry, pursuant to the authority vested in me as Governor of the State of Oklahoma and the federal Drug-Free Workplace Act of 1988 direct the following: 1. All State government work places shall be free from illegal manufacture, distribution, dispensation, possession or use of any controlled substance. Such activities shall be grounds for disciplinary action, up to and including termination. 2. State employees convicted of any work-place-related drug offense which does not result in discharge or forfeiture of position may be required to successfully complete a recognized drug treatment or rehabilitation program. 3. All state agencies directly receiving federal funds through grants or contracts are hereby directed to develop and implement policies for identifying and reporting work-place-related drug convictions of State employees and any personnel actions taken pursuant to such convictions to appropriate federal funding agencies. 4. All state agencies, boards and commissions are directed to adopt such policies and procedures as are necessary to implement the provisions of this order and to avoid any associated loss of federal funding.</p>
Oregon	<p><b>438.435. Clinical laboratories; Specimens and screening for substance abuse; Confirmation tests; Standards; Out-of-state tests.</b>—(1) In addition to duties which a clinical laboratory may perform under ORS 438.010 to 438.510, a laboratory is authorized to perform appropriate tests, examinations or analyses on materials derived from the human body for the purpose of detecting substances of abuse in the body. All laboratories performing the tests, examinations or analyses must be licensed under the provisions of ORS 438.010 to 438.510 and must employ qualified technical personnel to perform the tests, examinations and analyses. (2) In order to perform such tests, examinations or analyses, the laboratory may examine specimens submitted by persons other than those described in ORS 438.430 (1) and shall report the result of any test, examination or analysis to the person who submitted the specimen. When the substance of abuse test is for nonmedical employment or pre-employment purposes, and a written request is provided, the test result shall be reported to the person from whom the specimen was originally obtained. (3) When the specimen of a person tested for substances of abuse is submitted to the laboratory and the test result is positive, the laboratory shall perform a confirming test which has been designated by rule of the Health Division as the best available technology for use to determine whether or not the substance of abuse identified by the first test is present in the specimen prior to reporting the test results. (4) The Health Division by rule shall set standards for special category laboratories that engage only in the initial testing for substances of abuse in the body, including registration procedures for such laboratories and personnel. (5) The operator of a substances of abuse on-site screening facility may use substances of abuse on-site screening tests if the test results are not for use in diagnosing or preventing disease and are not for use by physicians, dentists or other licensed health care professionals in treating humans. Any entity</p>

using the test shall pay a yearly filing fee, not to exceed \$50, and file a registration form as provided by rule of the Health Division of the Department of Human Services that: (a) States the current name and address of the entity, the telephone number of the entity, if any, and the name of a contact individual at each on-site facility operated by the entity; and (b) Certifies that: (A) The tests are being administered according to the federal Food and Drug Administration package insert that accompanies the test; (B) The tests are being administered according to the instructions of the manufacturer; (C) Custody chain procedures are being followed; (D) Operators of the substances of abuse on-site screening facility are trained in the use of the substances of abuse on-site screening tests by the manufacturer; and (E) If the substances of abuse on-site screening facility obtains a positive test result on a specimen and the entity indicates that the test result is to be used to deny or deprive any person of employment or any benefit, or may otherwise result in adverse employment action, the same specimen shall be submitted to a clinical laboratory licensed under ORS 438.110 and 438.150 or an equivalent out-of-state facility and the presence of a substance of abuse confirmed prior to release of the on-site test result. (6) The Health Division by rule shall set reasonable standards for the screening by correctional agencies of inmates within state and local correctional facilities and offenders on parole, probation or post- prison supervision for substances of abuse. The standards shall include, but not be limited to, the establishment of written procedures and protocols, the qualifications and training of individuals who perform screening tests, the approval of specific technologies and the minimum requirements for record keeping, quality control and confirmation of positive screening results. (7) If an initial test by a special category laboratory under subsection (4) of this section or a special category screening under subsection (6) of this section shows a result indicating the presence of a substance of abuse in the body, a confirmatory test shall be conducted in a licensed clinical laboratory if the results are to be used to deprive or deny any person of any employment or benefit. If a screening test of an inmate of a state or local correctional facility is positive for a substance of abuse, the inmate may be held in a secure facility pending the outcome of the confirmatory test. If the confirmatory test is positive, the inmate may be held in a secure facility pending the outcome of any hearing to determine what action will be taken. (8) If any test for substances of abuse is performed outside this state the results of which are to be used to deprive or deny any person any employment or any benefit, the person desiring to use the test shall have the burden to show that the testing procedure used meets or exceeds the testing standards of this state.

**825.410. Motor carriers; In-house drug and alcohol testing program**—(1) Every motor carrier must: (a) Have an in-house drug and alcohol testing program that meets the federal requirements of 49 C.F.R. part 382; or (b) Be a member of a consortium, as defined in 49 C.F.R. 382.107, that provides testing that meets the federal requirements. (2) At the time of registration or renewal of registration of a commercial vehicle or a commercial motor vehicle under any provision of ORS chapter 803 or 826, a motor carrier must certify to the Department of Transportation that the carrier is in compliance with subsection (1) of this section and, if the carrier belongs to a consortium, must provide the department with the names of persons who operate the consortium. (3) When a medical review officer of a motor carrier's testing program or of the consortium the carrier belongs to determines that a positive test result is valid, the officer must report the finding to the department.

**825.412. Motor carriers; In-house drug and alcohol testing program; Hearing on test results; Notice; Rules; Recordkeeping**—(1) When the Department of Transportation receives a report under ORS 825.410, the department shall notify the person who is the subject of the report that the person has a right to a hearing to determine whether the test results reported under ORS 825.410 will be placed on the person's employment driving record. (2) The notice shall inform the person of the procedure for requesting a hearing, including but not limited to the time in which a hearing must be requested and the manner of making the request. (3) A hearing under this section shall be limited to the following issues: (a) Whether the person named in the report is the person who took the test. (b) Whether the motor carrier or consortium has a program that meets the requirements of ORS 825.410. (c) Whether the medical review officer making the report correctly followed the procedures for testing established by the motor carrier or consortium. (4) If the administrative law judge determines that the person is the person named in the report, that the motor carrier or consortium has a program meeting the requirements of ORS 825.410 and that the medical review officer followed established procedures, the administrative law judge shall order the positive test result to be entered into the employment

driving record of the person. (5) The department shall adopt rules specifying requirements for requesting a hearing under this section. (6) If a hearing is not requested within the time limit established by rule, or if the person does not appear at a hearing, the department shall place the information about the positive test result on the employment driving record of the person. (7) The department may not be held civilly liable for any damage resulting from placing information about a drug test result on the employment driving record as required by this section or for any damage resulting from release of the information by the department that occurs in the normal course of business.

**802.202. Dept. of Transportation; Drug test results and disclosure.**—The Department of Transportation shall disclose information about a drug test result that is made to the department under ORS 825.410 only if the person who requests the information provides the department with written permission from the person who is the subject of the report.

**659.840. Breathalyzer tests generally prohibited; Exception where person suspected to be under the influence of alcohol.**—(1) No person, or agent or representative of such person, shall require, as a condition for employment or continuation of employment, any person or employee to take a breathalyzer test. However, nothing in this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test. (2) For the purposes of this section, an individual is "under the influence of intoxicating liquor" when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision.

**659.990. Penalties for violations.**—(1) Violation of ORS 659.815 is punishable, upon conviction, by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year, or both. (2) Violation of ORS 659.805 by any officer or agent of a corporation or any other person is punishable, upon conviction, by a fine of not less than \$50 nor more than \$250, or by imprisonment in the county jail not less than 30 nor more than 90 days, or both. (3) Violation of ORS 659.800 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$200 or by imprisonment in the county jail for not less than one month nor more than six months. (4) Violation of ORS 659.810 or 659.845 is punishable, upon conviction, by a fine of not more than \$100 or imprisonment in the county jail for not more than 60 days, or both. (5) Any person who violates ORS 659.825, upon conviction, shall be required to make immediate restitution of delinquent payments to the fund or funds mentioned in ORS 659.825 and shall be punished by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year, or both. (6) Violation of ORS 659.840 is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for not more than one year, or by both.

**659A.300. Employers prohibited from requiring breathalyzer; Exceptions; Violations.**—(1) Except as provided in this section, it is an unlawful employment practice for any employer to subject, directly or indirectly, any employee or prospective employee to any breathalyzer test, polygraph examination, psychological stress test, genetic test or brain-wave test. (2) As used in this section: (a) "Breathalyzer test" means a test to detect the presence of alcohol in the body through the use of instrumentation or mechanical devices. (b) "Genetic test" has the meaning given in ORS 192.531. (c) "Polygraph examination or psychological stress test" means a test to detect deception or to verify the truth of statements through the use of instrumentation or mechanical devices. (d) An individual is "under the influence of intoxicating liquor" when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision. (3) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a polygraph examination to an individual, if the individual consents to the examination, during the course of criminal or civil judicial proceedings in which the individual is a party or witness or during the course of a criminal

investigation conducted by a law enforcement agency, as defined in ORS 181.010, a district attorney or the Attorney General. (4) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test. (5) Subsection (1) of this section does not prohibit the administration of a genetic test to an individual if the individual or the individual's representative grants informed consent in the manner provided by ORS 192.535, and the genetic test is administered solely to determine a bona fide occupational qualification.

**659A.885. Unlawful practices, Remedies; Unlawful discharge or discrimination; Civil action; Injunctive relief; Costs and fees (1 of 2 Versions; Eff. until 1/1/2010).**—(1) Any individual claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and such other equitable relief as may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section: (a) The judge shall determine the facts in an action under this subsection; and (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3). (2) An action may be brought under subsection (1) of this section alleging a violation of section 5 of this 2007 Act or ORS 25.337, 25.424, 171.120, 399.235, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 (1) or (3). (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262, 659A.318 or 659A.421 (1) or (3): (a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages; (b) At the request of any party, the action shall be tried to a jury; (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and (d) Any attorney fee agreement shall be subject to approval by the court. (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater. (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater. (6) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection: (a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages; (b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action; (c) At the request of any party, the action shall be tried to a jury; (d) The court shall award reasonable attorney fees to a prevailing plaintiff; (e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a

trial court; and (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

**659A.885. Unlawful practices, Remedies; Unlawful discharge or discrimination; Civil action; Injunctive relief; Costs and fees (2 of 2 Versions; Eff. 1/1/2010)**—(1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section: (a) The judge shall determine the facts in an action under this subsection; and (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3). (2) An action may be brought under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 171.120, 399.235, 408.230, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 or section 2 of this 2009 Act [H.B. 3162, L. 2009] or section 2 of this 2009 Act [Ch. 378 (H.B. 3256), L. 2009] or section 2 of this 2009 Act [S.B. 928, L. 2009]. (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262, 659A.318 or 659A.421 or section 2 of this 2009 Act [H.B. 3162, L. 2009] or section 2 of this 2009 Act [Ch. 378 (H.B. 3256), L. 2009] or section 2 of this 2009 Act [S.B. 928, L. 2009]: (a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages; (b) At the request of any party, the action shall be tried to a jury; (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and (d) Any attorney fee agreement shall be subject to approval by the court. (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater. (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater. (6) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406, may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection: (a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages; (b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action; (c) At the request of any party, the action shall be tried to a jury; (d) The court shall award reasonable attorney fees to a prevailing plaintiff; (e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1). (7) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or

federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty: (a) In an amount not exceeding \$50,000 for a first violation; and (b) In an amount not exceeding \$100,000 for any subsequent violation. (8) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court. (9) In an action under subsection (1) or (7) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law: (a) "Aggrieved person" includes a person who believes that the person: (A) Has been injured by an unlawful practice or discriminatory housing practice; or (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur. (b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

**475.918.Falsifying drug test results as a Class B misdemeanor offense; "Drug test" defined.**— (1) A person commits the crime of falsifying drug test results if the person intentionally uses, or possesses with intent to use, any substance or device designed to falsify the results of a drug test of the person. (2) Falsifying drug test results is a Class B misdemeanor. (3) As used in this section and ORS 475.982, "drug test" means a lawfully administered test designed to detect the presence of a controlled substance.

**R. 735-070-0185 Commercial motor vehicle drivers, Reports of positive drug tests from medical review officer; Notice.**—(1) The report submitted by a medical review officer under ORS 825.410 must include a Report of Positive Drug Test Under ORS 825.410 (DMV form 735-7200) and: (a) A legible copy of a completed Federal Custody and Control Form, Copy 2—Medical Review Officer Copy; or (b) Either an original or legible copy of a document that contains, at a minimum, the following information: (A) Full name of the person tested; (B) Specimen ID number; (C) Place of Specimen Collection; (D) Date of Specimen Collection; (E) Collector's name; (F) Whether a split specimen was collected; (G) The person tested certified by signature that: he or she provided an unadulterated specimen to the collector; the specimen bottle was sealed with a tamper evident seal in the person's presence; and the information on the label affixed to the specimen bottle was correct; (H) The date the Medical Review Officer verified the test result; and (I) Signature of the Medical Review Officer. (2) The Department of Transportation will not send notice as required by ORS 825.412 until a report as described in section (1) of this rule is received by the agency. (3) The requirements of this rule shall apply retroactively to all reports submitted on or after September 21, 2000.

**R. 735-070-0190.Commercial motor vehicle drivers, Reports of positive drug tests from medical review officer; Notice to driver; Request for hearing, Procedures.**—When the Department of Transportation (ODOT) receives a report described in OAR 735-070-0185, ODOT will notify the person who is the subject of the report that the person has a right to request a hearing to determine whether a positive drug test result will be placed on the person's employment driving record. (1) A hearing request must be in writing and must: (a) Include the person's full name; (b) Include the person's complete mailing address; (c) Include the person's Oregon driver license number; (d) Include a brief statement of the issues the person proposes to raise at the hearing. The issues are limited to those set forth in ORS 825.412(3); (e) Be postmarked within 30 days of the date of the notice. If the hearing request is not postmarked or a postmark date cannot be determined, it must be received by the Driver and Motor Vehicle Services Division of ODOT (DMV) within 30 days of the date of the notice; and (f) Be mailed or personally delivered to DMV Headquarters, 1905 Lana Avenue NE, Salem, OR 97314, or if sent by facsimile machine (FAX), received by DMV at FAX number (503)

945-5521. (2) A hearing request should also include: (a) The person's date of birth; (b) The telephone number where the person can be reached between 8 a.m. and 5 p.m.; and (c) The dates and times the person or the person's attorney cannot appear at a hearing. (3) Except for good cause shown: (a) Any factual or legal defense not set forth in the hearing request is considered waived; and (b) No evidence offered by a person who requests a hearing will be admitted into the hearing record on any factual or legal defense that is waived. (4) If good cause is shown under section (3) of this rule, the administrative law judge must give ODOT sufficient opportunity to obtain and present in the contested case hearing any testimony or documents deemed necessary by the agency to respond to evidence offered by the person on any factual or legal defense. (5) Except as provided in OAR 137-003-0528, the person's right to a hearing is waived if a hearing is not requested within the time period specified in section (1) of this rule and the notice becomes the final order by default. The test results will be posted to the person's employment driving record. The time period for requesting a hearing will be computed as set forth in OAR 137-003-0520(10).

**Rhode Island**

**28-6.5-1. Urine and blood tests as condition of continued employment; Procedures and conditions for drug testing; Confidentiality of information; Penalty for violations**—(a) No employer or agent of any employer shall, either orally or in writing, request, require, or subject any employee to submit a sample of his or her urine, blood, or other bodily fluid or tissue for testing as a condition of continued employment unless the test is administered in accordance [with] this section. Employers may require that an employee submit to a drug test if: (1) The employer has reasonable grounds to believe based on specific aspects of the employee's job performance and specific contemporaneous observations, capable of being articulated, concerning the employee's appearance, behavior or speech that the employee's use of controlled substances is impairing his or her ability to perform his or her job; and (2) The employee provides the test sample in private, outside the presence of any person; and (3) Employees testing positive are not terminated on that basis, but are instead referred to a substance abuse professional (a licensed physician with knowledge and clinical experience in the diagnosis and treatment of drug related disorders, a licensed or certified psychologist, social worker, or EAP professional with like knowledge, or a substance abuse counselor certified by the National Association of Alcohol and Drug Abuse Counselors (all of whom shall be licensed in Rhode Island)) for assistance; provided, that additional testing may be required by the employer in accordance with this referral, and an employee whose testing indicates any continued use of controlled substances despite treatment may be terminated; and (4) Positive tests of urine, blood or any other bodily fluid or tissue are confirmed by a federally certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate; and (5) The employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by an independent testing facility and so advises the employee; and (6) The employer provides the employee with a reasonable opportunity to rebut or explain the results; and (7) The employer has promulgated a drug abuse prevention policy which complies with requirements of this chapter; and (8) The employer keeps the results of any test confidential, except for disclosing the results of a "positive" test only to other employees with a job-related need to know, and to defend against any legal action brought by the employee against the employer. (b) Any employer who subjects any person employed by him or her to such a test, or causes, directly or indirectly, any employee to take such a test, except as provided for by this chapter, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or not more than one year in jail, or both. (c) In any civil action alleging a violation of this section, the court may: (1) Award punitive damages to a prevailing employee in addition to any award of actual damages; (2) Award reasonable attorneys' fees and costs to a prevailing employee; and (3) Afford injunctive relief against any employer who commits or proposes to commit a violation of this section. (d) Nothing in this chapter shall be construed to impair or affect the rights of individuals under chapter 5 of this title. (e) Nothing in this chapter shall be construed to prohibit or apply to the testing of drivers regulated under 49 C.F.R. §40.1 et seq. and 49 C.F.R. Part 382 if this testing is performed pursuant to a policy mandated by the federal government, nor to prohibit an employer in the public utility or mass transportation industry from requiring testing otherwise barred by this chapter if this testing is explicitly mandated by federal regulation or statute as a condition for the continued receipt of federal funds.

**28-6.5-2 Urine and blood testing; Prospective employees**—(a) Except as provided in subsections (b) and (c), an employer may require a job applicant to submit to testing of his or her blood, urine, or any

	<p>other bodily fluid or tissue if: (1) The job applicant has been given an offer of employment conditioned on the applicant's receiving a negative test result; (2) The applicant provides the test sample in private, outside the presence of any person; and (3) Positive tests of urine, blood, or any other bodily fluid or tissue are confirmed by a federal certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate. (b) The pre-employment drug testing authorized by this section does not extend to job applicants for positions with any agency or political subdivision of the state or municipalities, except for applicants seeking employment as a law enforcement or correctional officer, firefighter, or any other position where such testing is required by federal law or required for the continued receipt of federal funds. (c) An employer is not required to comply with the conditions of testing under subsection (a) to the extent they are inconsistent with federal law.</p> <p><b>28-6.5.3. Severability of law.</b>—If any provision of this chapter or the application of this chapter to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the chapter, which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.</p>
<p><b>South Carolina</b></p>	<p><b>44-107-30. Certification that drug-free conditions exist required for eligibility for certain state grants and contracts.</b>— No person, other than an individual, may receive a domestic grant or be awarded a domestic contract for the procurement of any goods, construction, or services for a stated or estimated value of fifty thousand dollars or more from any state agency unless the person has certified to the using agency that it will provide a drug-free workplace by: (1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition; (2) establishing a drug-free awareness program to inform employees about: (a) the dangers of drug abuse in the workplace; (b) the person's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug violations; (3) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by item (1); (4) notifying the employee in the statement required by item (1) that, as a condition of employment on the contract or grant, the employee will: (a) abide by the terms of the statement; and (b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction; (5) notifying the using agency within ten days after receiving notice under item (4)(b) from an employee or otherwise receiving actual notice of the conviction; (6) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee convicted as required by Section 44-107-50; and (7) making a good faith effort to continue to maintain a drug-free workplace through implementation of items (1), (2), (3), (4), (5), and (6).</p> <p><b>44-107-40. Individual required to certify absence of drug-related activity to qualify for state grant or contract.</b>—No state agency may enter into a domestic contract or make a domestic grant with any individual for a stated or estimated value of fifty thousand dollars or more unless the contract or grant includes a certification by the individual that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.</p> <p><b>44-107-50. Required response to employee's conviction of drug-related offense.</b>—A grantee or contractor shall, within thirty days after receiving notice from an employee of a conviction pursuant to Article 3, Chapter 53 of this title: (1) take appropriate personnel action against the employee up to and including termination; or (2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for the purposes by a federal, state, or local health, law enforcement, or other appropriate agency.</p> <p><b>44-107-60. Conditions justifying suspension or termination of state grant or contract.</b>—Each domestic contract or domestic grant awarded by a state agency is subject to suspension of payments or termination or both, and the contractor or grantee under the contract or grant or the individual who entered the contract with or received the grant from the state agency, as applicable, is subject to</p>



suspension or debarment in accordance with Section 11-35-4220 if the appropriate Chief Procurement Officer, as defined in Section 11-35-310(5), determines that: (1) the contractor or grantee has made a false certification under Section 44-107-30 or 44-107-40; (2) the contractor or grantee violates the certification by failing to carry out the requirements of Section 44-107-30(1), (2), (3), (4), (5), and (6); (3) the contractor or grantee does not take appropriate remedial action against employees convicted on drug offenses as specified in Section 44-107-50; or (4) the number of employees of the contractor or grantee who have been convicted of violations of criminal drug statutes for violations occurring in the workplace reasonably indicates that the contractor or grant recipient has failed to make a good faith effort to provide a drug-free workplace as required by this chapter.

**44-107-70.Duration of debarment.**—Upon issuance of any final decision under this chapter requiring debarment of a contractor, grantee, or individual, the contractor, grantee, or individual is ineligible for award of any contract or grant by any state agency for a period specified in the decision of at least one year but not to exceed five years.

**44-107-80.Technical assistance with implementation.**—Upon request, the Department of Alcohol and Other Drug Abuse Services shall provide technical assistance to any state agency to assist with the implementation of this chapter. Additionally, upon request, the names and addresses of contractors and grantees providing a drug-free workplace pursuant to this chapter must be provided to the department.

**44-107-90.Failure to comply with this chapter not grounds for protest.**—Failure to comply with any provision of this chapter shall not be grounds for any protest under Section 11-35-4210.

**41-1-15.Establishment of drug prevention program in workplace; confidentiality of information concerning test results.**—(A) Notwithstanding any other provision of the law, an employer may establish a drug prevention program in the workplace pursuant to Section 38-73-500(B) which shall include: (1) a substance abuse policy statement that balances the employer's respect for individuals with the need to maintain a safe, productive, and drug-free environment. The intent of the policy shall be to help those who need it while sending a clear message that the illegal use of nonprescription controlled substances or the abuse of alcoholic beverages is incompatible with employment at the specified workplace; and (2) notification to all employees of the drug prevention program and its policies at the time the program is established by the employer or at the time of hiring the employee, whichever is earlier. (B) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding. (C) Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum: (1) the name of the person who is authorized to obtain the information; (2) the purpose of the disclosure; (3) the precise information to be disclosed; (4) the duration of the consent; and (5) the signature of the person authorizing release of the information. (D) Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

**41-35-120. Disqualification for unemployment compensation benefits; Discharge for cause relating to violation of employer's drug-free workplace policy.**—Any insured worker is ineligible for benefits for: (2) **Discharge for cause connected with the employment.** (a) If the commission finds that he has been discharged for cause connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing not less than five nor more than the next twenty-six weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker's benefits to be calculated

by multiplying his weekly benefit amount by the number of weeks of his disqualification. The ineligibility period must be determined by the commission in each case according to the seriousness of the cause for discharge. A charge of discharge for cause connected with the employment may not be made for failure to meet production requirements unless the failure is occasioned by willful failure or neglect of duty. "Cause connected with the employment" as used in this item requires more than a failure in good performance of the employee as the result of inability or incapacity. (b) An insured worker is considered to have been discharged for cause pursuant to this item, and is ineligible for benefits if the: (i) company has communicated a policy prohibiting the illegal use of drugs, the violation of which may result in termination; and (ii) insured worker fails or refuses to provide a specimen pursuant to a request from the employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or (iii) insured worker provides a blood, hair, or urine specimen during a drug test administered on behalf of the employer, which tests positive for illegal drugs or legal drugs used unlawfully, provided: (A) the sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel; and (B) the test was performed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists or the State Law Enforcement Division; and (C) any initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse. (iv) for purposes of this item, "unlawfully" means without a prescription. (c) If an insured worker makes an admission pursuant to the employer's policy, which provides that voluntary admissions made before the employer's request to the employee to submit to testing may protect an employee from immediate termination, then the admission is inadmissible for purposes of this section as long as the: (A) employer has communicated a written policy, which provides protection from immediate termination for employees who voluntarily admit prohibited drug use before the employer's request to submit to a test; and (B) employee makes the admission specifically pursuant to the employer's policy. (d) Information, interviews, reports, and drug-test results, written or otherwise, received by an employer through a drug-testing program may be used or received in evidence in proceedings conducted pursuant to the provisions of this title for the purposes of determining eligibility for unemployment compensation, including any administrative or judicial appeal.

