

State of Utah

Drug and Alcohol Testing Policy and Procedures

Department of Human Resource Management
Effective Date: August 30, 2013

State of Utah Drug and Alcohol Testing Policy

1.1 Policy Statement

The State of Utah is committed to provide a workplace where employees of the state and the general public can safely conduct business. It is the policy of the State of Utah to provide a work environment that is free from the unlawful manufacture, distribution, sale, dispensation, possession, or use of controlled substances or alcohol.

1.2 Compliance with Federal/State Laws and Regulations

This policy has been written to comply with current federal laws and regulations, state law and Department of Human Resource Management (DHRM) rules which relate to a drug-free workplace, drug and alcohol testing, drug abuse and alcohol misuse, employee conduct, corrective action and discipline. A listing of applicable laws, rules, and regulations can be found in Appendix A.

1.3 Scope of Policy

This policy applies to all employees of the executive branch of the State of Utah. This policy also applies to final candidates under consideration for highly sensitive positions. Employment with the State of Utah is conditioned upon compliance with this policy.

Employees who hold positions designated by DHRM as highly sensitive are required to comply with a higher standard. These employees are subject to random drug and alcohol testing as authorized by DHRM. Highly sensitive positions fall under the following categories:

Safety Sensitive:

A position approved by DHRM that includes the performance of safety sensitive functions:

- a) requiring an employee to operate a commercial motor vehicle under 49 CFR 383
- b) directly related to law enforcement
- c) involving direct access or having control over direct access to controlled substances
- d) directly impacting the safety or welfare of the general public
- e) requiring an employee to carry or have access to firearms

Data Sensitive:

A position approved by DHRM that includes the performance of data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

- a) financial assets, liabilities, and account information

- b) social security numbers
- c) wage information
- d) medical history
- e) public assistance benefits or
- f) driver license

1.4 Prohibited Behaviors

Failure to comply with any aspect of this policy, including, but not limited to the following behaviors, is prohibited and may result in disciplinary action which may include dismissal:

1. Unlawful manufacture, distribution, sale, dispensation, possession, or use of any controlled substance or alcohol during working hours, on state property, while operating a state vehicle at any time or any other vehicle while on duty, except where legally permissible.
2. Refusal to submit to a drug and/or alcohol test without a medically verifiable reason, as determined by the state's Medical Review Officer (MRO).
3. Refusal to contact and cooperate with the state's MRO.
4. Refusal to cooperate with a technician administering a drug or alcohol test.
5. Impeding a drug and/or alcohol investigation.
6. Failure to appear for a scheduled drug and/or alcohol test without a reasonable and verifiable explanation.
7. Substitution of, adulteration of, or tampering with a drug and/or alcohol test sample.
8. Refusal to report for an assessment with a substance abuse professional (SAP).
9. Refusal or failure to enter and/or successfully complete a recommended drug and/or alcohol treatment, counseling, or education program.
10. Failure to report a drug conviction to agency head within five (5) calendar days in accordance with DHRM rule 477-14-2 (9).
11. Using alcohol before being tested or within eight (8) hours of an accident or critical incident, whichever comes first. (For any employee who may be required by this policy to be tested for alcohol after an accident or critical incident while performing assigned duties.) Violation of last chance or return to work agreement

1.5 Drug and Alcohol Testing

Under this policy, final candidates for highly sensitive positions and all employees are subject to drug and alcohol testing for, but not limited to: alcohol, cannabis (marijuana), cocaine, opiates, phencyclidine (PCP), amphetamines and the metabolites of these drugs. All sample collection and testing will comply with applicable Federal standards. Where no federal standards apply generally accepted drug testing industry tests and cut of levels will apply. All employees are subject to one or more of the following tests:

1. **Critical Incident testing.** Critical Incident drug and/or alcohol testing applies to all employees.
2. **Reasonable suspicion testing.** Reasonable suspicion drug and/or alcohol testing applies to all employees.

3. **Post-accident testing.** Post-accident drug and/or alcohol testing applies to all employees.
4. **Return-to-duty testing.** Return to duty drug and/or alcohol testing applies to all employees who have completed a recommended treatment, counseling or education program. This includes drug and/or alcohol.
5. **Follow up testing.** Follow up drug and/or alcohol testing is ongoing testing, conducted on an unannounced basis. Follow up testing applies to any employee who has previously failed a test for drugs and/or alcohol.

Additionally, final candidates for highly sensitive positions and employees designated by DHRM as highly sensitive are subject to the following additional tests:

1. **Pre-employment testing.** Pre-employment drug testing applies to final candidates for highly sensitive positions and employees transferring from non-highly sensitive positions, to highly sensitive positions. This includes drugs only. Pre-employment tests for alcohol will not be given.
2. **Random testing.** Random drug and/or alcohol testing applies to employees in positions designated by DHRM as highly sensitive and authorized by DHRM for random testing.

For highly sensitive positions not mandated by federal regulation, agencies may elect to participate in the drug testing program as a whole or as distinct sub-divisions within an agency. Agencies may elect to test safety sensitive positions, security sensitive positions or all highly sensitive positions. All applicable positions within a category must be included in the random testing pool for a participating agency or distinct division. Agencies may determine the random testing rate as an agency or individually for each sub division.

1.6 Employee Assistance

Employees with issues related to drugs and/or alcohol use or abuse are encouraged to seek assistance through private services or department employee assistance programs.

1.7 Notification of Convictions

Employees must notify their supervisor within five (5) calendar days when convicted under federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance, if such conviction could affect the eligibility of State agencies to receive federal grants or qualify for federal contracts of \$25,000 or more.

