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## ALCOHOL AND DRUG FREE WORKPLACE POLICY NMIAC 10-20.2-414

### § 10-20.2-414 Policy

As an employer, the government recognizes it has a responsibility to its employees and the public it serves to take reasonable steps to assure safety in the workplace and in the community. Furthermore, the government is concerned about the adverse effect alcohol and drug abuse have on safe and productive job performance. It also recognizes that any employee, whose ability to perform safely and productively is affected by the use of alcohol and other drugs, jeopardizes the integrity of the workplace and the achievement of the government's mission. The government realizes that alcoholism, problem drinking and drug addiction are treatable illnesses. The government, therefore, encourages employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

**§ 10-20.2-416 Definitions**

For the purposes of this subpart, the following definitions apply:

- (a) “Accident.” An event which causes
  - (1) A fatality,
  - (2) An injury to a person requiring professional medical treatment beyond simple at-scene first aid, or
  - (3) An economic loss, including property damage, greater than \$2,500.00.
- (b) “Assessment.” A determination of the severity of an individual’s alcohol or drug use problem and an analysis of the possible courses of treatment, made by an expert in the field of substance abuse.
- (c) “Breath Alcohol Concentration” (“B.A.C.”). The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath testing device (E.B.T.).
- (d) “Breath Alcohol Technician” (“B.A.T.”). An individual authorized to collect breath specimens under § 10-20.2-426(b) and who operates an E.B.T.
- (e) “Consulting Physician.” A licensed physician retained or employed by the government to advise on drug testing.
- (f) “Drug.” A substance
  - (1) Recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; or
  - (2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or
  - (3) Other than food, minerals, or vitamins, intended to affect the structure or any function of the body of a human or other animal; or
  - (4) Intended for use as a component of any article specified in subsections (f)(1), (2), or (3) above. Devices or their components, parts, or accessories are not considered drugs under this definition.
- (g) “Evidential Breath Testing Device” (“E.B.T.”). A device which is
  - (1) Approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath; and
  - (2) Is on the NHTSA’s Conforming Products List of E.B.T.s; and
  - (3) Conforms with the model specifications available from the NHTSA, Office of Alcohol and State Programs.
- (h) “Illegal Drug.” A drug that
  - (1) Is not obtained legally; or
  - (2) Is knowingly used for other than the prescribed purpose or in other than the prescribed manner; or
  - (3) Is a “designer drug” or drug substance not approved for medical or other use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.

- (i) “Invalid Test.” A breath or urine test that has been declared invalid by a medical review officer (M.R.O.), including a specimen that is rejected for testing by a laboratory for any reason. An invalid test shall not be considered either a positive or a negative test result.
- (j) “Medical File.” The file containing an employee’s medical examination form, mental health referrals, alcohol and drug test results, and other health related documents, maintained by the Office of Personnel Management separate from an employee’s official personnel folder, in accordance with § 10-20.2-1020(c).
- (k) “Medical Review Officer” (“M.R.O.”). A licensed physician, appointed by the government, with specialized training in substance abuse disorders and in the use and evaluation of drug test results. The M.R.O. shall be the only person authorized to receive laboratory drug test results and shall be the primary contact for technical inquiries to the drug testing laboratory.
- (l) “Reasonable Suspicion.” A perception based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an individual or on specific facts, circumstances, physical evidence, physical signs and symptoms, or on a pattern of performance or behavior that would cause a trained supervisor to reasonably conclude that the individual may be under the influence of alcohol or illegal drugs while on duty.
- (m) “Safety-sensitive.” A word describing activities which directly affect the safety of one or more persons, including the operation of motor vehicles or heavy machinery or the carrying of firearms. Each department, entity, or organization head, in conjunction with the Director of Personnel Management, shall identify all positions to be considered safety-sensitive positions due to the amount of time the employee spends performing safety-sensitive functions.
- (n) “Statement of Fitness for Duty.” A written statement from a substance abuse professional (S.A.P.), certifying that the named employee is not dependent on alcohol or any drug to the extent such dependence will affect safe and productive work.
- (o) “Substance Abuse Professional” (“S.A.P.”). A physician, psychologist, psychiatrist, or social worker with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders; or a counselor certified by the National Association of Alcoholism and Drug Abuse Counselors.
- (p) “Under the Influence.” A condition where a person’s behavior, attention, or ability to perform work in the usual careful fashion has been adversely affected by the use of alcohol or drugs; intoxicated.
- (q) “Vehicle.” A device in, upon, or by which any person or property is or may be propelled or moved on a highway, on a waterway, or through the air.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