**41-35-130. Disqualification for unemployment compensation benefits; Discharge for cause relating to violation of employer's drug-free workplace policy; Benefits paid to a claimant for unemployment immediately after expiration of disqualification for misconduct not to be charged to account of the employer** --- (a) Benefits paid to any claimant for unemployment immediately after the expiration of disqualification for (1) voluntarily leaving his most recent work without good cause, (2) discharge from his most recent work for misconduct or, (3) refusal of suitable work without good cause shall not be charged to the account of any employer. (b) Benefits paid to any claimant shall not be charged against the account of any employer by reason of the provisions of this subparagraph only if the Commission determines under Section 41-35-120 that such individual (1) voluntarily left his most recent employment with that employer without good cause, (2) was discharged from his most recent employment with that employer for misconduct connected with his work, or (3) subsequent to his most recent employment refused without good cause to accept an offer of suitable work made by that employer if, in any such case, such employer furnishes the Commission with such notices regarding the separation of the individual from work or the refusal of the individual to accept an offer of work as are or may be required by the law and the regulations of the Commission. (c) If benefits are paid pursuant to a decision which is finally reversed in subsequent proceedings with respect thereto, no employer's account shall be charged with benefits so paid. (d) Any benefits paid to any claimant for a week in which he is in training with the approval of the Commission shall not be charged to any employer. (e) The provisions of paragraphs (a) through (d), all inclusive, hereof with respect to the noncharging of benefits paid shall be applicable only to those employers subject to the payment of contributions. (f) Benefits paid to a claimant during an extended benefit period as defined in Chapter 35, Article 3, shall not be charged to any employer; provided, however, that any non-profit organization electing to become liable for payments in lieu of contributions in accord with Section 41-31-620 shall be required to reimburse fifty per cent of extended benefits attributable to services performed in its employ and provided, further, that after January 1, 1979, the State or any political

	<p>subdivision or any instrumentality thereof as defined in Section 41-27-230(2)(b) electing to become liable for payment in lieu of contributions in accord with Section 41-31-620 shall be required to reimburse all extended benefits attributable to services performed in its employ. (g) Any nonprofit organization which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in Section 41-31-620(2) or Section 41-31-810 shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 41-35-65 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to Section 121 of P.L. 94-566. (h) Benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 41-35-65 shall not be charged against the account of any employer to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to Section 121 of P.L. 94-566. (i) Benefits paid to an individual pursuant to Section 41-35-125 must not be charged to the account of a contributing</p>
<p><b>South Dakota</b></p>	<p><b>23-3-65. Program for employees and applicants in safety-sensitive positions.</b>—The commissioner shall establish and implement a drug screening program for applicants for safety-sensitive positions in state government. The commissioner may establish and implement a drug screening program for persons currently holding any safety-sensitive position in state government, based upon reasonable suspicion of illegal drug use by any such person.</p> <p><b>23-3-66. Solicitation for employment</b>— Notice of drug screening program required Any printed public announcement or advertisement soliciting applications for employment in a safety-sensitive position in state government shall include a statement of the requirements of the drug screening program established under this chapter for applicants and employees holding such position.</p> <p><b>23-3-67. Confidentiality of results.</b>—Individual test results and medical information collected pursuant to this chapter are confidential. This information may be revealed only as authorized by the commissioner. An applicant or employee may have access to his information or test results upon written request to the commissioner.</p> <p><b>23-3-68. Disclosure of information as misdemeanor.</b>—Except as provided in §23-3-67, any person responsible for recording, reporting or maintaining medical information required pursuant to the provisions of this chapter, who knowingly or intentionally discloses or fails to protect medical information declared to be confidential under §23-3-67, or who compels another person to disclose such medical information, is guilty of a Class 2 misdemeanor.</p> <p><b>23-3-69. Commissioner's authority to adopt rules.</b>—The commissioner may adopt rules, pursuant to chapter 1-26, necessary to carry out the provisions of this chapter with regard to: (1) Listing of safety-sensitive positions; (2) Substances to be screened; (3) Drug screening procedures for applicants for safety-sensitive positions; (4) Drug screening procedures for employees in safety-sensitive positions; (5) Procedures for collecting, analyzing and evaluating test samples; (6) Confidentiality of testing procedures; (7) Referral for education or treatment; (8) Consequences which may result from valid positive test results or from failure to submit to a test.</p> <p><b>1-36A-20. Drug screening of Applicants, Human Services Center or South Dakota Development Center or South Dakota State Veterans' Home; Employee testing where reasonable suspicion of illegal drug use; Implementation of program; Applicability</b>— The commissioner of the Bureau of Personnel shall establish and implement a drug screening program for applicants who seek positions at the Human Services Center or the South Dakota Developmental Center or the South Dakota State Veterans' Home whose primary duty includes patient or resident care or supervision. The commissioner may establish and implement a drug screening program for employees holding positions at the Human Services Center or the South Dakota Developmental Center or the South Dakota State Veterans' Home whose primary duty includes patient or resident care or supervision, based upon reasonable suspicion of illegal drug use by any such employee.</p> <p><b>1-36A-21. Drug screening, Applicants for certain state patient or resident care facilities; Announcements or ads for employment to include statement as to drug screening requirements.</b>— Any printed public announcement or advertisement soliciting applications for</p>

employment at the South Dakota Human Services Center or South Dakota Developmental Center or the South Dakota State Veterans' Home for a position in which the primary duty includes patient or resident care or supervision, shall include a statement of the requirements of the drug screening program established pursuant to §§1-36A-20 to 1-36A-24, inclusive.

**1-36A-22. Drug screening, Applicants for and employees of certain state patient or resident care facilities; Confidentiality of information.**—Individual test results and medical information collected pursuant to §§1-36A-20 to 1-36A-24, inclusive, are confidential. This information may be revealed only as authorized by the commissioner of the Bureau of Personnel. An applicant or employee may have access to the information or test results upon written request to the commissioner.

**1-36A-23. Drug screening, Applicants for and employees of certain state patient or resident care facilities; Recordkeeping; Improper disclosure of information as misdemeanor.**—Except as provided in §1-36A-22, any person responsible for recording, reporting, or maintaining medical information required pursuant to the provisions of §§1-36A-20 to 1-36A-24, inclusive, who knowingly or intentionally discloses or fails to protect medical information declared to be confidential under §1-36A-22, or who compels another person to disclose such medical information, is guilty of a Class 2 misdemeanor.

**27B-1-19. Drug screening of applicants of adjustment training centers for the developmentally disabled where the job's primary duty involves patient or resident care or supervision; Employee testing where reasonable suspicion of illegal drug use**—Any adjustment training center shall have a drug screening policy for applicants seeking employment whose primary duty includes patient or resident care or supervision. Any adjustment training center shall have a drug screening policy for employees whose primary duty includes patient or resident care or supervision, based upon reasonable suspicion of illegal drug use by such employee.

**41-20—. Drug screening, Department of Agriculture Wildland Fire Suppression Division; Establishment of Drug screening program for applicants**—The commissioner of the Bureau of Personnel shall establish and implement a drug screening program for applicants seeking positions in the Department of Agriculture, Wildland Fire Suppression Division whose duties include firefighting. In addition, the commissioner may establish and implement a drug screening program for employees holding positions in the Department of Agriculture, Wildland Fire Suppression Division whose duties include firefighting, based upon reasonable suspicion of illegal drug use by any employee.

**41-20—. Drug screening, Department of Agriculture Wildland Fire Suppression Division; Employment ads must include statement as to screening program requirements**—Any printed public announcement or advertisement soliciting applications for employment at the Department of Agriculture, Wildland Fire Suppression Division for a position in which the duties include firefighting, shall include a statement of the requirements of the drug screening program established pursuant to this Act.

**41-20—. Drug screening, Department of Agriculture Wildland Fire Suppression Division; Confidentiality of information; Employee and applicant access to personal information and test results.**—Individual test results and medical information collected pursuant to this Act are confidential. This information may be revealed only as authorized by the commissioner of the Bureau of Personnel. An applicant or employee may have access to the applicant's or employee's information or test results, upon written request to the commissioner.

**41-20—. Drug screening, Department of Agriculture Wildland Fire Suppression Division; Confidentiality; Disclosure or failure to protect confidential information; Violation as misdemeanor**—Except as provided in section 3 of this Act, any person responsible for recording, reporting, or maintaining medical information required pursuant to the provisions of this Act who knowingly or intentionally discloses or fails to protect medical information declared to be confidential under section 3 of this Act, or who compels another person to disclose such medical information, is guilty of a Class 2 misdemeanor.

**41-20—Drug screening, Department of Agriculture Wildland Fire Suppression Division; Rulemaking authority**—The commissioner of the Bureau of Personnel may promulgate rules, pursuant to chapter 1-26, necessary to carry out the provisions of this Act with regard to: (1) Listing of positions whose duties include firefighting; (2) Substances to be screened; (3) Drug screening procedures for applicants for positions at the Department of Agriculture, Wildland Fire Suppression Division, whose duties include firefighting; (4) Drug screening procedures for employees at the Department of Agriculture, Wildland Fire Suppression Division, whose duties include firefighting; (5) Procedures for collecting, analyzing, and evaluating test samples; (6) Confidentiality of testing procedures; (7) Referral for education or treatment; and (8) Consequences that may result from valid positive test results or from failure to submit to a test.

55:05:02:01.Law enforcement classes.—

The following classes of law enforcement officers are safety-sensitive positions:

- (1) Highway patrol colonel;
- (2) Highway patrol major;
- (3) Highway patrol captain;
- (4) Highway patrol lieutenant;
- (5) Highway patrol sergeant;
- (6) Headquarters corporal;
- (7) Headquarters lieutenant;
- (8) Headquarters sergeant;
- (9) Highway patrol trooper;
- (10) DCI director;
- (11) DCI assistant director;
- (12) DCI training coordinator;
- (13) DCI agent I;
- (14) DCI agent II;
- (15) DCI agent III;
- (16) Conservation officer;
- (17) Park ranger;
- (18) Conservation officer/park ranger trainee; and
- (19) Special agent, revenue.

**55:05:02:02.Custody staff classes.**—The following classes of custody staff are safety-sensitive positions:

- (1) Warden;
- (2) Associate warden;
- (3) Captain;
- (4) Lieutenant;
- (5) Corrections sergeant;
- (6) Correctional officer;
- (7) Superintendent;
- (8) Assistant superintendent;
- (9) Youth supervisor director;
- (10) Youth supervisor;
- (11) Parole agent supervisor;
- (12) Parole agent;
- (13) Deputy warden;
- (14) Unit manager;
- (15) Unit case manager;
- (16) Correctional counselor;
- (17) Youth counselor;
- (18) Youth counselor supervisor (senior youth advisor);

- (19) Juvenile corrections agent;
- (20) Juvenile corrections agent supervisor;
- (21) Drill instructor;
- (22) Senior drill instructor;
- (23) Department of Corrections program manager; and
- (24) Department of Corrections assistant program manager.

**Sec. 55:05:03:01.Substances to be screened.**—Urine samples collected pursuant to §55:05:04:01 or 55:05:05:02 shall be screened for the following substances:

- (1) Marijuana/cannabinoids (THC);
- (2) Cocaine metabolites;
- (3) Amphetamines/methamphetamines; and
- (4) Opiates.

**Sec. 55:05:03:02.Additional substances.**—The commissioner may, if requested by an appointing authority, approve screening to identify any additional substances as defined in SDCL chapter 34-20B.

**55:05:04:01.Drug test upon conditional offer of employment.**—A conditional offer of employment is an offer of employment to an applicant which is made contingent upon the applicant's participation in the drug screening program created in SDCL 23-3-65. A drug screening test shall be administered to an applicant for a safety-sensitive position if the applicant has received a conditional offer of employment. The test shall be administered within 24 hours after the conditional offer is made or as soon as possible. An applicant may be required to participate in the drug screening program any time before receiving a conditional offer of employment. If the applicant has participated in the drug screening test as part of the application process, the applicant will not be required to submit to the drug screening test when the applicant is offered employment.

**55:05:04:02.Statement of knowledge and consent to be signed by applicant.**—An applicant shall be informed in writing of the provisions of §55:05:04:01. The applicant must sign a statement affirming knowledge of the requirements of the drug screening program and consenting to the collection and analysis of a urine specimen for the drug screening. If an applicant fails to comply with this provision, the conditional offer of employment is void. An applicant, by signing the consent form, acknowledges that the results of the drug screen test will be made available to the commissioner and the appointing authority. The consent form shall contain the applicant's name, social security number, and position number. The form must be signed by the applicant and the appointing authority.

**55:05:04:03.Medical information form.**—An applicant who is required to submit to a drug screen test must complete a confidential medical information form provided by the collection site observer. The medical information form contains questions which provide for a disclosure of prescription medicines or over-the-counter products that were taken by the applicant prior to drug screening. This form contains the applicant's name, social security number, and position number of the position applied for and must be signed and dated by the applicant and the collection site observer. This form shall be transmitted with the specimen to the designated laboratory.

**55:05:05:01.Employees to remain drug free.**—Each employee who is employed in a safety-sensitive position shall remain free of illegal drugs and substances.

**55:05:05:02.Request for employee to be screened.**—The commissioner shall, upon finding a reasonable suspicion of illegal drug use by an employee in a safety-sensitive position, notify the employee of findings and request that the employee submit to a drug screen test. Before the test is administered, the employee may present reasons to the commissioner why the proposed action should not be taken. The test shall be administered within 24 hours after the request or as soon as possible.

**55:05:05:03.Reasonable suspicion.**—Reasonable suspicion means that the commissioner has a rational basis, whether from direct observation or from the reports of others, to believe that an

employee in a safety-sensitive position has violated §55:05:05:01 or is under the influence of drugs. Reasonable suspicion includes, but is not limited to, the following: (1) An on-the-job accident or occurrence caused in whole or part by the employee's action or inaction or an exhibition of behavior or other demonstration by the employee that indicated that the employee may have been using or was under the influence of drugs; (2) An on-the-job incident that may be attributed to drug use by the employee, such as a medical emergency; (3) Direct observation of or information about conduct, speech, behavior, or appearance which is usually associated with being impaired by or under the influence of illegal drugs, such as the following: (a) Shakiness; (b) Trembling; (c) Mood swings; (d) Excessive absenteeism; (e) A pattern of absenteeism; (f) Frequent absences from the work station; (4) Direct observation or information that the employee may be using drugs or may be under the influence of drugs; is exhibiting behavior that may render the employee unable to perform the employee's job; or may pose a threat to the safety or health of the employee, other employees, or members of the public. The observation or information must be supported by documentation or verified by the commissioner; (5) Physical on-the-job evidence of drug use by the employee; or (6) Documented deterioration in the employee's job performance that is likely to be attributed to drug use by the employee.

**55:05:05:04.Affirmation of policy form.**—Each employee must read, sign, and date an affirmation of policy form at the time the employee is informed of the provisions of this article and before any drug screen test is conducted on the employee. The affirmation of policy form describes the drug screening program. The form is a permanent record of prior knowledge by the employee of the drug screening policy. The form shall include the employee's name, social security number, and position number and must be signed and dated by the employee and appointing authority. If the employee fails or refuses to sign the affirmation of policy form, the failure or refusal may be grounds for disciplinary action.

**55:05:05:05.Consent form.**—If an employee is asked to submit to a drug screen, the employee shall sign a statement indicating consent to the collection of and analysis of a urine specimen taken from the employee for the purpose of a drug screen. When an employee signs the consent form, the employee acknowledges that the results of the screen will be made available to the commissioner and the appointing authority. The consent form contains the employee's name, social security number, and position number. The form must be signed by the employee and the appointing authority. If an employee is asked to submit to a drug screen more than once, a new consent form must be signed each time.

**55:05:05:06.Medical information form.**—Before the drug screening, an employee shall complete a confidential medical information form upon which the employee discloses prescription medicines or over-the-counter products, if any, that were taken by the employee before the drug screening. This form shall contain the employee's name, social security number, and position number and must be signed and dated by the employee and the collection site observer. This form shall be transmitted with the specimen to the designated laboratory.

**55:05:06:01.Collection site.**—The commissioner shall designate the site or sites to be used for collection of specimens for drug screen tests conducted pursuant to this article. Any facility or facilities designated as a collection site must have available all necessary materials, equipment, and facilities to provide for the collection, refrigerated temporary storage, and transportation of specimens to the designated laboratory.

**55:05:06:02.Collection site personnel.**—The commissioner shall designate and train personnel as collection site observers to provide for the integrity and security of records and specimens.

**55:05:06:03.Medical information form.**—The collection site observer shall give the employee or applicant a medical information form and shall inform the employee of the importance of completing the form. The medical information form requires disclosure of prescription medicines or over-the-counter products that were taken by the individual before the drug screening. This form shall contain the employee's or applicant's name, social security number, and position number and shall be signed and dated by the employee or applicant and the collection site observer. The medical information form

shall be transmitted to the designated laboratory along with the specimen. The information collected on this form is confidential.

**55:05:06:04.Privacy of collection procedures.**—Procedures for obtaining the specimen shall allow for individual privacy unless the supervisor, appointing authority, commissioner, or collection site observer believes that the employee or applicant may alter or substitute the specimen.

**55:05:06:05.Collection site chain of custody.**—The collection site observer must maintain a chain of custody log. The chain of custody log shall indicate the name of the employee or applicant being tested and the name of the collection site observer for each specimen collected. To ensure the integrity of the specimen and the identity of the individual, the log must be maintained for a period of at least five years or until all legal remedies have been exhausted. The employee or applicant providing the sample and the collection site observer must initial the label on the specimen bottle and sign the corresponding log entry. Specimens shall be shipped to the designated laboratory within 24 hours after collection. Transportation of the specimen to the designated laboratory shall be completed in a manner that maintains the chain of custody, normally by certified mail or hand delivery.

**Sec. 55:05:06:06.Designation of laboratory.**—The commissioner shall designate the laboratory or laboratories used to conduct all drug screen tests authorized by this article. The commissioner may conduct inspections of the designated laboratories at any time.

**55:05:06:07.Laboratory personnel.**—The designated laboratory used to conduct drug screen tests shall maintain qualified personnel responsible for the day-to-day management of the drug screen program, including a medical director.

**55:05:06:08.Medical director.**—The medical director is responsible for verifying all confirmatory tests with positive results. The medical director must be a licensed physician who has knowledge of substance abuse and has medical training or experience in the review of medical history and in pharmacology.

**55:05:06:09.Laboratory requirements.**—The designated laboratory must be able to perform both initial and confirmatory tests in a timely manner for all four classes of drugs specified in §55:05:03:01

**55:05:06:10.Storage of specimens.**—The designated laboratory must have the capacity to store specimens it tests in secure short-term refrigerated and long-term frozen storage. Any specimen which produces a confirmed positive result shall be retained for one year. Any confirmed positive test results and all other pertinent documentation shall be retained by the laboratory for five years or until legal remedies are exhausted..

**55:05:06:11.Subcontracts prohibited.**—The designated laboratory shall perform all testing with its own personnel and equipment and may not subcontract for work unless authorized by the commissioner.

**55:05:06:12.Laboratory security.**—The designated laboratory must be secure and must maintain limited access at all times. Only authorized personnel may have access to the testing area, specimens, and records. The laboratory shall document which personnel are authorized access to secure areas.

**55:05:06:13.Laboratory chain of custody.**—Laboratory chain of custody begins when the specimen is received from the collection site observer and continues with completion of testing and verification, reporting or results, storage, and final disposition. When the specimen is handled or transferred, the date and purpose must be documented on a chain of custody form; and every individual in the chain of custody must be identified.

**55:05:06:14.Initial screening test.**—The initial screening test shall use immunoassay technology, either enzyme multiplied immunoassay technique (emit), radioimmunoassay (ria), or fluorescence polarization immunoassay (fpia).



**55:05:06:15.Negative specimens.**—Drug screen tests shall be considered and reported as negative if illicit drug levels are below the cut off level established and listed at 53 Fed. Reg. 11,983 (April 11, 1988). Any report of negative results will not be made part of an employee's permanent personnel record.

**55:05:06:16.Positive specimens.**—A positive specimen must be confirmed by a test using alternative technology to establish a confirmed positive test result. Confirmatory tests shall use gas chromatography/mass spectrometry (gc/ms) techniques.

**55:05:06:17.Review of confirmatory tests.**—All positive confirmatory test results data shall be reviewed and compared by the medical director with the medical information form provided by the individual. The medical director shall then review documentation provided for all positive results to ensure accuracy.

**55:05:07:01.Consequences to applicant of failure to submit to testing or of positive test result.**—If an applicant refuses or fails to submit to a drug screening test or if an applicant has a confirmed positive result, the conditional offer of employment is void.

**55:05:07:02.Refusal of employee to submit to drug screen test.**—If an employee refuses to submit to a drug screen test requested pursuant to §55:05:05:02 or refuses to sign an affirmation of policy form or consent form, the refusal shall be considered the equivalent of a confirmed positive test result for the purpose of discipline or referral for treatment.

**55:05:07:03.Consequences to employee of confirmed positive test results.**—An employee covered by the Career Service Act or the Law Enforcement Civil Service Act who receives a confirmed positive drug screen test result may be subject to discipline in accordance with chapter 55:01:12 or 55:02:21 on the basis of a confirmed positive result. If the employee is referred to and fails to successfully complete an approved drug abuse assistance or rehabilitation program, the employee shall be subject to discipline in accordance with chapter 55:01:12 or 55:02:21.

**55:05:08:01.Circumstances under which results may be disclosed.**—The commissioner may not disclose the results of a drug screen test without the prior written consent of the applicant or employee unless the disclosure is to the appointing authority who has authority to take disciplinary action against the employee or pursuant to an order of a court of competent jurisdiction.

**55:05:09:01.Referral for education or treatment.**—If an employee receives a confirmed positive drug screen result, the employee may be directed by the commissioner to participate in an approved drug abuse assistance or rehabilitation program which meets the requirements of chapter 44:14:41 or 44:14:42.

**55:05:09:02.Refusal to participate.**—Refusal by an employee to participate in an approved drug abuse assistance or rehabilitation program as directed by the commissioner is considered failure by the employee to successfully complete the approved drug abuse assistance or rehabilitation program for disciplinary purposes.

**55:05:09:03.Release of treatment information.**—Upon completion of the approved drug abuse assistance or rehabilitation program, the employee must provide a release of clinical verification to the commissioner showing that the employee has successfully completed the approved drug abuse assistance or rehabilitation program.

**55:05:09:04.Successful completion of program.**—For the purposes of the drug screening program, "successful completion of a drug abuse assistance or rehabilitation program" means that the employee has achieved and maintained a drug- free state as determined by a negative result from an authorized drug screen test as specified by the commissioner.

**55:05:09:05.Drug screening required after treatment.**—The commissioner may require an

	<p>employee to submit to subsequent drug screen tests as necessary during an authorized drug abuse assistance or rehabilitation program and for a period of two years after the program ends to determine or verify that the employee has successfully completed the program.</p>
<p><b>Tennessee</b></p>	<p><b>50-9-104. Testing for drugs &amp; alcohol authorized—Conditions for testing—Effect of failure to comply</b>—A covered employer may test a job applicant for alcohol or for any drug described in Section 50-9-103; provided, that for public employees such testing shall be limited to the extent permitted by the Tennessee and federal constitutions. A covered employer may test an employee for any drug defined in Section 50-9-103(4) and at any time set out in Section 50-9-106. An employee who is not in a safety-sensitive position, as defined in Section 50-9-103(15), may be tested for alcohol only when the test is based upon reasonable suspicion as defined in Section 50-9-103(14). An employee in a safety-sensitive position may be tested for alcohol use at any occasion described in Section 50-9-106(a)(2)—(5), inclusive. In order to qualify as having established a drug-free workplace program which affords a covered employer the ability to qualify for the discounts provided under §50-6-418 and deny workers' compensation medical and indemnity benefits and shift the burden of proof under §50-6-110(c), all drug or alcohol testing conducted by covered employers shall be in conformity with the standards and procedures established in this chapter and all applicable rules adopted pursuant to this chapter. If a covered employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the covered employer shall not be eligible for: (1) Discounts under §50-6-418; (2) A shift in the burden of proof pursuant to §50-6-110(c); or (3) Denial of workers' compensation medical and indemnity benefits pursuant to this chapter. All covered employers qualifying for and receiving discounts provided under §50-6-418 must be reported annually by the insurer to the division. (b) The commissioner of labor and workforce development shall adopt a form pursuant to rulemaking authority, which form shall be used by the employer to certify compliance with the provisions of this chapter. Substantial compliance in completing and filing the form with the commissioner shall create a rebuttable presumption that the employer has established a drug-free workplace program and is entitled to the protection and benefit of this chapter. Prior to granting any premium credit to an employer pursuant to §50-6-418, all insurers and self-insured pools under chapter 6, part 4 of this title, shall obtain such form from the employer. Not less than monthly insurers and self-insured pools shall submit such forms to the department of labor and workforce development. Any other employer desiring to establish a drug-free workplace shall file such form with the department. (c) It is intended that any employer required to test its employees pursuant to the requirements of any federal statute or regulation shall be deemed to be in conformity with this section as to the employees it is required to test by those standards and procedures designated in that federal statute or regulation. All other employees of such employer shall be subject to testing as provided in this chapter in order for such employer to qualify as having a drug-free workplace program.</p> <p><b>50-9-105. Employer's written policy statement on drug or alcohol use; Information required; Notice of first-time implementation of program; Job posting requirements; Notice of termination of program; Minors to be informed that parents will receive test results.</b>—(a) One (1) time only, prior to testing, a covered employer shall give all employees and job applicants for employment a written policy statement which contains: (1) A general statement of the covered employer's policy on employee drug or alcohol use, which must identify: (A) The types of drug or alcohol testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug or alcohol testing or drug or alcohol testing conducted on any other basis; and (B) The actions the covered employer may take against an employee or job applicant on the basis of a positive confirmed drug or alcohol test result; (2) A statement advising the employee or job applicant of the existence of this section; (3) A general statement concerning confidentiality; (4) Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications to a medical review officer after being tested, but only if the testing process has revealed a positive result for the presence of alcohol or drug use; (5) The consequences of refusing to submit to a drug or alcohol test; (6) A representative sampling of names, addresses and telephone numbers of employee assistance programs and local drug or alcohol rehabilitation programs; (7) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within five (5) working days after receiving written notification of the test result; that if an employee's or job</p>

applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the covered employer; and that a person may contest the drug or alcohol test result pursuant to rules adopted by the Department of Labor and Workforce Development; (8) A statement informing the employee or job applicant of the employee's responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section; (9) A list of all drug classes for which the employer may test; (10) A statement regarding any applicable collective bargaining agreement or contract and any right to appeal to the applicable court; (11) A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication; and (12) A statement complying with the requirements for notice under §50-9-101(b). (b) A covered employer shall ensure that at least sixty (60) days elapse between a general one-time notice to all employees that a drug-free workplace program is being implemented and the effective date of the program. Such notice shall also indicate that on the effective date of the program that §50-6-110(c) will apply to that employer. (c) A covered employer shall include notice of drug and alcohol testing on vacancy announcements for positions for which drug or alcohol testing is required. A notice of the covered employer's drug and alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the covered employer during regular business hours in the covered employer's personnel office or other suitable locations. (d) Subject to any applicable provisions of a collective bargaining agreement or any applicable labor law, a covered employer may rescind its coverage under this chapter by posting a written and dated notice in an appropriate and conspicuous location on its premises. The notice shall state that the policy will no longer be conducted pursuant to this chapter. The employer shall also provide sixty (60) days' written notice to the employer's workers' compensation insurer of the rescission. As to employees and job applicants, the recession shall become effective no earlier than sixty (60) days after the date of the posted notice. (e) The commissioner of labor and workforce development shall develop a model notice and policy for drug-free workplace programs. (f) Any notice required by this section shall inform minors who are tested that the minor's parents or guardians will be notified of the results of tests conducted pursuant to this chapter.