1.8 Positive Test Results

1. For safety sensitive positions, the State will mirror federal DOT regulations for cut off levels on positive drug and alcohol tests, unless otherwise designated by federal regulation.
2. For security sensitive and non- highly sensitive positions the cut off levels for positive drug tests will mirror DOT regulations cut off levels.

3. For security sensitive and non- highly sensitive positions blood or breath alcohol concentrations for positive alcohol tests will be .08.
4. It is a violation of this policy to have a MRO verified positive test for but not limited to: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and the metabolites of these drugs.
5. It is a violation of this policy to have a positive alcohol test at or above the established concentration levels.

1.9 Canceled Test

1. At times, a problem with a drug test may be identified that cannot or has not been corrected, or which federal regulations requires to be cancelled. In these situations, a cancelled test reported. A cancelled test is neither positive nor negative.

1.10 DHRM Responsibilities

1. Identify a state drug program coordinator (DPC) to coordinate and monitor the state's drug and alcohol program.
2. Negotiate and secure contracts for collection, lab and medical review services.
3. Create and make appropriate changes to the state's drug and alcohol policy.
4. Propose changes to legislation as needed.
5. Disseminate policy, procedures, and information to agencies.
6. Designate jobs and/or positions as highly sensitive.
7. Provide the collection agency with updated lists of individuals subject to random drug and alcohol testing.

1.11 Agency and HR Field Office Responsibilities

1. Enforcement of drug and alcohol testing policy and procedures.
2. Inform all employees in highly sensitive positions of the existence and enforcement of this policy.
3. Inform all final candidates for employment in highly sensitive positions of the existence and enforcement of this policy.
4. Notify the State Drug Program Coordinator of intention to initiate random testing of non-regulated highly sensitive positions at least 45 days prior to initial implementation.
5. Notify highly sensitive employees of random testing program at least 30 days prior to initial implementation.
6. Field HR Manager will identify an agency drug program coordinator (DPC) and/or site coordinator(s): The agency DPC will notify the state DPC of changes in DPCs or site coordinators.
7. Determine the appropriate discipline for employees who violate this policy.
8. Coordinate rehabilitation, return to duty and/or follow-up testing of agency employees as needed.
9. Ensure record keeping is maintained in accordance with applicable state and federal regulations.

10. Provide ongoing training to agency staff as required by applicable state and federal regulations.
11. Submit requests and documentation to DHRM when changes in duties necessitate a change in highly sensitive status of any position.
12. Enter and maintain applicable employee records in the centralized state human resources database.

1.12 Unique Situations

1. The Department of Human Resource Management recognizes that situations may arise which are not specifically covered by this policy and program. These will be addressed on a case-by-case basis. Agencies may develop their own policy to address specific practices, where latitude is given, provided that any such policy conforms with state and federal laws and regulations and human resource rule R477-14. Agency policies may not be less restrictive than this policy.
2. Any questions concerning this policy should be directed to the agency drug program coordinator or the state drug program coordinator.

State of Utah Drug-Free Workplace Procedures

1.0 PROGRAM ADMINISTRATION

1.01 DHRM Administration Responsibilities

1. Identify a state drug program coordinator (DPC) to coordinate and monitor the state's drug and alcohol program.
2. Negotiate and secure contracts for collection, lab and medical review services.
3. Create and make appropriate changes to the state's drug and alcohol policy.
4. Propose changes to legislation as needed.
5. Disseminate policy, procedures, and information to agencies.
6. Designate jobs and/or positions as highly sensitive.
7. Provide the contracted collection provider with updated lists of agency DPCs and site coordinators and individuals subject to random drug and alcohol testing.

1.02 Agency and HR Field Office Responsibilities

1. Enforcement of drug and alcohol testing policy and procedures.
2. Inform all employees in highly sensitive positions of the existence and enforcement of this policy.
3. Inform all final candidates for employment in highly sensitive positions of the existence and enforcement of this policy.
4. Notify DHRM of intention to initiate random testing of non- federally regulated highly sensitive positions at least 45 days prior to initial implementation.
5. Determine which highly sensitive categories will be tested.
6. Determine if pre-employment and/or random testing will be implemented for positions which are not federally regulated.
7. Determine the random testing rate.
8. Notify affected employees of random testing program at least 30 days prior to initial implementation.
9. Identification of an agency drug program coordinator (DPC) and/or site coordinator(s): The agency DPC will notify the state DPC of changes in DPCs or site coordinators.
10. Determine the appropriate discipline for employees who violate the State of Utah Drug and Alcohol testing policy.
11. Coordinate rehabilitation, return to duty and/or follow-up testing of agency employees as needed.
12. Ensure record keeping is maintained in accordance with applicable state and federal regulations.
13. Provide ongoing training to agency staff as required by applicable state and federal regulations.
14. Submit requests and documentation to DHRM when changes in duties necessitate a change in highly sensitive status of any position.
15. Enter and maintain applicable employee records in the centralized state human resources database.

1.03 RECORD KEEPING

1. DHRM Responsibilities

DHRM shall retain a copy of the annual management information system report required by the Department of Transportation (DOT) which records the number of employees tested, by type of test (e.g., post-accident) and results, for at least five (5) years. Records that demonstrate the collection process conforms to DOT regulations shall be maintained by the State's contracted collection provider in accordance with federal regulations.

2. Agency Responsibilities

Each agency shall keep the following records in secured files separate from the employees' personnel files for the periods specified, and permit access to the records as provided in the records access section:

- < Records of drug and alcohol test results showing that an employee failed a test or refused to test, the type of test failed (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least five (5) years.
- < Records confirming that the agency has met the supervisor and employee training requirements have an indefinite retention period and need to be kept at least 2 years after termination.
- < Documents generated in connection with decisions to administer various tests have an indefinite retention period and need to be kept at least 2 years after termination.
- < Records of negative and canceled drug test results and alcohol test results with less than a .02 concentration must be kept for at least one (1) year.

