



# Operating Procedure

<b>Effective Date</b> November 1, 2016	<b>Number</b> 135.4
<b>Amended</b> 8/28/17, 2/1/19	<b>Operating Level</b> Department
<b>Supersedes</b> Operating Procedure 135.4 (130.2) (7/1/13)	
<b>Authority</b> COV §18.2-251.4; §18.2-474.1; §53.1-10; §54.1-3400 et seq.	
<b>ACA/PREA Standards</b> 4-4063, 4-4071; 4-ACRS-7C-02; 4-APPFS-3C-01; 2-CO-1C-20, 2-CO-1C-25; 1-CTA-1C-07	
<b>Office of Primary Responsibility</b> Human Resources Director	

**Subject**  
**ALCOHOL AND OTHER DRUG TESTING**

<b>Incarcerated Offender Access</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<b>Public Access</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	<b>Attachments</b> Yes <input checked="" type="checkbox"/> #2 No <input type="checkbox"/>

## I. PURPOSE

This operating procedure is a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in all Department of Corrections operating units and specifying the actions that will be taken against employees for violations of the prohibition. It also provides protocols for alcohol and other drug testing of Department of Corrections applicants, employees, interns, and volunteers.

## II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

## III. DEFINITIONS

**Adulterated Urine Specimen** - A urine specimen that contains a substance not expected to be present in human urine, or contains a substance expected to be present but is at a concentration that is not consistent with human urine; if the laboratory reports to the Medical Review Officer that a specimen has been adulterated or substituted, the Medical Review Officer shall report that the employee/applicant has a “verified adulterated” test result. This test result is considered a “refusal to take a drug test.”

**Alcohol** - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol

**Alcohol Concentration** - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test

**Alcohol Use** - Consumption of any beverage, mixture, or preparation, including any medication containing alcohol

**Applicant** - A person seeking employment with the Department of Corrections in an hourly (wage) or salaried position or on an individual contract basis; or a person seeking a position in another state agency or with a vendor that requires that person to work in any Department of Corrections facility or office. An individual who has been offered employment by the DOC is considered to be an applicant until the first day of employment.

**Cancelled Test** - An alcohol or other drug test that has a problem identified that cannot be or has not been corrected; a cancelled test is neither a positive nor a negative test. A re-test is required.

**CDL Driver** - Any person who holds a commercial driver’s license and operates a commercial motor vehicle for the Department of Corrections as a normal part of their job function; this includes, but is not limited to: full time, regularly employed drivers, casual, intermittent, occasional, or in a “ready to drive” status.

**Commercial Motor Vehicle** -A motor vehicle that meets any of the following U. S. Department of Transportation (DOT) criteria that requires the driver to hold a commercial driver’s license when the vehicle is used to transport passengers or for commerce:

- Has a gross combination weight rating of 11,794 or more kilograms ( 26,001 or more pounds) inclusive

- of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
- Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
  - Is designed by the manufacturer to transport 16 or more passengers including the driver, or
  - Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

**Confirmation (or Confirmatory) Alcohol or Other Drug Test** - A second analytical procedure performed on a urine specimen or oral fluid specimen to identify and quantify the presence of alcohol or a specific other drug or drug metabolite

**Designated Employer Representative (DER)** - An individual identified by the DOC as able to receive communications and test results from service agents

**Dilute Specimen** - A urine specimen with creatinine and specific gravity values that are lower than expected for human urine; if a specimen is reported by the laboratory to the Medical Review Officer as a “dilute negative”, under this procedure a new test will be required as soon as possible, with no notice to the employee of the re-test. The employee must be accompanied to the testing site by a supervisor. The second test is accepted as the test of record. A second “dilute negative” may be considered a negative test result (please contact the Employee Drug Testing Coordinator for further direction) however, circumstances may dictate a schedule for additional testing. (*Note: “a dilute specimen may possibly be due to a) a medical condition b) the applicant/employee normally consumes large amounts of fluid; or c) the applicant/employee hydrated in an attempt to reduce the level of detection on a drug test”*) A “dilute positive” is always viewed as a “verified positive” and no additional testing is necessary.

**Employee** - A person who is paid by the Department of Corrections on an hourly, salaried, or contractual basis, or who is paid by another state agency or outside vendor for working in a position within DOC or in a position that supervises offenders.

**Employee Assistance Program (EAP)** - The counseling program available to employees for treatment of substance abuse and other problems; employees who voluntarily identify themselves as having an alcohol or drug problem prior to being selected for a random substance abuse test are referred to the Employee Assistance Program for treatment.

**Evidential Breath Test (EBT)** - A breath test that detects and measures a person’s alcohol concentration level using evidential breath testing instruments approved by the DOT; an EBT must be conducted by a trained Breath Alcohol Technician (BAT) in a medical facility.

**Executive Team** - The DOC Director, Chief of Corrections Operations, Deputy Directors, Security Operations Manager, Corrections Operations Administrator, Re-entry and Programs Director, Director of Communications, Chief Information Officer, Budget Director, Regional Operations Chiefs, and any other members as determined by the Director of DOC

**Illegal Drugs** - Any drug or substance found in [Code of Virginia §54.1-3401](#), and Schedules I through VI of [§54.1-3446](#) through [§54.1-3456](#), or [Section 202 of the Controlled Substances Act \(21 U.S.C. 812\)](#); this also includes illegal or un-prescribed use of controlled substances (prescription drugs).

**Intern** - An individual who is undergoing supervised practical training and is serving an internship to advance his or her area of study; paid interns are considered employees; interns who do not receive pay will be considered as volunteers.

**Medical Review Officer (MRO)** - A licensed physician with toxicology and substance abuse expertise who functions independently of the testing laboratory and is responsible for receiving laboratory test results generated by the drug and alcohol testing program; the MRO is responsible for interpreting and evaluating an individual’s positive test results together with his or her medical history and any other relevant biomedical information. The DOC contracts with a Third Party Administrator (TPA) to provide the services of a MRO.

**Offender** - An inmate, probationer, parolee or post release supervisee or other person placed under the supervision (conditional release) or investigation of the Department of Corrections

**Oral Alcohol Strip Test** - An oral testing device used for the initial detection of the presence of alcohol; the

corresponding [Oral Alcohol Testing Form](#) 135\_F4 must be used to document the test and result.

**Oral Fluid Testing** - Testing of saliva samples to screen for specific illegal drug concentration; the collection process may be conducted on site by designated trained DOC personnel or by a trained third party collector and sent to a SAMHSA Certified Laboratory for testing. Oral fluid samples are first screened in the laboratory using enzyme immunoassay technology, proven reliable for routine drug testing. Any samples testing positive in the screening process are then subjected to gas chromatography/mass spectrometry/mass spectrometry (GC/MS/MS) confirmation testing.

**Post-Accident Testing** - The testing for illegal or unlawful drug use and for being under the influence of alcohol following an employee work-related accident or injury based on specific criteria outlined in this operating procedure

**Pre-Employment Testing** - Alcohol and/or drug testing of applicants who are being seriously considered for employment with the Department of Corrections

**Random Drug or Alcohol Testing** - The selection of individual employees for drug and/or alcohol testing that: a) results in an equal probability that any employee within a group of employees will be selected, and b) does not allow the Unit Head or any other component of management to waive the testing of any employee selected under the process or add any employee to the selected participant list.. The Human Resources Director will determine the percentage of employees who will be randomly tested.

