



Virginia Department of Corrections

Human Resources

Operating Procedure 135.4

Alcohol and Drug Testing

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REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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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.

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 Organizational Unit. 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.

Cannabis Oil - Any formulation of processed Cannabis plant extract, which may include oil from industrial hemp extract acquired by a pharmaceutical processor pursuant to §54.1-3442.6, or a dilution of the resin of the Cannabis plant that contains at least five milligrams of cannabidiol (CBD) or tetrahydrocannabinolic acid (THC-A) and no more than 10 milligrams of delta-9-tetrahydrocannabinol per dose. "Cannabis oil" does not include industrial hemp, as defined in §3.2-4112, that is grown, dealt, or processed in compliance with state or federal law, unless it has been acquired and formulated with cannabis extract by a pharmaceutical processor.

Cannabis Product - A product that is (i) produced by a pharmaceutical processor, registered with the Board, and compliant with testing requirements and (ii) composed of cannabis oil or botanical cannabis as defined in the Drug Control Act, Code of Virginia §54.1-3408.3, *Certification for use of cannabis oil for treatment*.

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 (CMV) - 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
- 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 49 U.S.C., *Hazardous Materials Transportation Act* and which require the motor vehicle to be placarded under 49 CFR, Part 172, Subpart F, *Placarding*.

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.

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 inmates or CCAP probationers/parolees.

Employee Assistance Program (EAP) - A confidential employee benefit program offered through all health



plans offered to state employees that assists eligible employees and their dependents with challenges that may be affecting personal and work life, such as:

- Conflicts within the family and workplace
- Child and elder care needs
- Emotional wellbeing
- Resources to support work/life balance
- Alcohol and substance abuse
- Financial and legal concerns
- Career concerns and other challenges

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.

Illegal Drugs - Any drug or substance found in COV §54.1-3400 et seq., *Drug Control Act*, or 21 U.S.C. §812 Section 202, *Controlled Substances Act*; this also includes illegal or un-prescribed use of controlled substances (prescription drugs).

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.

Inmate - A person who is incarcerated in a Virginia Department of Corrections facility or who is Virginia Department of Corrections responsible to serve a state sentence.

Intern - An individual who is undergoing supervised practical training and is serving an internship to advance their area of study, without compensation from the DOC. Interns receiving compensation from the DOC are considered employees and will be managed in accordance with their employment status.

Marijuana - For the purposes of this procedure, any part of a plant of the genus *Cannabis*, whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, its resin, or any extract containing one or more cannabinoids., See Code of Virginia §4.1-600 et seq.

Marijuana Products - "Marijuana Products" means (i) products that are composed of marijuana and other ingredients and are intended for use or consumption, ointments, and tinctures or (ii) marijuana concentrate. See Code of Virginia §4.1-600 et seq.

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 their medical history and any other relevant biomedical information. The DOC contracts with a Third Party Administrator (TPA) to provide the services of a MRO.

Non-Safety Sensitive Position - Any position not classified as a Safety-Sensitive position. All employees at headquarters/administrative locations that are not issued firearms by DOC, do not directly supervise inmates, and do not have a CDL that is used of official DOC business purposes. Non-safety-sensitive positions would only be subject to drug testing for reasonable suspicion and post-accident.

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.

Organizational Unit - A DOC unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual Headquarters units, e.g., Human Resource, Offender Management, Internal Audit.

Organizational Unit Head - The person occupying the highest position in a DOC organizational unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy



for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual Headquarters units, e.g., Human Resource, Offender Management, Internal Audit.

Other Drug - Any substance other than alcohol that may be taken into the body and may impair mental faculties and/or physical performance. Includes prescribed and over the counter medications.

Post-Accident Testing - The testing for illegal or unlawful drug use and for being under the influence of alcohol or drugs 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 in safety-sensitive positions with the Department of Corrections

Random Drug or Alcohol Testing - The selection of individual employees for drug and/or alcohol testing that: i) results in an equal probability that any employee within a group of employees will be selected, and ii) 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 Chief Human Resource Officer will determine the percentage of employees who will be randomly tested.

Reasonable Suspicion Alcohol and 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.

Refusal to Submit to an Alcohol or Drug Test - When an employee or applicant:

- Fails to appear for an alcohol or drug 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 Chief Human Resource Officer
- Fails to remain at the testing site until the alcohol or drug testing process is complete
- Fails to provide a urine or oral fluid specimen for any alcohol or 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 alcohol or drug 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.

Safety-Sensitive Position - A position in which: (i) a drug impairment constitutes an immediate and direct threat to public, employee, or inmate/probationer/parolee security, health or safety; and/or (ii) illegal or unlawful drug use could make the employee susceptible to corruption and thus poses an unacceptable risk to the DOC on issues of security and civil liability and also undermines DOC's ability to perform its mission. Positions designated as Safety-Sensitive include those job classifications that are issued firearms in the performance of their duties; all staff assigned to a correctional facility or probation and parole offices; staff in administrative offices/locations whose job duties involve regular contact with, or direct service to, inmates, probationers or parolees; or staff who have a Commercial Driver's License (CDL) used in an official capacity for the DOC. Safety-sensitive positions are subject to all the drug testing programs referenced herein; to include, pre-employment, random, post-accident, and reasonable suspicion. Additional positions may also be designated as "safety-sensitive" on a case-by-case basis and with the prior written approval by Human Resources.

SAMHSA Certified Laboratory - Substance Abuse and Mental Health Services Administration (SAMHSA) accredited drug-testing laboratories; SAMHSA inspects and regulates such laboratories. SAMHSA certified laboratories meet the requirements of 49 CFR Part 40, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs (FMCSR)*, for alcohol or other drug testing specimen analysis.

Senior Leadership - Senior Leadership includes the Director, the Chief Deputy Director, the Senior Deputy Director, the Deputy Director for Institutions, the Deputy Director for Community Corrections, the Deputy Director for Health Services, the Deputy Director of Programs, Education, and Reentry, and the Chief of Staff.