1.04 RECORDS ACCESS

Records may only be released in accordance with provisions of the Government Records Access and Management Act (GRAMA), Americans with Disabilities Act (ADA) and other applicable federal and state laws and regulations. All drug and alcohol related records must be kept secure and confidential. Drug and alcohol records must not be placed in the personnel file. These documents must be kept in a separate secured file. Specific information regarding an individual's drug and/or alcohol test result or rehabilitation is classified as private. The agency may utilize test results in any employment related administrative or legal forum whether or not the employee has given legal consent. Statistical data related to drug or alcohol testing and rehabilitation which does not identify the employee by name shall be made available to DHRM, DOT representatives or state agencies upon request.

1.05 BILLING

Agencies will be billed directly by the contracted collection provider for tests conducted on their employees. Agencies will also be billed for blind samples according to the percentage of their program usage.

Employees must make their own arrangements for the services and billing of substance abuse professionals and/or treatment, education, or counseling programs.

1.06 SITUATIONS NOT COVERED BY THESE PROCEDURES

- < The Department of Human Resource Management recognizes that situations may arise which are not specifically covered by these procedures. These situations will be addressed on a case-by-case basis. Agencies may develop their own procedures to address specific practices, where latitude is given, provided that any such procedure is in conformity with state and federal laws and regulations, and the State's Human Resource Rule R477-14 and are not less restrictive than these procedures
- < Any questions concerning these procedures or their specific application, should be directed to the agency drug program coordinator or the state drug program coordinator.

2.0 GUIDELINES FOR DRUG TESTING

2.01 DRUG TESTING

All drug testing will be done in a federally certified laboratory. Prohibited drugs which will be tested for include, but are not limited to, cannabis (marijuana), cocaine, opiates, PCP, amphetamines and metabolites of these drugs. Any employee with a Medical Review Officer (MRO) verified positive test result is subject to disciplinary action which may include dismissal.

2.02 COLLECTION LOCATIONS

All specimen collection for employee drug testing shall be conducted on site at the employee's work place. The agency Drug Program Coordinator (DPC) or designee may authorize other locations as needed. All time testing or waiting to be tested shall be considered as work time for the employee.

2.03 MEDICAL REVIEW OFFICER (MRO)

The Department of Human Resource Management (DHRM) has contracted with a qualified MRO in compliance with current federal guidelines. The MRO is a licensed physician with knowledge in the area of substance abuse disorders. The MRO is medically qualified to

interpret and evaluate an employee's/applicant's laboratory reported positive test results as well as the employee's/applicant's medical history or any other relevant biomedical information. No MRO utilized by this program shall be employed by a laboratory which analyzes state employee/applicant drug testing specimens.

The MRO has responsibility to review laboratory reported test results and determine whether the test result should be reported as positive or negative. Prior to the MRO reporting a test as positive, the donor shall be given an opportunity to discuss the test with the MRO regarding any legitimate reason for the presence of a controlled substance(s) or its metabolite in the specimen. The MRO shall contact the employee/applicant directly, in a confidential manner, to determine whether the employee/applicant wishes to discuss the test result. Any individual on the MRO's staff may make the initial contact, but only a medically licensed or certified individual may gather the information from the employee/applicant. If reasonable efforts by the MRO or his staff do not result in contact with the donor, the MRO shall contact the agency DPC or designee who shall, in a confidential manner, direct the donor to contact the MRO as soon as possible. If an applicant donor fails to contact or cooperate with the MRO, the applicant may not be hired. The MRO may report a test result without having communicated directly with the employee/applicant if:

1. The employee/applicant expressly declines an opportunity to discuss the test.
2. Neither the MRO nor the DPC, after making all reasonable efforts, has been able to contact the employee/applicant within 10 days of the date on which the MRO receives the confirmed positive test result from the laboratory.
3. The DPC or designee has successfully made and documented contact with the employee/applicant, instructed the employee/applicant to contact the MRO, and more than five (5) days have elapsed since the date the employee/applicant was contacted.

When there has been no documented communication with an employee or applicant, and the MRO has reported a test as positive under 2 or 3 above, the donor may present information to the MRO documenting that serious illness, injury or other circumstances unavoidably prevented the donor from being contacted by the MRO or DPC within the allotted time frame. Based on that information, the MRO may reopen the verification process and allow the donor to present information concerning a legitimate explanation for the confirmed positive test. If a legitimate explanation for the positive result is provided to the MRO, the test shall be declared negative.

If the MRO verifies a test as positive the employee may, within seventy two (72) hours of notification, request that the split sample be tested. The request for re-testing must be made to the MRO who shall then direct the laboratory which analyzed the original specimen to provide the split specimen to another federally certified laboratory for analysis. The cost of re-testing is the responsibility of the employee. However, if the reanalysis or retest is negative, the employee shall be reimbursed the cost of the test.

The MRO is responsible to insure the accuracy and consistency of the lab's testing, procedures, and results through the use of blind samples. The MRO will provide blind samples and a means of control in accordance with federal standards. The blind sample will be processed as normal through the contracted collection company and the lab. When the

MRO receives the sample back from the lab, a verification of the lab result will be done. A comparison of results will be reported to the State Drug Program Coordinator.