The Commission inserted quotation marks around terms defined. The Commission inserted commas after the words “treatment” in subsection (f)(2), “results” in subsection (j), and “upon” in subsection (q) pursuant to 1 CMC § 3806(g).

**§ 10-20.2-418 Prohibited Conduct**

- (a) Sale, Purchase, Possession with Intent to Deliver, or Transfer of Illegal Drugs. No employee shall
- (1) Sell, purchase, or transfer;
  - (2) Attempt to sell, purchase, or transfer; or
  - (3) Possess with the intent to deliver, any illegal drug while on government property, in any government vehicle or on any government business. It is a defense to this provision that the employee is employed by a law enforcement agency and the conduct occurs as part of the employee's assigned duties for the purpose of investigating illegal drug trafficking.
- (b) Possession of Illegal Drugs. No employee shall possess any illegal drug on government property, in any government vehicle, or while on government business. It is a defense to this provision that the employee is employed by a law enforcement agency and the conduct occurs as part of the employee's assigned duties for the purpose of investigating illegal drug trafficking.
- (c) Possession of Open Containers of Alcohol. No employee shall possess an open container of alcohol in any vehicle while on duty or in any government vehicle at any time. No employee shall possess an open container of alcohol while at his or her workplace.
- (d) Under the Influence of Alcohol or Illegal Drugs. No employee shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. As used in this subsection, alcohol includes any alcohol found in any prescription or non-prescription drug such as cough syrup. An employee is presumed to be under the influence of alcohol or an illegal drug if:
- (1) The employee has a B.A.C. of 0.02 or more;
  - (2) The employee has a detectable amount of any illegal drug in his or her urine;
  - (3) The employee uses alcohol or any illegal drug while on call when the employee knows he or she may be called upon to perform safety-sensitive functions;
  - (4) The employee uses alcohol or any illegal drug within four hours prior to reporting to work and expects to perform a safety-sensitive duty.
- (e) Refusal to Be Tested. No employee required to be tested for drugs or alcohol under any provision of this subpart shall refuse to be tested. The following conduct shall be considered a refusal to be tested:
- (1) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested;
  - (2) Refusing verbally, in front of at least two witnesses, to submit to testing after receiving clear and specific written notice of the requirement to be tested;
  - (3) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific written notice of the requirement to be tested. An M.R.O. or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample (shy bladder) or an adequate breath sample (shy lung);
  - (4) Engaging in conduct that clearly obstructs the specimen collection process;
  - (5) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may leave the scene of an accident only to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scene, the

employee must notify his or her supervisor as soon as possible of his or her location and reason for leaving the scene;

(6) Consuming alcohol or illegal drugs after an accident and before a testing decision is made;

(7) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; and

(8) Failing to report to the specimen collection site timely after being informed of the requirement to be tested.

(f) Giving False Information. No employee shall give false information about a urine specimen or attempt to contaminate or alter the specimen.

(g) Refusal to Comply with Treatment Recommendations. No employee shall fail to comply with recommendations for treatment or after-care made by an M.R.O. or S.A.P. as a consequence of a prior positive drug or alcohol test result.

(h) Failure to Notify Government of Conviction. No employee shall fail to notify the Director of Personnel Management of any criminal drug statute conviction, within five days of such conviction, if the violation of the criminal drug statute occurred while the employee was conducting Commonwealth business, or while on or using Commonwealth property.

(i) Supervisor's Responsibility for Confidentiality. No manager or appointing authority shall knowingly disregard an employee's right to confidentiality in matters relating to alcohol or drug testing or otherwise neglect his or her responsibilities under this subpart.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### **§ 10-20.2-420 Penalties and Consequences**

(a) Disciplinary Action. An employee committing any act prohibited by § 10-20.2-418 shall be subject to an appropriate form of discipline, depending on the circumstances.