**Reasonable Suspicion Alcohol and Other Drug Testing** - Drug and alcohol testing that is performed when information or behavioral evidence suggests that an employee is under the influence of drugs or alcohol; reasonable suspicion must be directed at a specific person, based on specific facts that can be articulated, and based on logical inferences and deductions that can be drawn from those facts. Reasonable suspicion may be based on any of the following: a) direct observation of the physical symptoms of being under the influence of illegal drugs, controlled substances or alcohol such as, but not limited to slurred speech, disorientation, pattern of abnormal or erratic behavior; b) information provided by reliable or credible sources, c) canine alerting, or d) information that can be independently corroborated.

**Refusal to Submit to a Substance Abuse Test** - When an employee or applicant:

- Fails to appear for a drug or alcohol test on the date or time that they are directed by the DOC unless compelling mitigating circumstances are accepted and approved by the Employee Relations Manager or Human Resources Director
- Fails to remain at the testing site until the drug or alcohol testing process is complete
- Fails to provide a urine or oral fluid specimen for any alcohol or other drug test required by this procedure
- Fails to provide a sufficient amount of urine when directed, and it has been determined through a required medical evaluation, that there is no medical explanation for the failure to provide a specimen
- Fails or declines to take a second drug or alcohol test that has been directed by the MRO or this procedure

**Return to Duty Alcohol Test** - An alcohol test that is required for an employee to return to duty after having a positive alcohol test result; a return to duty alcohol test must be negative before the employee is permitted to return to work.

**SAMHSA Certified Laboratory** - Substance Abuse and Mental Health Services Administration accredited drug-testing laboratories; SAMHSA inspects and regulates such laboratories. SAMHSA certified laboratories meet the requirements of [49 CFR Part 40](#) for alcohol or other drug testing specimen analysis.

**Screening Test (or Initial Test)** - A laboratory test to eliminate “negative” urine or oral fluid specimens from further analysis or to identify a specimen that requires additional testing for the presence of alcohol or other drugs

**Specimen/Sample** - Bodily exponents or fluid (including breath, urine, saliva, hair, and blood) provided or requested as appropriate to be utilized for alcohol or other drug testing

**Split Sample Test** - A second oral fluid specimen or a part of the urine specimen that is sent to a first laboratory and retained sealed, and is transported to a second laboratory in the event that an employee/applicant requests that it be retested following a verified positive test of the primary specimen, or a verified adulterated or substituted urine test result.

**Substance Abuse** - Alcohol or drugs which are either illegal, used unlawfully, misused or in violation of federal, state or agency policy; this term may be used interchangeably in this procedure with “alcohol or other drugs.”

**Substituted Specimen** - A urine specimen with creatinine and specific gravity values that are so diminished as to be inconsistent with human urine

**Third Party Administrator (TPA)** - A service agent that provides or coordinates one or more substance screening/testing services; TPAs typically provide Medical Review Officer services and administrative tasks concerning the operation of the drug testing program.

**Unlawful Drug Use** - Legal substances that may be used in violation of the prescription or directions, either by someone for whom they are not prescribed, in dosages exceeding the prescription/directions, prescribed or obtained by fraud, theft or deceit.

**Verified Test Results** - Urine or oral fluid test results from a SAMHSA certified laboratory that have undergone review and final determination by the Medical Review Officer.

**Voluntary Identification** - The process by which employees make known to management their illegal or unlawful drug usage or alcohol misuse and seek treatment; employees may inform their supervisor, Unit Head, or Human Resource Officer of illegal or unlawful drug use or alcohol misuse and require a referral to an Employee Assistance Program (EAP). Employees who have not voluntarily identified themselves to management prior to being ordered to report for drug or alcohol testing may not exercise this option and are subject to termination for drug usage and disciplinary action under the Standards of Conduct for alcohol use. These provisions also include disclosures made during fit-for-duty exams, VSDP claim process, etc.

**Volunteer** - Any citizen of the community who, of their own free will, provides goods or services to the DOC without any financial gain

#### IV. PROCEDURE

##### A. Responsibilities

1. Employees of the Department of Corrections have a responsibility to protect public safety. Additionally, employees have the right to work in an environment where internal security is not jeopardized by fellow employees who engage in illegal or unlawful drug usage, or are under the influence of alcohol.
2. Substance abuse by employees, volunteers, and contractors undermines the DOC's ability to perform its mission of offender supervision and control, as well as the public's perception of the DOC's ability to fulfill its mission and will not be tolerated.
3. Employees, volunteers, and contractors involved in illegal or unlawful drug use or who are under the influence of alcohol may have their judgment and performance impaired; are more susceptible to corruption, and pose an unacceptable risk to the DOC, based on issues of security and civil liability.
4. Therefore, DOC employees, volunteers, and contractors must be free of illegal or unlawful drugs at all times and cannot be under the influence of alcohol while at work or in a correctional facility. DOC employees, volunteers, and contractors shall not possess any illegal drug except in the performance of official duties. (4-4063; 4-ACRS-7C-02; 4-APPFS-3C-01; 2-CO-1C-20; 1-CTA-1C-07)
5. As a condition of employment, employees, volunteers, and contractors agree to abide by DOC requirements for an alcohol and drug-free workplace and under the conditions of this operating procedure, applicants, employees, volunteers, and contractors may be asked to submit to appropriate substance abuse screening which may include oral or urine drug testing oral or Evidential Breath Test (EBT) alcohol testing, or other pre-approved appropriate testing methods as outlined in this operating procedure.
6. Staff should notify their supervisor if they are taking a medication that could adversely affect their job performance; security staff are required to make this notification.
7. If an off duty employee has consumed alcohol and is called back in to work, the employee should