2.04 PRE-EMPLOYMENT TESTING

1. Each agency will advise applicants for highly sensitive positions, that submitting to urine drug screening is a condition of employment.
2. As a condition of employment, final candidates for highly sensitive positions may be required to submit to a urine drug screen. A test verified positive by the MRO will disqualify an applicant from employment in a highly sensitive position.
3. Any employee who is a final candidate for, is transferred to, or is assigned job duties in a highly sensitive position, if not already in a highly sensitive classification, must submit to a urine drug screen to test for controlled substances and metabolites of those controlled substances. Any such employee whose test is verified positive by the MRO may be subject to disciplinary action, which may include dismissal, and may not be hired, transferred or assigned to the new position.

2.05 REASONABLE SUSPICION TESTING

1. Reasonable suspicion testing may be initiated when management determines that there is reasonable suspicion to warrant a test. This reasonable suspicion must be based on specific, contemporaneous, documentable, observation including but not limited to: job performance, appearance, behavior, speech, statements, possession, or body odors.
2. Management shall contact the agency DPC or designee, to concur in the decision to arrange to test an employee. The agency DPC or designee need not observe the employee's behavior. (For CDL positions, the supervisor must be trained in detection of the possible symptoms of drug abuse.) The agency DPC will contact the contracted provider to schedule testing.
3. Employees in highly sensitive positions who are tested for reasonable suspicion must be placed in non-highly sensitive duties or on administrative leave until results from the drug urine screening are available. In all cases of reasonable suspicion testing, any employee may be placed on administrative leave until an evaluation has taken place and an appropriate course of action determined, by the agency. No advance notice is required to perform reasonable suspicion drug tests.

2.06 CRITICAL INCIDENT TESTING

1. Critical incident testing may be initiated when the behavior, action or inaction of an employee is of such seriousness it requires an immediate intervention on the part of management.
2. Critical incident testing includes anyone involved in an on-the-job accident or incident and means not only the one who was injured, but also anyone who arguably or potentially contributed to the accident or injury event in any way, i.e., the person suspected of causing someone else to be injured.
3. Management shall contact the agency DPC or designee, to concur in the decision to arrange to test an employee. The agency DPC or designee need not observe the employee's behavior.
4. Employees in highly sensitive positions who are tested for a critical incident must be placed in non--highly sensitive duties or on administrative leave until results from the test are available. In all cases of critical incident testing, any employee may be placed on administrative leave until an evaluation has taken place and an appropriate course of action determined, by the agency. No advance notice is required to perform critical incident drug tests.

2.07 POST-ACCIDENT TESTING

Employees who are involved in an accident while on duty, whether driving a state vehicle or any other vehicle, are subject to post-accident testing where:

1. A fatality occurs; or
2. The driver receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involved:
 - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - b. One or more motor vehicles incurring disabling damage as a result of the accident must be transported away from the scene by a tow truck or other vehicle.
3. There is reasonable suspicion that the employee had been driving under the influence of a controlled substance.
4. An employee who is subject to post-accident testing who fails to remain readily available for the testing, including notifying management of his/her location if leaving the scene of the accident, prior to submitting to testing, may be deemed to have refused to submit to testing. This requirement shall not be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for

the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

2.08 RANDOM TESTING

NOTE: *As of the effective date of this document, Data Sensitive employees have not been approved for random alcohol and drug testing.*

All employees in highly sensitive positions are subject to random drug testing.

1. Employees in positions which have specific federal regulations will be tested at the rate specified by the applicable federal regulation. Testing of the requisite number of employees shall be evenly distributed every calendar year. Each month the contracted collection company shall select the requisite number of employees to be tested using a computer program which randomly selects social security numbers. The contracted collection company will coordinate random testing with the DPC or designee. The contracted provider will notify the employee's supervisor to coordinate the time and location of the test. The supervisor will see that the employee reports directly to the testing site and shall ensure that random tests are unannounced. Testing will be conducted during normal working hours with no time lost to the employee.
2. Other positions, which have been designated as highly sensitive by DHRM, will be selected randomly by computer and be tested at a rate set by the agency. Testing of the requisite number of employees shall be evenly distributed every calendar year. Each month the contracted collection company shall select the requisite number of employees to be tested using a computer program which randomly selects social security numbers. The contracted collection company will coordinate random testing with the DPC or designee. The contracted provider will notify the employee's supervisor to coordinate the time and location of the test. The supervisor will see that the employee reports directly to the testing site and shall ensure that random tests are unannounced. Testing will be conducted during normal working hours with no time lost to the employee.

2.09 RETURN-TO-DUTY TESTING

1. Prior to allowing an employee who completes a drug treatment program to return to work, the agency must receive the following:
 - a. a statement of program completion from a substance abuse professional (SAP); and
 - b. a return to duty drug test which is verified as negative by the MRO.

2. Any employee who refuses to participate in a return to duty drug test or who tests positive for any controlled substance, is subject to discipline which may include dismissal.

2.10 FOLLOW-UP TESTING

1. Any employee who fails a drug test may be subject to unannounced follow up testing for a period not to exceed five (5) years.
2. An employee who has completed a substance abuse program whether voluntary or recommended by a SAP, may be required to submit to subsequent unannounced testing as recommended by the SAP. Follow-up testing may continue for a period not to exceed five (5) years.

2.11 REVIEW OF TEST RESULTS

All test results shall be sent by the laboratory directly to the MRO by the laboratory. Prior to reporting any drug test results the MRO will conduct a review of the test results. Drug tests will not be reported to agencies as positive until they have been verified positive by the MRO.

2.12 POSITIVE TEST RESULTS

1. Positive screen tests shall be confirmed by the laboratory and submitted to the MRO for review. After receiving the laboratory confirmed positive test results, the MRO will interview the employee/applicant as outlined in section 2.03. If the MRO verifies the test as positive, the MRO will provide an immediate notification of a “positive” test result to the agency DPC. A confidential verification of the positive result will be transmitted to the agency DPC.
2. The employee/applicant shall be informed by the MRO of positive test results in a confidential manner.

