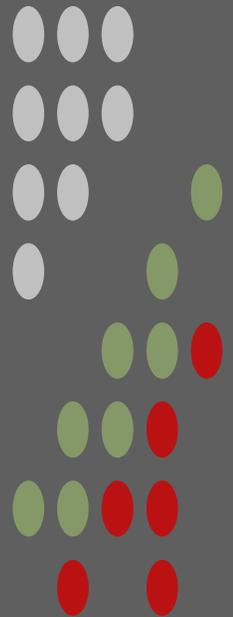


Mine Substance Abuse Task Force

Final Report



December, 2005



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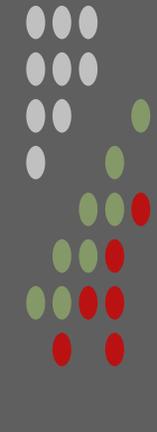


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Introduction





Mine Substance Abuse Task Force

FINAL REPORT

I. Introduction

Substance abuse is a critical problem facing the nation and our society as a whole. It is associated with many types of crime such as fraudulent medical claims, increased accidents, as well as lost time at work, serious health problems, social dysfunction and premature death. Within the last several years, problems related to substance abuse in Kentucky, West Virginia and Virginia have received increased attention from the media, law enforcement, the justice system and local communities. Rates of substance abuse, particularly associated with diverted prescription painkillers, methadone and methamphetamine, are increasing dramatically as reflected in treatment admissions, drug related deaths and drug related arrests. The abuse of Oxycontin in the Central Appalachian area has received national media attention.

While evidence suggests that substance abuse is prevalent in the coal field regions of Kentucky, Southwest Virginia and southern West Virginia, concerns about the impact to the mining industry began to rise following the death of one miner and injury of another miner when marijuana was found in the mine and a witness told investigators that he saw two miners snorting crushed painkillers. MSHA Acting Director, David Dye is on record stating "In several recent fatal mining accidents, toxicology reports revealed the presence of drugs or alcohol in the victim's system."

While few mining-specific alcohol and substance abuse statistics exist, it is not unreasonable to presume that the substance abuse problem in the mining population is at least reflective of the substance abuse problem within the community in which the miners reside. During Task Force deliberations, testimony indicated drug dependency can develop from the legitimate use of prescribed painkillers. This is further supported by a published Virginia Department of Health report which identified the average drug abuser in Southwest Virginia as a 37-year old male with a history of drug abuse and treatment for pain or chronic illness, with nearly one-fourth working in construction or mining jobs. In an interview with the *Bristol Herald Courier* about the report, Dr. John Dreyzehner, Director of the Cumberland Plateau Health District in Virginia, suggested that the widespread abuse and diversion of prescription painkillers such as Oxycontin began as a result of the culture of disability where workplace injuries contribute greatly to either temporary or permanent worker disability.



The U.S. Drug Enforcement Administration has proclaimed in an online brief that an “abuse epidemic” exists. They report that counties in eastern Kentucky lead the nation in terms of grams of narcotic pain medications distributed on a per capita basis. Aside from marijuana cultivation and trafficking, the trafficking and illicit usage of prescription drugs in the area may be the most significant current drug threat within the Appalachia HIDTA (High Intensity Drug Trafficking Areas). The Appalachia HIDTA encompasses the counties in Kentucky, West Virginia and Tennessee as shown in Figure 1.



Figure 1- Appalachian High Intensity Drug Trafficking Area

According to the Office of National Drug Control Policy, the following statistics reflect the magnitude of the problem in the tri-state area. Kentucky had 36,502 drug arrests in 2001 and 6.46 percent of its citizens reported an alcohol or illicit drug related dependence. In 2002, Virginia entered 2,487 new drug cases and according to the Virginia Office of the Chief Medical Examiner suffered 1,137 drug related deaths. Data from a 2002 National Survey on Drug Use and Health reported that 7.96 percent of citizens in West Virginia stated they had an alcohol or illicit drug related dependence.



The following statistics from the Office of National Drug Control Policy indicate a serious problem with substance and alcohol abuse in the general workplace.

- Of the 16.6 million illicit drug users aged 18 or older in 2002, 12.4 million (74.6%) were employed either full or part time.
- Of the 51.1 million adult binge drinkers in 2002, 40.8 million (80%) were employed either full or part time.
- Nearly 1 in 4 employed Americans between the ages of 18-35 have illegally used drugs in the past year.
- 1/3 of employees know of the illegal sale of drugs in their workplace
- 1 in 5 workers report being injured, having to cover for a co-worker, or needing to work harder due to other employees' drinking.