**50-9-106.Required drug tests.**—(a) To the extent permitted by law, a covered employer who establishes a drug-free workplace is required to conduct the following types of drug tests:(1) Job Applicant Drug and Alcohol Testing. A covered employer must, after a conditional offer of employment, require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. An employer may, but is not required to, test job applicants, after a conditional offer of employment, for alcohol. Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with division rule; (2) Reasonable-Suspicion Drug and Alcohol Testing. A covered employer must require an employee to submit to reasonable-suspicion drug or alcohol testing. A written record shall be made of the observations leading to a controlled substances reasonable suspicion test within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier. A copy of this documentation shall be given to the employee upon request, and the original documentation shall be kept confidential by the covered employer pursuant to §50-9-109 and shall be retained by the covered employer for at least one (1) year; (3) Routine Fitness-For-Duty Drug Testing. A covered employer shall require an employee to undergo drug or alcohol testing if, as a part of the employer's written policy, the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or is scheduled routinely for all members of an employment classification or group; provided, that a public employer may require scheduled, periodic testing only of employees who: (A) Are police or peace officers; (B) Have drug interdiction responsibilities; (C) Are authorized to carry firearms; (D) Are engaged in activities which directly affect the safety of others; (E) Work in direct contact with inmates in the custody of the department of correction; or (F) Work in direct contact with minors who have been adjudicated delinquent or who are in need of supervision in the custody of the department of children's services. This subdivision does not require a drug or alcohol test if a covered employer's personnel policy on July 1, 1998, does not include drug or alcohol testing as part of a routine fitness-for-duty medical examination. The test shall be conducted in a nondiscriminatory manner. Routine fitness-for-duty drug

or alcohol testing of employees does not apply to volunteer employee health screenings, employee wellness programs, programs mandated by governmental agencies, or medical surveillance procedures that involve limited examinations targeted to a particular body part or function. (4) Follow-Up Drug Testing. If the employee in the course of employment enters an employee assistance program for drug-related or alcohol-related problems, or a drug or alcohol rehabilitation program, the covered employer must require the employee to submit to a drug and alcohol test, as appropriate, as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two-year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested; and (5) Post-Accident Testing. After an accident which results in an injury, as defined in chapter 3 of this title, and the rules promulgated thereunder, the covered employer shall require the employee to submit to a drug or alcohol test in accordance with the provisions of this chapter. (b) This chapter does not preclude an employer from conducting any lawful testing of employees for drugs or alcohol that is in addition to the minimum testing required under this chapter.

**50-9-107. Testing subject to department of transportation procedures—Verification—Chain of custody procedures—Costs—Discrimination on grounds of voluntary treatment prohibited—**(a) All specimen collection and testing for drugs and alcohol under this chapter shall be performed in accordance with the procedures provided for by the United States department of transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40.

(b) A covered employer may not discharge, discipline, refuse to hire, discriminate against or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer. (c) A covered employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by regulations of the United States department of transportation or such other recognized authority approved by rule by the commissioner of labor and workforce development governing drug testing. (d) A covered employer shall pay the cost of all drug and alcohol tests, initial and confirmation, which the covered employer requires of employees. An employee or job applicant shall pay the costs of any additional drug or alcohol tests not required by the covered employer. (e) A covered employer shall not discharge, discipline or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the covered employer, for a drug-related or alcohol-related problem if the employee has not previously tested positive for drug or alcohol use, entered an employee assistance program for drug-related or alcohol-related problems or entered a drug or alcohol rehabilitation program. Unless otherwise provided by a collective bargaining agreement, a covered employer may select the employee assistance program or drug or alcohol rehabilitation program if the covered employer pays the cost of the employee's participation in the program. However, nothing in this chapter is intended to require any employer to permit or provide such a rehabilitation program. (f) If drug or alcohol testing is conducted based on reasonable suspicion, the covered employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the covered employer pursuant to §50-9-109, and shall be retained by the covered employer for at least one (1) year.

**50-9-108. Drug use not “handicap” or “disability”—Drug use “cause” for firing or failure to hire—Miscellaneous provisions** — (a) An employee or job applicant whose drug or alcohol test result is confirmed as positive in accordance with this section shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state or local handicap and disability discrimination laws. (b) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined or refused to hire for cause. (c) No physician-patient relationship is created between an employee or job applicant and a covered employer or any person performing or evaluating a drug or alcohol test, solely by the establishment, implementation or administration of a drug or alcohol testing

program. This section in no way relieves the person performing the test from responsibility for acts of negligence in performing the tests. (d) Nothing in this section shall be construed to prevent a covered employer from establishing reasonable work rules related to employee possession, use, sale or solicitation of drugs or alcohol, including convictions for offenses relating to drugs or alcohol, and taking action based upon a violation of any of those rules. (e) This section does not operate retroactively, and does not abrogate the right of an employer under state law to lawfully conduct drug or alcohol tests, or implement lawful employee drug-testing programs. The provisions of this chapter shall not prohibit an employer from conducting any drug or alcohol testing of employees which is otherwise permitted by law. (f) If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. However, this subsection does not abrogate the rights and remedies of the employee or job applicant as otherwise provided in this section. (g) This section does not prohibit an employer from conducting medical screening or other tests required, permitted or not disallowed by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with the rules adopted by the department of labor and workforce development and department of health. If applicable, such drug or alcohol testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented. (h) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug or alcohol testing.

**50-9-109. Information received by employer in connection with drug or alcohol testing program is confidential; Exceptions & conditions for disclosure; Disclosure of test results to parents of minor employee.**—(a) All information, interviews, reports, statements, memoranda and drug or alcohol test results, written or otherwise, received by the covered employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence,

obtained in discovery or disclosed in any public or private proceedings, except in accordance with this section or in determining compensability under this chapter. (b) Covered employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs and their agents who receive or have access to information concerning drug or alcohol test results shall keep all information confidential. Release of such information under any other circumstance is authorized solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section, relevant to a legal claim asserted by the employee or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum: (1) The name of the person who is authorized to obtain the information; (2) The purpose of the disclosure; (3) The precise information to be disclosed; (4) The duration of the consent; and (5) The signature of the person authorizing release of the information. (c) Information on drug or alcohol test results for tests administered pursuant to this chapter shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding. (d) This section does not prohibit a covered employer, agent of such employer or laboratory conducting a drug or alcohol test from having access to employee drug or alcohol test information or using such information when consulting with legal counsel in connection with actions brought under or related to this section, or when the information is relevant to its defense in a civil or administrative matter. Neither is this section intended to prohibit disclosure among management as is reasonably necessary for making disciplinary decisions relating to violations of drug or alcohol standards of conduct adopted by an employer. (e) A covered employer shall notify the parents or legal guardians of a minor of the results of any drug or alcohol testing program conducted pursuant to this chapter. Notwithstanding any other provisions of this section, an employer is authorized to disclose such results to parents and guardians and an employer shall not be liable for any disclosure permitted by this subsection.

**50-9-110. Licensure of testing laboratory.**—A laboratory may not analyze initial or confirmation test

specimens unless: (1) The laboratory is licensed and approved by the department of health, using criteria established by the United States department of health and human services as guidelines for modeling the state drug-free testing program pursuant to this section, or the laboratory is certified by the United States department of health and human services, the College of American Pathologists or such other recognized authority approved by rule by the commissioner of labor and workforce development; and (2) The laboratory complies with the procedures established by the United States department of transportation for a workplace drug test program or such other recognized authority approved by the commissioner of labor and workforce development. (3) Confirmation tests may only be conducted by a laboratory that meets the requirements of subdivisions (1) and (2) and is certified by either the Substance Abuse and Mental Health Services Administration or the College of American Pathologists—Forensic Urine Testing Programs.

**50-9-111.Labor Commissioner authorized to adopt rules; Employer to maintain updated copy of laws & rules; Posting requirements; Employees to be given opportunity to review applicable laws and rules at time of hire.**—(a) The commissioner of labor and workforce development is authorized to adopt rules, using the rules and guidelines adopted by the department of health and criteria established by the United States department of health and human services and the United States department of transportation as guidelines for modeling the state drug and alcohol testing program, concerning, but not limited to: (1) Standards for licensing drug and alcohol testing laboratories and suspension and revocation of such licenses; (2) Body specimens and minimum specimen amounts that are appropriate for drug or alcohol testing; (3) Methods of analysis and procedures to ensure reliable drug or alcohol testing results, including the use of breathalyzers and standards for initial tests and confirmation tests; (4) Minimum cut-off detection levels for alcohol, each drug or metabolites of such drug for the purposes of determining a positive test result; (5) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens tested; and (6) Retention, storage and transportation procedures to ensure reliable results on confirmation tests and retests. (b) The commissioner of labor and workforce development is authorized to adopt relevant federal rules concerning drug and alcohol testing as a minimum standard for testing procedures and protections which the commissioner may exceed. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. (c) The commissioner of labor and workforce development shall consider drug testing programs and laboratories operating as a part of the College of American Pathologists—Forensic Urine Drug Testing Programs in issuing guidelines or promulgating rules relative to recognized authorities in drug testing. (d) Prior to acting on the proposed rule to implement the provisions of this chapter, the commissioner shall submit the proposed rule to the special joint committee on workers' compensation of the general assembly for its review and comment. The committee shall have forty-five (45) days to review the proposed rule and transmit any comment it may have to the commissioner. (e) The commissioner is authorized to set education program requirements for drug-free workplaces by rules promulgated in accordance with the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Such requirements shall not be more stringent than the federal requirements for workplaces regulated by United States department of transportation rules. (f)(1) A covered employer who establishes a drug-free workplace shall have at least one (1) complete, updated copy of the law which regulates drug-free workplace programs and all rules promulgated and revised by the commissioner of labor and workforce development concerning drug and alcohol testing as a minimum standard for testing procedures and protections, education requirements for drug-free workplaces, and any other rules promulgated by the commissioner which affect drug-free workplace covered employers. (2) A covered employer shall post a notice in a conspicuous place easily accessible to employees informing the employees that the employer has such information available, and the procedure the employer has established for the employee to review such rules during working hours and to obtain a copy, if so requested by the employee. (3) At the time the employee is hired a covered employer shall provide the opportunity for the employee to review the law applicable to covered employers as well as all rules promulgated by the commissioner pursuant to the provisions of this part.

**50-9-112.Drug-free workplaces; Exemption for temporary employment agencies.**—A temporary employment agency shall not be required by rule, regulation or policy of the department of labor and workforce development to implement a drug-free workplace pursuant to this chapter.

**50-9-113.State or local government construction contracts; Private employers having five or more employees to have drug-free workplace program; Failure to comply; Written affidavit as to employer compliance.**—(a) Each employer with no less than five (5) employees receiving pay who contracts with the state or any local government to provide construction services or who is awarded a contract to provide construction services or who provides construction services to the state or local government shall submit an affidavit stating that such employer has a drug-free workplace program that complies with this chapter, in effect at the time of such submission of a bid at least to the extent required of governmental entities. Any private employer that certifies compliance with the drug-free workplace program, only to the extent required by this section, shall not receive any reduction in workers' compensation premiums and shall not be entitled to any other benefit provided by compliance with the drug-free workplace program set forth in this chapter. Nothing in this section shall be construed to reduce or diminish the rights or privileges of any private employer who has a drug-free workplace program that fully complies with this chapter. For purposes of compliance with this section, any private employer shall obtain a certificate of compliance with the applicable portions of the Drug-Free Workplace Act from the Department of Labor and Workforce Development. No local government or state governmental entity shall enter into any contract or award a contract for construction services with an employer who does not comply with the provisions of this section. (b) For the purposes of this section, "employer" does not include any utility or unit of local government. "Employer" includes any private company and/or corporation. (c) If it is determined that an employer subject to the provisions of this section has entered into a contract with a local government or state agency and such employer does not have a drug-free workplace pursuant to this section, such employer shall be prohibited from entering into another contract with any local government or state agency until such employer can prove compliance with the drug-free workplace program pursuant to this section. If the same employer again contracts with any local government or state agency and does not have a drug-free workplace program pursuant to this section, then such employer shall be prohibited from entering into another contract with any local government or state agency for not less than three (3) months from the date such violation was discovered and verified and shall be prohibited from entering into another contract until such employer complies with the drug-free workplace program pursuant to this section. If the same employer for a third time contracts with any local government or state agency and does not have a drug-free workplace program pursuant to this section, then such employer shall be prohibited from entering into another contract with any local government or state agency for not less than one (1) year from the date such violation was discovered and verified and shall be prohibited from entering into another contract until such employer complies with the drug-free workplace program pursuant to this section. (d) A written affidavit by the principal officer of a covered employer provided to a local government at the time such bid or contract is submitted stating that the employer is in compliance with this section shall absolve the local government of all further responsibility under this section and any liability arising from the employer's compliance or failure of compliance with the provisions of this section.

**50-9-114.Government contracts; Bids and procurement specifications for construction services must contain statement re drug-free workplace programs; Employer deadline to contest contract.**—(a) The state or any local government, including departments, divisions, or agencies thereof, shall include within any bid or procurement specifications for construction services the following information: (1) A statement as to whether the governmental entity issuing a construction service bid or other procurement specification operates a drug-free workplace program as certified under this chapter or operates any other programs which provide for testing of employees for workplace use of drugs or alcohol; (2) If operating such a program, a statement which describes the government entity's drug-free workplace and/or alcohol and drug testing program; and (3) A statement that all bidders or proposals for construction services are required to submit an affidavit as part of their bid, that attests that such bidder operates a drug-free workplace program or other drug or alcohol testing program with requirements at least as stringent as that of the program operated by the governmental entity. (b) Unless suit is filed in chancery court, employers shall have seven (7) calendar days to contest a contract entered into by employers subject to the provisions of this section with a local government or state government. Employers that do not contest such contracts within seven (7) calendar days by filing suit in chancery court shall waive their rights to challenge such

contracts for violating the provisions of this section. Such contracts shall be contested in chancery court in the county where the contract was entered. The trial of the alleged violation of the provisions of this section shall be expedited by giving it priority over all cases on the trial docket, except workers' compensation cases.

**41-1-122. Drug testing of certain personnel.**—(a) Notwithstanding any provisions of the law to the contrary, the commissioner of correction shall have the authority to require security personnel employed by the department of correction to submit to drug tests. If the result of the initial test is positive, the department shall administer a different reliable confirmatory test for the purpose of determining whether such employee is or has in the immediate past twenty-four (24) hours used a controlled substance which caused impairment of the employee's work performance. (b) Before the commissioner can require any employee to submit to the drug tests authorized by subsection (a), the commissioner must have a reasonable suspicion based upon specific objective facts that the employee's faculties are impaired on the job and such impairment presents a clear and present danger to the physical safety of the employee, another employee, or the security of the institution. Such specific objective facts shall be provided the employee in writing prior to requiring tests. The employee subject to the tests shall be given the opportunity to explain the occurrence of suspicious behavior, and viable explanation shall vitiate the requirement that the employee submit to the tests. (c) If the results of the drug tests are confirmed pursuant to subsection (a), the employee shall be provided a copy of the tests results, including confirmatory tests. All test results, including screening and confirmatory tests, must be reviewed by a qualified individual meeting certification requirements of a recognized board of toxicology. All test results shall identify the specific drugs or metabolites tested and found, whether positive or negative. The commissioner shall require precautionary measures to ensure the confidentiality of all testing information and results and shall not release any testing information to anyone other than the tested employee without written permission of the tested employee. The commissioner shall ensure that the testing of controlled substances shall not be used to test for any other medical or bodily condition. The commissioner shall provide the tested employee a reasonable opportunity to rebut or explain the test results. (d) If confirmatory tests verify the use of a controlled substance affecting the employee's job performance pursuant to subsections (a), (b) and (c), the commissioner shall be empowered to take appropriate disciplinary action based only upon the employee's job performance and pursuant to title 8, chapter 30. The commissioner shall provide employee counseling and rehabilitation with reasonable accommodation and support of the rehabilitation program. Following successful completion of a rehabilitation program and two (2) years of unimpaired job performance, any reference to testing or rehabilitation shall be expunged from any and all records. Reasonable efforts shall be made to safeguard the privacy of any employee required to enroll in a rehabilitation program. (e) If the initial or confirmatory test results are negative, any information, including the results of such test, shall be expunged from all files and records after being made available to the tested employee. (f) The commissioner is responsible for all costs associated with drug tests administered at the request of the department. (g) Prior to implementation of any testing program, the department shall promulgate a specific, written policy pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, authorizing the tests, procedures, confidentiality and expungement provision of this section. The policy shall include the requirement that the employee have an opportunity to have an independent analysis of the sample conducted by the laboratory of the employee's choice. (h) If any employee refuses to submit to the test, the employee shall have the option of entering a rehabilitation program pursuant to subsection (d). (i) The commissioner shall have the burden of proving that all foregoing provisions of this section have been followed. (j) If any provision of this section shall be rendered unconstitutional by the Constitution of the United States or the Constitution of Tennessee or invalid by the laws of the United States or the laws of the state of Tennessee, the unconstitutional or invalid provision of this section may be deleted by the courts if the deletion will not destroy the integrity, intent, or function of this section.

**71-3-502. Child care agency; Department of Human Services to issue rules to provide that drivers must undergo drug testing and have negative results for illegal drug use; Exceptions.**—(d)(7) (C) (i) The department [of human services] may promulgate rules, under the provisions of the Uniform Administrative Procedure Act, compiled in title 4, chapter 5, to provide for the amounts of liability coverage for any personal vehicles that are not owned, operated by, or contracted by the child



care agency for the transportation of children enrolled in the agency, but which are utilized by parents, staff or volunteers only for occasional field trips for children enrolled at the agency. (ii) Such rules must provide that any vehicles not owned, operated by, or contracted for by the agency for any transportation of children enrolled at the agency, and which are utilized only as described in subdivision (d)(7)(C)(i) for field trips must provide evidence of currently effective liability coverage for such non-agency vehicles in amounts sufficient to provide adequate coverage for children being transported by such vehicles. (iii) The department shall also promulgate rules providing that, on and after May 1, 2005, all vehicles used by or on behalf of a child care center to provide transportation of children, that are designed to transport six (6) or more passengers, shall be equipped with a child safety monitoring device that shall prompt staff to inspect the vehicle for children before an alarm sounds. In order to facilitate the affordability of such devices for centers, the department is authorized to establish a grant program to subsidize a portion or all of the cost of such devices for centers; provided, however, that the department may only use private donations that it receives for such purpose to fund the grants. Only devices approved by the department are authorized for use on such a vehicle. The provisions of this subdivision (d)(7)(C)(iii) shall not apply: (a) When all children in a vehicle are five (5) years of age and in kindergarten, or older than five (5) years of age, except that if any one (1) of such children is developmentally or physically disabled or non-ambulatory then the provisions of this subdivision (d)(7)(C)(iii) shall apply; or (b) To vehicles used exclusively for the provision of occasional field trips. (iv) Vehicles used by a licensed child care agency for the transportation of children shall be subject only to color and marking requirements promulgated by the department and shall be exempt from any other such requirements that may be set forth in state law or local ordinance. Color and marking requirements shall be issued by the department, in consultation with the department of safety, as deemed appropriate for the safe operation, proper identification, or registration of the vehicle. (v) Such rules shall prohibit a newly hired employee or existing employee who is full-time or part-time, or, as defined by the department, a substitute employee of a child care agency, or a contractor or other persons or entities providing any form of transportation services for compensation to a child care agency, from engaging in any form of driving services involving children in a child care agency until the employee or substitute employee has undergone a drug test and the results are negative for illegal drug use. The rules shall provide exceptions for emergency transportation requirements in limited circumstances, as deemed appropriate by the department.

**71-3-514. Child care agency; Drug testing policy for child care agency employees, directors, licensees, and operators; Contractors; Reasonable suspicion testing; Recordkeeping requirements, Copies of test results; Fees; Confidentiality of information; Failure to comply and denial, suspension or revocation of license (New; Eff. 7/1/2009)**—(a) (1) All persons or entities operating a child care agency as defined in this part, unless exempt as provided in Section 71-3-503, shall establish a drug testing policy for employees, directors, licensees and operators of child care agencies and for other persons providing services under contract or for remuneration for the agency, who have direct contact, as defined by the department, with a child in the care of the agency. (2) The policy shall specify how testing should be completed by the child care agency and provide for immediate and effective enforcement action involving such persons by such agency in the event of a positive drug test. (3) The policy shall be provided by the child care agency to persons employed or engaged for contract or remunerative services prior to the effective date of this act and to all such persons upon initial employment or initial engagement in contract or remunerative services for the agency. (4) The policy established pursuant to this section shall not supersede the requirements of Section 71-3-502(d)(7)(C)(v) that all persons described therein satisfactorily complete a drug test prior to engaging in transportation services for children in a child care agency. (b) (1) Such policy shall require drug testing based upon reasonable suspicion that employees, directors, licensees, or operators of a child care agency, or other persons providing services under contract or for remuneration for the agency are engaged in the use of illegal drugs. (2) Such policy shall require persons employed or engaged for contract or remunerative services prior to July 1, 2009, to have a drug test based upon reasonable suspicion that such persons are engaged in the use of illegal drugs. (3) Events that may give rise to reasonable suspicion for purposes of requiring a drug test include, but are not limited to: (A) Deterioration in job performance or changes in personal traits or characteristics; (B) Appearance in a specific incident or observation which indicates that an individual is under the present influence of drugs; (C) Changes in personal behavior not attributable to other factors; (D) Involvement in or

contribution to an accident where the use of drugs is reasonably suspected, regardless of whether the accident involves actual injury; or (E) Alleged violation of or conviction of criminal drug law statutes involving the use of illegal drugs or prescription drugs. (c) A child care agency shall, at no expense to the state, maintain for five (5) years and immediately make available to the department upon request a copy of drug testing results for an individual who is employed as a care giver, director, licensee or operator at the child care agency, or for other persons providing services under contract or for remuneration for the agency, who have direct contact with children in the care of the agency. (d) It shall be the responsibility of the individual who is to be tested to pay the appropriate fees necessary to obtain a drug test pursuant to the policy established by a child care agency. Drug testing results obtained under this section are confidential and may be disclosed only for purposes of enforcing the provisions of this part. (e) Notwithstanding subsection (a), a licensee or operator of a family child care home, as defined in this part, who has direct contact with children in the care of such home, shall submit to a drug test at the expense of the licensee or operator, when the department has reasonable suspicion to believe that such licensee or operator is engaged in the use of illegal drugs. (f) A child care agency that does not comply with this section is subject to the department: (1) Denying the application for a license; (2) Denying the application for a license renewal; or (3) Suspending or revoking a license issued.

**65-15-128.For-hire motor carriers providing passenger transportation service in a motor vehicle or vehicles designed to transport 8 or more passengers; Mandatory random drug testing.—**

Notwithstanding any provision of this title or Title 7, Chapter 51, to the contrary, each for-hire motor carrier providing passenger transportation service in a motor vehicle or motor vehicles designed or constructed to accommodate and transport passengers, eight (8) or more in number, exclusive of the driver, shall at a minimum: (1) Maintain a policy of liability insurance in the amount of not less than one million dollars (\$1,000,000) in value which shall bind the obligors thereunder to make compensation for injury to persons and for loss of or damage to property resulting from the negligent operation by such driver; (2) Conduct a program of mandatory random drug testing for the operators of its motor vehicles in accordance with regulations promulgated by the United States Department of Transportation; (3) Require the operators of its motor vehicles to submit to an annual physical examination in accordance with regulations promulgated by the United States Department of Transportation; (4) Submit each motor vehicle operated in such capacity to an annual safety examination, to be conducted by the Department of Safety; and (5) Comply with all other requirements deemed necessary to protect the public safety and welfare as specified by the Department of Safety in its promulgation of rules and regulations to effectuate such purpose.