- inform the Officer in Charge of their condition. The OIC will then decide if the person should come back in to work.
8. Employees and volunteers who have a Commercial Driver's License (CDL) paid by the DOC or are required to have a CDL for their DOC duties are subject to U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Regulations (FMCSA). For DOT purposes, such persons are considered to be performing a "safety sensitive function" at all times that they are at a DOC operational unit or on official business away from the DOC unit.
  9. Several federal, state, and agency mandates dictate the nature of compliance and regulation governing substance abuse and the provisions of this operating procedure.
    - a. In accordance with Operating Procedure 040.1, *Litigation*, all employees are required to notify their Organizational Unit Head immediately or the next working day if they are charged with a criminal offense (including illegal drugs) or a moving traffic violation.
    - b. The [Federal Drug-Free Workplace Act](#) requires employees to report convictions related to illicit drug use in the workplace and emphasizes the need for a drug-free workplace.
    - c. The Virginia Department of Human Resources Management (DHRM) [Policy No. 1.05, Alcohol and Other Drugs](#) is based on the federal act and requires state agencies to establish and maintain a work environment free from the adverse effects of alcohol and other drugs. [U.S. Department of Transportation \(DOT\)](#) has promulgated [Federal Motor Carrier Safety Regulations, 49 CFR Part 350 et seq. \(FMCSR\)](#), that govern drug and alcohol testing of employees who hold or are required to hold (CDLs).
    - d. Virginia has a drug falsification statute ([COV §18.2-251.4](#) and [§18.2-11](#)) that makes it unlawful to:
      - i. Provide, market, or transport urine with the intent to defraud a drug or alcohol screening test;
      - ii. Attempt to defeat a drug or alcohol test by substituting a urine sample;
      - iii. Adulterate urine or bodily fluid sample intended to defraud a drug or alcohol screening test.
      - iv. Violation of this law is a Class 1 misdemeanor punishable by a fine of up to \$2,500 and/or up to one year in jail.
    - e. [COV §18.2-474.1](#) states "notwithstanding the provisions of [§18.2-474](#), any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, any drug which is a controlled substance regulated by the [Drug Control Act in Chapter 34 of Title 54.1](#), synthetic cannabinoids or marijuana, shall be guilty of a Class 5 felony.
  10. Employees, who have an alcohol or illegal drug usage problem, may voluntarily inform their supervisor, organizational unit head, or Human Resource Officer prior to being ordered to report for alcohol or other drug testing. Upon making this information known, the employee will be referred to the Department of Human Resource Management (DHRM) [Employee Assistance Program](#) for evaluation and treatment. See the *Voluntary Identification and Treatment* section of this operating procedure. (4-4063, 4-4071; 4-ACRS-7C-02; 4-APPFS-3C-01; 2-CO-1C-20, 2-CO-1C-25; 1-CTA-1C-07)
  11. During orientation (see Operating Procedure 102.6, *Staff Orientation*), each employee will be notified of the requirements for an alcohol and drug-free workplace and required to sign *Receipt of Operating Procedure 135.4, Alcohol and Other Drug Testing* (see Attachment 1)
- B. Prohibited Conduct and Consequences (4-4063; 4-ACRS-7C-02; 4-APPFS-3C-01; 2-CO-1C-20; 1-CTA-1C-07)
1. The manufacture, distribution, possession, or use of unlawful drugs, illegal drugs, or controlled substances by DOC employees will result in termination of employment.
  2. Reporting for work or remaining on duty while impaired by alcohol, or having an illegal or unlawful substance in the employee's system will result in disciplinary actions in accordance with this operating procedure.
  3. Using prescription drugs that have not been prescribed or using prescription drugs in a manner that is

not consistent with the prescription will result in disciplinary actions in accordance with this procedure.

4. Having a verified positive drug test result will result in termination regardless of the substance involved. (see Attachment 2: *Substances and Cut-Off Levels*)
5. Having a verified confirmed positive alcohol test result determined by the Medical Review Officer (MRO) while on duty as measured through an alcohol EBT will result in the employee being removed from duty and disciplined under Operating Procedure 135.1, *Standards of Conduct*. The breath alcohol level and the employee's behavior may be contributing factors in determining disciplinary actions.
6. Consuming alcohol during work hours including meal breaks will result in the employee being removed from duty and disciplined under Operating Procedure 135.1, *Standards of Conduct*, up to and including termination.
7. Tampering, falsification, substitution, alteration, adulteration, or attempts to do any of the foregoing acts when requested to provide a specimen/sample for testing will be treated the same as a verified positive test and will result in withdrawal of an offer of employment to an applicant and the termination of an employee for "willful violation of a direct order which could endanger the public safety, internal security, or affect the safe and efficient operation of the DOC."
8. Employees, volunteers, interns, and contractors shall not possess alcohol (including in their vehicles) while on the grounds of any DOC facility or operating unit including but not limited to headquarters, regional offices, institutions, community corrections facilities, or the Academy for Staff Development. Violations will result in the employee being removed from duty and disciplined under Operating Procedure 135.1, *Standards of Conduct*; volunteers, interns, and contractors may be barred from entry into the facility or operating unit.
9. Employees who refuse to submit to alcohol and/or drug testing will be dismissed for "failure to follow a direct order which could endanger the public safety, internal security, or affect the safe and efficient operation of the DOC."

#### C. General Provisions

1. Oral fluid testing is the preferred method of drug testing, and the employee will be required to provide two oral fluid samples collected consecutively under the direct supervision of a trained Department of Corrections staff member or by a trained third party collector. The samples will be sent to a SAMHSA certified laboratory for testing and the results will be reported to the Designated Employer Representative by the Third Party Administrator (TPA) or the Medical Review Officer (MRO).
2. The oral fluid specimens should be sent to the SAMHSA certified laboratory via the shipping method established by the third party vendor (i.e., FedEx). In order to retain proper custody and control of the specimen, at no time should the specimens be dropped in a pick-up box or otherwise leave the custody of the DER until such time the specimens can be directly handed to the driver of the pick-up service.
3. Blood or other methods of testing (i.e.: hair, etc.) for alcohol or other drugs under any circumstances requires pre-approval by the Employee Relations Manager or the Human Resources Director. However, approval for such testing is rarely, if ever, provided.
4. Unless otherwise noted, the preferred method for alcohol testing is the oral alcohol strip test for the initial screening. Test results are documented on the [Oral Alcohol Testing Form](#) 135\_F4 and unless otherwise noted, should be retained in the employee's Medical File.
5. After hours sample collection:
  - a. Designated personnel should be available at each facility to conduct oral fluid drug and alcohol testing when these methods can be used.
  - b. Each unit should be aware of approved collections sites and hospitals in their area under the following circumstances:
    - i. Reasonable suspicion or post-accident testing must be conducted after hours
    - ii. Trained DOC employees or trained third party collectors are not available to conduct the oral fluid test

- iii. An alcohol EBT is necessary based on the result of the oral alcohol strip test
  - iv. Urine drug and/or EBT alcohol testing is necessary for CDL drivers
6. Employees Who Test Positive for Unlawful/Illegal Drug Use
- a. Employees who test positive for unlawful or illegal drug use on the initial screen will have their test results verified through a laboratory confirmation test using an alternate testing methodology with a greater sensitivity than the initial test confirmation (Urinalysis [GC/MS or GC/MS/MS] or oral swab [LC/MS/MS]).
  - b. Employees may challenge positive test results as outlined in the *Challenging Positive Test Results* section below.
  - c. Employees who are confirmed positive for unlawful or illegal usage will be dismissed from the Department of Corrections for "illegal conduct which endangers the public safety, internal security, or affects the safe and efficient operation of the DOC".
7. Challenging Positive Test Results
- a. Employees who are confirmed positive for illegal drug usage may request within 72 hours of notification by the Medical Review Officer that their urine or oral fluid specimen be retested by a certified independent laboratory that is coordinated between the MRO and donor. The employee should make this request directly to the MRO.
  - b. The split sample urine specimen or secondary oral fluid sample will then be transported to the selected, certified, independent laboratory for testing.
  - c. The employee shall be placed on pre-disciplinary leave pending the results of the retest.
  - d. The employee shall be required to pay for the cost of the retesting
  - e. Employees whose urine or oral fluid specimen retest results in a confirmed negative report shall be considered to be negative for unlawful or illegal drugs and the results of the first test shall be expunged, the employee reinstated, and the cost of the test reimbursed to the employee.
  - f. If the laboratory finds that the second retest has any detectable amount of the drug reported from the initial primary test, it is considered to have confirmed the reported positive test and the employee or applicant shall remain responsible for the cost of the second test.
8. Employees who Test Positive for Alcohol
- a. If the oral alcohol test indicates the presence of alcohol while the employee is on duty, an alcohol EBT must be conducted by a certified breath alcohol technician at an approved medical facility.
  - b. If the alcohol EBT indicates the presence of alcohol, the employee must be relieved of duty for 24 hours (consistent with FMCSA regulations).
    - i. If the employee's alcohol concentration is .04 or above, he or she is considered intoxicated and must be referred to an Employee Assistance Program for evaluation and treatment
    - ii. A return to duty alcohol EBT resulting in a negative reading is required if the employee is to return to work.
    - iii. The employee will be disciplined under the Standards of Conduct and may be terminated depending on the alcohol level and other mitigating factors.
    - iv. In no instance should an employee be allowed to drive a motor vehicle after an oral alcohol test indicates the presence of alcohol or an alcohol EBT confirms the presence alcohol.
9. Employees Who Resign
- a. The personnel records of employees who resign when ordered to report for alcohol or other drug testing will reflect the notation "employee resigned when selected for drug testing."
  - b. The personnel records of employees who resign pending notification of an alcohol or other drug screen result will reflect the notation "employee resigned pending outcome of an alcohol or other drug screen result."
  - c. The personnel records of employees who resign after being notified by the MRO of a verified positive alcohol or other drug test result will reflect the notation "employee resigned in lieu of