In addition, a study completed in 2005 by George Washington University, found that the construction and mining fields have the highest percentage of problem drinkers, with one in seven workers having a serious alcohol problem. In testimony before the Mine Safety and Health Administration's Hearing on Proposed Rulemaking regarding Impairment from Alcohol and Other Drugs, Mr. Eric Goplerud, Ph.D., director of project Ensuring Solutions to Alcohol Problems at George Washington University Medical Center stated that "About 9% of working adults suffer from alcohol problems. Employees with alcohol problems are likely to miss more days of work, have lower productivity, and higher medical costs than employees without alcohol problems. In addition, there is clear evidence that alcohol misuse—even outside of working hours—increases the risk of workplace accidents, injuries, and fatalities."

These problems with substance and alcohol abuse are societal problems, not problems specific to the mining industry, but to all people who work and live within our communities.

Mine Substance Abuse Task Force

In December 2004, LaJuana Wilcher, Secretary of Kentucky's Environmental and Public Protection Cabinet, announced plans to form a Mine Substance Abuse Task Force to address the increasing concern about drug and alcohol abuse in the mining industry at the "Keeping America's Mines Drug and Alcohol Free" summit. The summit, hosted by the states of Kentucky, Virginia and West



Virginia and the U.S. Mine Safety and Health Administration (MSHA), highlighted the problems in the mining industry with alcohol and substance abuse. The summit also brought to light the lack of readily available information on the scope and impact of alcohol and substance abuse in the mining industry.

The Mine Substance Abuse Task Force was charged with gathering and evaluating pertinent information on substance abuse and its impact on the health and safety of the miners. In addition, they were to develop recommendations for state and federal regulatory agencies, as well as to the mining industry, to eliminate substance abuse. To ensure that all stakeholders were represented and had a voice in the deliberations, the 15-member task force included a diverse group of individuals. The membership included representatives of state mine safety agencies from Kentucky, Virginia and West Virginia, the Mine Safety and Health Administration, health and safety professionals representing both large and small coal companies, Labor, the Kentucky Office of Drug Control Policy and the insurance industry. The Task Force conducted eight all-day meetings between March and November of 2005. The Task Force heard from several experts on the various topics related to substance abuse in our communities and mining industry.

Members of the Mine Substance Abuse Task Force

Tom Asbury, Safety Director, Cumberland Resources Corporation

Teresa Barton, Executive Director, and Karen Jones, Kentucky Office of Drug Control Policy

Alan Boswell, Manager of Special Projects, Alliance Coal, LLC

Ronnie Brock, Staff Assistant, District 7, Barbourville, KY, Mine Safety & Health Administration

Dave Blankenship, Director, Safety & Environmental Affairs, TECO Coal Corporation

Susan Bush, Commissioner, Kentucky Department for Natural Resources

Paris Charles, Executive Director, Kentucky Office of Mine Safety & Licensing

Helen Churilla, Manager, Clinical Occupational and Non-Occupational Healthcare, CONSOL Energy, Inc.



Doug Conaway, Director, West Virginia Office of Miners Health, Safety and Training

Greg Damron, Officer, Cheyenne Elkhorn Coal

Steve Earle, KY/TN COMPAC Director, United Mine Workers of America, Region III

Carroll Greene, Coal Mine Inspection Supervisor, VA Division of Mines, Department of Mines, Minerals, and Energy

David Hay, RN, Nurse Claims Examiner, Kentucky Employer's Mutual Insurance Company

Mike Hymes, Director of Human Resources, International Coal Group

Frank Linkous, Director/Chief, Virginia, Division of Mines



Key Issues Considered by the Task Force

During the first meeting of the Task Force consensus was reached on the various topics that would be studied. Experts in each of these areas were invited to make presentations and provide information to the Task Force. The topics considered by the Task Force are listed below. A list of the presentations made to the Task Force is included as an attachment to this report.

1. Geographic Distribution of Substances Abused

Evaluate the geographic distribution of the type of substances most commonly abused, in order to identify the most effective deterrent and treatment options.

2. Training and Education

Identify and evaluate training programs for mine management, miners, and governmental agency personnel on how to recognize impairment in the workplace and the warning signs and symptoms of substance abuse.

Identify effective training methods to educate miners and management of the dangers of substance abuse in the mines.

3. Drug Screen Tracking/Information Sharing

Determine the impact of existing laws and regulations on developing a tracking system that would allow sharing of information on certified individuals who have had a positive drug test. Evaluate the various uses for a tracking system and the key attributes required for an effective system.