Specimen/Sample - Body exellers or fluid including breath, urine, saliva, hair, and blood provided or requested



as appropriate to be utilized for alcohol or 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/saliva 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).

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



PURPOSE

This operating procedure provides protocols for alcohol and drug testing of Department of Corrections (DOC) applicants, employees, interns, and volunteers and specifies the actions that will be taken against employees for violations of this policy.

PROCEDURE

- I. Responsibilities
 - A. The DOC establishes and maintains a work environment free from the adverse effects of alcohol or drugs, to include marijuana and marijuana products, cannabis oil and cannabis products, and to ensure the fair and equitable application of policy requirements. The effects of alcohol or drugs in the workplace could undermine the productivity of the DOC's workforce and create a serious threat to the welfare and safety of employees, inmates and probationers/parolees, visitors, and the general public.
 - B. DOC employees have a responsibility to protect public safety, be a positive role model for inmates and probationers/parolees, and create a safe, secure, and healing environment by acting in accordance with this operating procedure.
 - C. Employees have the right to work in an environment where security is not jeopardized by fellow employees who engage in illegal or unlawful drug usage or related activity, or who are under the influence of alcohol, marijuana, marijuana products, cannabis oil, and cannabis products, or any other drug that could impair an employee's judgment and/or jeopardize the safety of employees, inmates, or probationers/parolees.
 - D. Unlawful, illegal, or prohibited substance use by employees, volunteers, interns, and contractors undermines the DOC's ability to perform its mission, as well as the public's perception of the DOC's ability to fulfill its mission and will not be tolerated.
 - E. Employees, volunteers, interns, and contractors involved in illegal or unlawful drug use or who are under the influence of alcohol, marijuana, marijuana products, cannabis oil, and cannabis products may have their judgment and performances impaired, are more susceptible to corruption, and pose an unacceptable risk to the DOC based on issues of security and civil liability.
 - F. Employees, volunteers, interns, and contractors must not possess illegal drugs or unprescribed controlled substance medications. They must also not be under the influence of alcohol, marijuana, marijuana products, cannabis oil, cannabis products, or unprescribed medications while at work or in a facility or other Organizational Unit in the performance of their official duties. Employees who engage in this behavior, and who knew or should have known they were in possession of or under the influence of illegal or unauthorized substances, are subject to disciplinary action under the Standards of Conduct. (5-ACI-1C-16; 4-ACRS-7C-02; 4-APPFS-3C-01; 2-CI-6C-2; 2-CO-1C-20; 1-CTA-1C-07)
 - G. As a condition of employment, employees, volunteers, interns, and contractors agree to abide by DOC requirements for an alcohol and drug-free workplace.
 - H. Applicants, employees, volunteers, interns, and contractors may be asked to submit to 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.
 - I. Employees should notify their supervisor if they are taking a medication that could adversely affect their job performance; security employees must make this notification to their supervisor and Human Resource Officer.
 - J. If an off-duty employee has consumed alcohol and is called back in to work, the employee must inform the Shift Commander of their condition. The Shift Commander will decide if the person should come back in to work.



- K. 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 49 CFR Part 350, Motor Carrier Safety Assistance Program, (MCSAP) and High Priority Program and 49 CFR Part 390, Federal Motor Carrier Safety Regulations (FMCSA); General. For U.S. Department of Transportation (DOT) purposes, such persons are always considered to be performing a safety sensitive function any time they are at a DOC Organizational Unit or on official business away from the Organizational Unit.
- L. Federal, state, and DOC mandates dictate the nature of compliance and regulation governing substance abuse and the provisions of this operating procedure.
1. 41 U.S.C. Chapter 81, *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.
 2. 49 CFR Part 350, *Motor Carrier Safety Assistance Program*, (MCSAP) and High Priority Program, governs drug and alcohol testing of employees and volunteers who hold or must hold a CDL.
 3. In accordance with the Federal Gun Control Act, employees in positions that carry and/or possess firearms are prohibited from using marijuana, marijuana products, cannabis oil, and cannabis products. There are no exceptions in federal law for marijuana use or possession, even if such use is sanctioned by state law.
 4. Department of Human Resources Management (DHRM) Policy No. 1.05, *Alcohol and Other Drugs* is based on the Federal Drug-Free Workplace Act and requires state agencies to establish and maintain a work environment free from the adverse effects of alcohol, and other drugs to include marijuana, marijuana products, cannabis oil and cannabis products.
 5. Operating Procedure 040.1, *Litigation*, requires all employees to notify their Organizational Unit Head immediately or the next working day if they are charged with a criminal offense including involvement with illegal drugs or a moving traffic violation.
- M. All employees who are classified as working in a safety-sensitive position must read and sign Attachment 2, *Notice of Safety-Sensitive Designation*.

II. General Provisions

- A. Employees occupying designated safety-sensitive positions will be subject to pre-employment, random, post-accident, and reasonable suspicion drug and alcohol testing. Employees classified as non-safety sensitive positions will be subject only to reasonable suspicion and post-accident drug and alcohol testing.
- B. Oral fluid testing is the preferred method of drug testing, and the employee must provide two oral fluid samples collected consecutively under the direct supervision of a trained employee or by a trained third-party collector.
1. The DOC uses two distinct drug testing panels, one drug testing panel screens for the presence or marijuana, marijuana products, cannabis oil, and cannabis products, and the other drug testing panel does not test for the presence of these drugs. See Attachment 3, *Oral Drug Testing Flow Chart*.
 - a. The drug testing panels for pre-employment and random drug tests for safety-sensitive employees that do not carry a firearm or use a CDL for DOC business are screened for the following drugs: Cocaine, Opiates, Phencyclidine (PCP), Amphetamines, and Ecstasy.
 - b. The drug testing panels for all other drug tests, including all tests for safety-sensitive employees that carry and/or possess firearms in the performance of their official duties or have a CDL that is used for official DOC business purposes, and all tests for non-safety sensitive employees (who, as noted above, are only subject to reasonable suspicion and post-accident testing) are screened for the following drugs:
 - i. Marijuana
 - ii. Cocaine
 - iii. Opiates