2.13 NEGATIVE TEST RESULTS

1. The MRO will provide an immediate notification of a “negative” test result to the agency DPC. A confidential verification of the positive result will be transmitted to the agency DPC.
2. The MRO will make no notification to an employee/applicant having a negative drug test result. The agency DPC may notify the employee/applicant of a negative test result.

2.14 RETENTION OF SAMPLES

The method of collection will be split sampling (two vials collected from one void).

Samples that yield positive test results on confirmation must be retained by the laboratory in properly secured, long term, frozen storage for at least 365 days.

Within the 365 day period the employee or his/her representative, State Drug Program Coordinator, Federal Administrator, or the State agency may request, in writing, that the laboratory retain the sample for an additional specified period. If, within the 365 day period, the laboratory has not received a written request to retain the sample, the sample may be discarded following the end of the 365 day period, unless the a specimen is known to be under legal challenge in which case it must be kept for an indefinite period.

The split specimen may be destroyed sixty (60) days after arrival at the laboratory if the laboratory has not received written notice of a request for a test of the split specimen from the MRO.

2.15 RETEST OF DILUTE SAMPLES

1. If the MRO reports that a positive drug test was dilute, then the test will be treated as a verified positive test. An employee should not be directed to take another test based on the fact that the specimen was dilute.
2. Agencies may establish a policy requiring retesting in cases of dilute samples. If the MRO reports that a negative drug test was dilute, the agency may, in accordance with their policy, immediately retest the employee. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation.
 - a. When directing the employee to take another test, ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site.
 - b. When directing the employee to take another test, the result of the second test – not that of the original test – becomes the test of record.
 - c. If an employee is required to take another test, and the second test is also negative and dilute the employee shall not be required to take a third test because the second test was dilute.
 - d. If an employee is directed to take another test and the employee declines to do so, the employee has refused the test for purpose of this policy.

2.16 RETEST OF ORIGINAL SAMPLE / SPLIT SPECIMEN TESTING:

The MRO will notify each employee with a verified positive test that the employee has seventy-two (72) hours from the time of notification to request that the split specimen be tested. The split specimen must be tested by another federally certified laboratory. The original laboratory must follow approved chain-of-custody procedures in transferring the split specimen. Payment for the retest is the responsibility of the employee.

If the split specimen fails to confirm the presence of drug or drug metabolite, the test will be reported as negative by the MRO. If re-testing results are negative the employee will be reimbursed, by the agency, for the cost of re-testing.

2.17 DIFFICULTY IN OBTAINING SAMPLES:

1. Employees with shy bladders and who are required to provide a specimen will remain at the collection site and continue to consume reasonable quantities of fluids (up to 40 ounces spaced throughout the three hour period) until an adequate specimen has been provided or until the expiration of a period up to three (3) hours from the beginning of the collection procedure. Employees with a shy bladder will be supervised by the collection site person during the time they are at the collection site.
 - a. Refusal to provide a new urine specimen or refusal to drink fluids as directed shall be deemed as refusing to take the test.
 - b. If unable to provide a sample within the 3 hour time period, the employee shall be directed to obtain an evaluation from a licensed physician to determine if a medical condition exists which precludes the donor's ability to provide a sample. This report will be given to the MRO who will issue a determination whether a legitimate medical cause exists for the donor's inability to provide a sample. Unless the MRO determines that there is a high probability that a medical condition has precluded the donor from providing a sample, the donor's inability to provide a sample shall be deemed as refusing to take the test.
2. Applicants for employment who have a shy bladder may remain at the collection site for a period not to exceed three (3) hours and may consume reasonable quantities of fluids (up to 40 ounces spaced throughout the three hour period) until they provide a specimen or they may elect to apply for a position at another time and again try to provide a specimen.
3. Alteration, adulteration, substitution or otherwise tampering with a specimen shall be deemed a refusal to submit to a test and carry the same consequences as a positive test.

2.18 REFERRAL TO REHABILITATION SERVICES

For employees in federally regulated positions, referral to rehabilitation services shall be in accordance with the specific applicable federal regulation. For employees in state designated highly sensitive and non-highly sensitive positions, agencies may, at their sole discretion, offer an employee, who has a confirmed positive drug test, the option to receive an evaluation from a qualified substance abuse professional (SAP) and to successfully complete an appropriate rehabilitation program in lieu of termination. Employees who elect to participate shall be subject to the following provisions:

1. All treatment, education and counseling services are at the employee's expense.
2. The employee shall be granted permission to use accrued leave in order to participate in treatment; the agency may also grant administrative leave or leave without pay.
3. Employees participating in rehabilitation are required to sign a medical records release in order to facilitate transmittal of verbal or written compliance reports; employees may also be required to sign a return to work and/or last chance agreement.
4. An employee may be required to continue participation in an outpatient rehabilitation program as prescribed by a licensed substance abuse professional.
5. An employee in highly sensitive position may not return to work in highly sensitive duties until the substance abuse professional declares the employee has successfully completed the rehabilitation program and is ready to return to work, including performance of highly sensitive duties if applicable and has been re-tested in accordance with recommendations by the substance abuse professional and received a negative test result.
6. Employees who have gone through a rehabilitation process are expected to meet their performance standards the same as other employees.
7. Employees shall be required to participate in a follow-up testing program after they have passed a return to duty test. Testing will occur on an unannounced basis for a period of time recommended by the substance abuse professional for a period not to exceed five (5) years.
8. Employees who fail to comply with the SAP recommendations and treatment plan, who violate their return to work or last chance agreement, or who test positive any time after the original positive test are subject to disciplinary action which may include dismissal.