4. Drug Testing/Screening Programs

Coal companies currently employ a variety of drug testing programs, including post-offer, post-accident, random, and reasonable suspicion. Evaluate the various approaches to drug testing in order to determine which are effective in identifying and eliminating substance abuse.

5. Testing Incentives for Employers

Currently not all companies are screening employees for substance abuse. Evaluate incentives that would encourage companies to develop and implement a substance abuse testing program.

6. Rehabilitation Treatment Options

Determine the various treatment/rehabilitation options currently available and identify their success rates. Also determine the availability of treatment and rehabilitation in the geographic areas of concern.



7. Contractors

Mining companies routinely use several contractors to provide goods and services, including contract miners. How should mining companies address the issue of substance abuse with contractors?



Substance Abuse Education & Awareness





II. Substance Abuse Education & Awareness Training

According to the federal Substance Abuse and Mental Health Services Administration's (SAMHSA) Division of Workplace Programs, it is essential in any Drug-Free Workplace program that employees are educated about the program and the effects of alcohol and substance abuse. Consistent and effective alcohol and substance abuse education awareness training is an important component in creating a workplace culture intolerant of substance and alcohol abuse.

All individuals that perform mine-related work should be provided sufficient education and training to ensure effective knowledge of the potential hazards associated with the use of illicit substances or alcohol in the workplace, as well as the consequences of violating a company's alcohol or substance abuse policies. It is also important for managers and supervisors be trained in the recognition of alcohol or substance abuse among their employees. A qualified person that has been instructed in alcohol and substance abuse awareness should conduct all training.

Training Recommendations

Initial Training

All newly-hired inexperienced miners should have Alcohol and Substance Abuse Education and Training as an integral part of initial miner certification training. The certifying agency or a company with an approved training plan can provide this training. All current experienced miners should be trained within a reasonable time period with the same Alcohol and Substance Abuse Education and Training as new miners.

The initial Alcohol and Substance Abuse Education and Training for new and experienced miners should consist of one hour of instruction and should cover all components of an Alcohol and Substance Abuse Program including, but not limited to, the following:

All of the substances screened or tested for in the program. An effective program should include all of the substances listed below.

- Alcohol
- Amphetamines
- Cannabinoids/THC



-
- Cocaine
 - Opiates
 - Phencyclidine (PCP)
 - Benzodiazepines
 - Propoxyphenes
 - Methaqualone
 - Methadone
 - Barbiturates
 - Synthetic Narcotics

On what occasions and under what circumstances testing will be performed:

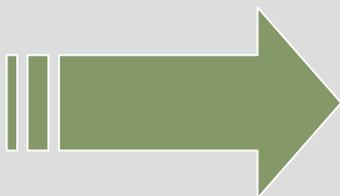
- Certification/re-certification
- Post-offer testing
- Random testing
- Reasonable suspicion testing
- Post accident testing
- Follow-up testing

Company policy and applicable state law with reference to:

- Refusal to submit to test
- Consequences of positive test results
- Employee Assistance Programs (EAP)
- Available treatment facilities
- Employees rights with respect to testing

Substance Abuse Recognition

- Hazards of substance and alcohol abuse
- Signs and symptoms of substance or alcohol abuse
- How to report substance or alcohol abuse



Initial Supervisory Training

All supervisory personnel should receive one hour of additional instruction for “Reasonable Suspicion Training.” This training will provide supervisory personnel with a means to identify persons who may be “under the influence” of illicit substances or alcohol in the workplace.

Refresher Training

Each miner should receive annual refresher “Alcohol and Substance Abuse Education and Training.” This training may be given as an integral part of the approved annual refresher training program or at safety meetings conducted at the mine site. This training should consist of a minimum of thirty minutes.

All supervisory personnel should receive an additional thirty minutes of annual instruction for “Reasonable Suspicion Training.” This training will provide continued support and expertise to assist with the identification of persons who may be “under the influence” of illicit substances or alcohol in the workplace.



Employee Assistance Programs





III. Employee Assistance Program

Employee Assistance Programs (EAP) are generally company or union sponsored programs that serve the needs of employees and their families. These programs address a wide-range of work-related, health, social and economic issues including substance or alcohol abuse. According to the Office of National Drug Control Policy, employee assistance program enrollment has risen steadily over the past decade. In 1993, there were 27.2 million individuals enrolled and by 2002, the number had risen to 80.2 million, representing an increase of 194 percent.

Employee Assistance Programs are an important component of an employer substance and alcohol abuse program. Drug-Free Workplace program studies have shown that drug testing alone is not effective in curbing substance and alcohol abuse. The effectiveness of testing increases when combined with an employee education component as well as access to substance abuse counseling and treatment for abuse problems.