termination due to an alcohol or other drug test result.

10. The Employee Drug Testing Coordinator shall be notified of any applicant or employee who fails to report for testing on the date that they were notified or who tests positive. The names and identification numbers of applicants or employees who test positive or who fail to report for testing will be forwarded to the Background Investigation Unit by the Employee Drug Testing Coordinator for tracking purposes.
  11. Unless in probationary status, employees may use the Employee Grievance Procedure (see Operating Procedure 145.4, *Employee Grievances*) to appeal disciplinary actions based on AOD testing.
  12. Time used for alcohol and other drug testing is considered work time and must be adjusted off or compensated if testing cannot be conducted during scheduled work hours.
  13. Substances included in oral fluid and urine testing with established threshold levels are outlined in Attachment 2: *Substances and Cut-Off Levels*.
- D. Conditions for Drug and Alcohol Testing (4-4063; 4-ACRS-7C-02; 4-APPFS-3C-01; 2-CO-1C-20; 1-CTA-1C-07)
1. Pre-employment Substance Abuse Testing
    - a. Applicants, who are not current DOC employees, shall receive pre-employment substance abuse testing for all positions with the DOC (salaried, wage, and contract employees).
    - b. Pursuant to inter-agency agreements or contracts, applicants of other state agencies or vendors for positions that work within the perimeter of a DOC facility or provide incarcerated offender, probationer, or parolee supervision are subject to pre-employment substance abuse testing.
    - c. Companies providing contract employees will be responsible for conducting their own pre-employment substance abuse testing unless otherwise outlined within DOC vendor contract.
    - d. Prior to a final offer of employment, an applicant will be tested for illegal or unlawful drug use by testing methods approved in this operating procedure.
    - e. A verified positive test result is considered sufficient grounds to disqualify the applicant from DOC employment.
    - f. A conditional offer of employment can be made prior to receipt of the test results if approved by the Human Resources Director or the Employee Relations Manager.
      - i. The applicant should be notified in writing that the offer is contingent upon receipt of negative drug test results.
      - ii. If the test results are verified positive, the proposed offer of employment shall be rescinded and the Employee Drug Testing Coordinator notified.
    - g. Applicants should not be given advance notice of the pre-employment drug test and must be tested on the date they are notified.
    - h. Applicants who refuse to submit to a drug test or who test positive for illegal or unlawful drug use will be ineligible for employment with the DOC for a period of two years from the date of the testing.
    - i. Applicants who fail to report for drug testing on the date that they are notified to test will be excluded from employment consideration with the DOC for two years from the date that they failed to report.
    - j. Tampering, falsification, substitution, alteration, adulteration, or attempts to do any of the foregoing acts when requested to provide a specimen/sample for testing will be treated the same as a verified positive test and will result in the applicant being excluded from DOC employment for a period of two years. Virginia state law prohibits any of the foregoing conduct on the part of the applicant and the DOC reserves the right to exercise its legal rights under the Code of Virginia.
  2. Random Drug Testing (Non-CDL)
    - a. All wage, full and part time salaried employees are subject to random drug testing.



- b. Companies providing contract employees are responsible for conducting their own random substance abuse testing.
  - c. All employees subject to random testing will be informed in writing of the requirement to submit to random alcohol or other drug testing as part of the orientation process as a new employee (see Attachment 1, *Receipt of Operating Procedure 135.4, Alcohol and Other Drug Testing*). The Organizational Unit Head or Human Resource Officer shall be responsible for this notification. A copy of the notification form will be signed by the employee and will be retained in the employee's official personnel file.
  - d. The Human Resources Director will determine the percentage or number of employees to be randomly tested on an annual basis.
  - e. The Employee Drug Testing Coordinator will send a monthly file of all active DOC employees to a third party administrator contracted by the Commonwealth of Virginia who will randomly select the employees to be tested each testing cycle using a scientifically valid computerized random selection methodology. All employees will have an equal chance of being selected for testing from the random pool each time random tests are conducted.
  - f. A member of the Executive Staff will be selected each time a random selection is made.
  - g. It shall be the responsibility of the Human Resource Officer, supervisor, or Unit Head to notify the employee that he or she has been selected for random alcohol or other drug testing.
  - h. Employees should not be given advanced notice that they have been selected for a random drug or alcohol test. Once called, the employee shall report for testing as soon as possible; preferably within 2 hours, but no later than by the end of the normal business day.
  - i. When possible, notification should be timed in consideration of the employee's work schedule so that testing can be conducted within the employee's normal work hours. If using an outside collector site, the collection site's operating hours must also be considered.
  - j. If an employee is not present at work on the day they are selected for random testing, the employee should be notified on the next available business day.
  - k. If an employee refuses to report for random drug testing on the day they are notified, it will be treated as refusal to test and grounds for termination.
  - l. Self-admission of illegal/unlawful drug usage (voluntary identification) by an employee made upon notification of random selection will not be a valid excuse for failure to submit to testing and will result in termination.
  - m. Oral fluid testing is the preferred method of non-CDL related drug testing, and the employee will be required to provide two oral fluid samples collected consecutively under the direct supervision of a trained DOC staff member or trained third party collector. The sample will be sent to a SAMHSA certified laboratory for testing and the results will be reported to the Designated Employer Representative (DER) by the Third Party Administrator (TPA) or the Medical Review Officer (MRO).
  - n. Other testing methods (i.e., hair, blood) may be conducted under industry approved, uniform protocols and procedures only if pre-approved by the Employee Relations Manager or Human Resources Director.
  - o. If a random drug test result is verified positive, the employee will be terminated from employment. Due process proceedings shall be followed in accordance with Operating Procedure 135.1, *Standards of Conduct*.
3. Reasonable Suspicion Drug and Alcohol Testing
- a. The DOC will require drug and/or alcohol tests for an employee, contract person, volunteer, or intern when there is reasonable cause to believe that the individual is using or under the influence of a prohibited drug or alcohol in violation of this operating procedure.
  - b. Justification for testing under this condition must be based on one or more of the following criteria:
    - i. Direct observation of the physical symptoms of using or being under the influence of illegal