3.00 GUIDELINES FOR ALCOHOL TESTING

3.01 ALCOHOL TESTING

All alcohol testing will be conducted by breath alcohol technicians who have been trained and meet federal requirements. Evidential breath screening devices must be found on the national conforming products list provided by the National Highway Traffic Safety Administration. Prohibited alcohol concentrations will be in conformance with applicable state and federal laws, rules, policies, and regulations.

3.02 BLOOD ALCOHOL CONCENTRATION LEVELS

Test results from alcohol breath tests showing an alcohol concentration equal to or greater than .08, (.04 for safety sensitive) shall be considered a positive test. Employees with a test result showing an alcohol concentration of .02 but less than .04 must be removed from any safety sensitive duties and/or may be placed on administrative leave until re-tested with a result of less than .02 or an appropriate time has lapsed since the last test as per section 3.03 below. Management may still take action even when the results of a conformation test are below these levels if it is determined that an employee is unable to perform the assigned job tasks.

3.03 CONFIRMATION TESTING

If initial screening test results are .02 or greater, a second test will be conducted within thirty (30) minutes of the screening test, but not less than fifteen (15) minutes following the screening test. The employee will be instructed to not eat, drink, or put any substance in his/her mouth during the waiting period, before the confirmation test is conducted.

3.04 TESTING LOCATIONS

All breath alcohol testing shall be conducted on site at the employee's work place or other locations as determined by the agency Drug Program Coordinator (DPC) or designee and shall be considered work time.

3.05 INABILITY TO PROVIDE AIR VOLUME

An employee who is unable to blow sufficient volume into the Evidential Breath Testing Device (EBT) shall be referred for a medical evaluation to determine if there is a valid reason the employee could not complete the breath alcohol test.

Disciplinary action, which may include dismissal, may be taken against the employee who was medically capable of completing the breath alcohol test but did not do so.

3.06 EMPLOYEE NOTIFICATION

1. The Breath Alcohol Technician (BAT) shall inform the employee of the test results.
2. If an employee tests .02 or greater, the contracted collection provider shall notify the agency DPC.

3.07 PRE-EMPLOYMENT TESTING

1. Pre-employment alcohol testing does not apply to state employees unless specifically required by federal regulations. (i.e.: CDL drivers)
2. Each agency will advise applicable applicants that submitting to a breath alcohol test is a condition of employment prior to the initial performance of highly sensitive duties as defined by the applicable federal agency.

3.08 REASONABLE SUSPICION TESTING

1. Reasonable suspicion alcohol testing may be initiated when management determines that there is reasonable suspicion to warrant a test. This reasonable suspicion must be based on specific, documentable, contemporaneous, observation including but not limited to: job performance, appearance, behavior, speech, statements, possession, or body odors.
2. Management shall contact the agency DPC or designee, to concur in the decision to arrange to test an employee. The agency DPC or designee need not observe the employee's behavior. (For CDL positions, the supervisor must be trained in detection of the possible symptoms of alcohol abuse.) The agency DPC will contact the contracted provider to schedule testing. In the case of alcohol testing, if the provider is not able to respond in a reasonable time the DPC may contact law enforcement to perform the test.
3. If it is determined that an alcohol test is required, the test should be administered within two (2) hours. If the test is not administered

within eight (8) hours, all attempts to administer the test should cease. For DOT testing, documentation is required for a reason as to why BAC test was not performed.

3.09 CRITICAL INCIDENT TESTING

1. Critical incident testing may be initiated when the behavior, action or inaction of an employee is of such seriousness it requires an immediate intervention on the part of management.
2. Management shall contact the agency DPC or designee, to concur in the decision to arrange to test an employee. The agency DPC or designee need not observe the employee's behavior.
3. Employees in safety sensitive positions who are tested for a critical incident must be placed in non-sensitive duties or on administrative leave until results from the test are available. In all cases of critical incident testing, any employee may be placed on administrative leave until an evaluation has taken place and an appropriate course of action determined, by the agency. No advance notice is required to perform critical incident alcohol tests.

3.10 POST-ACCIDENT TESTING

Employees who are involved in an accident while on duty, whether driving a state vehicle or any other vehicle, are subject to post-accident testing where:

1. A fatality occurs; or
2. The driver receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involved:
 - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident ; or
 - b. One or more motor vehicles incurring disabling damage as a result of the accident must be transported away from the scene by a tow truck or other vehicle.
3. There is reasonable suspicion that the employee had been driving under the influence of alcohol.

As soon as practical following the accident each surviving employee shall be tested for alcohol if that employee's performance either contributed to the accident or cannot be completely discounted as a contributing factor to the

accident.

If a test is required, it should be administered within two (2) hours of the incident. If a test is not administered within eight (8) hours following the accident all attempts shall cease. For DOT testing, documentation is required for a reason as to why BAC test was not performed.

An employee who is subject to post-accident testing who fails to remain readily available for the testing, including notifying the supervisor of his/her location if leaving the scene of the accident, prior to submitting to testing, may be deemed to have refused to submit to testing. This requirement shall not be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for a period necessary to obtain assistance in necessary emergency medical care.

3.11 RANDOM TESTING

NOTE: As of the effective date of this document, Data Sensitive employees have not been approved for random alcohol and drug testing.

All employees in highly sensitive positions are subject to random alcohol testing.