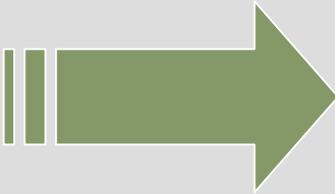
The Task Force has found that Employee Assistance Programs can be very effective in providing the necessary level of care and aftercare for individuals with substance abuse or alcohol related problems and therefore believes that voluntary participation in these programs should be encouraged.

Key Benefits of Employee Assistance Program (EAP):

- Address a wide variety of issues affecting employee performance on the job
- Identify the specific treatment needs of the individual
- Provide effective aftercare treatment
- Decrease medical costs to employer
- Increase employee productivity
- Provide substance and alcohol abuse education and awareness programs
- Provide Crisis Intervention services

Employee Assistance Program (EAP) Options:

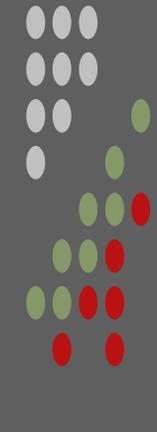
It is important to note that not all employer-sponsored healthcare programs cover substance and alcohol abuse treatment; nor do they include employee assistance programs. However, there are agencies and resources available for individuals not covered by these programs. Various web sites such as Drug-Rehabs.org provide treatment facility information. This non-profit organization was established in 2002 to provide assistance to individuals with addictions.



Information on treatment centers along with a toll free number can be obtained by searching for state or city. The Task Force also recommends that state and federal agencies compile and maintain directories of available employee assistance resources and make them widely available to assist employers and individuals seeking treatment information.

Generally, the cost of an employee assistance program is based on the number of employees in the organization or company. The employer sponsored plans are based upon the cost per employee; however, other members of the employee's family are usually covered under the program. According to 1995 data from the Office of National Drug Control Policy, the average annual cost nationwide was estimated at \$28 per employee.

Small employers and/or organizations that may not be able to afford employee assistance programs can form a consortium. This approach provides a cost effective means that will allow all employees to participate in a common employee assistance program with member companies sharing the cost.



Employer Incentive Programs





IV. Employer Incentive Programs

The Kentucky Office of Mine Safety and Licensing conducted a telephone survey of 490 mines licensed from January through October of 2005 to determine the number with some form of substance and alcohol testing program. Of the 490 licensed Kentucky mines surveyed, 127 (26%) reported that they had some form of testing program.

Representatives from the Tennessee Department of Labor and Workforce Development presented information to the Task Force on their “Drug Free Workplace” program. The Drug Free Workplace program applies to all businesses and was designed to deter the use of drugs and alcohol in the workplace. A 70 percent participation rate by mining companies in the program was reported. This voluntary program provides participating employers with incentives among which include a 5 percent premium credit on their workers’ compensation insurance policy. A copy of the Tennessee Drug Free Workplace ‘Rules and Guidelines for Participating Employers’ is included as an attachment to this report.

A Worker’s Compensation insurance premium discount is just the beginning of savings that a company can realize, which will more than off-set the cost of an effective program. According to ‘Working Partners’, the National Conference Proceedings Report sponsored by the U.S. Department of Labor, the SBA, and the Office of National Drug Control Policy, companies who have a Drug Free Workplace Program will find that an investment in education, prevention and assistance programs pays the following dividends for both the employer and employee.

- 38% to 50% of all Workers’ Compensation claims are related to substance abuse in the workplace; substance abusers file three to five times as many Worker’s Compensation Claims.
- Substance abusers incur 300% higher medical costs than non-abusers.
- Substance abusers are 2.5 times more likely to be absent eight or more days a year and are 1/3 less productive than non-abusers.

The Task Force recommends that states consider incentives to encourage the voluntary participation of coal companies in a comprehensive alcohol and substance abuse program. Eligibility should require the participation in the alcohol and substance abuse testing program as described in Section V of this report. Employers without an alcohol and substance abuse program should be eligible for incentives upon adoption of the prescribed program. Employers currently operating with an alcohol and substance abuse program meeting requirements as described in Section V should also be eligible for the incentives.



Recommended Substance and Alcohol Testing Program





Refusal by an individual to submit to an alcohol or drug test or whose test results show the presence of masking agents should result in the same consequences as a positive test result.

It is recommended that testing occur on the following occasions:

Post-Offer Testing –testing done after offer of employment. If an employee does not commence work within one month of the drug and alcohol screen, the company should have the right to retest the employee prior to commencing work.