- drugs, controlled substances or alcohol, such as, but not limited to slurred speech, disorientation, pattern of abnormal conduct, or erratic behavior.
- ii. Information provided by reliable or credible sources
  - iii. Canine alerting
  - iv. Information that can be independently corroborated
- c. Once the facts justify reasonable suspicion drug and/or alcohol testing, the employee, contract person, volunteer, or intern shall not be allowed to continue performing their duties within the facility. The reasonable suspicion testing should be conducted as soon as possible within the same day of the observation or information presented.
  - d. Reasonable suspicion drug and alcohol testing must be approved by a supervisor and the Organizational Unit Head or officer in charge. Approval for testing may also be given by the Chief of the Special Investigations Unit. Whenever possible, the facts will be discussed with the Human Resource Officer before ordering the drug and alcohol tests.
  - e. Written documentation shall be made of the observations leading to a reasonable suspicion test, and signed by the supervisor or other official who made the observations, within 24 hours of the observation or before the results of the drug or alcohol test is released, whichever is first. All documentation should be given to the Human Resources Officer or Employee Drug Testing Coordinator.
  - f. Whenever possible, reasonable suspicion testing should be conducted using the oral fluid drug test and/or the oral alcohol strip test. The supervisor initiating or approving the reasonable suspicion alcohol or drug tests should not be involved in the collection process (unless there are no other trained administrators at the facility at that time).
    - i. If the oral fluid drug testing cannot be conducted, the employee must be transported to an approved collection site by the supervisor (or other designated DOC supervisor) for a urine drug test.
    - ii. If the oral alcohol strip test indicates the presence of alcohol while on duty, the employee must be transported by the employee's supervisor (or other DOC supervisor, if necessary) to an approved collections site for an alcohol EBT. The results of the test should be brought back to the facility by the supervisor and given to the Unit Head or Human Resources Officer.
  - g. An employee who undergoes reasonable suspicion drug testing will be immediately placed on pre-disciplinary leave, pending the results of the drug test. If the employee undergoes reasonable suspicion alcohol testing using the oral alcohol test or EBT, the results are known at the time of the test. The employee would be placed on pre-disciplinary leave only if a pre-approved alcohol urinalysis test was conducted at an approved medical facility pending the results.
    - i. Operating Procedure 135.1, *Standards of Conduct*, states that when suspension is imposed pending completion of an agency investigation into misconduct or violation of established work rules, such suspension shall not exceed 15 working days (120 hours).
    - ii. If the drug and/or alcohol test results are returned as "negative", the employee will be allowed to return to work.
  - h. If an employee appears to be under the influence and refuses to be tested, the employee should be counseled on the consequences of refusing to be tested (refusal to test is grounds for termination). The employee should be charged under the Standards of Conduct, be picked up by a family member or friend or driven home and told to return the next business day to provide justification for not being terminated.
  - i. The employee will not be permitted to operate a motor vehicle under any circumstance, until a confirmed negative result is returned.
    - i. A spouse, family member, or other individual will be contacted to transport the employee to their home.
    - ii. The employee is not permitted to return to work pending the test results.
    - iii. If the employee refuses to agree to any of these procedures and attempts to operate their own vehicle, the supervisor or Unit Head will make appropriate efforts to discourage the employee

from doing so, up to and including contacting local law enforcement officials.

- j. If drug test results are reported as “positive,” the employee will be terminated. Due process must be observed. If alcohol tests reveal impairment while on duty and are reported as positive, appropriate disciplinary action will be taken per Operating Procedure 135.1, *Standards of Conduct*. If results are reported as “negative”, the employee will be permitted to return to work.
  - k. If reasonable suspicion exists, volunteers or interns who appear to be under the influence of alcohol or other drugs will be asked to submit to drug and alcohol testing. Failure to submit to testing or testing “positive” will result in the volunteer or intern being removed from the unit and not allowed to continue as a volunteer or intern with the DOC.
  - l. All documentation pertaining to reasonable suspicion shall be placed in a secure file with the Organizational Unit Head or Human Resources Officer. At no time shall the documentation be placed in a supervisor’s fact file or the employee’s personnel file. The employee may see any documentation justifying their reasonable suspicion drug and alcohol testing.
4. Post-Accident Drug and Alcohol Testing
- a. Under specific circumstances alcohol and drug tests must be conducted after a vehicular or non-vehicular accident unless the employee’s injury will not permit testing or testing would interfere with medical treatment. In this case, the rationale for the failure to collect the specimen and conduct the test must be documented.
  - b. Post-accident testing shall be limited to the situations in which: 1) it is likely that employee drug and/or alcohol use may have contributed to the accident; and 2) the drug and/or alcohol test can identify actual impairment at the time of the accident.
  - c. In post-accident situations, procedures for substance abuse testing apply to all full and part-time salaried DOC employees, wage employees, contract employees, volunteers, and interns.
  - d. Any employee who accidentally discharges a firearm will be subject to post accident drug and alcohol testing.
  - e. The post-accident drug and alcohol tests should be conducted as soon as medically practical following an accident or injury that meets the criteria for testing.
  - f. If alcohol tests are not done within 8 hours of the accident and drug tests are not done within 32 hours of the accident, the tests should not be conducted and documentation should be made as to why the tests could not be conducted within the required time frame.
  - g. Assault by an offender excludes the employee from being drug and/or alcohol tested unless there is cause for reasonable suspicion
  - h. The DOC will require employees to submit to post accident drug and alcohol testing under the following circumstances:
    - i. On the Job Accident or Injury (Non-Vehicular) - An employee is required to submit to post-accident drug and alcohol testing after an on-the-job accident or injury that is non-vehicular in nature resulting in ANY of the following:
      - (a) A fatality
      - (b) Personal injury requiring the employee to seek medical treatment outside of the facility, or a recommendation from the facility’s medical staff that the employee’s injuries be examined by an outside medical facility
      - (c) Property damage in excess of \$1,000 (non-vehicular property but may have been caused by a vehicle)
      - (d) An employee files a worker’s compensation claim as a result of injury requiring medical attention (see Operating Procedure 261.3, *Worker’s Compensation*).
    - ii. On the Job Vehicular (CDL and Non-CDL) - An employee involved in a vehicular accident while driving a state vehicle or his or her personal vehicle for state business during working hours (not including driving to and from work) will be required to submit to post accident drug and alcohol testing if ANY of the following occurs as a result of the accident:
      - (a) A fatality