**0800-2-12-.01[Drug-free workplace program rules; Purpose; Applicability; Scope.—**(1) Purpose: The purpose of these rules is to deter the use of drugs and alcohol in the workplace. (a) Employees who abuse drugs shall face the risk of unemployment and the forfeiture of workers' compensation benefits. (b) These rules shall apply to those employers who voluntarily choose to avail themselves of the remedies provided for in the Workers' Compensation Law regarding drug/alcohol testing in the workplace. (c) Employers who adopt a drug-free workplace program as prescribed herein shall qualify for reduced workers' compensation insurance premiums. (d) If an employer does implement a drug-free workplace program as prescribed herein and a worker injured in the course and scope of employment who is tested pursuant to these rules has a positive confirmation of a drug at a level prescribed herein, a rebuttable presumption is created that the injury was occasioned primarily by the presence of the drug. Such employee may be disciplined, up to and including termination, and forfeits his or her eligibility for workers' compensation medical and indemnity benefits. (2) Scope: The provisions of this chapter apply to all employers in the State of Tennessee subject to provisions of the Workers' Compensation Act who qualify for the drug-free workplace program. The application of the provisions of these rules are subject to the provisions of any applicable collective bargaining agreement.

**0800-2-12-.02.Drug-free workplace program rules; Limitation of rules; Insurance premium discounts; Rule changes---**(1) Nothing in these rules shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted or not disallowed by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy

substances in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests. (2) Nothing in these rules shall be construed to require an employer to test or create a legal obligation upon an employer to request an employee or job applicant to undergo drug or alcohol testing. (3) Nothing in these rules shall be construed to prohibit an employer from affording an employee greater protection than provided herein. A covered employer is not barred from conducting more extensive testing provided the employee/job applicant's constitutional rights are not infringed. (4) Nothing in these rules shall be construed as authorizing any employer to test any employee or applicant for alcohol or drugs in any manner inconsistent with federal constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act. (5) Employers who implement a drug-free workplace program pursuant to these rules will begin to accrue the premium discount on a pro rata basis as of the date of certification (the date of approval by the Tennessee Department of Labor, Division of Workers' Compensation). The covered employer's workers' compensation insurance company or self-insured pool program administrator will be notified by the Tennessee Department of Labor when an employer's drug-free workplace program has been certified. The covered employer's workers' compensation insurance company or self-insured pool program administrator must apply to such policy the premium credit granted under this program directly upon receipt of notification from the Tennessee Department of Labor or make payment for such credit effective after the annual final premium audit has been completed. (6) Future Revisions. In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of the drug-free workplace testing programs, the Commissioner of the Department of Labor may make changes to these rules and guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the Tennessee Administrative Register

**0800-2-12-.03. Drug-free workplace program rules; Definitions**—(1) "Alcohol" as used in these rules shall have the same meaning as in the federal regulations describing procedures for the testing of alcohol by programs operating pursuant to the authority of the United States Department of Transportation as currently compiled at 49 Code of Federal Regulations (C.F.R.), Part 40. This definition shall be changed to conform to any future revision of the Department of Transportation's regulations. (2) "Alcohol test" means an analysis of breath or blood, or any other analysis which determines the presence, absence or level of alcohol as authorized by the relevant regulations of the United States Department of Transportation. (3) "Certified laboratory" means any facility equipped to perform the procedures prescribed in this chapter, in accordance with the standards of the United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), or the College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT). (4) "Chain of Custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing accountability at each stage in handling, testing, and storing specimens and reporting test results. (5) "Confirmation test", "confirmed test", or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug, or alcohol, or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy. (6) "Covered employer" means a person or entity that employs a person, is covered by the Workers' Compensation Law, maintains a drug-free workplace pursuant to these rules, and also includes on the posting required by TCA §50-9-105 a specific statement that the policy is being implemented pursuant to the provisions of these rules. These rules shall have no effect on employers who do not meet this definition. (7) "Drug" means any drug subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation. A covered employer may test an individual for any or all of such drugs. (8) "Drug Rehabilitation Program" means a service provider that provides confidential, timely, and expert identification, assessment and resolution of employee drug or alcohol abuse. (9) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence or absence of a drug or its metabolites or alcohol pursuant to regulations governing drug or alcohol testing adopted by the United States

Department of Transportation or such other recognized authority approved by rule by the Commissioner of Labor. (10) "Employee" means any person who works for a salary, wages, or other remuneration for a covered employer. (11) "Employee Assistance Program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug or alcohol abuse; referrals of employees for appropriate diagnosis, treatment and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program. (12) "Employer" means a person or entity that employs a person and is covered by the Workers' Compensation Law. (13) "Injury" means a harm or damage to an employee, occurring in the workplace or in the scope of employment which must be recorded, in accordance with Occupational Safety and Health Administration (OSHA) reporting guidelines, in the covered employer's OSHA 200 Log. (14) "Initial drug test" means a procedure that qualifies as a "screening test" or "initial test" pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation or such other recognized authority approved by rule by the Commissioner of Labor. (15) "Job Applicant" means a person who has applied for a position with a covered employer and has been offered employment conditioned upon successfully passing a drug or alcohol test, and may have begun work pending the results of the drug or alcohol test. (16) "Medical Review Officer" or "MRO" means a licensed physician, employed with or contracted with a covered employer, who has knowledge of substance abuse disorders, laboratory testing procedures and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information. (17) (a) "Prohibited Levels" for a drug or a drug's metabolites means cut-off levels on screened specimens which are equal to or exceed the following shall be considered to be presumptively positive;

1. Cut-off levels on initially screened specimens:

Amphetamines 1,000ng/mL  
Marijuana (cannabinoids) 50ng/mL  
Cocaine (benzoyllecgonine) 300ng/mL  
Opiates (codeine, morphine, heroin) 300ng/mL  
PCP (phencyclidine) 25ng/mL

2. Cut-off levels on confirmation specimens:

Amphetamines 500ng/mL  
Marijuana (cannabinoids) 15ng/mL  
Cocaine (benzoyllecgonine) 150ng/mL  
Opiates (codeine, morphine, heroin) 300ng/mL  
PCP (phencyclidine) 25ng/mL

(b) "Prohibited Levels" for alcohol means cut-off levels on screened specimens which are equal to or exceed the following shall be considered to be presumptively positive: Alcohol...(.10%) by weight blood alcohol concentration for non-safety sensitive positions. Alcohol...(.04%) by weight blood alcohol concentration for safety sensitive positions. (18) "Reasonable-Suspicion Drug Testing" means drug testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon: (a) Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol; (b) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance; (c) A report of drug or alcohol use, provided by a reliable and credible source; (d) Evidence that an individual has tampered with a drug or alcohol test during his employment with

his/her current covered employer; (e) Information that an employee has caused, contributed to, or been involved in an accident at work; or (f) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or alcohol while working or while on the covered employer's premises or while operating the covered employer's vehicle, machinery, or equipment. (19) "Safety-Sensitive Position" means a position involving a safety-sensitive function pursuant to regulations governing drug testing adopted by the United States Department of Transportation. For drug-free workplaces, the Commissioner is authorized, with the approval of the Advisory Council on Workers' Compensation, to promulgate rules expanding the scope of safety-sensitive position to cases where impairment may present a clear and present risk to co-workers or other persons. "Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations or work with controlled substances, or a position in which momentary lapse in attention could result in injury or death to another person. (20) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol, drugs or their metabolites. (21) "Split Specimen" means the procedure by which each urine specimen is divided in two and put into a primary specimen container and a secondary, or "split", specimen container. Only the primary specimen is opened and used for the initial screening and confirmation test. The split specimen container remains sealed and is stored at the testing laboratory. (22) "Threshold Detection Level" means the level at which the presence of a drug or alcohol can be reasonably expected to be detected by an initial and a confirmatory test performed by a certified laboratory. The threshold detection level indicates the level at which a valid conclusion can be drawn that the drug or alcohol is present in the employee or job applicant's sample.

**0800-2-12-.05. Drug-free workplace program; Types of drug tests required.**—It is a requirement that a covered employer who establishes a drug-free workplace program conduct the following types of drug tests to the extent permitted by law: (1) **Job applicant drug or alcohol testing.** A covered employer must, after a conditional offer of employment, require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. An employer may, but is not required to, test job applicants for alcohol after a conditional offer of employment. Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with the following: (a) A temporary, leased, seasonal or former worker who has tested negative for substance abuse within the preceding twelve (12) months from the date employment is to begin will not be required to undergo job applicant testing by the covered employer. Any such worker who has not been tested or has not tested negative must submit to job applicant testing according to Rules 0800-2-12-.07, .08 and .10. (2) **Reasonable suspicion.** A covered employer must require an employee to submit to reasonable suspicion drug or alcohol testing. (a) Employers shall, within seven days after testing based on reasonable suspicion, detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. If drug-testing is conducted based on reasonable suspicion, the covered employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the covered employer pursuant to TCA §50-9-109 and shall be retained by the covered employer for at least one (a) year. (3) **Routine fitness-for-duty drug or alcohol testing.** A covered employer must require an employee to submit to a drug or alcohol test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination where the examinations are required by law or regulation, are part of the covered employer's established policy, or one that is scheduled routinely for all members of an employment classification group. This Rule does not require a drug or alcohol test if a covered employer's current personnel policy does not include a drug or alcohol testing as part of a routine fitness-for-duty medical exam. If such testing is included, it must be done on a nondiscriminatory basis for all employees. Routine fitness-for-duty drug or alcohol testing of employees would not apply to programs mandated by governmental agencies, volunteer employee health screenings, employee wellness programs, or medical surveillance procedures. (4) **Follow-up drug or alcohol testing.** If the employee in the course of employment enters an employee assistance program for drug or alcohol-related problems, or a drug or alcohol rehabilitation program, the covered employer must require the employee to submit to a drug or alcohol test, as appropriate, as

a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two year period after successful completion of the program. Advance notice of a follow-up testing date must not be given to the employee. (5) **Post-accident testing.** After an accident which results in an injury, the covered employer may require the employee to submit to a drug or alcohol test in accordance with these rules: (a) An employee injured at the workplace and required to be tested shall be taken to a medical facility for immediate treatment of injury. Specimens shall be obtained at the treating facility or a designated collection site under the procedures set forth under these rules and transported to an approved testing laboratory. (b) No specimens shall be taken prior to the administration of emergency medical care. Once this condition has been satisfied, an injured employee must submit to testing. (c) In the case of non-emergency injuries reported to the covered employer after the fact, the injured employee must submit to testing at the time the injury is entered into the covered employer's OSHA 200 Log or any authorized or required replacement for the OSHA 200 Log.

**0800-2-12-.06. Drug-free workplace program; Employee or applicant refuses to submit to testing; Employer remedy.**—If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. If the injured worker refuses to submit to a drug or alcohol test, it shall be presumed in the absence of a preponderance of the evidence to the contrary that the proximate cause of the injury was the influence of drugs or alcohol as defined in these rules.

**0800-2-12-.07. Drug-free workplace program; Drug/alcohol testing requirements & procedures.**—(1) A covered employer shall be required to test employees and job applicants for the following drugs:

- (a) Alcohol-Not required for job applicant testing.
- (b) Amphetamines
- (c) Cannabinoids, (THC)
- (d) Cocaine
- (e) Opiates
- (f) Phencyclidine

(2) The initial screen for all drugs, except alcohol, shall use an immunoassay in a certified laboratory. (3) All specimens identified as positive on the initial test, excluding tests for alcohol, shall be confirmed using gas chromatography/mass spectrometry (GC/MS). (4) Threshold detection levels of these drugs shall be in accordance with Substance Abuse & Mental Health Services Administration (SAMHSA) or (CAP-FUDT) guidelines unless modified according to TCA §50-9-111. (5) All specimens must be tested by a certified laboratory. (6) All testing for drugs and alcohol shall be in accordance with the procedures compiled at 49 C.F.R., Part 40. However, if a certified laboratory under TCA §50-9-110 is used for testing, no further quality assurance monitoring or proficiency testing is required by the employer under these rules. (7) As technology develops faster, more convenient, and more cost effective testing methods, covered employers shall be allowed to use those technologies and devices which have been approved by the Commissioner of Labor and the Substance Abuse & Mental Health Services Administration (SAMHSA) or the College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT) guidelines, provided that none of the established rules regarding security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen, and transportation of the specimen to the laboratory are compromised. Any modification or change to this rule shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. (8) These rules and guidelines do not prohibit an employer from conducting any drug or alcohol testing of employees which is otherwise permitted by law. (9) Should an employee/job applicant receive a positive confirmed test result for an otherwise legal medication for which he/she does not hold a valid prescription, a covered employer is not barred from discharging the employee or refusing to hire the job applicant. Such an employee/job applicant will also forfeit his/her workers' compensation benefits; provided, that the drug or alcohol test was conducted according to these rules

and guidelines. Drug or alcohol tests which are not conducted according to these rules and guidelines shall not be used as a basis to terminate benefits. (10) A covered employer may test a job applicant for alcohol or for any drug described in TCA §50-9-103; provided, that for public employees such testing shall be limited to the extent permitted by the Tennessee and Federal constitutions. [A covered employer may test an employee for any drug defined in TCA §50-9-103(4) and at any time set out in TCA §50-9-106.] (11) It is intended that any employer required to test its employees pursuant to the requirements of any federal statute or regulation, shall be deemed to be in conformity with these rules and guidelines as to the employees it is required to test by those standards and procedures designated in that federal statute or regulation. All other employees of such employer shall be subject to testing as provided in this chapter in order for such employer to qualify as having a drug-free workplace program. (12) An employee who is not in a safety-sensitive position, as defined in TCA §50-9-103(15), may be tested for alcohol only when the test is based upon reasonable suspicion as defined in TCA §50-9-103(14). An employee in a safety-sensitive position may be tested for alcohol use at any occasion described in TCA §50-9-106(a)(2)-(5), inclusive.

**0800-2-12-.08. Drug-free workplace program; Specimen collection procedures.**—(1) The employer shall provide the employee or job applicant with a form to provide any information that he/she considers relevant to the test, including the identification of currently or recently used prescription or nonprescription medication or other information. The information provided shall be treated as confidential and reviewed by a medical review officer in interpreting any positive confirmed results. (2) Collection procedures shall be in accordance with procedures compiled at 49 C.F.R., Part 40, and must be collected according to those prescribed procedures using the split sample method. No inference or presumption of intoxication or impairment may be made in a case where a physician prevents a specimen collection based on his or her medical expertise. Where additional drugs are to be included in a drug test other than those listed in Rule 0800-2-12-.07, a separate specimen collection is not required provided that all other collections procedures/protocols are consistent with those compiled at 49 C.F.R., Part 40. (3) It is a requirement that covered employers must use the chain of custody form developed by the Department of Labor specifically for the Tennessee Drug-Free Workplace Program. (4) Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity, identity, and retention of the specimen, and transportation of the specimen to the laboratory shall be in accordance with the Substance Abuse & Mental Health Services Administration (SAMHSA) guidelines or United States Department of Transportation regulations (49 C.F.R., Part 40).

**0800-2-12-.09. Drug-free workplace program; Responsibility for testing costs**—(1) The covered employer shall pay the cost of initial and confirmation testing which it requires of employees and job applicants. The employee or job applicant shall pay the costs of any additional drug or alcohol tests not required by the employer. (2) Where re-testing of a split-specimen is requested, the party requesting the re-test (i.e., covered employer or employee/job applicant) shall pay the cost.

**0800-2-12-.10. Drug-free workplace program; Review and reporting of specimen test results; Employee/applicant notice of positive test & opportunity to contest/explain results**—(1) Except for Rules 0800-2-12-.10(2) and 0800-2-12-.10(3), the procedures for laboratory reporting and MRO review and reporting of specimen test results shall be in accordance with those described in 49 C.F.R., Parts 40.29 and 40.33. (2) Any specimens with evidence of dilution, contamination, tampering, or any question normally requiring an MRO opinion shall be reported to the MRO for disposition. The MRO may determine the need to re-test, re-collect, or otherwise modify the collection procedure to ensure adequate and appropriate testing. (3) An employee or job applicant who receives a positive confirmed test result upon notification by the MRO may contest or explain the result to the medical review officer within five (5) working days after receiving written notification of the test result from the MRO. If an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the covered employer.

**0800-2-12-.11. Drug-free workplace program; Employee protections.**—(1) A covered employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation

of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer. (2) A covered employer shall not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the covered employer, for a drug or alcohol-related problem if the employee has not previously tested positive for drug or alcohol use, entered an employee assistance program for drug or alcohol related problems, or entered a drug or alcohol rehabilitation program. Unless otherwise provided by a collective bargaining agreement, a covered employer may (but need not) select the employee assistance program or drug or alcohol rehabilitation program if the covered employer pays the cost of the employee's participation in the program.

**0800-2-12-.12. Drug-free workplace program; Employer rights & protections.**—(1) An employee or job applicant whose drug or alcohol test result is confirmed as positive in accordance with these rules shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws. (2) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with these rules is considered to have discharged, disciplined, or refused to hire for cause. (3) No physician-patient relationship is created between an employee or job applicant and a covered employer or any person performing or evaluating a drug or alcohol test, solely by the establishment, implementation, or administration of a drug or alcohol-testing program. This rule in no way relieves the person performing the test from responsibility for his or her acts of negligence in performing the tests. (4) Nothing in these rules shall be construed to prevent a covered employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs or alcohol, including convictions for drug or alcohol-related offenses, and taking action based upon a violation of any of those rules.

**0800-2-12-.13. Drug-free workplace programs; Annual employee education/awareness programs on substance abuse**—(1) Employee Education/Awareness Required for Certification. Each year, covered employers must provide at least one-hour of an education/awareness program for all employees about substance abuse in the workplace. The Employee Education/Awareness Program may include, but is not limited to, the following information (Employers may choose any of the following suggested topics and/or combine them in order to fulfill this requirement): (a) General explanation about the addictive disease of substance abuse; sample topics: 1. The disease of addiction. 2. Defining use versus abuse. 3. The recovering employee in the workplace. 4. Why people abuse substances. 5. Avoiding relapse in the workplace. 6. The role of the family in addressing substance abuse and addiction. 7. The role of co-workers in addressing substance abuse and addiction. 8. The role of co-workers in maintaining a drug-free workplace. 9. Alcoholics Anonymous: History of the AA Program. (b) The effects and dangers of the commonly abused substances in the workplace; sample topics: 1. Stress and the workplace. 2. Safety and the workplace. 3. Warning signs. 4. The most commonly abused drugs in the workplace (e.g.; marijuana, cocaine/crack, inhalants, alcohol, opiates, hallucinogens, or prescription drugs, etc.). 5. The physical and psychological effects related to the abuse of the above drugs, and others. 6. The health & medical risks of substance abuse. 7. Avoiding substance abuse through wellness, exercise, diet, etc. (c) This program is also a good opportunity to reinforce the employer's policies and procedures regarding workplace substance abuse. Also, the employer should remind employees of their EAP and/or substance abuse treatment options. (2) Supervisor Training Required for Certification. (a) In addition to the employee substance abuse education/awareness program (one-hour each year), employers must provide all supervisory personnel with a minimum of two-hours per year of workplace substance abuse recognition training. Training should include: recognizing the signs of substance abuse in the workplace, how to document and collaborate signs of employee substance abuse, and how to refer substance abusing employees to proper providers for treatment. The minimum two-hours of training may be completed on one specific date, or two one-hour training sessions may be held on different dates during the year. (Supervisors should receive a minimum total of three-hours of substance abuse education/awareness & recognition training per year.) It is recommended that supervisors complete workplace substance abuse recognition training before an employer implements a drug and alcohol testing program that includes testing based on "reasonable suspicion", and/or attempting to refer an employee to an EAP or other provider for substance abuse treatment. (b) The Supervisor Training Program should include, but is



not limited to, the following information. Employers may choose from these suggested topics and/or combine them in order to fulfill the supervisor training requirement: 1. Legal aspects of "reasonable suspicion" employee testing for drug and alcohol: Building and establishing through observation and measurement. 2. Legal aspects regarding EAP and/or substance abuse treatment referrals: Supervisor referral, voluntary/self referral, last chance agreement. 3. How to recognize signs of employee substance abuse. 4. How to refer substance abusing employees to proper treatment providers. 5. How family problems can affect an employee's performance. 6. How to interview and detect potential workplace substance abusers. 7. When and if to test. When and how to intervene and confront potential workplace substance abusers. 8. Conducting the performance review. 9. Using positive peer pressure and management to gain support for mutual goals. (c) Because resources available to employers across the state will vary from community to community, the employee education/awareness and supervisory training component of the drug-free workplace program is meant to be flexible so that employers may be creative in conducting these programs. For example, employers may utilize speakers, workshops, videos, written material, in-house supervisors that have been educated on how to train employees and/or supervisors regarding aspects of workplace substance abuse, any combination of the above, and/or other means of educating employees about the benefits of a drug-free workplace. Please refer to the "Directory of National and State Resources" located on the inside of the back cover of your Tennessee Drug-Free Workplace Employer's Program Development and Implementation Guide, if you would like assistance with this aspect of your drug-free workplace program. (Note: The "Directory of National, State, and Local Resources" referred to above is presented on page 82 of these Rules). Important: Covered employers should keep appropriate records in order to document the completion of the employee education/awareness program and supervisor training requirements.

**0800-2-12-.14. Drug-free workplace program; Confidentiality of information; Consent forms.—**

(1) All information, interviews, reports, statements, memoranda, and drug or alcohol test results, written or otherwise, received by the covered employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with these rules or in determining compensability under these rules. (2) Covered employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug or alcohol test results shall keep all information confidential. Release of such information under any other circumstances is authorized solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this rule, relevant to a legal claim asserted by the employee or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum: (a) The name of the person who is authorized to obtain the information; (b) The purpose of the disclosure; (c) The precise information to be disclosed; (d) The duration of the consent; and (e) The signature of the person authorizing the release of the information. (3) Information on drug or alcohol test results for tests administered pursuant to these rules shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding. (4) These rules do not prohibit a covered employer, agent of such employer, or laboratory conducting a drug or alcohol test from having access to employee drug or alcohol test information or using such information when consulting with legal counsel in connection with actions brought under or related to these rules or when the information is relevant to its defense in a civil or administrative matter. Neither are these rules intended to prohibit disclosure among management as is reasonably necessary for making disciplinary decisions relating to violation of drug or alcohol standards of conduct adopted by an employer.

**0800-2-12-.15. Drug-free workplace program; Filing of form for program benefits.—**(1) Any employer seeking any benefits conferred by the Drug-Free Workplace Program shall file with the Workers' Compensation Division of the Department of Labor the form promulgated by the Commissioner for that purpose. From the date of receipt, such employer shall be rebuttably presumed to be entitled to all applicable benefits under the Drug-Free Workplace Program. (2) Before granting any premium credit to an employer, an insurance carrier or self-insured pool shall obtain a true copy of the form described in subsection (a) from the employer. Upon granting such credit to the employer,

	<p>the insurer shall notify the Workers' Compensation Division of the Department of Labor of such action by filing the form promulgated by the Commissioner for that purpose.</p>
<p><b>Texas</b></p>	<p><b>242.0371. Nursing homes &amp; related institutions, Employment policies to include drug testing.—</b>  (a) An institution licensed under this chapter shall prepare a written statement describing the institution's policy for: (1) the drug testing of employees who have direct contact with residents; and (2) the conducting of criminal history record checks of employees and applicants for employment in accordance with Chapter 250. (b) The institution shall provide the statement to: (1) each person applying for services from the institution or the person's next of kin or guardian; and (2) any person requesting the information.</p> <p><b>242.052. Nursing homes &amp; related institutions, Employee drug testing.—</b>(a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the board or may use another drug testing policy. (b) The board by rule shall adopt a model drug testing policy for use by institutions. The model drug testing policy must be designed to ensure the safety of residents through appropriate drug testing and to protect the rights of employees. The model drug testing policy must: (1) require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and (2) authorize random, unannounced drug testing for employees described by Subdivision (1).</p> <p><b>644.251. Commercial driver's license holders subject to federal safety regulations and drug testing programs, Reports on drug and alcohol tests; Definitions—</b>In this subchapter: (1) "Employee" has the meaning assigned by 49 C.F.R. Section 40.3. (2) "Valid positive result" means: (A) an alcohol concentration of 0.04 or greater on an alcohol confirmation test; or (B) a result at or above the cutoff concentration levels listed in 49 C.F.R. Section 40.87 on a confirmation drug test.</p> <p><b>644.252. Commercial driver's license holders subject to federal safety regulations and drug testing programs; Reports on drug and alcohol tests; Report of refusal; Positive test results; Adulterated, diluted or substituted specimens; Confidentiality of information (1 of 2 Versions; Eff. until 9/1/2007).—</b>(a) An employer required to conduct alcohol and drug testing of an employee who holds a commercial driver's license under Chapter 522 under federal safety regulations as part of the employer's drug testing program or consortium, as defined by 49 C.F.R. Part 382, shall report to the department: (1) a valid positive result on an alcohol or drug test performed; (2) a refusal to provide a specimen for an alcohol or drug test; or (3) an adulterated specimen, dilute specimen, or substituted specimen, as those terms are defined by 49 C.F.R. Section 40.3, on an alcohol or drug test performed. (b) The department shall maintain the information provided under this section. (c) Information maintained under this section is confidential and only subject to release as provided by Section 521.053.</p> <p><b>644.252. Commercial driver's license holders subject to federal safety regulations and drug testing programs; Reports on drug and alcohol tests; Report of refusal; Positive test results; Adulterated, diluted or substituted specimens; Confidentiality of information (2 of 2 Versions; Eff. 9/1/2007).—</b>(a) An employer required to conduct alcohol and drug testing of an employee who holds a commercial driver's license under Chapter 522 under federal safety regulations as part of the employer's drug testing program or consortium, as defined by 49 C.F.R. Part 382, shall report to the department: (1) a valid positive result on an alcohol or drug test performed and whether the specimen producing the result was a dilute specimen, as defined by 49 C.F.R. Section 40.3; (2) a refusal to provide a specimen for an alcohol or drug test; or (3) an adulterated specimen or substituted specimen, as those terms are defined by 49 C.F.R. Section 40.3, on an alcohol or drug test performed. (b) The department shall maintain the information provided under this section. (c) Information maintained under this section is confidential and only subject to release as provided by Section 521.053.</p> <p><b>42.057. Drug testing, Child care facilities; Residential child-care facilities must establish drug testing policies for employees; Rulemaking.—</b>(a) Each residential child-care facility shall establish a drug testing policy for employees. A residential child-care facility may adopt the model employee drug testing policy adopted by the executive commissioner under Subsection (b) or may use another</p>

employee drug testing policy approved by the executive commissioner. (b) The executive commissioner by rule shall adopt a model employee drug testing policy for use by a residential child-care facility. The policy must be designed to ensure the safety of resident children through appropriate drug testing of employees while protecting the rights of employees. The model policy must require: (1) preemployment drug testing; (2) random, unannounced drug testing of each employee who has direct contact with a child in the care of the facility; (3) drug testing of an employee against whom there is an allegation of drug abuse; and (4) drug testing of an employee whom the department is investigating for the abuse or neglect of a child in the care of the facility, if the allegation of abuse or neglect includes information that provides good cause to suspect drug abuse. (c) The department shall require a drug test of a person who directly cares for or has access to a child in a residential child-care facility within 24 hours after the department receives notice of an allegation that the person has abused drugs. (d) An employee may not provide direct care or have direct access to a child in a residential child-care facility before completion of the employee's initial drug test. (e) A residential child-care facility shall pay any fee or cost associated with performing the drug test for an employee.