- iv. Phencyclidine (PCP)
 - v. Amphetamines
 - vi. Ecstasy
2. The only time oral fluid testing will not be utilized is for employees that hold a CDL and requires a drug or alcohol test be conducted under the provisions of DOT regulations.
 3. The samples are sent to a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory for testing and the third-party administrator (TPA), or the Medical Review Officer (MRO) reports the results to the Designated Employer Representative (DER).
 - a. Oral fluid samples are first screened in the laboratory using enzyme immunoassay technology, which has proven reliable for routine drug testing.
 - b. Any oral fluid sample testing positive in the screening process is then subjected to gas chromatography-mass spectrometry/mass spectrometry (GC-MS/MS) confirmation testing.
 4. The oral fluid specimens should be sent to the SAMHSA certified laboratory via the shipping method established by the third-party vendor.
 5. 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 as the specimens can be directly handed to the driver of the pick-up service.
- C. Unless otherwise noted, the preferred initial screening method for alcohol testing is the oral alcohol strip test. The 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.
- D. Blood or other methods of testing e.g., hair, etc. for alcohol or other drugs requires pre-approval of the Chief Human Resource Officer or designee.
- E. After hours sample collection:
1. Designated employees should be trained and available at each Organizational Unit to conduct oral fluid drug and alcohol testing.
 2. Each unit should be aware of approved collection sites and hospitals in their area to conduct required testing under the following circumstances:
 - a. When reasonable suspicion or post-accident testing must be conducted after hours.
 - b. When trained DOC employees or trained third party collectors are not available to conduct the oral fluid test.
 - c. When an alcohol EBT is necessary based on the result of the oral alcohol strip test.
 - d. When urine drug and/or EBT alcohol testing is necessary for Commercial Driver's License (CDL) drivers.

III. Prohibited Conduct and Consequences

- A. Engaging in any of the following prohibited conduct will result in disciplinary action under Operating Procedure 135.1, *Standards of Conduct*. (5-ACI-1C-16; 4-ACRS-7C-02; 4-APPFS-3C-01; 2-CI-6C-2; 2-CO-1C-20; 1-CTA-1C-07)
1. Manufacturing, distributing, possessing, or using unlawful drugs, illegal drugs, or controlled substances without a valid prescription is prohibited by state law. Staff that carry and/or possess firearms in the performance of their duties are prohibited from using or possessing marijuana, marijuana products, cannabis oil and cannabis products. Violations will result in termination of employment.
 2. Reporting for duty or remaining on duty while impaired by alcohol, marijuana, marijuana products, cannabis oil and cannabis products, or any other drug that could impair an employee's judgment and/or jeopardize the safety of employees or inmates/probationers/parolees or having an illegal or unlawful



- substance in the system will result in removal from duty and disciplinary action up to and including termination.
3. Consuming alcohol, marijuana, marijuana products, cannabis oil and cannabis products, during work hours, including meal breaks, will result in removal from duty and disciplinary action up to and including termination.
 4. Using prescription drugs that have not been prescribed to the employee or using prescription drugs in a manner that is not consistent with the prescription will result in removal from duty and disciplinary action up to and including termination.
 5. Tampering, falsifying, substituting, altering, adulterating, or attempting to do any of those acts when requested to provide a specimen/sample for testing will be treated the same as a verified positive test. This conduct 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".
- B. Employees, volunteers, interns, and contractors must not possess alcohol, marijuana, marijuana products, cannabis oil or cannabis products, including in their vehicles while on the grounds of any DOC Organizational Unit including but not limited to Headquarters, Regional Offices, institutions, Community Corrections facilities, the Academy for Staff Development, etc. Violations will result in the employee removal from duty and disciplinary action under Operating Procedure 135.1, *Standards of Conduct*, Volunteers, interns, and contractors may be barred from entry into the Organizational Unit and termination of service.
- C. Employees who refuse to submit to alcohol and/or drug testing will be terminated 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.
- D. Employees Who Test Positive for Unlawful/Illegal Drug Use
1. 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:
 - a. Urinalysis - Gas Chromatography-Mass Spectrometry, (GC-MS) or GC-MS/MS
 - b. Oral Swab - Liquid Chromatography-Tandem Mass Spectrometry, (LC-MS/MS)
 2. Employees who are confirmed positive for unlawful, illegal, or prohibited usage will be terminated for conduct which endangers the public safety, internal security, or affects the safe and efficient operation of the DOC.
 - a. Marijuana and marijuana products may remain in one's system for an extended period.
 - b. Legal impairment levels are not yet established for standard drug testing procedures or by statute.
 3. The HRO must inform the employee of the process for challenging their positive test result upon notification from the MRO that the employee's drug test is positive. Employees may challenge their positive test results as outlined below:
 - a. The employee has seven calendar days from notification to submit Attachment 4, *Retest Request*, provided by the test administrator with the required payment to the HRO's attention.
 - b. The employee must pay for the cost of the retesting.
 - c. Once received, the HRO must immediately send the *Retest Request* and the payment directly to the MRO via overnight delivery.
 4. Upon receipt of the *Retest Request* and payment, the MRO will arrange for the secondary oral fluid sample or the split sample urine specimen to be sent to a certified, independent laboratory for testing. The employee must remain on pre-disciplinary leave pending the results of the retest.
 5. Employees whose retest results in a confirmed negative report will be considered to be negative for

unlawful or illegal drugs. Under these circumstances, the results of the first test will be expunged, the employee will be reinstated, and the cost of the test will be reimbursed to the employee.

6. If the laboratory finds that the retest has any detectable amount of the drug reported from the initial drug test, it will be considered a confirmation of the reported positive test results, and the employee or applicant will remain responsible for the cost of the second test.