- (b) The driver is issued a citation for a moving traffic violation and there is an injury to any person as a result of the accident that requires treatment away from the scene of the accident.
  - (c) The driver is issued a citation for a moving traffic violation and as a result of the accident a vehicle must be towed from the scene of the accident.
  - (d) An employee files a worker's compensation claim as a result of injury requiring medical attention (see Operating Procedure 261.3, *Worker's Compensation*).
  - i. An employee shall notify their supervisor or HRO as soon as possible if they are involved in a vehicular accident while on duty to determine if they meet the criteria for vehicular post-accident drug and alcohol testing. The supervisor shall notify the HRO immediately to aid in the determination of drug and/or alcohol testing.
  - j. Methods of Post-Accident Drug and Alcohol Testing (Non-CDL)
    - i. Drug Testing
      - (a) Oral Fluid drug testing is the preferred method for post-accident testing. If practicable, oral fluid drug testing shall be conducted by trained DOC personnel within 32 hours of the accident and sent to the approved laboratory for testing
      - (b) If the in-house oral fluid drug test is not practicable and the criteria for post-accident testing are met, the employee shall report to or be escorted (due to injury) to an approved medical collection site with the [Authorization for Drug Sample Collection](#) 135\_F3 and appropriate Custody and Control Form for a urinalysis drug screening.
      - (c) If the employee is hospitalized, the HRO shall make every effort to provide the treating hospital with the [Authorization for Drug Sample Collection](#) 135\_F3 and appropriate Custody and Control Form
      - (d) If the post-accident drug test result is reported as positive, the employee will be terminated from employment in accordance with this operating procedure and Operating Procedure 135.1, *Standards of Conduct*.
    - ii. Alcohol Testing
      - (a) The oral alcohol strip test is the initial testing method to determine if alcohol is present
      - (b) If the oral alcohol strip test does not indicate the presence of alcohol, no further testing for alcohol is required, and the employee may return to work pending the result of the drug test.
      - (c) If the oral alcohol strip test indicates the presence of alcohol, the employee must be escorted (by the supervisor or other DOC supervisor) immediately to an approved medical collection site with the [Authorization for Drug Sample Collection](#) 135\_F3 and appropriate Custody and Control Form for a confirmation alcohol EBT. The confirmation test should be done within 30 minutes of the initial oral alcohol strip test, or as soon as practicable as but no later than 8 hours post-accident. The alcohol EBT results shall be brought back by the supervisor and given directly to the Unit Head or HRO.
      - (d) Test results indicating the presence of alcohol shall result in disciplinary charges under Operating Procedure 135.1, *Standards of Conduct*. Mitigating circumstances such as the level of alcohol present, prior discipline, etc., should be considered when determining the level of the disciplinary charge.
      - (e) An employee, volunteer, intern, or contractor is not permitted to operate a motor vehicle if their alcohol test indicates the presence of alcohol.
- E. CDL Drivers - all provisions regarding CDL driver testing are in accordance with FMCSA regulations.
- 1. General Provisions
    - a. Drug and/or alcohol testing under FMCSA regulations pertains to those employees driving a commercial motor vehicle as part of their normal job functions and are subject to DOT testing rules.
    - b. Drug testing refers to urine screening. Alcohol testing refers to an alcohol EBT performed by a certified Breath Alcohol Technician. Both types of testing are to be conducted at approved medical collection sites that have the capability of performing DOT testing. In-house oral testing is not permissible for CDL drivers.
    - c. The DOC facility shall provide the medical collection site with the [Authorization for Drug Sample](#)

Collection 135\_F3 and the appropriate Federal Custody and Control Form(s) at the time of the testing

- d. All CDL drivers testing positive for drugs must be referred to an Employee Assistance Program and must complete the program prior to using a Commercial Motor Vehicle License again. This does not impact the disciplinary action, which will be termination from employment with the Department of Corrections
  - e. All CDL drivers testing positive for alcohol (.04 or above) will be referred to an Employee Assistance Program (EAP). This does not impact the disciplinary action.
  - f. The first visit to an EAP may be charged to Civil Work Related Leave. If the individual requires treatment during working hours, the time must be charged to the employee's leave.
  - g. CDL drivers testing positive for alcohol must pass a return-to-duty alcohol EBT before being allowed to resume driving in a CDL capacity.
  - h. Drivers should be made aware that certain drug and alcohol convictions in a non-commercial vehicle may affect their commercial driver's license status.
2. Additional requirements for CDL drivers
- a. No driver shall report to work within 4 hours after using alcohol.
  - b. When required to take a post-accident test, no driver shall use alcohol within 8 hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
  - c. No driver shall report for duty or remain on duty, requiring the performance of safety sensitive functions, when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate the Commercial Motor Vehicle.
  - d. No driver shall report for duty, remain on duty, or perform a safety sensitive function, if the driver tests positive for controlled substances (including prescribed medications).
3. Pre-employment Documentation and Testing
- a. Pursuant to FMCSA regulations, drug and alcohol information must be requested on all new CDL holders who will be driving or performing safety sensitive functions for the DOC. This federal regulation applies to the following employees:
    - i. Applicants/employees seeking positions that would require them to drive a commercial motor vehicle for the DOC, either full- time, part time, intermittently, or in a "ready to drive" status"
    - ii. Employees who transfer into a driving position from a non-driving position
  - b. Drug and alcohol history information must be requested from the previous DOT-regulated employers who have employed the employee/applicant within the past two years prior to the date of the employee's application or transfer
  - c. The [Drug and Alcohol History Request and Release of Information](#) 135\_F5 and the [DOT-Regulated Testing Records Cover Letter](#) 135\_F6 should be completed, signed by the applicant/employee driver and sent to all previous employers dating back two years from the date of application or transfer from a non-driving position into a driving position.
  - d. If the employee refuses to provide written consent, they shall not be permitted to drive a commercial motor vehicle for the Department of Corrections, which is a condition of employment for certain positions.
  - e. If the applicant/employee driver was not subject to DOT testing requirements while employed by the previous employer, the information is noted on the form by the previous employer and returned to the requesting DOC authority.
  - f. Pre-employment drug testing for applicants required to have CDL as part of their normal job function should be conducted via a DOT urine drug screen performed at an approved medical collection site. The HRO should provide the applicant with the [Authorization for Drug Sample Collection](#) 135\_F3 and appropriate Custody and Control Form, which is to be given to the medical collection site. Advanced notice should not be provided and the applicant must have the test

conducted on the day they are informed.

4. Random Drug and Alcohol Testing

- a. The minimum number of total random tests administered each year will be at percentage rates (of the average number of driver positions) independently designated by the Federal Highway Administration for alcohol and controlled substance.
- b. CDL drivers should not be given advance notice that they have been selected for a random drug or alcohol test. Once called, the employee shall report for testing as soon as possible; preferably within 2 hours, but no later than by the end of the normal business day.

5. On the Job Vehicular Post-Accident Drug and Alcohol Testing

- a. An employee involved in an accident while driving in a CDL capacity for state business during working hours will be required to submit to post-accident DOT drug and alcohol testing.
- b. The Criteria as described above in *On the Job Vehicular -CDL and Non-CDL* must be met in order to test for drugs and/or alcohol (*see IV., D., 4., f., ii., above*).

6. Reasonable Suspicion Testing

- a. Reasonable suspicion drug and/or alcohol testing is authorized under DOT regulations only if observations are made during, just before, or just after the period of the work day the driver is required to be in compliance of DOT regulations. Otherwise, reasonable suspicion testing may be conducted using the in-house oral testing devices.
- b. If the observation of reasonable suspicion is outside of the time frame mentioned above, the reasonable suspicion test would fall under Non-DOT regulations.
- c. A driver shall not be permitted to perform or continue to perform safety sensitive functions until an alcohol EBT is administered, and the driver's alcohol concentration level is negative or at least 24 hours have elapsed following the administration of the EBT

F. P&P Officers and Surveillance Officers who carry a firearm (see Operating Procedure 910.2, *Community Corrections Use of Force*)

1. Any P&P Officer or Surveillance Officer requesting the authority to carry a firearm must be drug and alcohol tested with negative results prior to issuance of a concealed weapon.