(1) Generally. Where an employee commits any act prohibited by § 10-20.2-418, without valid reason, the employee shall be disciplined up to and including removal. At a minimum, the employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs, the employee shall be referred to an S.A.P. for assessment and treatment.

(2) First offense, under the influence. An employee found to be under the influence of alcohol or illegal drugs in violation of § 10-20.2-418(d), for a first offense, shall not be subject to removal solely for being under the influence of alcohol or illegal drugs. However, if the person is also involved in an accident, depending on the circumstances, the appointing authority may decide to initiate an adverse action for removal, even on a first offense.

(3) Serious offenses. The following acts, even for a first offense, will result in an immediate adverse action for removal in accordance with § 10-20.2-257(j) and (m):

(i) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase or transfer illegal drugs in violation of § 10-20.2-418(a);

- (ii) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs, in violation of § 10-20.2-418(d);
- (iii) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs, in violation of § 10-20.2-418(d);
- (iv) An unexcused refusal to be tested, in violation of § 10-20.2-418(e);
- (v) Giving false information, contaminating or attempting to contaminate a urine sample, in violation of § 10-20.2-418(f);
- (vi) Failing to notify the proper authority of conviction for a drug offense in violation of § 10-20.2-418(h);
- (vii) Testing positive for alcohol or illegal drugs within five years of a prior positive test; and
- (viii) Breaching any term of a return to duty contract executed under the provisions of § 10-20.2-422(b).

(b) Information Concerning Treatment Options. Those employees not removed from government service after committing any act prohibited by § 10-20.2-418 shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the Office of Personnel Management's Alcohol and Drug Free Workplace Coordinator shall give the names, addresses, and telephone numbers of local S.A.P.s and substance abuse counseling or treatment programs. The employees will then be required to fulfill all the specified steps of treatment before being considered ready for return to duty.

(c) Report to Department of Public Safety. An employee committing any act prohibited by § 10-20.2-418(a) or (b) shall be reported, by the appointing authority, to the Department of Public Safety for the purpose of possible criminal prosecution.

(d) Duty/Pay Status Pending Adverse Action. Unless the employee was involved in an accident resulting in a fatality, an employee subject to an adverse action for committing any act prohibited by § 10-20.2-418, except for § 10-20.2-418(g), shall be allowed to remain on the job pending resolution of any proposed adverse action but shall not be allowed to perform a safety-sensitive function, even if that means assigning to the employee duties the employee would not otherwise be performing. An employee subject to an adverse action for committing any act prohibited by § 10-20.2-418 who was involved in a fatal accident shall be placed on leave without pay pending resolution of the adverse action for removal.

Modified, 1 CMC § 3806(c).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### **§ 10-20.2-422 Return to Work Procedures**

- (a) Prerequisites to Returning to Duty. No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:
- (1) Complied with treatment recommendations of an M.R.O. or S.A.P. and been released for work by an S.A.P. in consultation, when appropriate, with the M.R.O. or a consulting physician;
  - (2) Tested negative in a subsequent test paid for by the employee for the presence of alcohol, if the removal from duty was due to alcohol use; or cocaine, marijuana, opiates, amphetamines, and phencyclidine, if the removal from duty was due to drug use; and

- (3) Agreed to execute a return to duty contract.
- (b) Return to Duty Contract. The return to duty contract shall include the following provisions:
  - (1) Aftercare. An agreement to comply with aftercare and follow-up treatment recommendations for one to five years, as determined appropriate by the employee's S.A.P.;
  - (2) Follow-up testing. An agreement to unannounced alcohol or drug testing, depending on the substance which resulted in the removal from duty, paid for by the employee, for one to five years, as determined appropriate by the employee's S.A.P., but there shall be no fewer than six tests in the first year after the employee returns to work;
  - (3) Compliance with rules. An agreement to comply with government rules, policies, and procedures relating to employment;
  - (4) Term. An agreement that the terms of the contract are effective for five years after the employee's return to duty; and
  - (5) Breach of contract. An agreement that violation of the return to duty contract is grounds for termination.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