E. Employees Who Test Positive for Alcohol

1. If the oral alcohol strip test indicates the presence of alcohol while the employee is on duty, a certified breath alcohol technician at an approved medical facility must conduct an alcohol Evidential Breath Test (EBT). The employee must be taken to an approved medical facility by a supervisor, Unit Head, or designee.
2. If the alcohol EBT indicates the presence of alcohol, the employee must be relieved of duty for 24 hours consistent with *FMCSA* regulations.
 - a. If the employee's alcohol concentration is .04 or above, they are considered intoxicated and must be referred to the Employee Assistance Program (EAP); see Operating Procedure 150.5, *Employee Health and Wellness*. (5-ACI-1C-24; 2-CO-1C-25)
 - b. For CDL Drivers, a return to duty alcohol EBT resulting in a negative reading is required if the employee is to return to work.
 - c. The employee will be disciplined under the *Standards of Conduct* and may be terminated depending on the alcohol level and other aggravating and/or mitigating factors.
 - d. 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.

F. Employees Who Resign

1. 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 alcohol or drug testing.
2. 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.
3. 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.

G. The Employee Drug Testing Coordinator will forward the names and identification numbers of applicants and employees with positive drug test results to the Background Investigation Unit monthly. These individuals are not eligible for re-hire or employment for one year from the date of testing.

H. Unless in probationary status, full-time employees may use the Employee Grievance Procedure, see Operating Procedure 145.4, *Employee Grievances*, to appeal disciplinary actions based on alcohol or drug testing.

I. Time used for alcohol or drug testing is considered work time and must be adjusted off or compensated if testing cannot be conducted during scheduled work hours.

J. Conditions for Drug and Alcohol Testing (5-ACI-1C-16; 4-ACRS-7C-02; 4-APPFS-3C-01; 2-CI-6C-2; 2-CO-1C-20; 1-CTA-1C-07)

K. Pre-employment Drug and Alcohol Testing Conditions

1. Applicants for salaried, wage, and contract positions that are designated as safety-sensitive positions must submit to pre-employment alcohol or drug testing.
 - a. A negative alcohol or drug test result must be received before an applicant is hired.



- b. A verified positive test result is considered sufficient grounds to disqualify the applicant from DOC employment.
 2. A conditional offer of employment can be made prior to receipt of the test results, provided the applicant is notified of the following:
 - a. The employment offer is contingent upon receipt of negative drug test results.
 - b. If the test results are verified positive, the proposed offer of employment will be rescinded.
 3. Applicants who refuse to submit to a drug test or who test positive for illegal or unlawful drug use are disqualified from DOC employment for a period of one year from the date of the testing.
 4. A cancelled test, an alcohol or other drug test that has a problem identified that cannot be or has not been corrected; is neither a positive nor a negative test. A re-test is required.
 5. Applicants should not be given advance notice of the pre-employment drug test and must be tested on the date they are notified.
 6. If an applicant is notified, they are to be drug tested, and they fail to report on the date that they are notified to test, the applicant will be excluded from employment consideration with the DOC for one year from the date that they failed to report.
 7. Tampering, falsifying, substituting, altering, adulterating, or attempting to do any of these 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 one year.
- L. Random Drug Testing Conditions (Non-DOT, Safety-Sensitive)
 1. All employees classified as safety-sensitive are subject to random drug testing. All employees classified as safety-sensitive must acknowledge and sign the Attachment 2, *Notice of Safety-Sensitive Designation*.
 2. All employees subject to random testing will be informed and acknowledge in writing, of the requirement to submit to random alcohol or other drug testing, including marijuana, marijuana products, cannabis oil, and cannabis products, as applicable, as part of the orientation process as a new employee; see Attachment 1, *Receipt of Operating Procedure 135.4, Alcohol and Drug Testing*.
 - a. The Organizational Unit Head or Human Resource Officer will be responsible for this notification.
 - b. A signed copy of Attachment 1, *Receipt of Operating Procedure 135.4, Alcohol and Drug Testing* will be retained in the employee's official personnel file.
 3. The Employee Drug Testing Coordinator will send a monthly file of all active safety-sensitive DOC employees to the third-party administrator contracted by the Commonwealth of Virginia.
 - a. The third-party administrator will randomly select the employees to be tested each testing cycle using a scientifically valid computerized random selection methodology.
 - b. All safety-sensitive employees will have an equal chance of being selected for testing from the random pool each time random tests are conducted.
 4. It will be the responsibility of the Organizational Unit Head, Human Resource Officer, or supervisor to notify the safety-sensitive employee that they have been selected for random alcohol or other drug testing.
 5. Employees must not be given advance notice that they have been selected for a random drug or alcohol test.
 - a. Once called, the employee must report for testing as soon as possible, preferably within two hours, but no later than by the end of the normal business day.
 - b. 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.
 - c. If using an offsite collection site, the collection site's operating hours must also be considered.

6. 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.
7. 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.
8. Self-admission of illegal/unlawful/prohibited 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.
9. Oral fluid testing is the preferred method of non-DOT 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 employee member or trained third party collector.
 - a. The samples will be sent to a SAMHSA certified laboratory for testing.
 - b. The third-party administrator (TPA) or the Medical Review Officer (MRO) will report the results to the Designated Employer Representative (DER).
10. If a random drug test result is verified positive, the employee will be terminated from employment. Due process proceedings must be followed in accordance with Operating Procedure 135.1, *Standards of Conduct*.