**169.1. Employer drug abuse policies; Notice to employees; Copies of policy; Penalty for violation (Repealed 10/29/2009).**— (a) Each employer who has 15 or more employees and who maintains workers' compensation insurance coverage shall adopt a policy for elimination of drug abuse (hereinafter called drug abuse policy) by May 15, 1991. An employer who becomes subject to this subchapter after January 1, 1991, shall adopt a drug abuse policy within 45 days of the date on which the employer becomes subject. Employers who are in compliance with the federal Drug-Free Workplace Act of 1988 must amend their policies to include alcoholic beverages and must notify their employees of the change and provide their employees with a copy of the policy. (b) An employer shall provide a written copy of the drug abuse policy to each employee: (1) on or before the first day of employment; or (2) within 30 days after the date the policy is adopted by the employer. (c) An employer shall provide the commission 1 with a copy of the drug abuse policy for the purpose of a compliance audit, no later than 30 days after the receipt of a written request. (d) After June 1, 1991, an employer who is subject to this section, and who does not have a drug abuse policy, may be subject to a Class D administrative violation, and may be assessed with an administrative penalty not to exceed \$500.

**169.2. Drug abuse policy; Requirements (Repealed 10/29/2009).**—An employer adopting a policy for the elimination of drug abuse shall provide each employee with a written copy of the policy, which shall include: (1) a statement of the purpose and scope of the policy; (2) a statement that the policy includes alcoholic beverages, as well as inhalants and illegal drugs. The policy may include prescription drugs; (3) a statement of any consequences the employee may suffer if found violating the policy; (4) a description of available treatment programs, if any, and how they may be requested, such as assistance provided by the employee's health care insurance or drug and alcohol abuse rehabilitation programs sponsored by the employer; (5) the availability of, and the requirements for participation in, drug and alcohol abuse education and treatment programs, if any; and (6) a description of any drug testing program that the employer has in force.

**745.4151. Drug testing, Residential child care facilities; Required drug testing policies.**—(a) The Department of Family and Protective Services is required to adopt a model drug testing policy for residential child-care operations under the Human Resources Code, §42.057. Your residential child-care operation must either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy. Although this policy only covers drugs, coverage of alcohol may be included. The department recommends that an operation obtain legal advice before adopting and implementing any drug testing policy. (b) Residential child-care operations must pay for any required drug tests, except as provided in subsection (c)(7) of this section. (c) The mandatory criteria for the Model Drug Testing Policy For Residential Child-Care Operations include: (1) **Purpose.** (Name of residential child-care operation) has a vital interest in ensuring the safety of resident children through the appropriate drug testing of employees, while also protecting the rights of the employees. (2) **Scope.** This policy applies to all employees of residential child-care operations, including child-placing agencies, that have direct contact with children in care. It also applies to all contract employees that have direct contact with children in care and volunteers that

	<p>frequently and regularly have direct contact with children. This policy does not apply to foster parents that are verified by child-placing agencies. (3) <b>Definitions.</b> The following definitions apply to this section. (A) <b>Abusing drugs</b>—The use of any: (i) Drug or substance defined by the Texas Controlled Substances Act, Texas Health and Safety Code, Chapter 481; or (ii) Prescription or non-prescription drug that is not being used for the purpose for which it was prescribed or manufactured. (B) <b>Drug testing</b>—The scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens for detecting a drug. (C) <b>Random drug testing</b>—A testing cycle that varies the frequency and intervals that specimens are collected for testing and selects employees in a random manner that does not eliminate already tested employees from future testing. The testing should ensure all employees are subject to random testing on a continuing basis. (D) <b>Good cause to believe the employee may be abusing drugs</b>—A reasonable belief based on facts sufficient to lead a prudent person to conclude that the employee may be abusing drugs. Sufficient facts may include direct observations of the employee using or possessing drugs, or exhibiting physical symptoms, including but not limited to slurred speech or difficulty in maintaining balance; erratic or marked changes in behavior, including a decrease in the quality or quantity of the employee's productivity, judgment, reasoning, and concentration and psychomotor control, accidents, and deviations from safe working practices; or any other reliable information. (4) <b>Mandatory drug testing.</b> (A) All applicants that are intended to be hired for employment are subject to pre-employment testing, and may not provide direct care or have access to a child in care until the drug test results are available; (B) All employees are subject to random, unannounced drug testing; (C) Any employee that is the subject of a child abuse or neglect investigation, when DFPS determines there is "good cause to believe the employee may be abusing drugs", must be drug tested within 24 hours of notification by DFPS to the residential child-care operation; and (D) Any employee who is alleged to be abusing drugs must be tested within 24 hours, if there is "good cause to believe the employee may be abusing drugs". (5) <b>Drug testing procedures.</b> All drug testing will: (A) At a minimum screen for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP); (B) Use one of the following drug-testing methods: (i) A drug test performed by a certified laboratory; (ii) A testing kit with proven rates of false positives below 2% and false negatives below 8% on all drugs screened; or (iii) Another testing method for which there is scientific proof of accuracy comparable to either of the first two choices, such as saliva, hair, or spray drug testing; (C) Ensure the integrity and identity of the specimen collected from the time of collection to the time of disposal to minimize the opportunity for an employee to adulterate or substitute a specimen; and (D) Preserve the privacy and rights of the person tested. This includes safeguarding the results of any test and maintaining them, so they remain confidential and free from unauthorized access. (6) <b>Discipline.</b> (A) An applicant or employee's consent to submit to drug testing is required as a condition of employment, and the refusal to consent may result in refusal to hire the applicant and disciplinary action, including discharge, against the employee for a refusal; (B) An employee who is tested because there is "good cause to believe the employee may be abusing drugs," may be suspended pending receipt of written test results and further inquiries that may be required; (C) An employee determined through drug testing to have abused drugs is subject to discipline, up to and including discharge; (D) An applicant for employment or an employee determined through drug testing to have abused drugs may not be employed in a position with direct contact with children in care if the employee presents a risk of harm to children; and (E) An employee determined through drug testing to have abused drugs may be offered the opportunity to complete a rehabilitation program at the employee's expense. (7) <b>Appeal.</b> An applicant or employee whose drug test is positive may, at the employee's expense: (A) Have an opportunity to explain and offer written documentation why there is another cause for the positive drug test; (B) Request that the remaining portion of the sample that yielded the positive results, if available, be submitted for an additional independent test, including second tests to rule out false positive results; and/or (C) Submit the written test result for an independent medical review. (8) <b>Documentation.</b> (A) All applicants that you intend to hire for employment and employees must be provided a copy of your drug testing policy and must sign a document consenting to these terms and conditions of employment. (B) All drug test results will be kept for one year after an employee's last work day with the residential child-care operation, or until any investigation involving the person is resolved, whichever is later. The results must be available for review by Licensing Division within 24 hours of the request.</p>
Utah	<p><b>34-38-3.Testing for drugs or alcohol.</b>—(1) It is not unlawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this</p>

chapter, as a condition of hiring or continued employment. However, employers and management in general shall submit to the testing themselves on a periodic basis. (2) (a) Any organization which is operating a storage facility or transfer facility or which is engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste within the exterior boundaries of the state shall establish a mandatory drug testing program regarding drugs and alcohol for prospective and existing employees as a condition of hiring any employee or the continued employment of any employee. As a part of the program, employers and management in general shall submit to the testing themselves on a periodic basis. The program shall implement testing standards and procedures established under Subsection (2)(b). (b) The executive director of the Department of Environmental Quality, in consultation with the Labor Commission under Section 34A-1-103, shall by rule establish standards for timing of testing and dosage for impairment for the drug and alcohol testing program under this Subsection (2). The standards shall address the protection of the safety, health, and welfare of the public.

**34-38-4.Samples**—Identification and collection In order to test reliably for the presence of drugs or alcohol, an employer may require samples from his employees and prospective employees, and may require presentation of reliable identification to the person collecting the samples. Collection of the sample shall be in conformance with the requirements of Section 34-38-6. The employer may designate the type of sample to be used for testing.

**34-38-5.Time of testing**—Cost of testing and transportation (1) Any drug or alcohol testing by an employer shall occur during or immediately after the regular work period of current employees and shall be deemed work time for purposes of compensation and benefits for current employees. (2) An employer shall pay all costs of testing for drugs or alcohol required by the employer, including the cost of transportation if the testing of a current employee is conducted at a place other than the workplace.

**34-38-6.Requirements for collection and testing.**—All sample collection and testing for drugs and alcohol under this chapter shall be performed in accordance with the following conditions: (1) the collection of samples shall be performed under reasonable and sanitary conditions; (2) samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples; (3) sample collection shall be documented, and the documentation procedures shall include: (a) labeling of samples so as reasonably to preclude the probability of erroneous identification of test results; and (b) an opportunity for the employee or prospective employee to provide notification of any information which he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. (4) sample collection, storage, and transportation to the place of testing shall be performed so as reasonably to preclude the probability of sample contamination or adulteration; and (5) sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of any test may be used as a basis for any action by an employer under Section 34-38-8.

**34-38-7.Employer's written testing policy**—Purposes and requirements for collection and testing—Employer's use of test results (1) Testing or retesting for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy which has been distributed to employees and is available for review by prospective employees. (2) Within the terms of his written policy, an employer may require the collection and testing of samples for the following purposes: (a) investigation of possible individual employee impairment; (b) investigation of accidents in the workplace or incidents of workplace theft; (c) maintenance of safety for employees or the general public; or (d) maintenance of productivity, quality of products or services, or security of property or information. (3) The collection and testing of samples shall be conducted in accordance with Sections 34-38-4, 34-38-5, and 34-38-6, and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee. (4) The employer's use and disposition of all drug or alcohol test results are subject to the limitations of Sections 34-38-8 and

34-38-13.

**34-38-8. Employer's disciplinary or rehabilitative actions.**—Upon receipt of a verified or confirmed positive drug or alcohol test result which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a sample, an employer may use that test result or refusal as the basis for disciplinary or rehabilitative actions, which may include the following: (1) a requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment; (2) suspension of the employee with or without pay for a period of time; (3) termination of employment; (4) refusal to hire a prospective employee; or (5) other disciplinary measures in conformance with the employer's usual procedures, including any collective bargaining agreement.

**34-38-9. No cause of action for failure to test or detect substance or problem, or for termination of testing program.**—No cause of action arises in favor of any person against an employer who has established a policy and initiated a testing program in accordance with this chapter, for any of the following: (1) failure to test for drugs or alcohol, or failure to test for a specific drug or other substance; (2) failure to test for, or if tested for, failure to detect, any specific drug or other substance, disease, infectious agent, virus, or other physical abnormality, problem, or defect of any kind; or (3) termination or suspension of any drug or alcohol testing program or policy.

**34-38-10. No cause of action arises against employer unless false test result**—Presumption and limitation of damages in claim against employer (1) No cause of action arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this chapter, and who has taken any action under Section 34-38-8, unless the employer's action was based on a false test result. (2) In any claim, including a claim under Section 34-38-11, where it is alleged that an employer's action was based on a false test result: (a) there is a rebuttable presumption that the test result was valid if the employer complied with the provisions of Section 34-38-6; and (b) the employer is not liable for monetary damages if his reliance on a false test result was reasonable and in good faith.

**34-38-11. Bases for cause of action for defamation, libel, slander, or damage to reputation.**—No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this chapter, unless: (1) the results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee; (2) the information disclosed was based on a false test result; (3) the false test result was disclosed with malice; and (4) all elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or common law, are satisfied.

**34-38-12. No cause of action for failure of employer to establish testing program.**—No cause of action arises in favor of any person based upon the failure of an employer to establish a program or policy of drug or alcohol testing.

**34-38-13. Confidentiality of information.**—(1) For purposes of this section, "test-related information" means the following received by the employer through the employer's drug or alcohol testing program: (a) information; (b) interviews; (c) reports; (d) statements; (e) memoranda; or (f) test results. (2) Except as provided in Subsections (3) and (6), test-related information is a confidential communication and may not be: (a) used or received in evidence; (b) obtained in discovery; or (c) disclosed in any public or private proceeding. (3) Test-related information: (a) shall be disclosed to the Division of Occupational and Professional Licensing: (i) in the manner provided in Subsection 58-13-5 (3); and (ii) only to the extent required under Subsection 58-13-5 (3) 1; and (b) may only be used in a proceeding related to: (i) an action taken by the Division of Occupational and Professional Licensing under Section 58-1-401 when the Division of Occupational and Professional Licensing is taking action in whole or in part on the basis of test-related information disclosed under Subsection (3)(a); (ii) an action taken by an employer under Section 34-38-8; or (iii) an action under Section 34-

38-11. (4) Test-related information shall be the property of the employer. (5) An employer is entitled to use a drug or alcohol test result as a basis for action under Section 34-38-8. (6) An employer may not be examined as a witness with regard to test-related information, except: (a) in a proceeding related to an action taken by the employer under Section 34-38-8; (b) in an action under Section 34-38-11; or (c) in an action described in Subsection (3)(b)(i).

**34-38-14. Employee or prospective employee with verified or confirmed positive drug or alcohol test results can not be defined as a person with a “disability” based on those results alone.**—An employee or prospective employee whose drug or alcohol test results are verified or confirmed as positive in accordance with the provisions of this chapter may not, because of those results alone, be defined as a person with a "disability" for purposes of Title 34A, Chapter 5, Utah Antidiscrimination Act.

**34-38-15.No physician-patient relationship created.**—A physician-patient relationship is not created between an employee or prospective employee, and the employer or any person performing the test, solely by the establishment of a drug or alcohol testing program in the workplace.

**34-41-102.Governmental drug-free workplace policies.**—(1) Any local governmental entity or state institution of higher education may establish workplace policies and procedures designed to: (a) educate, counsel, and increase awareness of the dangers of drugs; and (b) prohibit and discourage the detrimental use of drugs among its various classes of employees and volunteers. (2) A local governmental entity or state institution of higher education may test employees, volunteers, prospective employees, and prospective volunteers for the presence of drugs or their metabolites, in accordance with the provisions of this chapter, as a condition of hiring, continued employment, and voluntary services. (3) A drug-free workplace policy may include, but does not require, drug testing under the following circumstances: (a) preemployment hiring or volunteer selection procedures; (b) postaccident investigations; (c) reasonable suspicion situations; (d) preannounced periodic testing; (e) rehabilitation programs; (f) random testing in safety sensitive positions; or (g) to comply with the federal Drug Free Workplace Act of 1988, 41 U.S.C. 701 through 707, or other federally required drug policies. (4) This section may not be construed to prohibit local governmental entities or state institutions of higher education from establishing policies regarding other hazardous or intoxicating substances.

**34-41-103.Policy requirements.**—(1) (a) Before testing or retesting for the presence of drugs, a local governmental entity or state institution of higher education shall: (i) adopt a written policy or ordinance; (ii) distribute it to employees and volunteers; and (iii) make it available for review by prospective employees and prospective volunteers. (b) The local governmental entity or state institution of higher education may only test or retest for the presence of drugs by following the procedures and requirements of that ordinance or policy. (2) The collection and testing of samples shall be conducted in accordance with Section 34-41-104 and not necessarily limited to circumstances where there are indications of individual, job-related impairment of an employee or volunteer. (3) The use and disposition of all drug test results are subject to the limitations of Title 63G, Chapter 2, Government Records Access and Management Act, and Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213. (4) An employee, prospective employee, volunteer, or prospective volunteer shall submit a split urine sample for testing or retesting. (5) A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If the test results of the 30 ml urine sample indicate the presence of drugs, the donor of the test shall have 72 hours from the time the donor is so notified to request, at the donor's option that the 15 ml urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the donor and employer. In addition to the test results of the 30 ml urine sample, the test results of the 15 ml urine sample shall be considered at any subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 have been complied with in the collection, handling, and testing of these samples.

**34-41-104.Requirements for identification, collection, and testing of samples.**—(1) The local governmental entity or state institution of higher education shall ensure that: (a) all sample collection

under this chapter is performed by an entity independent of the local government or state institution of higher education; (b) all testing for drugs under this chapter is performed by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology; (c) the instructions, chain of custody forms, and collection kits, including bottles and seals, used for sample collection are prepared by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology; and (d) sample collection and testing for drugs under this chapter is in accordance with the conditions established in this section. (2) The local governmental entity or state institution of higher education may: (a) require samples from its employees, volunteers, prospective employees, or prospective volunteers; (b) require presentation of reliable identification to the person collecting the samples; and (c) in order to dependably test for the presence of drugs, designate the type of sample to be used for testing. (3) The local governmental entity or state institution of higher education shall ensure that its ordinance or policy requires that: (a) the collection of samples is performed under reasonable and sanitary conditions; (b) samples are collected and tested: (i) to ensure the privacy of the individual being tested; and (ii) in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples; (c) sample collection is appropriately documented to ensure that: (i) samples are labeled and sealed so as reasonably to preclude the probability of erroneous identification of test results; and (ii) employees, volunteers, prospective employees, or prospective volunteers have the opportunity to provide notification of any information: (A) that that person considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs or other relevant medical information; and (B) in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213; (d) sample collection, storage, and transportation to the place of testing are performed in a manner that reasonably precludes the probability of sample misidentification, contamination, or adulteration; and (e) sample testing conforms to scientifically accepted analytical methods and procedures. (4) Before the result of any test may be used as a basis for any action by a local governmental entity or state institution of higher education under Section 34-41-105, the local governmental entity or state institution of higher education shall verify or confirm any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical methods and shall provide that the employee, prospective employee, volunteer, or prospective volunteer be notified as soon as possible by telephone or in writing at the last-known address or telephone number of the result of the initial test, if it is positive, and told of his option to have the 15 ml urine sample tested, at an expense equally divided between the donor and the employer. In addition to the initial test results, the test results of the 15 ml urine sample shall be considered at any subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 have been complied with in the collection, handling, and testing of these samples. (5) Any drug testing by a local governmental entity or state institution of higher education shall occur during or immediately after the regular work period of the employee or volunteer and shall be considered as work time for purposes of compensation and benefits. (6) The local governmental entity or state institution of higher education shall pay all costs of sample collection and testing for drugs required under its ordinance or policy, including the costs of transportation if the testing of a current employee or volunteer is conducted at a place other than the workplace.

**34-41-105.Rehabilitative and disciplinary actions.**—(1) If a verified or confirmed positive drug test result indicates a violation of the local governmental entity's or state institution of higher education's written drug-free workplace policy, if an employee, volunteer, prospective employee, or prospective volunteer refuses to provide a sample in accordance with the written policy, or otherwise violates the written policy, an employer may use that test result, refusal, or violation as the basis for imposing any rehabilitative and disciplinary actions authorized by this section. (2) If the conditions required by Subsection (1) are met, the employer may: (a) require the employee to enroll in a rehabilitation, treatment, or counseling and educational program, approved by the local governmental entity or state institution of higher education as a condition of continued employment or volunteer service; (b) suspend the employee with or without pay for a period of time; (c) terminate the employment or voluntary services; (d) refuse to hire a prospective employee or use the services of a volunteer; and (e) impose disciplinary measures in conformance with the usual procedures, including employment



contracts of the local governmental entity or state institution of higher education.

**34-41-106.Employee not disabled.**—An employee, volunteer, prospective employee, or prospective volunteer whose drug test results are verified or confirmed as positive in accordance with the provisions of this chapter shall not, by virtue of those results alone, be defined as disabled for purposes of: (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or (2) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.

**34-41-107.No physician-patient relationship created.**—A physician-patient relationship is not created between an employee, volunteer, prospective employee, or prospective volunteer, and the local governmental entity, state institution of higher education, or any person performing the test, solely by the establishment of a drug testing program in the workplace.

**67-19-33.Controlled substances and alcohol use prohibited.**—An employee may not: (1) manufacture, dispense, possess, use, distribute, or be under the influence of a controlled substance or alcohol during work hours or on state property except where legally permissible; (2) manufacture, dispense, possess, use, or distribute a controlled substance or alcohol if the activity prevents: (a) state agencies from receiving federal grants or performing under federal contracts of \$25,000 or more; or (b) the employee to perform his services or work for state government effectively as regulated by the rules of the executive director in accordance with Section 67-19-34; or (3) refuse to submit to a drug or alcohol test under Section 67-19-36.

**67-19-34.Rulemaking power to executive director.**—In accordance with this chapter and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall make rules regulating: (1) disciplinary actions for employees subject to discipline under Section 67-19-37; (2) the testing of employees for the use of controlled substances or alcohol as provided in Section 67-19-36; (3) the confidentiality of drug testing and test results performed under Section 67-19-36 in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and (4) minimum blood levels of alcohol or drug content for work effectiveness of an employee.

**67-19-35.Reporting of convictions under federal and state drug laws.**—(1) An employee who is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance shall report the conviction to the director of his agency within five calendar days after the date of conviction. (2) Upon notification either under Subsection (1) or otherwise, the director of the agency shall notify the federal agency for which a contract is being performed within ten days after receiving notice.

**67-19-36.Drug testing of state employees.**—(1) Except as provided in Subsection (2), when there is reasonable suspicion that an employee is using a controlled substance or alcohol unlawfully during work hours, an employee may be required to submit to medically accepted testing procedures for a determination of whether the employee is using a controlled substance or alcohol in violation of this part. (2) In highly sensitive positions, as identified in department class specifications, random drug testing of employees may be conducted by an agency in accordance with the rules of the executive director. (3) All drug or alcohol testing shall be: (a) conducted by a federally certified and licensed physician, a federally certified and licensed medical clinic, or testing facility federally certified and licensed to conduct medically accepted drug testing; (b) conducted in accordance with the rules of the executive director made under Section 67-19-34; and (c) kept confidential in accordance with the rules of the executive director made in accordance with Section 67-19-34. (4) A physician, medical clinic, or testing facility may not be held liable in any civil action brought by a party for: (a) performing or failing to perform a test under this section; (b) issuing or failing to issue a test result under this section; or (c) acting or omitting to act in any other way in good faith under this section.

**67-19-37.Discipline of employees.**—An employee shall be subject to the rules of discipline of the executive director made in accordance with Section 67-19-34, if the employee: (1) refuses to submit to testing procedures provided in Section 67-19-36; (2) refuses to complete a drug rehabilitation program in accordance with Subsection 67-19-38(3); (3) is convicted under a federal or state criminal statute

regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance; or (4) manufactures, dispenses, possesses, uses, or distributes a controlled substance in violation of state or federal law during work hours or on state property.

**67-19-38. Violations and penalties.**—In addition to other criminal penalties provided by law, an employee who: (1) fails to notify his director under Section 67-19-35 is subject to disciplinary proceedings as established by the executive director by rule in accordance with Section 67-19-34; (2) refuses to submit to testing procedures provided for in Section 67-19-36, may be suspended immediately without pay pending further disciplinary action as set forth in the rules of the executive director in accordance with Section 67-19-34; or (3) tests positive for the presence of unlawfully used controlled substances or alcohol may be required, as part of the employee's disciplinary treatment, to complete a drug rehabilitation program at the employee's expense within 60 days after receiving the positive test results or be subject to further disciplinary procedures established by rule of the executive director in accordance with Section 67-19-34.

**67-19-39. Exemptions.**—Peace officers, as defined under Title 53, Chapter 13, Peace Officer Classifications, acting in their official capacity as peace officers in undercover roles and assignments, are exempt from the provisions of this act.