#### **§ 10-20.2-424 Testing Occasions**

- (a) Pre-employment Testing. At the time of application, persons applying for any position within the Civil Service will be notified that any offer of employment is contingent upon a negative urine test. After receiving an offer of employment, the candidate shall be tested for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine in the urine. The test shall be paid for by the candidate. Testing shall be in compliance with § 10-20.2-428, below. Applicants who were previously employed by the government and applicants who have had an offer for government employment withdrawn due to a previous positive urine test result, must also provide a written release of drug testing history for the two years immediately preceding the application date.
  - (1) No new civil service candidate may be assigned to work in any position until he or she presents the results of a urine test, taken after the offer for employment has been made, that shows negative for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine.
  - (2) If the candidate's test result is positive for the presence of a tested drug, without a legitimate explanation, the offer of employment will be withdrawn.
  - (3) If the candidate presents a drug testing history showing a positive drug test within two years prior to the application date, the offer of employment will be withdrawn unless the candidate submits a statement of fitness for duty and agrees to execute an agreement similar to a return to duty contract described in § 10-20.2-422(b).
- (b) Reasonable Suspicion Testing. Where there is a reasonable suspicion that an employee is under the influence of alcohol or drugs while at work or about to begin work, he or she shall submit to a breath or urine test for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, and phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the government shall pay for the testing.

- (1) Properly trained supervisor. Only a supervisor with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make reasonable suspicion testing decisions.
  - (2) Objective inquiry. The properly trained supervisor will observe the employee suspected of being under the influence of alcohol or illegal drugs. A decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Prior to making the decision to require testing, the supervisor will question the employee in a private area to ascertain whether there are any reasons other than alcohol or drug use for any behavior observed.
  - (3) Verification. No employee shall be required to submit to a drug or alcohol test based on reasonable suspicion unless the need for the test is verified by a second properly trained government employee. The required verification shall be done in person.
  - (4) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.
  - (5) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee tested based upon reasonable suspicion shall be allowed to perform or continue to perform a safety-sensitive duty.
  - (6) Report. The supervisor ordering reasonable suspicion testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's official personnel folder.
- (c) Post-accident Testing. As soon as practical after an accident any employee whose action or inaction may have contributed to the accident must submit to breath and urine tests for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the government shall pay for the testing.
- (1) Supervisor training. Only a supervisor with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make post-accident testing decisions.
  - (2) Objective inquiry. A supervisor's decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Specifically, the properly trained supervisor shall require the driver of any government vehicle or the operator of any government equipment involved in the accident to be tested.
  - (3) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.
  - (4) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall be allowed to perform or continue to perform a safety-sensitive duty.
  - (5) Report. The supervisor ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's official personnel folder.
- (d) Random Testing. During each calendar year randomly selected employees performing safety-sensitive functions will be required to submit to breath tests for alcohol and urine tests for cocaine,



marijuana, opiates, amphetamines, and phencyclidine. The testing will be done during on-duty time. Except as otherwise provided, the government shall pay for the testing.

(1) Method of selection. Employees will be selected by a statistically valid method such as a random number table or computer-based random number generator that is matched with employee Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(2) Number to be tested. No more than twenty-five percent of all employees performing safety-sensitive functions in each department or agency each year shall be required to submit to breath alcohol testing and no more than fifty percent shall be required to submit to urine testing. The actual percentage will be determined at the beginning of each fiscal year for each department or agency by the Office of Personnel Management's Alcohol and Drug Free Workplace Coordinator, in consultation with the appointing authority and the MRO after reviewing the department's or agency's prior positive testing rates, reasonable suspicion and post accident events, and referrals for service.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401. PL 18-47 (Apr. 24, 2014) § 3 purported to amend this section. However, pursuant to 1 CMC § 9103(a), the Administrative Code consists of "Commonwealth administrative rules." As PL 18-47 is a statute enacted by the legislature and not an administrative rule promulgated by an agency, the Commission codified it at 1 CMC § 8602. To the extent that this section conflicts with 1 CMC § 8602, it is superseded.

### **§ 10-20.2-426 Collecting and Testing Breath Specimens**

(a) Collection Site. Breath specimens shall be collected only at a site approved by the Director of Personnel Management or at the scene of an accident if proper equipment and personnel can be made immediately available.