M. Reasonable Suspicion Drug and Alcohol Testing Conditions

1. The DOC requires drug and/or alcohol tests for any employee, volunteer, intern, or contractor 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.
2. Justification for testing under this condition must be based on one or more of the following criteria:
 - a. Direct observation of the physical symptoms of using or being under the influence of illegal drugs, controlled substances, or alcohol, including but not limited to, slurred speech, disorientation, pattern of abnormal conduct, or erratic behavior.
 - b. Information provided by reliable or credible sources. Anonymous calls or letters are not considered reliable or credible sources.
 - c. Canine alerts.
 - d. Information that can be independently corroborated.
3. The Organizational Unit Head or Shift Commander must approve reasonable suspicion drug and alcohol testing. Approval for testing may also be given by the Chief of the Office of Law Enforcement Services, Chief Human Resource Officer, or the Employee Drug Testing Coordinator. Whenever possible, the facts will be discussed with the Human Resource Officer before conducting the alcohol or drug tests.
4. Reasonable suspicion testing must be conducted upon determination that reasonable suspicion exists. Immediate testing of the employee, volunteer, intern, or contractor is preferred, but testing must be done within the same day of the observation or information presented.
5. Once the facts justify reasonable suspicion testing, the employee, volunteer, intern, or contractor must not be allowed to continue performing their duties within the unit. The employee must not be allowed to operate a vehicle and should either be picked up by another party or driven home by a supervisor.
6. Observations leading to a reasonable suspicion test must be documented and signed by the person making the original observation and the Shift Commander, organizational unit supervisor or higher-ranking organizational authority within 24 hours of the observation or before the results of the drug or alcohol test are released, whichever is first. All documentation must be given to the Human Resource Officer and Employee Drug Testing Coordinator.
7. Whenever possible, reasonable suspicion testing should be conducted using the oral fluid drug test and/or the oral alcohol strip test.

- a. 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 or Organizational Unit at that time.
 - b. If the oral fluid drug test cannot be conducted, the employee must be transported to an approved collection site by an organizational supervisor or other higher ranking organizational authority for a urine drug test.
 - c. If the oral alcohol strip test indicates the presence of alcohol while on duty, the employee must be transported by their supervisor or another DOC supervisor, if necessary, to an approved collections site for an alcohol EBT.
 - d. The results of the test must be brought back to the facility or Organizational Unit by the supervisor and given to the Organizational Unit Head or Human Resources Officer, and a copy to the Employee Drug Testing Coordinator.
 - i. If drug test results are reported as “positive”, the employee will be terminated in accordance with the Operating Procedure 135.1, *Standards of Conduct*.
 - ii. 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*.
 - iii. If results are reported as “negative”, the employee will be permitted to return to work.
 - e. Any employee who undergoes reasonable suspicion drug testing will be immediately placed on pre-disciplinary leave, pending the results of the drug test.
 - f. If a pre-approved alcohol urinalysis test was conducted at an approved medical facility with approval from the Chief Human Resource Officer or designee, the employee who undergoes reasonable suspicion alcohol testing will be placed on pre-disciplinary leave pending the results.
 - g. If the employee undergoes reasonable suspicion alcohol testing using the oral alcohol test and/or EBT, the results are known at the time of the test.
8. If an employee appears to be under the influence and refuses to be tested, the employee should be counseled that the consequence of their refusal is grounds for termination. The employee should be notified in writing that they are subject to disciplinary action under the Standards of Conduct and issued an Administration of Employee Discipline: *Due Process Notification 135_F9*, advised that they must be picked up by another party or driven home by a supervisor, and that they must return the next business day to provide mitigating circumstances.
 9. If the employee refuses to agree to any of these procedures and attempts to operate their own vehicle, the supervisor or Organizational Unit Head will make appropriate efforts to discourage the employee from doing so, which includes contacting local law enforcement officials, if necessary.
 10. The employee will not be permitted to operate a state motor vehicle under any circumstance, until a confirmed negative result is returned.
 11. The employee is not permitted to return to work, and will remain on pre-disciplinary leave with pay, pending the test results.
 12. If reasonable suspicion exists, volunteers and interns who appear to be under the influence of alcohol or other drugs will be asked to submit to drug or 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.
 13. All documentation pertaining to reasonable suspicion must be placed in a secure file in offices of the Human Resource Officer and the Employee Drug Testing Coordinator.
 - a. At no time will the documentation be placed in a supervisor’s fact file or the employee’s personnel file.
 - b. The employee may see any documentation justifying their reasonable suspicion drug and alcohol testing.

N. Post-Accident Drug and Alcohol Testing Conditions

1. 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. The rationale for the failure to collect the specimen and reason(s) to support administering the test must be documented.
2. Post-vehicle accident testing will be limited to the situations in which:
 - a. It is likely that employee drug and/or alcohol use may have contributed to the accident; and
 - b. The drug and/or alcohol test can identify actual impairment at the time of the accident.
3. In post-accident situations, procedures for substance abuse testing apply to all full and part-time salaried employees, wage employees, contract employees, volunteers, and interns.
4. Any employee who accidentally discharges a firearm will be subject to post accident drug and alcohol testing.
5. 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.
6. If alcohol tests are not done within eight 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.
7. Assault by an inmate/probationer/parolee excludes the employee from being drug and/or alcohol tested unless there is cause for reasonable suspicion.
8. The DOC will require employees to submit to post accident drug and alcohol testing under the following circumstances:
 - a. 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:
 - i. A fatality.
 - ii. Personal injury requiring the employee to seek medical treatment outside of the facility or unit, or a recommendation from the facility's medical staff that the employee's injuries be examined by an outside medical facility.
 - iii. Property damage in excess of \$1,000 (non-vehicular property but may have been caused by a vehicle).
 - iv. An employee files a worker's compensation claim because of an injury requiring medical attention; see Operating Procedure 261.3, *Workers' Compensation*.
 - b. On the Job Vehicular (CDL and Non-CDL) Accident - An employee involved in a vehicular accident while driving a state vehicle or their 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:
 - i. A fatality.
 - ii. The driver is issued a citation for a moving traffic violation and because of the accident; there is an injury to any person that requires treatment away from the scene of the accident.
 - iii. The driver is issued a citation for a moving traffic violation and because of the accident; a vehicle must be towed from the scene of the accident.
 - iv. An employee files a worker's compensation claim because of injury requiring medical attention; see Operating Procedure 261.3, *Workers' Compensation*.
9. An employee must notify their supervisor or HRO as soon as possible if they are involved in an accident (vehicular or non-vehicular) while on duty to determine if they meet the criteria for post-accident drug and alcohol testing. The supervisor must notify the HRO immediately to aid in the determination of drug and/or alcohol testing.