**R477-14-1. Drug-Free Workplace rules; Purpose.**—(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to: (a) Provide a safe and productive work environment that is free from the effect of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701. (b) Identify, correct and remove the effects of drug and alcohol abuse on job performance. (c) Assure the protection and safety of employees and the public. (2) State employees may not unlawfully manufacture, dispense, possess, distribute or use any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty except where legally permissible. (a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more. (3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies. (4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM. (5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test. (6) Employees in non highly sensitive positions are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty;
- (e) follow up.

(7) For employees in non highly sensitive positions, the State of Utah will use the same cut off levels for positive drug tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures. (8) For employees in non highly sensitive positions, the State of Utah will use a blood alcohol concentration level of .08 as the cut off for a positive alcohol test. (9) Employees who hold highly sensitive positions, are final candidates for, are transferred to, or are assigned the duties of a highly sensitive position, and final applicants for highly sensitive positions are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty;

- (e) follow up;
- (f) preemployment;
- (g) random.

(10) For employees in highly sensitive positions, the State of Utah will use the same cutoff levels for positive drug and alcohol tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures, 49 CFR 382.107 (2002), Definitions, 49 CFR 382.201 (2002), Alcohol Concentration and 49 CFR 382.505 (2002), Other Alcohol Related Conduct. (11) Employees in highly sensitive positions, as approved by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency. (12) Employees in highly sensitive positions whose confirmation test for alcohol results are .02 or greater, when tested before, during, or immediately after performing highly sensitive functions, must be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than .02. (13) Employees in highly sensitive positions whose confirmation test for alcohol results are .04 or greater when tested before, during or after performing highly sensitive duties, may be subject to corrective action or discipline. (14) Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual. (15) Management may take disciplinary action if: (a) there is a positive confirmation test for controlled substances; (b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level; (c) management determines an employee is unable to perform his assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level. (16) The agency human resource field office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

**R477-14-2. Workplace violations; Managerial disciplinary actions; Rehabilitation; Follow-up testing; Notice of state or federal conviction.**—(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action. (2) Management may take disciplinary action which may include dismissal. (3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33. (4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal. (5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions: (a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00; (b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk. (6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be required to participate, at his expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply: (a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment. (b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider. (c) All communication shall be classified as private in accordance with Title 63, Chapter 2. (d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense. (e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range. (7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action. (8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing. (9) An employee who is convicted for a violation occurring in the workplace, under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or

	<p>using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction. (a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from: (i) the judicial system; (ii) other sources; (iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.</p> <p><b>R477-14-3. Distribution of rules</b>—The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.</p> <p><b>R477-14-4. Rule exceptions</b>—The Executive Director, DHRM, may authorize exceptions to this rule consistent with R477-2-2(1).</p>
<p><b>Vermont</b></p>	<p><b>512. Drug testing of applicants; Prohibitions; Exceptions.</b>—(a) <b>General prohibition.</b> Except as provided in subsection (b) of this section, an employer or an employment agency shall not, as a condition of employment, do any of the following: (1) Request or require that an applicant for employment take or submit to a drug test. (2) Administer or attempt to administer a drug test to an applicant for employment. (3) Request or require that an applicant for employment consent, directly or indirectly, to a practice prohibited under this subchapter. (b) <b>Exception.</b> An employer may require an applicant for employment to submit to a drug test only if all of the following conditions are met: (1) Conditional offer of employment. The applicant has been given an offer of employment conditioned on the applicant receiving a negative test result. (2) <b>Notice.</b> The applicant received written notice of the drug testing procedure and a list of the drugs to be tested. The notice shall also state that therapeutic levels of medically-prescribed drugs tested will not be reported. The notice required under this subdivision may not be waived by the applicant. (3) <b>Administration.</b> The drug test is administered in accordance with section 514 of this title.</p> <p><b>513. Drug testing of employees; Prohibitions; Exceptions.</b>—(a) <b>General prohibition.</b> Except as provided in subsection (c) of this section, an employer shall not, as a condition of employment, promotion or change of status of employment, or as an expressed or implied condition of a benefit or privilege of employment, do any of the following: (1) Request or require that an employee take or submit to a drug test. (2) Administer or attempt to administer a drug test to an employee. (3) Request or require that an employee consent, directly or indirectly, to a practice prohibited under this subchapter. (b) <b>Random or company-wide tests.</b> An employer shall not request, require or conduct random or company-wide drug tests except when such testing is required by federal law or regulation. (c) <b>Exception.</b> Notwithstanding the prohibition in subsection (a) of this section, an employer may require an individual employee to submit to a drug test if all the following conditions are met: (1) <b>Probable cause.</b> The employer or an agent of the employer has probable cause to believe the employee is using or is under the influence of a drug on the job. (2) <b>Employee assistance program.</b> The employer has available for the employee tested a bona fide rehabilitation program for alcohol or drug abuse and such program is provided by the employer or is available to the extent provided by a policy of health insurance or under contract by a nonprofit hospital service corporation. (3) <b>Employee may not be terminated.</b> The employee may not be terminated if the test result is positive and the employee agrees to participate in and then successfully completes the employee assistance program; however, the employee may be suspended only for the period of time necessary to complete the program, but in no event longer than three months. The employee may be terminated if, after completion of an employee assistance program, the employer subsequently administers a drug test in compliance with subdivisions (1) and (4) of this subsection and the test result is positive. (4) <b>Administration of test.</b> The drug test is administered in accordance with section 514 of this title.</p> <p><b>514. Administration of tests.</b>—An employer may request an applicant for employment or an employee to submit to a drug test pursuant to this subchapter, provided the drug testing is performed in compliance with all the following requirements: (1) <b>Drugs to be tested.</b> The test shall be administered only to detect the presence of alcohol or drugs, as defined in subdivision 511(3) of this title, at nontherapeutic levels. (2) <b>Written policy.</b> The employer shall provide all persons tested with a written policy that identifies the circumstances under which persons may be required to submit to drug tests, the particular test procedures, the drugs that will be screened, a statement that over-the-counter medications and other substances may result in a positive test and the consequences of a</p>

positive test result. The employer's policy shall incorporate all provisions of this section. (3) **Blood samples.** An employer may not request or require that a blood sample be drawn for the purpose of administering a drug test. (4) **Designated laboratory.** The employer shall use only a laboratory designated by the department of health. (5) **Chain of custody.** The collector shall establish a chain of custody procedure for both sample collection and testing that will assure the anonymity of the individual being tested and verify the identity of each sample and test result. (6) **Urinalysis procedure.** If a urinalysis procedure is used to screen for drugs, the employer shall: (A) require the laboratory performing the test to confirm any sample that tests positive by testing the sample by gas chromatography with mass spectrometry or an equivalent scientifically accepted method that provides quantitative data about the detected drug or drug metabolites; and (B) provide the person tested with an opportunity, at his or her request and expense, to have a blood sample drawn at the time the urine sample is provided, and preserved in such a way that it can be tested later for the presence of drugs. (7) **Laboratory reports.** A laboratory may report that a urine sample is positive only if both the initial test and confirmation test are positive for the particular drug. Test results shall only be provided by written report in accordance with subdivision (9) of this section. (8) **Negative test results.** The detection of a drug at a therapeutic level as defined by the commissioner of health shall be reported as a negative test result. The laboratory's report shall not contain any information indicating the presence of a drug at a therapeutic level as defined by the commissioner. (9) **Information to be supplied.** The laboratory shall provide the medical review officer with a written report of the drug test result. The medical review officer shall review the report, and discuss the results and options available with the individual tested. The written report shall include all of the following information: (A) The unique identifier code of the person tested. (B) The type of test conducted for both initial screening and confirmation. (C) The results of each test. (D) The detection level, meaning the cut-off or measure used to distinguish positive and negative samples, on both the initial screening and confirmation procedures. (E) The name and address of the laboratory. (F) Any other information provided by the laboratory concerning that person's test. (10) **Preservation of samples.** The collector shall ensure that a portion of any positive sample is preserved in a condition that will permit accurate retesting for a period of not less than 90 days after the person tested receives the result. (11) **Medical review officer.** The employer shall contract with or employ a certified medical review officer who shall be a licensed physician with knowledge of the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs. The medical review officer shall review and evaluate all drug test results, assure compliance with this section and sections 515 and 516 of this title, report the results of all tests to the individual tested, and report only confirmed drug test results to the employer. (12) **Collector.** The employer shall designate a collector to collect specimens from job applicants and employees. The collector may be an employee for the purposes of collecting specimens from job applicants. The collector may not be an employee for the purposes of collecting specimens from employees for drug testing based on probable cause.

**515. Positive test results; Opportunity to retest.**—(a) A medical review officer shall contact personally an employee or applicant who has a positive test result and explain the results and why the results may not be accurate. (b) The medical review officer shall provide any applicant or employee who has a positive test result with an opportunity to retest a portion of the sample at an independent laboratory at the expense of the person tested and shall consider the results of the retest.

**516. Confidentiality.**—(a) Any health care information about an individual to be tested shall be taken only by a medical review officer and shall be confidential and shall not be released to anyone except the individual tested, and may not be obtained by court order or process, except as provided in this subchapter. (b) Employers, medical review officers, laboratories and their agents, who receive or have access to information about drug test results, shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, except where such release is compelled by a court of competent jurisdiction in connection with an action brought under this subchapter. A medical review officer shall not reveal the identity of an individual being tested to any person, including the laboratory. (c) If information about drug test results is released contrary to the provisions of this subchapter, it shall be inadmissible as evidence in any judicial or quasi-judicial proceeding, except in a court of competent jurisdiction in connection with an action brought under this subchapter.

	<p><b>517. Employer's authority.</b>—This subchapter shall not restrict an employer's authority to prohibit the non prescribed use of drugs or alcohol during work hours, or restrict an employer's authority to discipline, suspend or dismiss an employee for being under the influence of drugs or alcohol during work hours, except as that authority is restricted under subsection 513(c)(3) of this title in reference to participation in an employee assistance program or suspension.</p> <p><b>518. Designated laboratory; Rulemaking authority of the commissioner.</b>—(a) The department of health shall designate laboratories to test body fluids or materials for drugs. Such laboratories must be able to document competency in regard to personnel, quality assurance programs, methodology and equipment, on site confirmation of positive screening tests, security, confidentiality and expert testimony. (b) A laboratory that fails to comply with the provisions of this subchapter relating to the confirmation and reporting of test information and the release of confidential information shall lose its designation under this subsection. (c) The commissioner of health shall adopt rules pursuant to chapter 25 of Title 3 establishing nontherapeutic levels of therapeutic drugs by establishing a range of values considering average medical use for each particular drug or metabolite authorized to be tested under this subchapter.</p> <p><b>519. Enforcement.</b>—(a) Private right of action. An applicant or employee aggrieved by a violation of this subchapter may bring a civil action for injunctive relief, damages, court costs and attorney's fees. (b) Burden of proof. In a private right of action alleging that an employer has violated this subchapter, the employer has the burden of proving that the requirements of sections 513, 514 and 516 of this title have been satisfied. In any civil action alleging that a laboratory has violated the reporting of confidentiality sections of this subchapter, the laboratory shall have the burden of proving that the requirements of sections 514 and 516 of this title have been satisfied. (c) State action to obtain civil penalty. A person who violates any provision of this subchapter shall be subject to a civil penalty of not less than \$500.00 nor more than \$2,000.00. (d) State action to obtain criminal penalty. A person who knowingly violates any provision of this subchapter shall be fined not less than \$500.00 nor more than \$1,000.00 or shall be imprisoned not more than six months, or both.</p> <p><b>520. Transitory provisions.</b>—(a) On or before July 1, 1989, the commissioner of health pursuant to chapter 25 of Title 3 shall set nontherapeutic levels of therapeutic drugs by establishing a range of values by considering average medical use for each particular drug or metabolite authorized to be tested under this subchapter. (b) Until July 1, 1989, the test shall be administered to detect the presence of alcohol or drugs as defined in subdivision 511(3) of this title. Sections 514(1) and 514(8) of this title insofar as they apply to testing only for nontherapeutic levels shall not take effect until July 1, 1989. (c) Until July 1, 1989, if an applicant receives a positive test result and has a valid predated prescription for the drug tested, the positive test result may not in and of itself be sufficient reason for not hiring an applicant. Until July 1, 1989, if an employee receives a positive test result and has a valid predated prescription for the drug tested, the positive test result may not in and of itself be sufficient reason for requiring that the employee participate in an employee assistance program or for disciplining or dismissing the employee. (d) The commissioner of health on or before January 15, 1989 shall issue a progress report to the house and senate committees on general affairs on the ability of the commissioner to comply with subsection (a) of this section.</p>
<p>Virginia</p>	<p><b>18.2-251.4. Drug &amp; alcohol screening test violations; Attempt to defeat tests by substituting or altering sample.</b>—A. It is unlawful for a person to: 1. Sell, give away, distribute, transport or market human urine in the Commonwealth with the intent of using the urine to defeat a drug or alcohol screening test; 2. Attempt to defeat a drug or alcohol screening test by the substitution of a sample; 3. Adulterate a urine or other bodily fluid sample with the intent to defraud a drug or alcohol screening test. B. A violation of this section is a Class 1 misdemeanor.</p> <p><b>22.1-178. Drug &amp; alcohol testing requirements, School bus drivers.</b>—C. School boards may require persons accepting employment after July 1, 1994, as a driver of a school bus transporting pupils to agree, as a condition of employment, to submit to alcohol and controlled substance testing. Any such tests shall be conducted in compliance with Board of Education regulations.</p>

**65.2-813.2. Workers compensation premium discounts; Drug-free workplace programs.**—Every insurer providing coverage pursuant to this title shall provide a premium discount of up to five percent to every employer instituting and maintaining a drug-free workplace program satisfying such criteria as each insurer may establish.

**46.2-341.5. Commercial drivers licenses, Regulations and procedures to be consistent with federal Commercial Motor Vehicle Safety Act**—The Department is authorized to promulgate regulations and establish procedures to enable it to issue commercial driver's licenses, maintain and exchange driver records, and impose licensing sanctions consistent with the provisions of this article and with the minimum standards of the federal Commercial Motor Vehicle Safety Act and the federal regulations promulgated thereunder.

**46.2-341.18. Commercial drivers licenses, Disqualification for certain offenses**—A. Except as otherwise provided in this section, the Commissioner shall disqualify for a period of one year any person whose record, as maintained by the Department of Motor Vehicles, shows that he has been convicted of any of the following offenses, if such offense was committed while operating a commercial motor vehicle: 1. A violation of any provision of §46.2-341.21 or a violation of any federal law or the law of another jurisdiction substantially similar to §46.2-341.21; 2. A violation of any provision of §46.2-341.24 or a violation of any federal law or the law of another state substantially similar to §46.2-341.24; 3. A violation of any provision of §18.2-51.4 or 18.2-266 or a violation of a local ordinance paralleling or substantially similar to §18.2-51.4 or 18.2-266, or a violation of any federal, state or local law or ordinance substantially similar to §18.2-51.4 or 18.2-266; 4. Refusal to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath in accordance with §§18.2-268.1 through 18.2-268.12 or this article, or the comparable laws of any other state or jurisdiction; 5. Failure of the driver whose vehicle is involved in an accident to stop and disclose his identity at the scene of the accident; or 6. Commission of any crime punishable as a felony in the commission of which a motor vehicle is used, other than a felony described in §46.2-341.19. B. The Commissioner shall disqualify any such person for a period of three years if any offense listed in subsection A of this section was committed while driving a commercial motor vehicle used in the transportation of hazardous materials required to be placarded under federal Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F). C. Beginning September 30, 2005, the Commissioner shall disqualify for a period of one year any person whose record, as maintained by the Department, shows that he has been convicted of any of the following offenses committed while operating a noncommercial motor vehicle, provided that the person was, at the time of the offense, the holder of a commercial driver's license, and provided further that the offense was committed on or after September 30, 2005: 1. A violation of any provision of §18.2-51.4, 18.2-266, or a violation of a local ordinance paralleling or substantially similar to §18.2-51.4 or 18.2-266, or a violation of any federal, state, or local law or ordinance, or law of any other jurisdiction, substantially similar to §18.2-51.4 or 18.2-266; 2. Refusal to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath in accordance with §§18.2-268.1 through 18.2-268.12, or the comparable laws of any other state or jurisdiction; 3. Failure of the driver whose vehicle is involved in an accident to stop and disclose his identity at the scene of the accident; or 4. Commission of any crime punishable as a felony in the commission of which a motor vehicle is used. D. The Commissioner shall disqualify for life any person whose record, as maintained by the Department, shows that he has been convicted of two or more violations of any of the offenses listed in subsection A or C of this section, if each offense arose from a separate incident committed within a period of 10 years, except that if all of the offenses are for violation of an out-of-service order, the disqualification shall be for five years. If two or more such disqualification offenses arise from the same incident, the disqualification periods imposed pursuant to subsection A, B, or C of this section shall run consecutively and not concurrently. E. The Department may issue, if permitted by federal law, regulations establishing guidelines, including conditions, under which a disqualification for life under subsection D may be reduced to a period of not less than 10 years.

**46.2-341.18:2. Commercial drivers licenses, Disqualification for use of urine masking agents or devices.**—The Commissioner shall disqualify for a period of one year any person who has been convicted of a violation of §18.2-251.4.

**46.2-341.19. Commercial drivers licenses, Disqualification for certain offenses involving controlled substances.**—No person shall use a commercial motor vehicle in the commission of any felony involving manufacturing, distributing or dispensing a controlled substance or possession with intent to manufacture, distribute or dispense such controlled substance. For the purpose of this section, a controlled substance shall be defined as provided in §102 (6) of the federal Controlled Substances Act (21 U.S.C. §802 (6)) and includes all substances listed on Schedules I through V of 21 C.F.R. Part 1308 as they may be revised from time to time. Violation of this section shall constitute a separate and distinct offense and any person violating this section shall be guilty of a Class 1 misdemeanor. Punishment for a violation of this section shall be separate and apart from any punishment received from the commission of the primary felony. The Commissioner shall, upon receiving a record of a conviction of a violation of this section, disqualify for life any person who is convicted of such violation.

**46.2-341.21. Commercial drivers licenses, Driving while disqualified**—No person whose privilege to drive a commercial motor vehicle has been suspended or revoked or who has been disqualified from operating a commercial motor vehicle or who has been ordered out of service, and who has been given notice of, or reasonably should know of the suspension, revocation, disqualification, or out-of-service order shall operate a commercial motor vehicle anywhere in the Commonwealth until the period of such suspension, revocation, disqualification, or out-of-service order has terminated, nor shall any person operate on any highway any vehicle that has been declared out of service until such time as the out-of-service declaration has been lifted. Any person who violates this section shall, for the first offense, be guilty of a Class 2 misdemeanor, and for the second or any subsequent offense, be guilty of a Class 1 misdemeanor; however, if the offense is the violation of an out-of-service order, the minimum fine shall be \$1,500 for any person so convicted, and the maximum fine shall be \$5,000. Upon receipt of a record of a violation of this section, the Commissioner shall impose an additional disqualification in accordance with the provisions of §46.2-341.18.

**46.2-341.24. Commercial drivers licenses, Driving while intoxicated or under the influence of narcotics prohibited.**—A. It shall be unlawful for any person to drive or operate any commercial motor vehicle (i) while such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams per 210 liters of breath as indicated by a chemical test administered as provided in this article; (ii) while such person is under the influence of alcohol; (iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any commercial motor vehicle safely; (iv) while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to drive or operate any commercial motor vehicle safely; or (v) while such person has a blood concentration of any of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood. B. It shall be unlawful and a lesser included offense of an offense under provision (i), (ii), or (iv) of subsection A of this section for a person to drive or operate a commercial motor vehicle while such person has a blood alcohol concentration of 0.04 percent or more by weight by volume or 0.04 grams or more per 210 liters of breath as indicated by a chemical test administered in accordance with the provisions of this article.

**46.2-341.25. Commercial drivers licenses, Preliminary screening for alcohol by law-enforcement official; Breath analysis.**—A. Any person who is reasonably suspected of a violation of §46.2-341.24 or of having any alcohol in his blood while driving or operating a commercial motor vehicle may be required by any law-enforcement officer to provide a sample of such person's breath for a preliminary screening to determine the probable alcohol content of his blood. Such person shall be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. Such breath may be analyzed by any police officer of the Commonwealth, or of any county, city, or town, or by any member of a sheriff's department in the normal discharge of his duties. B. The Department of Forensic Science shall determine the proper method and equipment



to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same. C. If the breath sample analysis indicates that there is alcohol present in the person's blood, or if the person refuses to provide a sample of his breath for a preliminary screening, such person shall then be subject to the provisions of §§46.2-341.26:1 through 46.2-341.26:11. D. The results of a breath analysis conducted pursuant to this section shall not be admitted into evidence in any prosecution under §46.2-341.24 or 46.2-341.31, but may be used as a basis for charging a person for a violation of the provisions of §46.2-341.24 or 46.2-341.31. E. The law-enforcement officer requiring the preliminary screening test shall advise the person of his obligations under this section and of the provisions of subsection C of this section.

**46.2-341.26:1. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Terms defined.**—As used in §§46.2-341.26:2 through 46.2-341.26:11, unless the context clearly indicates otherwise: The phrase “alcohol or drug” means alcohol, drug or drugs, or any combination of alcohol and a drug or drugs. The phrase “blood or breath” means either or both. “Chief police officer” means the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city, or the sergeant or chief of police of the town in which the charge will be heard, or their authorized representatives. “Department” means the Department of Forensic Science. “Director” means the Director of the Department of Forensic Science.

**46.2-341.26:2. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Testing after arrests.**—A. Any person, whether licensed by Virginia or not, who operates a commercial motor vehicle upon a highway as defined in §46.2-100 in the Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug or both alcohol and drug content of his blood, if he is arrested for violation of §46.2-341.24 or 46.2-341.31 within two hours of the alleged offense. B. Such person shall be required to have a breath sample taken and shall be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. If the equipment automatically produces a written printout of the breath test result, the printout or a copy shall be given to the suspect. If a breath test is not available, then a blood test shall be required. C. The person may be required to submit to blood tests to determine the drug content of his blood if he has been arrested pursuant to provision (iii), (iv), or (v) of subsection A of §46.2-341.24, or if he has taken the breath test required pursuant to subsection B and the law-enforcement officer has reasonable cause to believe the person was driving under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs. D. If the certificate of analysis referred to in §46.2-341.26:9 indicates the presence of alcohol in the suspect's blood, the suspect shall be taken before a magistrate to determine whether the magistrate should issue an out-of-service order prohibiting the suspect from driving any commercial motor vehicle for a 24-hour period. If the magistrate finds that there is probable cause to believe that the suspect was driving a commercial motor vehicle with any measurable amount of alcohol in his blood, the magistrate shall issue an out-of-service order prohibiting the suspect from driving any commercial motor vehicle for a period of 24 hours. The magistrate shall forward a copy of the out-of-service order to the Department within seven days after issuing the order. The order shall be in addition to any other action or sanction permitted or required by law to be taken against or imposed upon the suspect.

**46.2-341.26:3. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Refusal to consent to testing and issuance of out-of-service order and disqualification from operating motor vehicle**—A. If a person arrested for a violation of §46.2-341.24 or §46.2-341.31, after having been advised by a law-enforcement officer (i) that a person who operates a commercial motor vehicle on a public highway in the Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples of his blood or breath taken for chemical tests to determine the alcohol or drug content of his blood, (ii) that a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, and (iii) that the unreasonable refusal to do so constitutes grounds for the issuance of an out-of-service order and for the disqualification of such person from operating a commercial motor vehicle, then refuses to permit blood or breath samples to

be taken for such tests, the law-enforcement officer shall take the person before a magistrate. If he again refuses after having been further advised by the magistrate (i) of the law requiring blood or breath samples to be taken, (ii) that a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, and (iii) the sanctions for refusal, and declares again his refusal in writing on a form provided by the Supreme Court, or refuses or fails to so declare in writing and such fact is certified as prescribed below, then no blood or breath samples shall be taken even though he may later request them. B. The form shall contain a brief statement of the law requiring the taking of blood or breath samples, that a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, and the sanctions for refusal; a declaration of refusal; and lines for the signature of the person from whom the blood or breath sample is sought, the date, and the signature of a witness to the signing. If the person refuses or fails to execute the declaration, the magistrate shall certify such fact and that the magistrate advised the person that a refusal to permit a blood or breath sample to be taken, if found to be unreasonable, constitutes grounds for immediate issuance of an out-of-service order prohibiting him from driving a commercial vehicle for a period of twenty-four hours, and for the disqualification of such person from operating a commercial motor vehicle. C. If the magistrate finds that there was probable cause to believe the refusal was unreasonable, he shall immediately issue an out-of-service order prohibiting the person from operating a commercial motor vehicle for a period of twenty-four hours and shall issue a warrant or summons charging such person with a violation of §46.2-341.26:2. The warrant or summons shall be executed in the same manner as criminal warrants. Venue for the trial of the warrant or summons shall lie in the court of the county or city in which the criminal offense is to be tried. D. The executed declaration of refusal or the certificate of the magistrate, as the case may be, shall be attached to the warrant and shall be forwarded by the magistrate to the court. E. When the court receives the declaration or certificate together with the warrant or summons charging refusal, the court shall fix a date for the trial of the warrant or summons, at such time as the court designates. F. The declaration of refusal or certificate under §46.2-341.26:3 shall be prima facie evidence that the defendant refused to allow a blood or breath sample to be taken to determine the alcohol or drug content of his blood. However, this shall not prohibit the defendant from introducing on his behalf evidence of the basis for his refusal. The court shall determine the reasonableness of such refusal.