1. Employees in positions which have specific federal regulations will be tested at the rate specified by the applicable federal regulation. Testing of the requisite number of employees shall be evenly distributed every calendar year. Each month the contracted collection company shall select the requisite number of employees to be tested using a computer program which randomly selects social security numbers. The contracted collection company will coordinate random testing with the DPC or designee. The contracted provider will notify the employee's supervisor to coordinate the time and location of the test. The supervisor will see that the employee reports directly to the testing site and shall ensure that random tests are unannounced. Testing will be conducted during normal working hours with no time lost to the employee.
2. Other positions, which have been designated as highly sensitive by DHRM, will be selected randomly by computer and be tested at a rate set by the agency. Testing of the requisite number of employees shall be evenly distributed every calendar year. Each month the contracted collection company shall select the requisite number of employees to be tested using a computer program which randomly selects social security numbers. The contracted collection company will coordinate random testing with the DPC or designee. The contracted provider will notify the employee's supervisor to

coordinate the time and location of the test. The supervisor will see that the employee reports directly to the testing site and shall ensure that random tests are unannounced. Testing will be conducted during normal working hours with no time lost to the employee.

3.12 RETURN-TO-DUTY TESTING

1. Prior to allowing an employee who completes an alcohol treatment program to return to work, the agency must receive the following:
 - a. a statement of program completion from a substance abuse professional (SAP) ;
 - b. DOT mandated return to duty and follow up tests shall be conducted under direct observation as outlined in federal guidelines; and
 - c. a return to duty test which is verified as negative by the MRO.
2. Any employee who refuses to participate in a return to duty test or who tests positive for alcohol, is subject to discipline which may include dismissal.

3.13 FOLLOW-UP TESTING

1. Any employee who tests positive for a controlled substance may be subject to follow up testing for a period not to exceed five (5) years.
2. An employee who has completed a substance abuse program whether voluntary or recommended by a SAP, may be required to submit to subsequent unannounced testing as recommended by the SAP. Follow-up testing may continue for a period not to exceed five (5) years.

3.14 REFERRAL TO REHABILITATION SERVICES

Agencies may, at their sole discretion, offer an employee who has a failed test the option to receive an evaluation from a qualified substance abuse professional (SAP) and to successfully complete an appropriate rehabilitation program in lieu of dismissal. Employees who elect to participate shall be subject to the following provisions:

1. All treatment, education and counseling services are at the employee's expense.

2. The employee shall be granted accrued leave in order to participate in treatment; the agency may also grant administrative leave or leave without pay.
3. Employees participating in rehabilitation are required to sign a medical records release in order to facilitate transmittal of verbal or written compliance reports; employees may also be required to sign a return to work and/or last chance agreement.
4. An employee may be required to continue participation in an outpatient rehabilitation program as prescribed by a licensed substance abuse professional.
5. An employee in highly sensitive position may not return to work in sensitive duties until the substance abuse professional declares the employee has successfully completed the rehabilitation program and is ready to return to work, including performance of highly sensitive duties if applicable and has been re-tested in accordance with recommendations by the substance abuse professional and received a negative test result.
6. Employees who have gone through a rehabilitation process are expected to meet their performance standards just as other employees.
7. Employees shall be required to participate in a follow-up testing program after they have passed a return to duty test. Testing will occur on an unannounced basis for a period of time recommended by the substance abuse professional for a period not to exceed five (5) years. DOT mandated return to duty and follow up tests shall be conducted under direct observation as outlined in federal guidelines.
8. Employees who fail to comply with the SAP recommendations and treatment plan, who violate their return to work or last chance agreement, or who test positive any time after the original positive test are subject to disciplinary action, which may include dismissal.

DEFINITIONS

Adulterated Specimen:

A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Agency

An entity of state government that is directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code.

Alcohol

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

Alcohol confirmation test :

A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

Alcohol Concentration (AC):

The concentration of alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

Blind Specimen:

A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of a specific drug or is blank, containing no drugs.

Breath Alcohol Technician (BAT):

An individual who instructs and assists an employee in the alcohol testing process and is responsible for operating an evidential breath testing device (EBT).

Cancelled Test:

A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which federal regulations otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Chain of Custody:

The procedure used to document the handling of a urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

Controlled substance:

Controlled substance has the meaning such term has under 21 U.S.C. 802(6) and includes all substances listed on schedules I through V of 21 CFR 1308 (§§1308.11 through 1308.15), as they may be amended by the United States Department of Justice.

Custody and Control Form (CCF) :

The federal form used to document the handling of an employee urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. The custody and control form is first completed by the employee, along with the collector, prior to providing the urine specimen. The form then accompanies the specimen to document where it goes, how it is handled and by whom. Copies of the custody of control form are sent to the testing lab, medical review officer, collector, donor and department drug program coordinator or site coordinator for their use in billing and employee notification.

Critical Incident Drug or Alcohol Test:

A drug or alcohol test conducted an employee as a result of the behavior, action or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

DHRM:

Department of Human Resource Management - The state's central personnel office as defined in the Utah Code Annotated 67-19-1 through 67-19-40.

Donor:

The employee who is being tested or scheduled to provide a specimen.

DOT:

United States Department of Transportation

Drug Program Coordinator (DPC):

The individual(s) designated at the department level to oversee implementation of drug policy for that department including providing instruction to site coordinators. The DPC may be the Human Resource Director, a Human Resource Specialist, or a Human Resource Analyst assigned to the department's Human Resource Field Office; an analyst from the Department of Human Resource Management's Administration Office; or any other person designated by a Human Resource Director. These individuals are authorized to order testing and receive test results as outlined in this policy.

Employee Assistance Program (EAP):

A program to provide agency employees with counseling services including services for employees with substance abuse problems. Employee assistance programs are set up at the discretion of individual departments in state government, and may not be available for all employees.