IV. Post-Accident Drug and Alcohol Testing (Non-DOT)

A. Drug Testing

1. Oral fluid drug testing is the preferred method for post-accident testing. If practicable, oral fluid drug testing must be conducted by a trained DOC employee within 32 hours of the accident and sent to the approved laboratory for testing.
2. If the oral fluid drug test is not practicable and the criteria for post-accident testing are met, the employee must report or be escorted when injured to an approved medical collection site with the *Authorization for Drug Sample Collection 135_F3* and an appropriate custody and control form such as the *Evidence Custody Report 030_F13* for a urinalysis drug screening.
3. When the employee is hospitalized, the HRO must make every effort to provide the treating hospital with the *Authorization for Drug Sample Collection 135_F3* and an appropriate custody and control form.
4. 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*.

B. Alcohol Testing

1. The oral alcohol strip test is the initial testing method to determine if alcohol is present.
2. 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 any other drug test conducted at the same time.
3. If the oral alcohol strip test indicates the presence of alcohol, the employee must be driven by their supervisor or other DOC supervisor immediately to an approved medical collection site with the *Authorization for Drug Sample Collection 135_F3* and an appropriate custody and control form such as the *Evidence Custody Report 030_F13* for a confirmation alcohol EBT.
 - a. The confirmation test should be done as soon as practicable as but no later than eight hours post-accident.
 - b. The alcohol EBT results must be brought back by the supervisor and given directly to the Organizational Unit Head or HRO.
4. Test results indicating the presence of alcohol will result in disciplinary action 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 disciplinary action.
5. An employee, volunteer, intern, or contractor is not permitted to operate a motor vehicle if their alcohol test indicates the presence of alcohol. Local law enforcement should be notified if the individual attempts to drive the vehicle after a confirmed positive result for alcohol.

V. Commercial Driver's License (CDL) Driver Testing

- A. All provisions regarding CDL driver substance abuse testing are in accordance with *Federal Motor Carrier Safety Administration (FMCSA)* regulations.
- B. Drug and/or alcohol testing under *FMCSA* regulations pertains to those employees driving a commercial motor vehicle (CMV) as part of their normal job functions and who are subject to DOT testing rules.
 1. Drug testing refers to urine screening.
 2. Alcohol testing refers to an alcohol EBT performed by a certified Breath Alcohol Technician.
 3. Drug and Alcohol testing must be conducted at approved medical collection sites that have the capability of performing DOT testing.
 4. Oral testing at the Organizational Unit is not permissible for CDL drivers except for the following



situations:

- a. The CDL holder is selected for a non-DOT random drug test.
 - b. The CDL holder has an accident that is not DOT related, e.g., driving a vehicle that does not require a CDL license.
- C. DOC facility or unit staff will provide the medical collection site with the *Authorization for Drug Sample Collection* 135_F3 and the appropriate *Federal Drug Testing 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 CMV license again. Referral and completion of the program does not impact the level of disciplinary action, which will be termination from DOC employment. (5-ACI-1C-24; 4-4071; 2-CO-1C-25)
1. All CDL drivers testing positive for alcohol (.04 or above) must be referred to an Employee Assistance Program (EAP). Referral and completion of the program does not impact the level of disciplinary action. (5-ACI-1C-24; 2-CO-1C-25)
 2. 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.
 3. CDL drivers testing positive for alcohol must pass a return-to-duty alcohol EBT before being allowed to resume driving in a CDL capacity.
 4. CDL Drivers should be made aware that certain drug and alcohol convictions in a non-commercial vehicle may affect their commercial driver's license status. CDL Drivers should be directed to review the Virginia "*Commercial Driver License Manual*" available both at Virginia DMV Offices and on-line at *DMVNow*.
- E. Additional Requirements for CDL Drivers
1. No driver will report to work within four hours after using alcohol.
 2. When required to take a post-accident test, no driver will use alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
 3. No driver will 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 CMV.
 4. No driver will report for duty, remain on duty, or perform a safety-sensitive function, if the driver tests positive for controlled substances including prescribed medications.
- F. Pre-employment Documentation and Testing
1. Pursuant to *Federal Motor Carrier Safety Administration (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:
 - a. Applicants/employees seeking positions that would require them to drive a CMV for the DOC, either full- time, part time, intermittently, or in a "ready to drive" status.
 - b. CDL holders' employees who transfer into a driving position from a non-driving position.
 2. 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.
 3. 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.

4. If the employee refuses to provide written consent, by not signing the *Drug and Alcohol History Request and Release of Information 135_F5* they must not be permitted to drive a CMV for the DOC, which is a condition of employment for certain positions.
5. If the applicant/employee driver was not subject to DOT testing requirements while employed by the previous employer, the information is noted on the *Drug and Alcohol History Request and Release of Information 135_F5* by the previous employer and returned to the requesting DOC authority.
6. 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.
 - a. The HRO must 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.
 - b. Advanced notice should not be provided, and the applicant must have the test conducted on the day they are informed.

G. Random Drug and Alcohol Testing

1. 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.
2. CDL drivers must not be given advance notice that they have been selected for a random drug or alcohol test. Once called, the employee must report for testing as soon as possible, preferably within two hours, but no later than by the end of the normal business day.

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

1. 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.
2. The criteria as described in the *On the Job Vehicular -CDL and Non-CDL* section of this operating procedure must be met to test for drugs and/or alcohol.

I. Reasonable Suspicion Testing

1. 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 workday the driver is required to follow DOT regulations. Otherwise, reasonable suspicion testing will fall under non-DOT regulations and may be conducted using the in-house oral testing devices.
2. A driver must 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.