(b) Collection Protocol. Breath specimens shall be collected only by a B.A.T. trained in the collection of breath specimens at a course approved by the United States Department of Transportation in accordance with standard collection protocols as specified in 49 CFR, part 40(C) "Procedures for Transportation Workplace Drug Testing Programs - Alcohol Testing," except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(c) Confirming Test. Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration of 0.02 or greater, a second test, confirming the first and providing quantitative data of alcohol concentration, shall be performed. No alcohol test shall be considered positive unless both the screening test and the confirming test show a B.A.C. of 0.02 or greater.

(d) Results. The breath test results shall be transmitted by the B.A.T., in a manner to assure confidentiality, to the employee, to the employee's appointing authority, and to the Director of Personnel Management.

(e) Confidentiality. Other than as specified above, no person involved in the testing process shall release the results of breath tests to any other individual without a written release from the tested employee.

(f) Invalid Test. If the Director of Personnel Management determines the test is invalid, using the factors found at 49 CFR, part 40.79, the test result shall be reported as negative.

(g) Statistical Reporting. The B.A.T. shall compile statistical data, that is not name-specific, related to testing results. The B.A.T. shall release the statistical data to the Director of Personnel Management upon request.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### **§ 10-20.2-428 Collecting and Testing Urine Specimens**

(a) Collection Site. Urine specimens shall be collected only at a site approved by an appropriate government agency, and identified by the Director of Personnel Management.

(b) Collection Protocol. Urine specimens shall be collected by persons trained in the collection process developed by the Substance Abuse and Mental Health Service Administration, United States Department of Health and Human Services, in accordance with standard collection protocols as specified in 49 CFR, part 40(B), "Procedures for Transportation Workplace Drug Testing Programs - Drug Testing," except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(c) Splitting Sample.

(1) After collecting a sample of the employee's urine, the sample will be split into two specimens. Both specimens will be shipped to the laboratory selected for performing tests for the government.

(2) One specimen, called the primary specimen, shall be tested for the government. The other specimen, called the secondary specimen, shall be the property of the employee, to be tested only upon request of the employee.

(d) Confirming Test. Primary urine specimens shall first be subjected to a screening test. Only if the screening test shows positive for the presence of a prohibited drug, will a second test be conducted on the same urine specimen to identify the presence of a specific drug or metabolite, using a gas chromatography/mass spectrometry (GC/MS) test. No drug test shall be considered positive unless both the screening test and the confirming test show the presence of one or more of the drugs tested for.

(e) Results. The laboratory conducting the urine test shall give the results only to the M.R.O. The M.R.O. shall discuss the test result with the tested individual.

(f) Invalid Test. If the M.R.O. decides that the test is invalid, the candidate shall immediately submit another urine specimen for testing.

(g) Employee Test. If the government's test shows positive for the presence of a specific drug or drugs, the employee may request that the M.R.O. have the secondary specimen tested at another laboratory certified by the United States Department of Health and Human Services, for the presence of the drug or drugs found in the primary specimen.

- (1) The employee must make the request in writing, within 72 hours of receiving notice of the result of the government's test.
- (2) The results of the second test shall be given to the M.R.O. who shall discuss the result with the employee.
- (3) The employee shall pay for the cost of the second test.

(h) Alternative Explanations for Positive Test Results.

(1) Upon receiving a report of a positive test result, the M.R.O. shall determine if there is any alternative medical explanation for the result, including the use of prescribed medication by the employee. Such a determination shall be based on information received from the employee such as the tested individual's medical history and records. If the M.R.O. determines it to be necessary he or she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.

(2) The M.R.O. shall report the urine test result as negative and shall take no further action if he or she determines:

(i) There is a legitimate medical explanation for a positive test result, other than the use of the specific drug; or

(ii) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically insufficient for further action.

(i) Illegal Use of Opium. If the GC/MS does not confirm the presence of 6-monoacetylmorphine, the M.R.O. shall determine whether there is clinical evidence, in addition to the urine test result, of illegal use of any opium, opiate or opium derivative.