**46.2-341.26:4. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Procedures for appeals and trials.**—The procedure for appeal and trial shall be the same as provided by law for misdemeanors. If requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt. If the court or jury finds the defendant guilty as charged in the warrant or summons referred to in §46.2-341.26:3, the defendant shall be disqualified as provided in §46.2-341.18. However, if the defendant pleads guilty to a violation of §46.2-341.24, the court may dismiss the warrant or summons. The court shall notify the Commissioner of any such finding of guilt and shall forward the defendant's license to the Commissioner as in other cases of similar nature for suspension of license unless the defendant appeals his conviction. In such case the court shall return the license to the defendant upon his appeal being perfected.

**46.2-341.26:5. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Persons authorized to take blood samples for testing; Procedure; Liability**—For purposes of this article, only a physician, registered nurse, licensed practical nurse, phlebotomist, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting on the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine, pvp iodine, povidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining its alcohol or drug content. It is a Class 3 misdemeanor to reuse single-use-only needles or syringes. No civil liability shall attach to any person authorized by this section to withdraw blood as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures. However, the person shall not be relieved from liability for negligence in the withdrawing of any blood sample. No

person arrested for a violation of §46.2-341.24 or §46.2-341.31 shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood or as a condition precedent to the withdrawal of blood as provided for in this section.

**46.2-341.26:6. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Blood samples, Handling of.**—The blood sample withdrawn pursuant to §46.2-341.26:5 shall be placed in vials provided or approved by the Department of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vials shall complete the prenumbered certificate of blood withdrawal forms and attach one form to each vial. The completed withdrawal certificate for each vial shall show the name of the suspect, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting or accompanying officer. The vials shall be placed in a container provided by the Department, and the container shall be sealed to prevent tampering with the vials. A law-enforcement officer shall take possession of the container as soon as the vials are placed in such container and sealed, and shall promptly transport or mail the container to the Department.

**46.2-341.26:7. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Handling of samples.**—A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to §46.2-341.26:6, the Department shall have it examined for its alcohol or drug content, and the Director shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug content. The Director or his representative shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. After completion of the analysis, the Department shall preserve the remainder of the blood until 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period. B. When a blood sample taken in accordance with the provisions of §§46.2-341.26:2 through 46.2-341.26:6 is forwarded for analysis to the Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT). Upon request of the person whose blood or breath was analyzed, the test results shall be made available to him. The Director may delegate or assign these duties to an employee of the Department.

**46.2-341.26:8. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Costs, Fees**—Payment for withdrawing blood shall not exceed \$25, which shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of §46.2-341.24 or §46.2-341.31, any fees paid by the Commonwealth to the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

**46.2-341.26:10. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Trials, Evidence.**—A. In any trial for a violation of §46.2-341.24, admission of the blood or breath test results shall not limit the introduction of any other relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the results of the blood or breath tests, consider other relevant admissible evidence of the condition of the accused. If the test results indicate the presence of any drugs other than alcohol, the test results shall be admissible except in a prosecution under clause (v) of §46.2-341.24, only if other competent evidence has been presented to relate the presence of the drug or drugs to the impairment of the accused's ability to drive or operate any commercial motor vehicle safely. B. The failure of an accused to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood is not evidence and shall not be subject to any comment by the Commonwealth at the trial of the case, except in rebuttal or pursuant to subsection C; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal or pursuant to subsection C. C. Evidence of a finding against the defendant under §18.2-268.3 for his unreasonable refusal to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood shall be admissible into evidence, upon the motion of the Commonwealth or the defendant, for the sole purpose of explaining the absence at trial of a chemical test of such sample. When admitted pursuant to this subsection such evidence shall not be considered evidence of the accused's guilt. D. The court or jury trying the case involving a violation of clause (ii), (iii) or (iv) of §46.2-341.24 shall determine the innocence or guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

**46.2-341.26:11. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Substantial compliance with procedures.**—The steps set forth in §§46.2-341.26:2 through 46.2-341.26:9 relating to taking, handling, identifying, and disposing of blood or breath samples are procedural and not substantive. Substantial compliance shall be sufficient. Failure to comply with any steps or portions thereof shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered with all the evidence in the case; however, the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedures or any part thereof, and that as a result his rights were prejudiced.

**46.2-341.27. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Prosecution for violations; Presence of alcohol or drugs and presumptions.**—In any prosecution for a violation of provision (ii), (iii) or (iv) of subsection A of §46.2-341.24, the amount of alcohol or drugs in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the suspect's blood or breath to determine the alcohol or drug content of his blood in accordance with the provisions of §§46.2-341.26:1 through 46.2-341.26:11 shall give rise to the following rebuttable presumptions: A. If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, it shall be presumed that the accused was under the influence of alcoholic intoxicants. B. If there was at that time less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, such fact shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such fact may be considered with other competent evidence in determining the guilt or innocence of the accused. C. If there was at that time an amount of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood, it shall be presumed that the accused was under the influence of drugs to a degree which impairs his ability to drive or operate any commercial motor vehicle safely.

**46.2-341.28. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Penalty for violations**—Any person violating any provision of subsection A of §46.2-341.24 shall be guilty of a Class 1 misdemeanor. Any person convicted of a second offense committed within less than five years after a first offense under subsection A of §46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor

more than one year. Five days of such confinement shall be a mandatory minimum sentence. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under subsection A of §46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within 10 years of an offense under subsection A of §46.2-341.24 shall be punishable by a fine of not less than \$500 nor more than \$2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory minimum sentence if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory minimum sentence if the third or subsequent offense occurs within a period of five to 10 years of a first offense. For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under (i) §18.2-51.4 or §18.2-266, (ii) the ordinance of any county, city or town in this Commonwealth substantially similar to the provisions of §18.2-51.4 or §18.2-266, (iii) subsection A of §46.2-341.24, or (iv) the laws of any other state substantially similar to the provisions of §§18.2-51.4, 18.2-266 or subsection A of §46.2-341.24, shall be considered a prior conviction.

**46.2-341.29. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Penalty for violations, where blood alcohol content equal to or greater than 0.04**—Any person violating the provisions of subsection B of §46.2-341.24 shall be guilty of a Class 3 misdemeanor.

**46.2-341.30. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Conviction and disqualification from privilege to drive or operate a commercial motor vehicle.**—A. The judgment of conviction under any provision of §46.2-341.24 shall of itself operate to disqualify the person so convicted from the privilege to drive or operate any commercial motor vehicle as provided in §46.2-341.18. Notwithstanding any other provision of law, such disqualification shall not be subject to any suspension, reduction, limitation or other modification by the court or the Commissioner. B. A judgment of conviction under any provision of subsection A of §46.2-341.24, in addition to causing the disqualification under subsection A of this section, shall also operate to deprive the person so convicted of his privilege to drive or operate any motor vehicle as provided in §18.2-271.

**46.2-341.31. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Commercial motor vehicle drivers prohibited from driving with any amount of alcohol in the blood**—No person shall drive a commercial motor vehicle while having any amount of alcohol in his blood, as measured by a test administered pursuant to the provisions of §§46.2-341.26:1 through 46.2-341.26:11. Any person found to have so driven a commercial motor vehicle shall be guilty of a traffic infraction.

**46.2-341.32. Commercial drivers, Chemical tests to determine alcohol or drug content of blood; Agreements to implement Commercial Motor Vehicle Safety Act requirements.**—The Department may procure and enter into agreements or arrangements for the purpose of participating in the Commercial Driver License System or any other similar information system established to implement the requirements of the Commercial Motor Vehicle Safety Act, and may procure and enter into other agreements or arrangements to carry out the provisions of this article.

**46.2-341.34. Commercial drivers, Chemical tests for alcohol or drugs; Denial of license or disqualification from operating a motor vehicle; Appeals; Judicial review**—Any person denied a commercial driver's license or who has been disqualified from operating a commercial motor vehicle under the provisions of this article is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§2.2-4000 et seq.). No appeal shall lie in any case in which such denial or disqualification was mandatory except to determine the identity of the person concerned when the question of identity is in dispute. From the final decision of the circuit court, either party shall have an appeal as of right to the Court of Appeals. While an appeal is pending from the action of the Department disqualifying the person or denying him a license, or from the court affirming the action of the Department, the person aggrieved shall not drive a commercial motor vehicle.

**45.1-161.78. Coal mine safety; Accident reports; Substance abuse testing required as part of inspection or complaint investigation if reasonable cause to suspect a miner's impairment caused or was a contributing factor to any accident in which serious injury or death occurred; Refusal to submit to testing or failure to pass a test and immediate temporary suspension of certificates; Accident reports.**—A. Each operator will report promptly to the Department the occurrence at any mine of any accident. The scene of the accident shall not be disturbed pending an investigation, except to the extent necessary to rescue or recover a person, prevent or eliminate an imminent danger, prevent destruction of mining equipment, or prevent suspension of use of a slope, entry or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator will secure prior approval from the Department before any changes are made. B. The Chief will go personally or dispatch one or more mine inspectors to the scene of such a coal mine accident, investigate causes, and issue such orders as may be needed to ensure safety of other persons. C. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in the investigation. An employee if so designated by the employees of the mine will be notified, and as many as three employees if so designated as representatives of the employees may be present at the investigation in a consulting capacity. D. The Chief shall require substance abuse testing as part of an inspection or complaint investigation if there is reasonable cause to suspect a miner's impairment, due to the presence of intoxicants or any controlled substance not used in accordance with the prescription of a licensed prescriber, or has been a contributing factor to any accident in which a serious personal injury or death occurs at a mine. The Chief shall require substance abuse testing of any miner killed or seriously injured and of any other person who may have contributed to the accident. Any substance abuse testing required by the Chief will be paid for by the Department. Refusal by any miner to submit to substance abuse testing, or the failure to pass such a test, shall result in the immediate temporary suspension of all certificates, pending hearing before the Board of Coal Mining Examiners. E. The Department will render a complete report of circumstances and causes of each accident investigated, and make recommendations for the prevention of similar accidents. The Department will furnish one copy of the report to the operator, and one copy to the employee representative when he has been present at the investigation. The Chief shall maintain a complete file of all accident reports for coal mines, and shall give such further publicity as may be ordered by the Director in an effort to prevent mine accidents.

**45.1-161.87. Coal mine safety, Duties of mine operator; Implementation of a substance abuse screening policy for all miners, to include preemployment, 11-panel urine testing; Collection and handling of specimens; Notice requirements; Limitations.**—A. The operator, or his agent, of every mine shall furnish the Chief and mine inspectors proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector. B. The operator of an underground mine, or his agent, shall provide a mine inspector adequate means for transportation to the active working areas of the mine within a reasonable time following the mine inspector's arrival at the mine. C. The operator or his agent shall, when ordered to do so by a mine inspector during the course of his inspection, promptly clear the mine or section thereof of all persons. D. The mine operator shall implement a substance abuse screening policy and program for all miners that shall, at a minimum, include a pre-employment, 11-panel urine test for the following substances:

1. Amphetamines,
2. Cannabinoids/THC,
3. Cocaine,
4. Opiates,
5. Phencyclidine (PCP),
6. Benzodiazepines,
7. Propoxyphene,
8. Methaqualone,
9. Methadone,
- 10. Barbiturates, and**
- 11. Synthetic narcotics.**

	<p>Samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 CFR Part 40. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. The mine operator may implement a more stringent substance abuse screening policy and program. E. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of any failure of a pre-employment substance abuse screening test. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending hearing before the Board of Coal Mining Examiners. F. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of (i) discharging a miner due to violation of the company's substance or alcohol abuse policies, (ii) a miner testing positive for intoxication while on duty status, or (iii) a miner testing positive as using any controlled substance without the prescription of a licensed prescriber. An operator having a substance abuse program shall not be required to notify the Chief under subdivision (iii) unless the miner having tested positive fails to complete the operator's substance abuse program. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending hearing before the Board of Coal Mining Examiners. G. The provisions of this chapter shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section.</p>
<p><b>Washington</b></p>	<p><b>46.25.090. Commercial motor vehicle drivers, Grounds for disqualification from driving a commercial motor vehicle; Driving under the influence of alcohol or any drug; Driving while alcohol concentration is 0.04 or more per testing.</b>—(1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of: (a) Driving a motor vehicle under the influence of alcohol or any drug; (b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction; (c) Leaving the scene of an accident involving a motor vehicle driven by the person; (d) Using a motor vehicle in the commission of a felony; (e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle; (f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle; (g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide. If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years. (2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents. (3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years. (4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW. (5) A person is disqualified from driving a commercial motor vehicle for a period of: (a) Not less than sixty days if: (i) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or (ii) Convicted of reckless driving, where there has been a prior serious traffic violation; or (b) Not less than one hundred twenty days if: (i) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or (ii) Convicted of reckless driving, where there has been two or more prior serious traffic violations. For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted. (6) A person is disqualified from driving a commercial motor vehicle for a period of: (a) Not less than ninety days nor more than one year if convicted of or found to have</p>

committed a first violation of an out-of-service order while driving a commercial vehicle; (b) Not less than one year nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents; (c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents; (d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. (7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life. (8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation: (i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train; (ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear; (iii) For drivers who are always required to stop, failing to stop before driving onto the crossing; (iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping; (v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing; (vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance. (b) A person is disqualified from driving a commercial motor vehicle for a period of: (i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation; (ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period; (iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period. (9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. (10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action.

**46.25.090. Commercial motor vehicle drivers, Grounds for disqualification from driving a commercial motor vehicle; Driving under the influence of alcohol or any drug; Driving while alcohol concentration is 0.04 or more per testing.**—(1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of: (a) Driving a motor vehicle under the influence of alcohol or any drug; (b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction; (c) Leaving the scene of an accident involving a motor vehicle driven by the person; (d)



Using a motor vehicle in the commission of a felony; (e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle; (f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle; (g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide. If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years. (2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents. (3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years. (4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW. (5) A person is disqualified from driving a commercial motor vehicle for a period of: (a) Not less than sixty days if: (i) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or (ii) Convicted of reckless driving, where there has been a prior serious traffic violation; or (b) Not less than one hundred twenty days if: (i) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or (ii) Convicted of reckless driving, where there has been two or more prior serious traffic violations. For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted. (6) A person is disqualified from driving a commercial motor vehicle for a period of: (a) Not less than ninety days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle; (b) Not less than one year nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents; (c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents; (d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. (7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life. (8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation: (i) For drivers who are not required to always stop, failing to

slow down and check that the tracks are clear of an approaching train; (ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear; (iii) For drivers who are always required to stop, failing to stop before driving onto the crossing; (iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping; (v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing; (vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance. (b) A person is disqualified from driving a commercial motor vehicle for a period of: (i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation; (ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period; (iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period. (9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. (10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action.

**46.25.110. Driving a commercial motor vehicle under the influence of alcohol prohibited; Out-of-service orders for those under influence or who refuse to take an alcohol test.—(1)**

Notwithstanding any other provision of Title 46 RCW, a person may not drive, operate, or be in physical control of a commercial motor vehicle while having alcohol in his or her system. (2) Law enforcement or appropriate officials shall issue an out-of-service order valid for twenty-four hours against a person who drives, operates, or is in physical control of a commercial motor vehicle while having alcohol in his or her system or who refuses to take a test to determine his or her alcohol content as provided by RCW 46.25.120.

**46.25.120. Commercial motor vehicle drivers, Testing for alcohol or drugs; Disqualification for refusal to submit to test or for a positive test result—(1)** A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to RCW 46.61.506, to take a test or tests of that person's blood or breath for the purpose of determining that person's alcohol concentration or the presence of other drugs. (2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system. (3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under RCW 46.25.090. (4) If the person refuses testing, or submits to a test that discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (1) of this section and that the person refused to submit to testing, or submitted to a test that disclosed an alcohol concentration of 0.04 or more. (5) Upon receipt of the sworn report of a law enforcement officer under subsection (4) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while having alcohol in the person's system, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, and, if the test was administered, whether the results indicated an alcohol concentration of 0.04 percent or more. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic

infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334. (6) If a motor carrier or employer who is required to have a testing program under 49 C.F.R. 382 knows that a commercial driver in his or her employ has refused to submit to testing under this section and has not been disqualified from driving a commercial motor vehicle, the employer may notify law enforcement or his or her medical review officer or breath alcohol technician that the driver has refused to submit to the required testing. (7) The hearing provisions of this section do not apply to those persons disqualified from driving a commercial motor vehicle under RCW 46.25.090(7).

**46.25.123. Commercial motor vehicle drivers, Testing for alcohol or drugs; Mandatory reporting of a positive test result.**—(1) All medical review officers or breath alcohol technicians hired by or under contract to a motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40 or to a consortium the carrier or employer belongs to, as defined in 49 C.F.R. 40.3, shall report the finding of a commercial motor vehicle driver's verified positive drug test or positive alcohol confirmation test to the department of licensing on a form provided by the department. If the employer is required to have a testing program under 49 C.F.R. 655, a report of a verified positive drug test or positive alcohol confirmation test must not be forwarded to the department under this subsection unless the test is a pre-employment drug test conducted under 49 C.F.R. 655.41 or a pre-employment alcohol test conducted under 49 C.F.R. 655.42. (2)(a) A motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40, or the consortium the carrier or employer belongs to, must report a refusal by a commercial motor vehicle driver to take a drug or alcohol test, under circumstances that constitute the refusal of a test under 49 C.F.R. 40 and where such refusal has not been reported by a medical review officer or breath alcohol technician, to the department of licensing on a form provided by the department. (b) An employer who is required to have a testing program under 49 C.F.R. 655 must report a commercial motor vehicle driver's verified positive drug test or a positive alcohol confirmation test when: (i) The driver's employment has been terminated or the driver has resigned; (ii) any grievance process, up to but not including arbitration, has been concluded; and (iii) at the time of termination or resignation the driver has not been cleared to return to safety-sensitive functions. (3) Motor carriers, employers, or consortiums shall make it a written condition of their contract or agreement with a medical review officer or breath alcohol technician, regardless of the state where the medical review officer or breath alcohol technician is located, that the medical review officer or breath alcohol technician is required to report all Washington state licensed drivers who have a verified positive drug test or positive alcohol confirmation test to the department of licensing within three business days of the verification or confirmation. Failure to obtain this contractual condition or agreement with the medical review officer or breath alcohol technician by the motor carrier, employer, or consortium, or failure to report a refusal as required by subsection (2) of this section, will result in an administrative fine as provided in RCW 46.32.100 or 81.04.405. (4) Substances obtained for testing may not be used for any purpose other than drug or alcohol testing under 49 C.F.R. 40.

**46.25.125. Commercial motor vehicle drivers, Testing for alcohol or drugs; Disqualification for positive test results; Procedure.**—(1) When the department of licensing receives a report from a medical review officer, breath alcohol technician, employer, contractor, or consortium that a driver has a verified positive drug test or positive alcohol confirmation test, as part of the testing program conducted under 49 C.F.R. 40, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090(7) subject to a hearing as provided in this section. The department shall notify the person in writing of the disqualification by first class mail. The notice must explain the procedure for the person to request a hearing. (2) A person disqualified from driving a commercial motor vehicle for having a verified positive drug test or positive alcohol confirmation test may request a hearing to challenge the disqualification within twenty days from the date notice is given. If the request for a hearing is mailed, it must be postmarked within twenty days after the department has given notice of the disqualification. (3) The hearing must be conducted in the county

of the person's residence, except that the department may conduct all or part of the hearing by telephone or other electronic means. (4) For the purposes of this section, or for the purpose of a hearing de novo in an appeal to superior court, the hearing must be limited to the following issues: (a) Whether the driver is the person who is the subject of the report; (b) whether the motor carrier, employer, or consortium has a program that is subject to the federal requirements under 49 C.F.R. 40; and (c) whether the medical review officer or breath alcohol technician making the report accurately followed the protocols established to verify or confirm the results, or if the driver refused a test, whether the circumstances constitute the refusal of a test under 49 C.F.R. 40. Evidence may be presented to demonstrate that the test results are a false positive. For the purpose of a hearing under this section, a copy of a positive test result with a declaration by the tester or medical review officer or breath alcohol technician stating the accuracy of the laboratory protocols followed to arrive at the test result is prima facie evidence: (i) Of a verified positive drug test or positive alcohol confirmation test result; (ii) That the motor carrier, employer, or consortium has a program that is subject to the federal requirements under 49 C.F.R. 40; and (iii) That the medical review officer or breath alcohol technician making the report accurately followed the protocols for testing established to verify or confirm the results. After the hearing, the department shall order the disqualification of the person either be rescinded or sustained. (5) If the person does not request a hearing within the twenty-day time limit, or if the person fails to appear at a hearing, the person has waived the right to a hearing and the department shall sustain the disqualification. (6) A decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation and the department receives no further report of a verified positive drug test or positive alcohol confirmation test during the pendency of the hearing and appeal. If the disqualification is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of his or her residence to review the final order of disqualification by the department in the manner provided in RCW 46.20.334. (7) The department of licensing may adopt rules specifying further requirements for requesting and conducting a hearing under this section. (8) The department of licensing is not civilly liable for damage resulting from disqualifying a driver based on a verified positive drug test or positive alcohol confirmation test result as required by this section or for damage resulting from release of this information that occurs in the normal course of business.

**46.25.170. Commercial motor vehicle drivers, Driving under influence of alcohol; Penalty for violations.**—(1) A person subject to RCW 81.04.405 who is determined by the utilities and transportation commission, after notice, to have committed an act that is in violation of RCW 46.25.020, 46.25.030, 46.25.040, 46.25.050, or 46.25.110 is liable to Washington state for the civil penalties provided for in RCW 81.04.405. (2) A person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of RCW 46.25.020, 46.25.030, 46.25.040, 46.25.050, or 46.25.110 is guilty of a gross misdemeanor.

**Sec. 1. Commercial drivers who test positive for unlawful substances, Legislative policy on reporting requirements**—It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington.