VI. Probation and Parole (P&P) Officers and Surveillance Officers Who Carry a Firearm

- A. 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 the initial issuance of a weapon. In accordance with federal law, individuals who carry and/or possess a firearm are prohibited from using marijuana, marijuana products, cannabis oil or cannabis products.
- B. The Chief P&P Officer and Regional Administrator will be notified in all instances of admissions of alcohol dependence or drug use.
- C. Following the use of any lethal force, the P&P Officer involved must submit a sample for alcohol or drug testing as soon as feasible after the incident, but no later than the 32 hours for drug testing and eight hours for alcohol testing; see Operating Procedure 910.2, *Probation and Parole Use of Force*.



VII. Contract Employees or Employees of Other Agencies

- A. Contractors or employees of local, state, or other agencies who provide full-time or part-time employees to work in any DOC facility or Organizational Unit will provide pre-employment and random drug and alcohol testing through their company or agency policy unless otherwise outlined under the DOC vendor contract or Memorandum of Understanding.
- B. All contract, local, state, or other agency employees working in facilities or in locations where they have direct contact with inmates and/or probationers/parolees will be subject to the DOC's procedures for reasonable suspicion drug and alcohol testing.
- C. Contractual, local, state, or other agency employees having individual contracts with the DOC and working in any DOC facility or Organizational Unit will be subject to the DOC's procedures for:
 - 1. Pre-employment substance abuse testing.
 - 2. Reasonable suspicion drug and alcohol testing.
 - 3. Post-accident drug and alcohol testing.
- D. Employers of such contract personnel will be notified of any unsuitable test results conducted by DOC.
- E. Based on a positive alcohol or drug test, the Organizational Unit Head may bar the contract and/or agency employee from entry into or work within the Organizational Unit regardless of any disciplinary action taken by the employer.

VIII. Service and Delivery Vendors

- A. The Organizational Unit Head may bar occasional or regular service personnel and/or delivery vendors, e.g., copier repair, vending machines or delivery person suspected of being under the influence of drugs, or alcohol from entry into the unit.
- B. The parent company of any vendor must be notified immediately whenever a vendor is under reasonable suspicion for drug or alcohol use.
- C. Vendors suspected of being under the influence of drug or alcohol should not be allowed to drive off 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.
- D. Local law enforcement should be notified if the vendor attempts to drive the vehicle away.
- E. The parent company is responsible for drug and or alcohol testing their employees.

IX. Voluntary Identification and Treatment**A. Unlawful/Illegal/Prohibited Substance Use**

- 1. Human Resource Officers and the Employee Drug Testing Coordinator must be notified immediately of any employees identifying themselves as having used an unlawful/illegal/prohibited drug.
 - a. An employee's identification may be made to their supervisor, Organizational Unit Head, or Human Resource Officer.
 - b. The employee will be immediately referred to the Employee Assistance Program (EAP) for evaluation and referral for treatment. (5-ACI-1C-24; 2-CO-1C-25)
 - c. Employees may use appropriate leave to participate in treatment programs.
- 2. Employees identifying themselves as having used an unlawful/illegal/prohibited drug use must successfully complete a treatment program.
 - a. Successful completion of the program is defined by the treatment program provider.
 - b. Written documentation must be provided by the treatment provider stating that the employee has completed sufficient treatment and can perform their job duties prior to the employee returning to



work.

3. When an employee returns to work after being released from treatment, they will be drug tested on a regular basis.
 - a. Drug testing will be conducted at minimum of every quarter.
 - b. The Employee Drug Testing Coordinator will select the dates for testing.
 - c. Testing may occur at any time during working hours for a two-year period following the employee's return to work.
 - d. Employees who test positive for illegal or unlawful drug use during the two-year period of testing will be terminated from employment.
4. An employee may only self-identify to an unlawful/illegal/prohibited drug problem on one occasion. On the second occasion, the employee will be terminated for conduct that endangers the public safety, internal security, or affects the safe and efficient operation of the DOC. Due process proceedings must be followed in accordance with Operating Procedure 135.1, *Standards of Conduct*.
5. An employee will be allowed to resign in lieu of termination on an attempted second voluntary identification. Notation will be made in the employee's personnel file that the employee resigned after admitting to conduct that endangers the public safety, internal security, or affects the safe and efficient operation of the DOC.
6. 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, Virginia Sickness and Disability Program (VSDP) claim process, etc.

B. Alcohol Abuse Problem

1. Human Resources Officers and the Employee Drug Testing Coordinator will be notified immediately of any employees identifying themselves as having an alcohol abuse problem. The employee will be immediately referred to an Employee Assistance Program. The employee's ability to effectively perform their job duties will be assessed. Limited duties or accommodations may be made while the employee is in treatment. (5-ACI-1C-24; 2-CO-1C-25)
2. 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 Employee Drug Testing Coordinator, no less than quarterly.
 - a. Testing may occur at any time during working hours for a two-year period following the employee's return to work.
 - b. Employees who test positive for alcohol during the two-year period of testing will be terminated from employment.
3. Employees will be made aware that they are subject to disciplinary action if they report to the workplace under the influence of alcohol.
4. 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.
5. Employees who voluntarily stop their prescribed drug and/or alcohol treatment program before the successful completion will have their employment terminated.
6. 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.
7. 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 balances, as appropriate.
8. 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.

X. Special Circumstances for Urine and Oral Fluid Drug Screens

A. Failure to Provide a Urine Specimen

1. 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.
2. If an employee refuses to try to provide a urine specimen or leaves the collection site before the collection is complete, it is considered a “refusal to test” and warrants termination.
3. 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 (MRO) is contacted by the collector.
4. The MRO will determine if there is a medical condition that precluded the employee from providing enough urine for testing.
5. If the MRO determines there is a medical condition that precluded the employee from providing enough urine for testing, the test will be reported as “cancelled”. No further action is taken with respect to an employee with this finding.
6. 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 enough urine, the MRO will report the test as “refusal to test”.

B. Dilute Specimen Urine Tests

1. If a specimen is reported by the laboratory to the MRO 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.
 - a. The employee must be accompanied to the testing site by a supervisor.
 - b. The second test is accepted as the test of record.
 - c. 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.
2. A “positive-dilute” urine test is considered “positive” and does not warrant a second test.