(j) Report to Government. The M.R.O. shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to the employee's appointing authority, and to the Director of Personnel Management.

(k) M.R.O. and Confidentiality. Other than as specified above, the M.R.O. shall not release the results of drug tests to any other individual without a written release from the tested employee.

(l) Statistical Reporting. The M.R.O. shall compile statistical data, that is not name-specific, related to testing and rehabilitation. The M.R.O. shall release the statistical data to the Director of Personnel Management upon request.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### **§ 10-20.2-430 Employee Awareness and Rehabilitation**

(a) Employee Awareness Training. All employees shall receive information concerning the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; the manifestations and behavioral clues indicative of drug and alcohol use; and the resources available to the employee in evaluating and resolving problems associated with the use of illegal and legal drugs and alcohol.

(b) **Employees Seeking Voluntary Assistance.** Government employees shall be allowed to voluntarily seek assistance for alcohol or drug use at any time prior to being required to be tested under the reasonable suspicion, post-accident or random testing procedures.

(1) **Referrals.** Employees may request referral to an S.A.P. for treatment, may refer themselves, or may be referred by a supervisor as part of a performance counseling. Such referrals shall only be made a part of the employee's medical file and shall not be a part of the employee's official personnel folder. Referrals shall be kept confidential.

(2) **Voluntary referrals.** Employees who voluntarily seek assistance in dealing with drug and alcohol problems or accept referrals, before job performance is compromised, shall be provided the same leave benefits for recommended treatment as provided for any other health problem.

(3) **Accountability for job performance.** Regardless of participation in or requests for referrals, employees shall be held accountable for acceptable job performance. In no case where job performance has been compromised will disciplinary action be waived for employees asking for assistance and referral. However, such requests may be considered a mitigating factor in determining the appropriate form of discipline.

(c) **Job Security Maintained.** Employees shall not have job security or promotional opportunities jeopardized solely because of a request for a drug or alcohol treatment referral.

(d) **Required Documentation.** Although voluntary referrals or referrals made prior to testing are kept strictly confidential, documentation of poor performance or disciplinary actions taken due to drug or alcohol abuse shall be included in the employee's official personnel folder.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

#### **§ 10-20.2-432 Disseminating Information on Regulations**

(a) **Distribution to Employees.** All current employees shall receive a copy of this subpart at least thirty days before the implementation date. New employees hired after the effective date of this policy will be given a copy of this policy at the time of hire. Each employee shall sign a form prescribed by the Director of Personnel Management which acknowledges the receipt of the policy and the employee's understanding that he or she is bound by this policy. This acknowledgment shall be kept in the employee's official personnel folder.

(b) **Posting.** This subpart will be posted in all government workplaces for at least sixty days following their implementation.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

#### **§ 10-20.2-434 Record Retention and Reporting Requirements**

- (a) Administrative Records. Records relating to the administration of this policy, including policy and program development, employee awareness training, supervisory training, collection site training, program administration, and calibration documentation, shall be kept by the Director of Personnel Management and the M.R.O. for five years.
- (b) Records Relating to Collection Process. Records relating to the breath and urine collection process shall be kept by the Director of Personnel Management, the M.R.O., and the specimen collector at the collection site for two years.
- (c) Refusals, Referrals, and Test Results. The Director of Personnel Management shall keep a copy of all records of refusals to be tested, breath and urine test results, and referrals to an S.A.P. in the employee's medical file, not the employee's official personnel folder, at least until such time as disciplinary action is taken. The M.R.O. shall keep a copy of all urine test results and the B.A.T. shall keep a copy of all breath test results in a manner to assure confidentiality. No test results shall be available for use in a criminal prosecution of the employee without the employee's consent.
- (1) Positive test result records, records of refusals to be tested and referrals to an S.A.P. shall be kept for five years.
- (2) Negative test result records shall be kept for a period of one year.
- (d) Report to Federal Contract Agency. To comply with the Drug Free Workplace Act of 1988, 41 U.S.C. § 701(a)(1)(E), the Director of Personnel Management shall notify the federal contracting agency of the conviction of any employee for selling, manufacturing or dispensing any illegal drug on government business property or government time, within 10 days of the conviction.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.