G. Contract Employees or Employees of Other Agencies

1. Contractors who provide full-time or part time employees who work in any DOC facility or location shall provide pre-employment and random drug and alcohol testing through their company's policy unless otherwise outlined under the DOC vendor contract.
2. All contract employees working in facilities or in locations where they have direct contact with offenders will be subject to the DOC's drug procedures for random drug testing, reasonable suspicion drug and alcohol testing, and post-accident drug and alcohol testing.
3. Contractual employees having individual contracts with the DOC and working in any DOC facility or location will be subject to the DOC's procedures for pre-employment drug and alcohol testing, reasonable suspicion drug and alcohol testing, and post-accident drug and alcohol testing.
4. The employer will be notified of any positive tests conducted by DOC. Based on the positive alcohol or drug test, the Organizational Unit Head may bar the contract or other agency employee from entry into or work in the DOC Unit regardless of disciplinary action taken by the employer.

H. Service and Delivery Vendors

1. Occasional or regular service and delivery vendors (i.e. copier repair, vending machines or delivery person) who are suspected of being under the influence of drugs, or alcohol may be barred from entry into the unit by the Organizational Unit Head.
2. The parent company of any vendor should be notified immediately whenever a vendor is under reasonable suspicion for drug or alcohol use.

3. Vendors suspected of being under the influence of drug or alcohol should not be allowed to drive off of the premises. A representative of the parent company should be requested to take responsibility for the vendor and drive them and the company vehicle away.
4. Local law enforcement should be notified if the vendor attempts to drive the vehicle away.
5. The parent company shall be responsible for drug and or alcohol testing their employees.

#### I. Voluntary Identification and Treatment

##### 1. Unlawful/Illegal Drug Problem

- a. Human Resources Officers and the Employee Drug Testing Coordinator shall be notified immediately of any employees identifying themselves as having an unlawful or illegal drug problem. The employee will be immediately referred to the Employee Assistance Program (EAP) for evaluation and referral for treatment. Identification may be made to the supervisor, Organizational Unit Head, or Human Resource Officer. Employees may use appropriate leave to participate in treatment programs.
- b. Employees identifying themselves as having an unlawful or illegal drug abuse problem must successfully complete a treatment program (successful completion is defined by the treatment program provider). Written documentation must be provided by the treatment provider stating that the employee has completed sufficient treatment and is capable of performing his or her job duties prior to the employee returning to work.
- c. When an employee returns to work after being released from treatment, they will be drug tested on a regular basis. Drug testing will be conducted at minimum every other month. The DOC Employee Drug Testing Coordinator will select the times for testing. Testing may occur at any time during working hours for a two year period following the employee's return to work. Employees who test positive for illegal drug use during the two year period of testing will be terminated from employment.
- d. An employee may only self-identify to an unlawful or illegal drug abuse problem on one occasion. On the second occasion, the employee will be terminated for "illegal conduct that endangers the public safety, internal security, or affects the safe and efficient operation of the DOC." Due process proceedings shall be followed as per Operating Procedure 135.1, *Standards of Conduct*.
- e. An employee shall be allowed to resign in lieu of termination on the occasion of an attempted second voluntary identification. Notation will be made in the employee's personnel file that the employee "resigned after admitting to illegal conduct that endangers the public safety, internal security, or affects the safe and efficient operation of the DOC."

##### 2. Alcohol Problem

- a. Human Resources Officers and the Employee Drug Testing Coordinator shall be notified immediately of any employees identifying themselves as having an alcohol problem. The employee will be immediately referred to an Employee Assistance Program for evaluation and referral for treatment. The employee's ability to effectively perform his job duties will be assessed. Limited duties or accommodations may be made while the employee is in treatment.
  - b. When an employee returns to full duty after being released from treatment, they will be alcohol tested on a stringent basis as determined by the DOC Employee Drug Testing Coordinator no less than once every eight weeks. Testing may occur at any time during working hours for a two year period following the employee's return to work. Employees who test positive for alcohol during the two year period of testing will be terminated from employment.
  - c. Employees will be made aware that they are subject to disciplinary actions if they report to the workplace under the influence of alcohol.
3. Employees who do not satisfactorily complete the prescribed drug and or alcohol treatment program within the time prescribed by the program provider will have their employment terminated.
  4. Employees who voluntarily stop their prescribed drug and/or alcohol treatment program before the successful completion will have their employment terminated.

5. The cost of the substance abuse treatment program is the responsibility of the employee either through the state's health care coverage or as a personal expense.
6. The first visit to an EAP may be charged to Civil Work Related Leave. If the individual requires treatment during working hours, the time must be charged to the employee's leave.
7. The provisions of the *Voluntary Identification and Treatment* section of this operating procedure may also apply to employee disclosures made to physicians or third party vendors such as during fit-for-duty exams, the VSDP claim approval process, etc. Appropriate actions will be determined on a case-by-case basis by the Employee Relations Manager and the Benefits Manager.

#### J. Special Circumstances for Urine and Oral Fluid Drug Screens

##### 1. Failure to Provide a Urine Specimen

- a. Employees who fail to provide a sufficient urine specimen to permit drug test (i.e., 45 ml of urine) will be urged to drink up to 40 ounces of fluid through a period of up to three hours or until the individual has provided a sufficient urine specimen, whichever occurs first.
- b. If an employee refuses to make an attempt to provide a urine specimen or leaves the collection site before the collection is complete, it is considered a "refusal to test."
- c. If the employee has not provided a sufficient urine specimen within three hours of the first unsuccessful attempt to provide a specimen, the collection process is terminated and the Medical Review Officer is contacted by the collector.
- d. The Medical Review Officer (MRO) will determine if there is a medical condition that has precluded the employee from providing a sufficient amount of urine for testing.
- e. If the MRO determines there is a medical condition that precluded the employee from providing a sufficient amount of urine for testing, the test will be reported as "cancelled". No further action is taken with respect to the employee with this finding.
- f. If there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, the MRO will report the test as "Refusal to test".

##### 2. Diluted Urine Tests Specimens

- a. If the MRO determines that the primary urine alcohol or drug test resulting in a negative test result was diluted (reported as a "Negative-Dilute"), the secondary split sample urine specimen will be retested by the first lab.
- b. If the secondary urine test result is a "Negative-Dilute", it will be accepted as negative. The second result will be the result of record.
- c. A "Positive-Dilute" urine test is considered "positive" and does not warrant a second test.

##### 3. Adulterated Specimen Results - A urine specimen that the laboratory reports to the Medical Review Officer as an adulterated specimen will be reported and considered to be a verified positive drug test for "refusal to submit to drug testing" under the terms and conditions of this operating procedure.

##### 4. Substituted Specimen Results - A urine specimen that the laboratory reports to the Medical Review Officer as a substituted specimen will be reported and considered to be a verified positive drug test for "refusal to submit to drug testing" under the terms and conditions of this operating procedure.

##### 5. Invalid Specimen Results

- a. If the Medical Review Officer (MRO) reports a drug test result as "invalid", the employee/applicant will be requested to provide two new oral fluid specimens for testing.
- b. The test result from the new oral fluid specimens will be the test results of record.