Random Testing –testing of employees selected by using a statistically valid, unannounced random method.

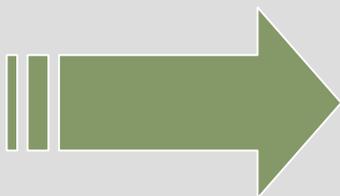
Reasonable Suspicion Testing – the employer believes the actions, appearance or conduct of the employee indicate the use of alcohol or an illicit substance. The conclusion that reasonable suspicion exists must be based on specific contemporaneous articulated facts concerning the employee’s appearance, behavior, speech, or body odors. Observations may include actions or behavior that is indicative of usage or withdrawal from an illicit substance or alcohol.

Post-Accident Testing –conducted following an accident that occurs on mine property. This includes accidents while operating equipment, conducting business, or performing any work related activities provided the accident results in injuries that require medical attention away from the scene or death. Testing should be conducted as soon as possible, but in no case longer than eight (8) hours following the accident. In addition to the victim, testing should include those individuals that were directly involved or whose actions may have contributed to the accident.

Follow-up Testing – An unannounced random test of an employee for a specified period of time after completion of a substance abuse rehabilitation program.

Recommended Quality Control Measures

An effective drug and alcohol testing program must have established quality control measures to ensure the integrity of the results. The test administrator should perform the essential steps in the sample collection protocol. The collection site may be a permanent or temporary facility located either at the work site or at a remote site. The donor’s identify should be verified as per the Substance Abuse and Mental Health Services Administration (SAMHSA) requirements prior to sample collection.



Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) should perform drug testing. State agencies should compile a list of SAMHSA certified laboratories from which they will accept data.

Positive drug test results should only be reviewed and interpreted by a Medical Review Officer (MRO). A Medical Review Officer is a licensed physician with knowledge of substance abuse disorders, laboratory testing and collection procedures. The MRO must have the ability to verify positive, confirmed test results and possess the necessary medical training to interpret and evaluate a positive test result in relation to the person's medical history or any other relevant biomedical information. The Medical Review Officer should follow procedures outlined in the SAMHSA Medical Review Officer Manual.



State Mine Safety & Miner Certification Program





VI. State Mine Safety & Miner Certification Programs

Alcohol and Drug-Free Workplace Policy

State administered miner certification programs should embrace and support an alcohol and drug-free workplace policy. A written drug-free workplace policy is one of the essentials of an effective program because it makes everyone aware of the policy and the consequences of not following the policy. It also makes legal review possible and provides documentation of the state's effort should the policy be challenged. An alcohol and drug-free workplace policy should include a rationale for establishing the policy; expectations and prohibitions; consequences and appeals; as well as benefits and assurances.

Miner Certification and Recertification Requirements

It is recommended that states incorporate the following provisions into their miner certification programs.

- Certification for new miners and recertification of miners should only be granted to those individuals who demonstrate, by submitting to a drug and alcohol test, that they are “drug and alcohol free.”
- Certification or recertification should be withheld if the applicant fails to provide proof of drug and alcohol-free status, has a positive drug or alcohol test result, or the presence of masking agents are detected.
- The recommended test protocol is an 11-panel urine test plus a blood alcohol test or a Breathalyzer test for alcohol.
- State agencies should provide a list of SAMHSA certified laboratories from which they will accept data.
- Encourage states to negotiate an agreement with approved laboratories for unit prices for test to minimize cost.



Notification and Enforcement:

State administered miner certification programs should incorporate enforcement sanctions against certified personnel who violate the alcohol and drug-free condition of their certification. Enforcement sanctions should incorporate the following concepts:

- A requirement for companies to report certified persons who have been discharged for violation of the companies' substance or alcohol abuse policies or who tested positive and failed to enter or complete an Employee Assistance Program to the certifying agencies.
- States are encouraged to share with other state certifying agencies the identification of individuals whose mining certifications have been suspended or revoked.
- Enforcement programs should include procedures for offenders to regain "good standing" with the certifying agency upon demonstrating that they are drug and alcohol free.
- State agencies responsible for mine safety laws and mine accident investigations should have the authority to require post-accident alcohol and drug testing on the victim and those persons directly involved or whose actions contributed to the accident.
- Toxicology screens are recommended on victims when death occurs on mine property. In some cases, autopsies may be required to definitively determine the presence of illicit substances in the body.



Contract Employees





VII. Contract Employees

A common practice in the mining industry is to employ contract service companies and contract service workers on a routine basis. These personnel regularly interact with mine employees and are exposed to the hazards of the mine site as well as expose the mine employees to the actions of the contractor.