Failed Drug Test

Not successfully producing a clean drug or alcohol test result for any reason including but not limited to: a positive test, refusal to test, adulteration of a sample, or substitution of a sample.

Fitness for Duty Evaluation:

Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

Follow up Drug or Alcohol test:

Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously refused to be tested, tested positive, or who has successfully completed a voluntary or required substance abuse treatment program.

Highly Sensitive Position:

Positions designated by DHRM or required by federal regulation, to be subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Highly sensitive positions fall into one of two categories, Safety Sensitive or Security Sensitive.

Medical Review Officer (MRO):

A licensed physician (medical doctor or doctor of osteopathy) under contract with DHRM to provide statewide technical assistance in implementing the drug testing program by receiving, reviewing, and interpreting test results and evaluating medical explanations for positive test results. The MRO must have a background in substance abuse disorders, medical use of prescription drugs, pharmacology, and toxicology of illicit drugs and applicable state and federal regulations.

Negative result:

Alcohol: A Breath Alcohol Concentration confirmation test that produces a reading of 0.019 or less.

Drug: A drug test that is reported by the state's Medical Review Officer (MRO) as being negative.

Positive test:

Alcohol: A breath alcohol concentration confirmation test that produces a reading of 0.02 or greater

Drug: A drug test that is reported by the state's Medical Review Officer (MRO) as being positive.

Post-Accident Drug or Alcohol Test:

A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty:

- (a) where a fatality occurs;
- (b) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident;
- (c) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves one or more motor vehicles that incur disabling damage as a

result of the accident that must be transported away from the scene by a tow truck or other vehicle;

- (d) where there is reasonable suspicion that the employee had been driving while under the influence of a controlled substance or alcohol

Pre Employment Drug Test:

A drug test conducted on final candidates for a highly sensitive position or on a current employee prior to assuming safety sensitive duties.

Reasonable Suspicion:

Knowledge sufficient to induce an ordinary, reasonable and prudent person to arrive at a conclusion of thought or belief based on factual, non-subjective and substantiated observations or reported circumstances. Factual situations verified through personal visual observation of behavior or actions, or substantiated by a reliable witness.

Reasonable Suspicion Drug or Alcohol Test:

A drug or alcohol test conducted on an employee based on reasonable suspicion that the employee may be under the influence of drugs or alcohol.

Refusal to Test

The failure to sign testing forms, provide adequate test samples without a valid medical explanation, comply with scheduled appointment times, or remain readily available for post-accident testing (if required), or any conduct that clearly obstructs the testing process.

Return-to-Duty Agreement:

Following a failed test, an agency may allow an employee to request to enter into a return to duty agreement as an alternative to dismissal. This agreement will outline terms, and conditions required before allowing an employee's return to work. Granting such a request is at management's discretion.

Return to Duty Drug or Alcohol Test:

A drug or alcohol test conducted on an employee prior to allowing the employee to return to duty after successfully completing a drug or alcohol treatment, counseling or education program.

Highly Sensitive Position:

A position approved by DHRM that includes the performance of:

Safety sensitive functions:

- f) requiring an employee to operate a commercial motor vehicle under 49 CFR 383
- g) directly related to law enforcement
- h) involving direct access or having control over direct access to controlled substances
- i) directly impacting the safety or welfare of the general public
- j) requiring an employee to carry or have access to firearms or

Data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information including:

- g) financial assets, liabilities, and account information
- h) social security numbers
- i) wage information
- j) medical history
- k) public assistance benefits or
- l) driver license

Site Coordinator (SC):

A supervisor or other individual designated by the DPC who is responsible for coordinating on site specimen collection in accordance with SAMHSA guidelines and DHRM drug testing program procedures. The Site Coordinator and DPC may be the same person if assigned a dual role by the department's Human Resource Field Office. In agencies without a human resource office, the SC may be an agency employee and the DPC may be the assigned DHRM representative. The site coordinator is responsible for operational issues and notifying employees of drug and /or alcohol tests, but does not have a consulting role in reasonable suspicion incidents.

Split Specimen:

A split specimen is a urine specimen which part of the specimen is set aside for possible future testing. This specimen comes from one void being poured into separate specimen bottles and sealed in the donor's presence.

Split specimen collection:

A collection of a specimen in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

State Drug Program Coordinator:

A person designated by the Department of Human Resource Management as having primary responsibility for coordinating implementation of the state's drug and alcohol program.

Substance Abuse Professional (SAP):

A licensed physician (medical doctor or doctor of Osteopathy); or a licensed or certified psychologist, social worker or employee assistance professional; or an addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & other Drug Abuse. All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances and related disorders.

Substituted specimen:

A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

APPENDIX A
LIST OF RELATED LAWS, RULES AND REGULATIONS

- < Drug-Free Workplace Act of 1988
- < Omnibus Transportation Employee Testing Act of 1991
- < 21 USC 802(6) – Drug Abuse Prevention and Control
- < 34 CFR Part 85 Subpart F
- < 21 CFR 1308 (§§1308.11 through 1308.15) – Schedule of Controlled Substances
- < 49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs
- < 49 CFR Part 382 – Commercial Driver’s License Standards
- < Utah Code Annotated 67-19-36 - Testing
- < Utah Code Annotated 67-19-37 - Discipline
- < Utah Code Annotated 67-19-38 - Violations and Penalties
- < Department of Human Resource Management Rule 477-9-1 - Employee conduct
- < Department of Human Resource Management Rule 477-11 - Discipline
- < Department of Human Resource Management Rule 477-14 - Substance abuse and drug-free work place