C. Adulterated Urine Specimen Results - A urine specimen that the laboratory reports to the MRO 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.

1. If the laboratory reports to the MRO that a specimen has been adulterated or substituted, the MRO will report that the employee/applicant has a “verified adulterated” test result.
2. This test result is considered a “refusal to take a drug test”.

D. Substituted Specimen Results - A urine specimen that the laboratory reports to the MRO 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.

E. Invalid Specimen Results

1. If the MRO reports a drug test result as “invalid”, the employee/applicant must provide two new oral fluid specimens for testing.
2. The test result from the new oral fluid specimens will be the test results of record.



- F. 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 MRO as a positive drug test result for cocaine.

XI. Reporting of Testing Results

- A. All alcohol and drug test results will be communicated by the laboratory to a specially trained physician serving as the MRO who works independently of the laboratory.
1. 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 available on a secure website provided by the third-party administrator (TPA).
 2. Positive results are confirmed, reviewed, and reported to the MRO within 72 hours of receipt. The MRO must attempt to contact the employee or applicant to discuss the positive result.
 - a. If the MRO 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.
 - b. If the MRO is unable to contact 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.
- B. 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.
1. If the result is reclassified 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.
 2. The employee's fitness for duty will be investigated based on this report taking into consideration the protections of the 28 CFR Part 35, *Nondiscrimination on the Basis of Disability in State and Local Government Services*.
- C. If the MRO is unable to contact 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".

XII. Confidentiality and Retention of Alcohol and Drug Test Results

- A. The results of any drug or alcohol test will be kept confidential.
1. The results will be reported to the Employee Drug Testing Coordinator and the Organizational Unit Head, Human Resource Officer, and highest-ranking facility Security supervisor, normally the Chief of Security.
 2. Test results will be disclosed within the DOC on a need-to-know basis only.
 3. The Chief Human Resource Officer may release test results to state or law enforcement agencies as deemed appropriate.
- B. Recordkeeping and Retention
1. DOT Records
 - a. DOT regulated drug and alcohol tests results must be kept separate from non-DOT drug and alcohol test results.
 - b. All DOT records will be maintained by each facility or Organizational Unit in a secure location with controlled access and must be destroyed by shredding at the end of the required time period for retention.
 - c. The following records must be maintained for a minimum of five years, and then confidentially

- destroyed.
 - i. Records of alcohol test results indicating an alcohol concentration level of 0.02 or greater.
 - ii. Records of verified positive drug test results.
 - iii. Documentation of refusals to take required alcohol and/or drug tests.
 - iv. EBT documentation.
 - v. EAP evaluations and referrals.
 - vi. Records related to the administration of the alcohol and drug testing.
 - d. The following records related to the alcohol and controlled substance collection process must be maintained for a minimum of two years, and then confidentially destroyed.
 - i. Documents related to the random selection process.
 - ii. Reasonable suspicion testing.
 - iii. Post-accident testing.
 - iv. Documentation verifying the existence of a medical explanation of the inability of a driver to provide adequate breath or urine for testing.
 - e. The following records must be maintained for a minimum of one year, and then confidentially destroyed:
 - i. Records of negative and cancelled controlled substances test result
 - ii. Alcohol test results with a concentration of less than 0.02
2. Non-DOT Records
- a. All negative test results must be maintained for a minimum of one year and then confidentially destroyed.
 - b. All positive test results must be maintained for a minimum of five years and then confidentially destroyed.
3. All drug and alcohol test results will also be kept electronically by the Third-Party Administrator.
4. Designated Employer Representatives (DERs) will have secure access to test results for their location.
5. The Employee Drug Testing Coordinator will have access to all drug and alcohol test results for the entire DOC.
6. 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.

XIII. Work Time and Travel Expenses

- A. Time spent traveling to and from the collection site and the time at the collection site is considered work time for employees.
- B. State vehicles may be utilized to transport the employee to and from collection sites in the case of random, reasonable suspicion, and post-accident testing, as appropriate. A supervisory employee should be used to facilitate the transportation in cases of reasonable suspicion or post-accident testing.
- C. Employees using their personal vehicles for travel to and from collection sites for random drug testing may be reimbursed for mileage.
 - 1. The mileage will be determined by the nearest accessible collection site location.
 - 2. Use of a personal vehicle must be pre-approved by management to ensure reimbursement.

XIV. Training for Managers and Supervisors

- A. 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

REFERENCES

28 CFR Part 35, *Nondiscrimination on the Basis of Disability in State and Local Government Services*
49 CFR Parts 40, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs (FMCSR)*
49 CFR Part 172, Subpart F, *Placarding*
49 CFR Part 350, *Motor Carrier Safety Assistance Program, (MCSAP) and High Priority Program*
49 CFR Part 390, *Federal Motor Carrier Safety Regulations; General*
21 U.S.C. §812 Section 202, *Controlled Substances Act*
41 U.S.C. Chapter 81, *Federal Drug-Free Workplace Act*
COV §54.1-3400 et seq., *Drug Control Act*
Department of Human Resource Management (DHRM), *Employee Assistance Program*
Department of Human Resource Management (DHRM) Policy 1.05, *Alcohol and Other Drugs*
Operating Procedure 040.1, *Litigation*
Operating Procedure 135.1, *Standards of Conduct*
Operating Procedure 145.4, *Employee Grievances*
Operating Procedure 150.5, *Employee Health and Wellness*
Operating Procedure 261.3, *Workers' Compensation*
Operating Procedure 910.2, *Probation and Parole Use of Force*
Virginia Department of Motor Vehicles, "*Commercial Driver License Manual*"

ATTACHMENTS

Attachment 1, *Receipt of Operating Procedure 135.4, Alcohol and Drug Testing*
Attachment 2, *Notice of Safety-Sensitive Designation*
Attachment 3, *Oral Drug Testing Flow Chart*
Attachment 4, *Retest Request*

FORM CITATIONS

Evidence Custody Report 030_F13
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
Federal Drug Testing Custody and Control Form