Regulations of the Department of Social and Health Services pertaining to drug-free workplace programs, Washington Administrative Code Chapter 388-815, WAC 388-815-005 through 388-815-250, were repealed, effective July 13, 2001 [Formerly Chapter 440-26 WAC]. The Department of Social and Health Services repealed WAC 388-815-050 through 388-815-250 because related

	<p>statutory provisions under chapter 49.82 RCW, Drug-free workplace programs, expired January 1, 2001.</p>
<p><b>West Virginia</b></p>	<p><b>25-1-11. Prospective correctional employees must pass a preemployment drug screening prior to hiring</b>—The commissioner of corrections shall appoint a warden for each institution under the control of the division of corrections. The commissioner of corrections, or his or her designee, has the authority to manage and administer the finances, business, operations, security and personnel affairs of correctional units under the jurisdiction of the division of corrections. All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the chief executive officer and the authority of the commissioner of corrections, or his or her designee, except those persons employed by the state board of education, pursuant to section thirteen-f, article two, chapter eighteen of this code. The warden or administrator of each institution or correctional unit has the power to hire all assistants and employees required for the management of the institution in his or her charge; but the number of the assistants and employees, and their compensation, shall first be approved by the state commissioner of corrections. All prospective correctional employees shall pass a preemployment drug screening prior to being hired. It is the duty of the commissioner of corrections to investigate any complaint made against the warden or administrator of any institution, and also against any other officer or employee thereof, if the same has not been investigated.</p> <p><b>60A-4-412. Defeating or attempting to defeat drug and alcohol tests; Adulteration or attempted adulteration of sample; Penalty for violations.</b>—(a) Any person who: (1) Knowingly sells, gives away, distributes or markets any substance or product in this state or transports such a substance or product into this state with the intent that the substance or product will be used to defeat a drug or alcohol screening test;(2) Attempts to defeat a drug or alcohol screening test by the substitution of a false sample; (3) Knowingly advertises for sale or distribution any substance or product the advertised purpose of which is to defeat a bodily fluid screening test for drugs or alcohol; (4) Adulterates a bodily fluid sample with the intent to defeat a drug or alcohol screening test; (5) Knowingly possesses adulterants for the purpose of defeating a drug or alcohol screening test; or (6) Knowingly sells adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defeating a drug or alcohol screening test. (b) A person who violates a provision of subsection (a) of this section: (1) For a first offense is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars; (2) For a second offense is guilty of a misdemeanor and, upon conviction, be fined not more than five thousand dollars; and (3) For a third or subsequent offense is guilty of a misdemeanor and, upon conviction, be fined not more than ten thousand dollars or confined in the regional jail for not more than one year, or both. (c) As used in this section, "adulterate" means a substance that is not expected to be in human fluids but that is a concentration so high that it is not consistent with human bodily fluids, including, but not limited to:</p> <ul style="list-style-type: none"> <li>(1) Bleach;</li> <li>(2) Chromium;</li> <li>(3) Creatinine;</li> <li>(4) Detergent;</li> <li>(5) Glutaraldehyde;</li> <li>(6) Glutaraldehyde/squalene;</li> <li>(7) Hydrochloric acid;</li> <li>(8) Hydroiodic acid;</li> <li>(9) Iodine;</li> <li>(10) Nitrite;</li> <li>(11) Peroxidase;</li> <li>(12) Potassium dichromate;</li> <li>(13) Potassium nitrate;</li> <li>(14) Pyridinium chlorochromate; and</li> <li>(15) Sodium nitrite.</li> </ul> <p><b>21-1D-1. Title, West Virginia Alcohol and Drug-free Workplace Act (New; Eff. 7/1/2008).</b>—This article shall be called the West Virginia Alcohol and Drug-Free Workplace Act.</p>

**21-1D-2. West Virginia Alcohol and Drug-free Workplace Act; Definitions (New; Eff. 7/1/2008).**—(a) The term “alcohol test” means a procedure conducted to determine if an individual is under the influence of alcohol. (b) The term “construction”, as used in this article, means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract. The term “construction” does not include temporary or emergency repairs. (c) The term “contractor” means any employer working on a public improvement without regard to whether they are serving as the prime or subcontractor to another. (d) The term “drug test” means a procedure using a nine-panel drug screen in urine specimens that are collected from individuals for the purpose of scientifically analyzing the specimens to determine if the individual ingested, was injected or otherwise exposed to a drug of abuse. (e) The term “drug of abuse” means any substance listed under subsection (h) of this section. (f) The term “employee” means a laborer, mechanic or other worker. For the purposes of this article, employee does not include such persons as are employed or hired directly by a public authority on a regular or temporary basis engaged exclusively in making temporary or emergency repairs. Furthermore, employee does not include such persons employed by a contractor who does not work in public improvement construction. (g) The term “medical review officer” means a physician who holds a certificate authorizing them to practice medicine and surgery or osteopathic medicine and surgery, has knowledge of substance abuse disorders, has the appropriate medical training to interpret and evaluate positive drug and alcohol test results together with a person's medical history and other relevant biomedical information, has successfully completed qualification training as outlined in the Code of Federal Regulations at 49 C. F. R. Part 40 Section 121 (c) and has passed an exam administered by a nationally recognized medical review officer certification board or subspecialty board for medical practitioners in the field of medical review of federally mandated drug testing. (h) The term “nine-panel drug screen” means a drug-testing program that tests for marijuana, cocaine, opiates including hydromorphone, oxycodone, hydrocodone, phencyclidine, amphetamines, barbiturates, benzodiazepines, methadone and propoxyphene at the substance screening and confirmation limits where provided under federally mandated drug and alcohol testing programs or otherwise accepted as the industry standard. (i) The term “public authority”, as used in this article, means any officer, board or commission or other agency of the State of West Virginia authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia and this article applies to expenditures of these institutions made, in whole or in part, from public funds. (j) The term “public improvement”, as used in this article, includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia. (k) The term “random drug testing” means a procedure in which employees who perform safety-sensitive tasks are selected to undergo a drug test by a statistically valid random selection method without prearrangement or planning. (l) The term “reasonable cause” means a belief based on facts and inferences based primarily upon, but not limited to: (1) Observable phenomena, such as direct observation of use, possession or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance, such as, but not limited to, slurred speech, dilated pupils, odor of an alcoholic beverage or a controlled substance, changes in affect or dynamic mood swings; (2) a pattern of abnormal conduct, erratic or aberrant behavior or deteriorating work performance such as frequent absenteeism, excessive tardiness or recurrent accidents, that appears to be related to the use of alcohol or a controlled substance and does not appear to be attributable to other factors; (3) the identification of an employee as the focus of a criminal investigation into unauthorized possession, use or trafficking of a controlled substance; (4) a report of use of alcohol or a controlled substance provided by a reliable and credible source; and (5) repeated or flagrant violations of the safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appears to be related to the use of alcohol or a controlled substance and that does not appear attributable to other factors. (m) The term “safety-sensitive duty” means any task or duty fraught with such risks of injury to the employee or others that even a momentary lapse of attention or judgment, or both, can lead to serious bodily harm or death. (n) The term “under the influence of alcohol” means a concentration of eight hundredths of one percent or more by weight of alcohol in an individual's blood or a concentration of eight hundredths of one gram or more by weight of alcohol per two hundred ten liters of an individual's breath.

**21-1D-3. West Virginia Alcohol and Drug-free Workplace Act; State policy (New; Eff. 7/1/2008).**—It is hereby declared to be the policy of the State of West Virginia to require public improvement contractors to have and implement a drug-free workplace policy that requires drug and alcohol testing.

21-1D-4.[West Virginia Alcohol and Drug-free Workplace Act; Public contracts; Contractors and subcontractors must implement and maintain a drug-free workplace policy (New; Eff. 7/1/2008)].— Except as provided in section eight of this article, no public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the contractor and its subcontractors to implement and maintain a written drug-free workplace policy in compliance with this article and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy in compliance with this article. The public improvement contract shall provide for the following: (1) That the contractor implements its drug-free workplace policy; (2) Cancellation of the contract by the awarding public authority if the contractor: (A) Fails to implement its drug-free workplace policy; (B) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or (C) Provides to the public authority false information regarding the contractor's drug-free workplace policy.

**21-1D-5. West Virginia Alcohol and Drug-free Workplace Act; Public contracts; Contractors submitting bids for public improvement projects must submit affidavit of written plan for a drug-free workplace policy (New; Eff. 7/1/2008)**—After the first day of July, two thousand eight, any solicitation for a public improvement contract shall require each contractor that submits a bid for the work to submit at the same time an affidavit that the contractor has a written plan for a drug-free workplace policy. A public improvement contract may not be awarded to a contractor who does not have a written plan for a drug-free workplace policy and who has not submitted that plan to the appropriate contracting authority in timely fashion. For subcontractors, compliance with this section may take place before their work on the public improvement is begun. A drug-free workplace policy shall include the following: (1) Establish drug testing and alcohol testing protocols that at a minimum require a contractor to: (A) Conduct preemployment drug tests of all employees; (B) Conduct random drug testing that annually tests at least ten percent of the contractor's employees who perform safety-sensitive duties; (C) Conduct a drug test or alcohol test of any employee who may have caused or contributed to an accident while conducting job duties where reasonable cause exists to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician when, but not limited to, the employer has evidence that an employee is or was using alcohol or a controlled substance drawn from specific documented, objective facts and reasonable inferences drawn from these facts in light of experience and training. The drug or alcohol test shall be conducted as soon as possible after the accident occurred and after any necessary medical attention has been administered to the employee. (D) Conduct a drug test or alcohol test of any employee when a trained supervisor has reasonable cause to believe that the employee has reported to work or is working under the influence of a drug of abuse or alcohol. Written documentation as to the nature of a supervisor's reasonable cause shall be created. In order to ascertain and justify implementation of a reasonable cause test, all supervisors will be trained to recognize drug-and alcohol-related signs and symptoms. (2) Require that all drug tests performed pursuant to this section be conducted by a laboratory certified by the United States Department of Health and Human Services or its successor; (3) Establish standards governing the performance of drug tests by such a laboratory that include, but are not limited to, the following: (A) The collection of urine specimens of individuals in a scientifically or medically approved manner and under reasonable and sanitary conditions; (B) The collection and testing of urine specimens with due regard for the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection and testing of specimens; (C) The documentation of urine specimens through procedures that reasonably preclude the possibility of erroneous identification of test results and that provide the individual being tested a reasonable opportunity to furnish information identifying any prescription or nonprescription drugs used by the individual in connection with a medical condition to the medical review officer; (D) The collection, maintenance, storage and transportation of urine specimens in a

manner that reasonably precludes the possibility of contamination or adulteration of the specimens; (E) The testing of a urine specimen of an individual to determine if the individual ingested, was injected or otherwise introduced with a drug of abuse in a manner that conforms to scientifically accepted analytical methods and procedures that include verification and confirmation of any positive test result by gas chromatography or mass spectrometry. (4) Establish standards and procedures governing the performance of alcohol tests; (5) Require that a medical review officer review all drug tests that yield a positive result; (6) Establish procedures by which an individual who undergoes a drug test or alcohol test may contest a positive test result; (7) Require that when an employee of a contractor tests positive for a drug of abuse or alcohol, or if an employee is caught adulterating a drug or alcohol test, as defined in section four hundred twelve, article four, chapter sixty-a of this code, the employee shall be subject to appropriate disciplinary measures up to and including termination from employment, in accordance with the contractor's written drug-free workplace policy. If not terminated, the employee shall be subject to random drug or alcohol tests at any time for one year after the positive test; (8) Require that when a supervisor has reasonable cause to believe an employee is under the influence of a drug of abuse or alcohol at work and requires the employee to take a drug or alcohol test, the employee shall immediately be suspended from performing safety-sensitive tasks by the contractor until such time as a drug or alcohol test is performed and results of that test are available; (9) Require a contractor to provide to any employee testing positive for a drug of abuse or alcohol the list of community resources where employees may seek assistance for themselves or their families as identified in paragraph (D), subdivision (12) of this section; (10) Require that a contractor assist an employee who voluntarily acknowledges that the employee may have a substance abuse problem by providing the list of community resources where employees may seek assistance for themselves or their families as identified in paragraph (D), subdivision (12) of this section; (11) Require that a contractor establish a written drug-free workplace policy regarding substance abuse and provide a copy of the written policy to each of its employees and to each applicant for employment. The written policy shall contain, at a minimum, all of the following: (A) A summary of all the elements of the drug-free workplace policy established in accordance with this article; (B) A statement that it is the contractor's intention to create a drug-free workplace environment; (C) Identification of an employee who has been designated the contractor's drug-free workplace representative; (D) Shall list the types of tests an employee may be subject to, which may include, but are not limited to, the following:

(i) Preemployment;

(ii) Post-accident;

(iii) Random; and

(iv) Reasonable cause. (12) Require that a contractor provide within six weeks of new employment at least two hours of drug-free workplace employee education for all employees unless that employee has already received such training anytime within a prior two-year period. The employee shall participate in drug-free workplace employee education at least biannually thereafter. The employee education shall include all of the following: (A) Detailed information about the content of the contractor's specific drug-free workplace policy and an opportunity for employees to ask questions regarding the policy; (B) The distribution of a hard copy of the written drug-free workplace policy, including collecting an employee-signed acknowledgment receipt from each employee; (C) Specific explanation of the basics of drugs and alcohol abuse, including, but not limited to, the disease model, signs and symptoms associated with substance abuse, and the effects and dangers of drugs or alcohol in the workplace; and (D) A list of community resources where employees may seek assistance for themselves or their families. (13) Require that a contractor provide at least two hours of drug-free workplace supervisor training for all supervisory employees and annually thereafter. The supervisor training shall include all of the following:

(A) How to recognize a possible drug or alcohol problem;

(B) How to document behaviors that demonstrate a drug or alcohol problem;

(C) How to confront employees with the problem from observed behaviors;

(D) How to initiate reasonable suspicion and post-accident testing;

(E) How to handle the procedures associated with random testing;

(F) How to make an appropriate referral for assessment and assistance;

(G) How to follow up with employees returning to work after a positive test; and



(H) How to handle drug-free workplace responsibilities in a manner that is consistent with the applicable sections of any pertinent collective bargaining agreements.

**21-1D-7. West Virginia Alcohol and Drug-free Workplace Act; Recordkeeping requirements; Inspection of records (New; Eff. 7/1/2008).**—Every contractor shall keep an accurate record showing the names, occupation and safety-sensitive status of all employees, in connection with the construction on the public improvement, and showing any drug tests or alcohol tests performed and employee education and supervisor training received, which record shall be open at all reasonable hours for inspection by the public authority which let the contract and its officers and agents. It is not necessary to preserve the record for a period longer than three years after the termination of the contract.

**21-1D-7a. West Virginia Alcohol and Drug-free Workplace Act; Confidentiality of drug test information; Test results not to be used in criminal proceedings unless employee consent given (New; Eff. 7/1/2008).**—All drug testing information specifically related to individual employees is confidential and should be treated as such by anyone authorized to review or compile program records. Drug test results may not be used in a criminal proceeding without the employee's consent.

**21-1D-8. West Virginia Alcohol and Drug-free Workplace Act; Penalties for violations (New; Eff. 7/1/2008)**—(a) Any contractor who violates any provision of this article is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars; for the third or any subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars and the contractor shall be excluded from bidding any additional new public improvement projects for a period of one year. (b) Any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred fifty dollars.

**21-1D-9. West Virginia Alcohol and Drug-free Workplace Act; Application of law; Law applies to contracts for construction on public improvements awarded after July 1, 2008 (New; Eff. 7/1/2008).**—This article applies only to contracts for construction on public improvements awarded after the effective date of this article.

**Executive Order No. 05-07; Drug- and Alcohol-Free workplace policy, Certain public employments** —WHEREAS, the abuse of alcohol and the use of illegal drugs damages the health, safety and welfare of employees and those that they serve by increasing workplace injuries and decreasing employee morale, effectiveness and efficiency; and WHEREAS, these harms to the health and safety of the workplace are estimated to cost employers, including State, county and local governments, millions of dollars each year in diminished productivity and increased absenteeism, health care costs and other related expenses, not to mention the often incalculable mental and emotional toll taken on the friends and family of those abusing drugs and alcohol; and WHEREAS, a recent national survey conducted by the Substance Abuse & Mental Health Services Administration of the United States Department of Health and Human Services found that over seventy-five percent of adult substance abusers are employed and research conducted by the United States Bureau of Labor Statistics also indicates that between ten and twenty percent of the nation's workers that die in work-related accidents test positive for drugs or alcohol; and WHEREAS, the Congress of the United States enacted the Drug-Free Workplace Act of 1988 to require that, as a condition of receiving a contract or grant from a federal agency, certain federal contractors and all federal grantees, including state agencies, must agree to take certain steps to institute and maintain a drug-free workplace; and WHEREAS, to establish clear and uniform guidelines in accordance with State and federal guidelines, including the Drug-Free Workplace Act of 1988, the West Virginia Division of Personnel adopted a Drug- and Alcohol-Free Workplace Policy (the "Policy"), effective October 1, 1991 and last revised on October 1, 2004; and WHEREAS, the Division of Personnel's Policy is applicable to State employees, independent contractors, and volunteers engaged in any work or service-related activity

that relates to the performance of State agency business; and WHEREAS, drug screening tests represent a useful and effective component of a comprehensive drug-free workplace program, enabling the avoidance of the aforementioned costs and providing an opportunity to positively impact the health and safety of afflicted persons; and WHEREAS, the Division of Personnel's Policy currently states that "when reasonable suspicion exists that an independent contractor, volunteer, or employee has reported to work under the influence of alcohol, illegal drugs, or is impaired due to abuse or misuse of controlled substances or prescribed medications, the individual may be subject to assessment and disciplinary action or termination of service agreement"; and WHEREAS, prospective employees of the Division of Corrections, the Division of Juvenile Services and the Division of Protective Services and prospective members of the West Virginia State Police are required to pass a pre-employment drug screening test before being hired; and WHEREAS, the use of a pre-employment drug screening requirement for all prospective State employees would further the State's goal of ensuring that State government workplaces are safe, productive, and secure for State employees and the public; and WHEREAS, the United States Supreme Court has recognized that a need to ensure a safe and reliable workforce may outweigh an individual's expectations of privacy and, therefore, not violate the Fourth Amendment's protection against unreasonable government searches and seizures; and WHEREAS, introducing a pre-employment drug screening requirement into the Division of Personnel's Policy in a manner that properly balances the interests of employers, employees, State government, private industry, and the general public is in the best interests of West Virginia and her people. NOW, THEREFORE, I, JOE MANCHIN III, by virtue of the authority vested in me as Governor of the State of West Virginia, do hereby ORDER that the Director of the Division of Personnel shall revise the Drug- and Alcohol-Free Workplace Policy so as to incorporate a pre-employment drug screening component consistent with State and federal law and, at a minimum, the following requirements: 1. All Executive Branch departments designated in section two, article one, chapter five-f of the Code of West Virginia and the Office of the Governor must require all prospective employees applying with said department or office to submit to a drug screening test after extending a conditional offer of employment. 2. The refusal to submit to testing, evidence of adulteration of a test specimen, or a positive test result may be used as a basis for not hiring the applicant. 3. Prospective employees must be given written notice of the Drug- and Alcohol-Free Workplace Policy, including the drug testing policy and procedures and a list of the drugs to be tested. This written notice may not be waived by the applicant. 4. Prospective employees may not be requested or required to provide a blood sample for the purposes of administering a drug screening test. However, prospective employees may, at their own request and expense, have a blood sample drawn at the time a urine specimen is provided, and preserved in such a way that it can be tested later for the presence of drugs should an offer of employment be made. 5. The collection of a specimen shall be performed in a manner that provides a relative measure of privacy to the prospective employee, and in no event may an employing agency or a representative or agent of the employing agency observe a prospective employee in the process of producing a specimen. 6. Pre-employment drug screening tests required herein must be performed in accordance with methods and standards approved by the Bureau of Public Health, and any chemical analysis used to determine the presence of drugs shall be conducted by a qualified laboratory licensed pursuant to article five-j, chapter sixteen of said Code. 7. A chain of custody procedure shall be established for both sample collection and testing that will assure the confidentiality of the individual being tested and verify the identity of each specimen and test result. 8. All drug test results shall be reviewed and evaluated by a certified medical review officer. Medical review officers also shall report the results of all tests to the individual tested and report only confirmed drug test results to the employer. 9. Drug screening test results received by an employing agency or a representative or agent of the employing agency shall not be used for law enforcement purposes and shall be kept confidential consistent with State confidentiality laws and the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations thereto. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless release is otherwise compelled by order of a court of competent jurisdiction. 10. Prospective employees shall have the right to drug screening test results, to request confirmatory screening tests, and the opportunity to challenge the results of such screening tests. 11. An employing agency, and not the prospective employee, shall be responsible for paying the cost of an initial pre-employment drug screening test.

**Wisconsin**

**103.503. Public works projects, Substance abuse prevention; Definitions; Substance abuse**

**prohibited; Prevention programs required; Employee access to project; Local ordinances, Strict conformity required**—(1) DEFINITIONS. In this section: (a) "Accident" means an incident caused, contributed to, or otherwise involving an employee that resulted or could have resulted in death, personal injury, or property damage and that occurred while the employee was performing the work described in Section 66.0903 (4) or 103.49 (2m) on a project. (b) "Alcohol" has the meaning given in Section 340.01 (1q). (c) "Contracting agency" means a local governmental unit, as defined in Section 66.0903 (1) (d), or a state agency, as defined in Section 103.49 (1) (f), that has contracted for the performance of work on a project. (d) "Drug" means any controlled substance, as defined in Section 961.01 (4), or controlled substance analog, as defined in Section 961.01 (4m), for which testing is required by an employer under its substance abuse prevention program under this section. (e) "Employee" means a laborer, worker, mechanic, or truck driver who performs the work described in Section 66.0903 (4) or 103.49 (2m) on a project. (f) "Employer" means a contractor, subcontractor, or agent of a contractor or subcontractor that performs work on a project. (g) "Project" mean a project of public works that is subject to Section 66.0903 or 103.49. (2) **SUBSTANCE ABUSE PROHIBITED.** No employee may use, possess, attempt to possess, distribute, deliver, or be under the influence of a drug, or use or be under the influence of alcohol, while performing the work described in Section 66.0903 (4) or 103.49 (2m) on a project. An employee is considered to be under the influence of alcohol for purposes of this subsection if he or she has an alcohol concentration that is equal to or greater than the amount specified in Section 885.235 (1g) (d). (3) **SUBSTANCE ABUSE PREVENTION PROGRAMS REQUIRED.** (a) Before an employer may commence work on a project, the employer shall have in place a written program for the prevention of substance abuse among its employees. At a minimum, the program shall include all of the following: 1. A prohibition against the actions or conditions specified in sub. (2). 2. A requirement that employees performing the work described in Section 66.0903 (4) or 103.49 (2m) on a project submit to random, reasonable suspicion, and postaccident drug and alcohol testing and to drug and alcohol testing before commencing work on a project, except that testing of an employee before commencing work on a project is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the project. 3. A procedure for notifying an employee who violates sub. (2), who tests positive for the presence of a drug in his or her system, or who refuses to submit to drug or alcohol testing as required under the program that the employee may not perform work on a project until he or she meets the conditions specified in sub. (4) (b) 1. and 2. (b) Each employer shall be responsible for the cost of developing, implementing, and enforcing its substance abuse prevention program, including the cost of drug and alcohol testing of its employees under the program. The contracting agency is not responsible for that cost, for the cost of any medical review of a test result, or for any rehabilitation provided to an employee. (4) **EMPLOYEE ACCESS TO PROJECT.** (a) No employer may permit an employee who violates sub. (2), who tests positive for the presence of a drug in his or her system, or who refuses to submit to drug or alcohol testing as required under the employer's substance abuse prevention program under sub. (3) to perform work on a project until he or she meets the conditions specified in par. (b) 1. and 2. An employer shall immediately remove an employee from work on a project if any of the following occurs: 1. The employee violates sub. (2), tests positive for the presence of a drug in his or her system, or refuses to submit to drug or alcohol testing as required under the employer's substance abuse prevention program. 2. An officer or employee of the contracting agency has a reasonable suspicion that the employee is in violation of sub. (2) and requests the employer to immediately remove the employee from work on the project. (b) An employee who is barred or removed from work on a project under par. (a) may commence or return to work on the project upon his or her employer providing to the contracting agency documentation showing all of the following: 1. That the employee has tested negative for the presence of drugs in his or her system and is not under the influence of alcohol as described in sub. (2). 2. That the employee has been approved to commence or return to work on the project in accordance with the employer's substance abuse prevention program. (c) Testing for the presence of drugs or alcohol in an employee's system and the handling of test specimens shall be conducted in accordance with guidelines for laboratory testing procedures and chain-of-custody procedures established by the substance abuse and mental health services administration of the federal department of health and human services. (5) **LOCAL ORDINANCES; STRICT CONFORMITY REQUIRED.** A local governmental unit, as defined in s. 66.0903 (1) (d), may enact an ordinance regulating the conduct regulated under this section only if the ordinance

	strictly conforms to this section.
Wyoming	<p><b>27-14-201. Employer adoption of drug-free workplace program; Drug and alcohol testing program compliance; Workers' Compensation rate discounts.</b>— (o) The division 1 may in accordance with its rules and regulations, grant a discount to rates established under this section in an amount not to exceed ten percent (10%) of the base rate for the employment classification of any employer if the employer complies with a safety program approved by the division and a discount in an amount not to exceed five percent (5%) of the base rate for the employment classification if the employer complies with a drug and alcohol testing program approved by the division. In determining safety program approval, drug and alcohol program approval and the total discount granted under this subsection, the division shall consider: (i) The probability the program will reduce the number of accidents and the probable savings which may be realized from the reduction; (ii) Relevant experience, if any, depicting actual reduction in accidents and actual savings which is compared to an industry standard; (iii) The adequacy and accuracy of determining participation in the program and the eligibility for a discount by individual employers; (v) Whether the employer adopts and enforces policies establishing a drug-free workplace which may include an employee assistance program to assist employees with alcohol or other drug problems. The division shall follow rules adopted by the department of employment in consultation with the department of health for the effective implementation of this paragraph. Rules adopted pursuant to this paragraph shall not impose on any employer the requirement to pay the costs of treatment or any other intervention. Employers enrolled in a safety discount program under this paragraph shall have one (1) year from the effective date of those rules within which to come into compliance.</p> <p><b>6-3-614. Drug and alcohol screening tests; Defrauding of tests; Penalty for violations.</b>—(a) A person is guilty of defrauding a drug and alcohol screening test if he: (i) Manufactures, sells, gives away, distributes or markets synthetic or human substances or other products including, but not limited to urine, in this state or transports synthetic or human substances or other products including, but not limited to urine, into this state with the intent to defraud a drug or alcohol screening test; (ii) Attempts to foil or defeat a drug or alcohol screening test by the substitution or spiking of a sample with the intent to defraud an alcohol or drug screening test; (iii) Adulterates a hair follicle sample or a urine or other bodily fluid sample with the intent to defraud a drug or alcohol screening test; (iv) Possesses adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol screening test; or (v) Sells adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol screening test. (b) Instructions which provide a method for thwarting a drug-screening test and which accompany the sale, giving, distribution or marketing of synthetic or human substances or other products including, but not limited to urine, are prima facie evidence of intent under subsection (a) of this section. (c) A person who violates any provision of subsection (a) of this section is guilty of: (i) A misdemeanor for a first offense and, upon conviction, shall be subject to imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both; (ii) A misdemeanor for a second or subsequent offense and, upon conviction, shall be subject to imprisonment for not less than seven (7) days nor more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.</p> <p><b>Sec. 7. Workers' Safety &amp; Compensation Rules; Safety programs &amp; Employer discounts.</b>— (a) New safety programs must be submitted to the Division 1 before December 15 to be eligible for review and approval for the subsequent rating period. Plans shall be submitted on a form provided by the Division and including such information as prescribed by the Division. The plan shall address: (i) a formal declaration (in writing) of a company-wide loss prevention and loss control policy; (ii) a formal creation of a risk assessment (safety) committee or coordinator; (iii) clearly defined and posted loss prevention (accident prevention) rules; (iv) all employees have undergone loss prevention training; (v) written policies/procedures on claims management; and (vi) a goal for improvement in the employer's loss ratio position of 10%, except that those employers eligible for the maximum claims experience adjustment at the time of plan approval will be eligible for the maximum discount if they maintain a zero claims record during the applicable experience rating period. (b) Discounts will be calculated only after a safety program has been in effect for one year following approval by the Division. Discounts will be awarded for the following year, and will be awarded only to those employers who</p>

	achieve the loss ratio goal. Discounts will be recalculated annually. Maximum allowable discounts from the base rate are 3.33% after the first year if loss ratio goal is achieved, 6.66% after the second consecutive year of achieving the loss ratio goal, and 10% after the third year of achieving the loss ratio goal.
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