The Task Force recommends that all contract employees and contractor service companies have proof of an alcohol and substance-testing program.

Independent Contractors may comply with the substance testing program by having their employees tested under an existing program established by the mine operator or by establishing their own testing program.

An Independent Contractor is any person, partnership, and corporation, subsidiary of a corporation, firm, association or other organization that contracts to perform services or construction at a mine.

Examples of services routinely conducted by contractors that can impact the safety of mine personnel include:

- Mine development, including shaft and slope sinking
- Construction or reconstruction of mine facilities; including building or rebuilding preparation plants, mining equipment, and additions to existing facilities
- Demolition of mine facilities
- Construction of dams
- Excavation or earthmoving activities involving mobile equipment
- Equipment installation, such as crushers and mills
- Equipment service or repair of equipment on mine property for a period exceeding five consecutive days at a particular mine
- Material handling within mine property; including haulage of coal, ore, refuse etc., unless for the sole purpose of direct removal from or delivery to mine property
- Drilling and blasting services



Appendix





List of Presentations to the Task Force

APRIL MEETING -

ELAINE OZMENT - KENTUCKY PROGRAM CONSULTANT, PREVENTION RESEARCH INSTITUTE, INC.

TONY POLITO - CONSOL ATTORNEY
TOPIC - HIPPA

MAY MEETING -

CHERYL LEWIS - LEWIS LAW OFFICE
TOPIC - HIPPA

CONSTANCE MCQUIRE - INTERSTATE DIAGNOSTICS, INC.
TOPIC - DRUG AND ALCOHOL TESTING

JULY MEETING -

CADE SEXTON, DIRECTOR, TN DIVISION OF MINES
OSCAR FREDERICK, ASST. DIRECTOR, TN DIVISION OF MINES
ARTHUR FRANKLIN, ASST. COMMISSIONER, TN DEPT. OF LABOR AND
WORKFORCE DEVELOPMENT
TOPIC - TENNESSEE DRUG-FREE WORKPLACE PROGRAM

MIKE PRICKETT, DIRECTOR, KEMI UNDERWRITING DEPT.
TOPIC - PROVIDING PREMIUM CREDIT TO OFFSET COST OF DRUG-FREE
WORKPLACE PROGRAM

KAREN ENGLE AND DAN SMOOT, OPERATION UNITE
TOPIC - OVERVIEW OF OPERATION UNIT AND GEOGRAPHIC
DISTRIBUTION OF DRUGS IN EASTERN KENTUCKY

AUGUST MEETING -

CONSENSUS BUILDING MEETING

SEPTEMBER MEETING -

KAREN MCCOMB, REACH EMPLOYEE ASSISTANCE PROGRAM
TOPIC - EAP'S FROM AN EMPLOYER'S PERSPECTIVE

TENNESSEE DRUG FREE WORKPLACE RULES & GUIDELINES FOR PARTICIPATING EMPLOYERS

RULES OF DEPARTMENT OF LABOR DIVISION OF WORKERS' COMPENSATION CHAPTER 0800-2-12 DRUG FREE WORKPLACE PROGRAMS



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- 0800-2-12-.02 Policies
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- 0800-2-12-.05 Types of Testing
- 0800-2-12-.06 Refusal to Test
- 0800-2-12-.07 Testing
- 0800-2-12-.08 Collection Procedures
- 0800-2-12-.09 Cost of Testing
- 0800-2-12-.10 Reporting and Review of Testing
- 0800-2-12-.11 Employee Protection
- 0800-02-12-.12 Employer Protection
- 0800-2-12-.13 Substance Abuse Education/Awareness
- 0800-2-12-.14 Confidentiality
- 0800-2-12-.15 Application Form

0800-2-12-.01 PURPOSE AND SCOPE.

(1) Purpose: The purpose of these rules is to deter the use of drugs and alcohol in the workplace.

(a) Employees who abuse drugs shall face the risk of unemployment and the forfeiture of workers' compensation benefits.

(b) These rules shall apply to those employers who voluntarily choose to avail themselves of the remedies provided for in the Workers' Compensation Act who qualify for the drug-free workplace program in the workplace.

(c) Employers who adopt a drug-free workplace program as prescribed herein shall qualify for reduced workers' compensation insurance premiums.