##### 6. Cancelled Test Results

- a. If the Medical Review Officer (MRO) reports a drug test result to be "cancelled", the employee/applicant will be requested to provide two new oral fluid specimens for testing.
- b. The test results from the new oral fluid specimens will be the test of record.



7. Hemp Product Ingestion - Hemp product ingestion will not be considered a valid explanation or excuse for a positive laboratory report for marijuana and will be reported by the Medical Review Officer as a positive drug test result for marijuana.
8. Coca Leaf Tea or other Coca Product Ingestion - Coca leaf tea or other coca product ingestion will not be considered a valid explanation or excuse for a confirmed positive laboratory report for cocaine and will be reported by the Medical Review Officer as a positive drug test result for cocaine.
9. Medical Marijuana Use - The use of marijuana for medical purposes will not be considered explanation or excuse for a confirmed positive laboratory report for marijuana and will be reported by the Medical Review Officer as a positive drug test for marijuana.

#### K. Reporting of Testing Results

1. All alcohol and drug test results will be communicated by the laboratory to a specially trained physician serving as the Medical Review Officer (MRO) who works independently of the laboratory.
  - a. If an employee's test result is negative, the MRO will notify the Designated Employer Representative (DER) within 48 hours. This notification is normally made by email and also available on a secure website provided by the Third Party Administrator (TPA).
  - b. Positive results are confirmed, reviewed, and reported to the MRO within 72 hours of receipt. The MRO must attempt to make contact with the employee or applicant.
    - i. Positive results will first be discussed in confidence with the employee or applicant by the Medical Review Officer.
    - ii. If the Medical Review Officer concludes that there is a valid medical explanation for the positive test result, (i.e. prescription medication), the positive test result will be reported to the Designated Employer Representative as negative. Otherwise, a "verified" positive result will be reported.
    - iii. If the Medical Review Officer is unable to make contact with the employee or applicant, the results are not reported to the Designated Employer Representative as "positive" until 10 days from the date they are received from the laboratory.
2. If the laboratory confirmed test result is determined by the MRO to be a verified confirmed positive test result, the employee or applicant will be so advised.
  - a. If the result is downgraded to negative due to a legitimate medical explanation, but the MRO determines that there is a safety concern relative to fitness for duty, the MRO will add a safety warning note to the test result.
  - b. The DOC will investigate fitness for duty based on this report taking into consideration the protections of the [Americans with Disability Act](#).
3. If the MRO is unable to make contact with the employee or applicant after repeated attempts or the employee or applicant declines to speak to the MRO, the test result will be considered a valid positive and the result will be reported as a "non-contact positive."

#### L. Confidentiality and Retention of Alcohol and Other Drug Test Results

1. The results of any drug or alcohol test will be kept confidential.
  - a. The results will be reported to the DOC's Employee Drug Testing Coordinator and Organizational Unit Head, Human Resource Officer, or officer-in-charge (OIC).
  - b. Test results will be disclosed within the DOC on a need-to-know basis only.
  - c. Test results may be released to state or law enforcement agencies as deemed appropriate by the Human Resources Director.
2. Recordkeeping and Retention
  - a. DOT Records
    - i. DOT regulated drug and alcohol tests results must be kept completely separate from Non-DOT drug and alcohol test results.

- ii. All DOT records will be maintained by each facility in a secure location with controlled access and destroyed by shredding at the end of the required time period.
- iii. The following records must be maintained for a minimum of 5 years, and then confidentially destroyed.
  - (a) Records of alcohol test results indicating an alcohol concentration level of 0.02 or greater
  - (b) Records of verified positive drug test results
  - (c) Documentation of refusals to take required alcohol and/or drug tests
  - (d) EBT documentation
  - (e) EAP evaluations and referrals
  - (f) Records related to the administration of the alcohol and drug testing
- iv. The following records related to the alcohol and controlled substance collection process must be maintained for a minimum of 2 years, and then confidentially destroyed; documents related to the random selection process, reasonable suspicion testing, post-accident testing and documentation verifying the existence of a medical explanation of the inability of a driver to provide adequate breath or urine for testing.
- v. The following records must be maintained for a minimum of 1 year, and then confidentially destroyed:
  - (a) Records of negative and cancelled controlled substances test result.
  - (b) Alcohol test results with a concentration of less than 0.02

b. Non-DOT Records

- i. All negative test results must be maintained for a minimum of 1 year and then confidentially destroyed.
  - ii. All positive test results must be maintained for a minimum of 5 years and then confidentially destroyed.
- c. All drug and alcohol test results will also be kept electronically by the TPA.
- d. Designated Employer Representatives (DERs) will have secure access to test results for their location.
- e. The Employee Drug Testing Coordinator will have access to all drug and alcohol test results for the entire DOC.
- f. Any information about an employee's medical condition or history obtained in connection with a positive drug test or voluntary identification will be retained in the employee's medical file.
3. The employee or applicant has the right to obtain a written copy of the result and to receive a confidential explanation of the test result from the MRO. The employee or applicant must make this request to the Human Resource Officer, Unit Head, or Employee Drug Testing Coordinator.
4. An individual's drug or alcohol test results will only be released to a third party with the specific, written consent of the employee or job applicant authorizing its release to a specific individual or as otherwise outlined above.

M. Work Time and Travel Expenses

- 1. Time spent traveling to and from the collection site and the time at the collection site is considered work time for employees.
- 2. State vehicles may be used for travel to and from collection sites in the case of random testing.
- 3. Employees using their personal vehicles for travel to and from collection sites for random drug testing shall be reimbursed for mileage.
  - a. The mileage will be determined by the nearest accessible collection site location.
  - b. Use of a personal vehicle must be pre-approved by management to ensure reimbursement.

N. Training for Managers and Supervisors - Managers and supervisors should receive training and information on areas such as:

- 1. Employee self-identification referral to an Employee Assistance Program

2. Procedures and requirements for alcohol or other drug testing
3. Testing for reasonable suspicion
4. Confidentiality

V. REFERENCES

[DHRM Policy 1.01, Introduction](#)

[DHRM Policy 1.05, Alcohol and Other Drugs](#)

[Federal Drug-Free Workplace Act](#)

Operating Procedure 040.1, *Litigation*

Operating Procedure 102.6, *Staff Orientation*

Operating Procedure 135.1, *Standards of Conduct*

Operating Procedure 145.4, *Employee Grievances*

Operating Procedure 261.3, *Worker's Compensation*

Operating Procedure 910.2, *Community Corrections Use of Force*

[Section 202 of the Controlled Substances Act \(21 U.S.C. 812\)](#)

U.S. DOT [Federal Motor Carrier Safety Regulations, 49 CFR Part 350 et seq. \(FMCSR\)](#)

U.S. DOT *Procedures for Transportation Workplace Drug and Alcohol Testing Programs* [49 CFR Part 40](#)

VI. FORM CITATIONS

[Authorization for Drug Sample Collection](#) 135\_F3

[Oral Alcohol Testing Form](#) 135\_F4

[Drug and Alcohol History Request and Release of Information](#) 135\_F5

[DOT-Regulated Testing Records Cover Letter](#) 135\_F6

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

*The office of primary responsibility reviewed this operating procedure in November 2017 and no changes are needed at this time.*

*Signature Copy on File*

N. H. Scott, Deputy Director for Administration

*10/6/16*

Date