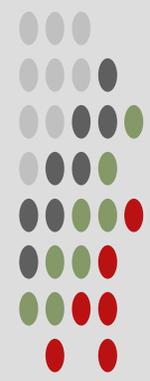
(d) If an employer does implement a drug-free workplace program as prescribed herein and a worker injured in the course and scope of employment who is tested pursuant to these rules has a positive confirmation of a drug at a level prescribed herein, a refutable presumption is created that the injury was occasioned primarily by the presence of the drug. Such employee may be disciplined, up to and including termination, and forfeits his or her eligibility for workers' compensation medical and indemnity benefits.

(2) Scope: The provisions of this chapter apply to all employers in the State of Tennessee subject to provisions of the Workers' Compensation Act who qualify for the drug-free workplace program. The application of the provisions of these rules are subject to the provisions of any applicable collective bargaining agreement.

Authority: T.C.A. §§50-6-110(c), 50-9-101 and 50-6-418. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.02 POLICIES.

(1) Nothing in these rules shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted or not disallowed by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests.



DRUG FREE WORKPLACE PROGRAMS

CHAPTER 0800-2-12

(Rule 0800-2-12-.02, continued)

(2) Nothing in these rules shall be construed to require an employer to test or create a legal obligation upon an employer to request an employee or job applicant to undergo drug or alcohol testing.

(3) Nothing in these rules shall be construed to prohibit an employer from affording an employee greater protection than provided herein. A covered employer is not barred from conducting more extensive testing provided the employee/job applicant's constitutional rights are not infringed.

(4) Nothing in these rules shall be construed as authorizing any employer to test any employee or applicant for alcohol or drugs in any manner inconsistent with federal constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.

(5) Employers who implement a drug-free workplace program pursuant to these rules will begin to accrue the premium discount on a pro rata basis as of the date of certification (the date of approval by the Tennessee Department of Labor, Division of Workers' Compensation). The covered employer's workers' compensation insurance company or self-insured pool program administrator will be notified by the Tennessee Department of Labor when an employer's drug-free workplace program has been certified. The covered employer's workers' compensation insurance company or self-insured pool program administrator must apply to such policy the premium credit granted under this program directly upon receipt of notification from the Tennessee Department of Labor or make payment for such credit effective after the annual final premium audit has been completed.

(6) Future Revisions. In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of the drug-free workplace testing programs, the Commissioner of the Department of Labor may make changes to these rules and guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the Tennessee Administrative Register.

Authority: T.C.A. §§50-9-101, 50-9-104 and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.03 DEFINITIONS.

(1) "Alcohol" as used in these rules shall have the same meaning as in the federal regulations describing procedures for the testing of alcohol by programs operating pursuant to the authority of the United States Department of Transportation as currently compiled at 49 Code of Federal Regulations (C.F.R.), Part 40. This definition shall be changed to conform to any future revision of the Department of Transportation's regulations.

(2) "Alcohol test" means an analysis of breath or blood, or any other analysis which determines the presence, absence or level of alcohol as authorized by the relevant regulations of the United States Department of Transportation.

(3) "Certified laboratory" means any facility equipped to perform the procedures prescribed in this chapter, in accordance with the standards of the United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), or the College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT).

(4) "Chain of Custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing accountability at each stage in handling, testing, and storing specimens and reporting test results.



DRUG FREE WORKPLACE PROGRAMS
CHAPTER 0800-2-12

(Rule 0800-2-12-.03, continued)

() 35) “Confirmation test”, “confirmed test”, or “confirmed drug test” means a second analytical procedure used to identify the presence of a specific drug, or alcohol, or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

(6) “Covered employer” means a person or entity that employs a person, is covered by the Workers’ Compensation Law, maintains a drug-free workplace pursuant to these rules, and also includes on the posting required by TCA §50-9-105 a specific statement that the policy is being implemented pursuant to the provisions of these rules. These rules shall have no effect on employers who do not meet this definition.

(7) “Drug” means any drug subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation. A covered employer may test an individual for any or all of such drugs.

(8) “Drug Rehabilitation Program” means a service provider that provides confidential, timely, and expert identification, assessment and resolution of employee drug or alcohol abuse.

(9) “Drug test” or “test” means any chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence or absence of a drug or its metabolites or alcohol pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation or such other recognized authority approved by rule by the Commissioner of Labor.

(10) “Employee” means any person who works for a salary, wages, or other remuneration for a covered employer.

(11) “Employee Assistance Program” means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug or alcohol abuse; referrals of employees for appropriate diagnosis, treatment and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program.

(12) “Employer” means a person or entity that employs a person and is covered by the Workers’ Compensation Law.

(13) “Injury” means a harm or damage to an employee, occurring in the workplace or in the scope of employment which must be recorded, in accordance with Occupational Safety and Health Administration (OSHA) reporting guidelines, in the covered employer’s OSHA 200 Log.

(14) “Initial drug test” means a procedure that qualifies as a “screening test” or “initial test” pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation or such other recognized authority approved by rule by the Commissioner of Labor.

(15) “Job Applicant” means a person who has applied for a position with a covered employer and has been offered employment conditioned upon successfully passing a drug or alcohol test, and may have begun work pending the results of the drug or alcohol test.

(16) “Medical Review Officer” or “MRO” means a licensed physician, employed with or contracted with a covered employer, who has knowledge of substance abuse disorders, laboratory testing procedures and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee’s positive test result in relation to the employee’s medical history or any other relevant biomedical information.



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(17) (a) “Prohibited Levels” for a drug or a drug’s metabolites means cut-off levels on screened specimens which are equal to or exceed the following shall be considered to be presumptively positive;

1. Cut-off levels on initially screened specimens:

Amphetamines	1,000 ng/mL
Marijuana (cannabinoids)	50 ng/mL
Cocaine (benzoyllecgonine)	300 ng/mL
Opiates (codeine, morphine, heroin)	300 ng/mL
PCP (phencyclidine)	25 ng/mL

2. Cut-off levels on confirmation specimens:

Amphetamines	500 ng/mL
Marijuana (cannabinoids)	15 ng/mL
Cocaine (benzoyllecgonine)	150 ng/mL
Opiates (codeine, morphine, heroin)	300 ng/mL
PCP (phencyclidine)	25 ng/mL

(b) “Prohibited Levels” for alcohol means cut-off levels on screened specimens which are equal to or exceed the following shall be considered to be presumptively positive:

Alcohol...(10%) by weight blood alcohol concentration for non-safety sensitive positions.

Alcohol...(04%) by weight blood alcohol concentration for safety sensitive positions.

(18) “Reasonable-Suspicion Drug Testing” means drug testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer’s policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience.

Among other things, such facts and inferences may be based upon:

(a) Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;

(b) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

(c) A report of drug or alcohol use, provided by a reliable and credible source;

(d) Evidence that an individual has tampered with a drug or alcohol test during his employment with his/her current covered employer;

(e) Information that an employee has caused, contributed to, or been involved in an accident at work; or

(f) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or alcohol while working or while on the covered employer’s premises or while operating the covered employer’s vehicle, machinery, or equipment.

(19) “Safety-Sensitive Position” means a position involving a safety-sensitive function pursuant to regulations governing drug testing adopted by the United States Department of Transportation. For drug-free workplaces, the Commissioner is authorized, with the approval of the Advisory Council on



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(Rule 0800-2-12-.03, continued)

Workers' Compensation, to promulgate rules expanding the scope of safety-sensitive position to cases where impairment may present a clear and present risk to co-workers or other persons. "Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations or work with controlled substances, or a position in which momentary lapse in attention could result in injury or death to another person.

(20) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol, drugs or their metabolites.

(21) "Split Specimen" means the procedure by which each urine specimen is divided in two and put into a primary specimen container and a secondary, or "split", specimen container. Only the primary specimen is opened and used for the initial screening and confirmation test. The split specimen container remains sealed and is stored at the testing laboratory.

(22) "Threshold Detection Level" means the level at which the presence of a drug or alcohol can be reasonably expected to be detected by an initial and a confirmatory test performed by a certified laboratory. The threshold detection level indicates the level at which a valid conclusion can be drawn that the drug or alcohol is present in the employee or job applicant's sample.

Authority: T.C.A. §§50-9-103, 50-9-106 and 50-9-109. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.04 NOTICE TO JOB APPLICANTS AND EMPLOYEES.

(1) It is a requirement of the drug-free workplace program that, prior to testing, the employer give a onetime written policy statement to employees and job applicants which contains:

(a) A general statement of the covered employer's policy on employee drug and alcohol abuse, which must identify:

1. The types of drug or alcohol testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug or alcohol testing or drug or alcohol testing conducted on any other basis; and

2. The actions the covered employer may take against an employee or job applicant on the basis of a positive confirmed drug or alcohol test result.

(b) A statement advising the employee or job applicant of the existence of this rule;

(c) A general statement concerning confidentiality;

(d) Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications being tested, but only after the testing process has revealed a positive confirmed result for alcohol or drug use;

(e) The consequences of refusing to submit to a drug or alcohol test;

(f) A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug and alcohol rehabilitation programs;

(g) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within five (5) working days after



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receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall then report the positive test result to the covered employer; and that an employee or job applicant may then contest the drug test result pursuant to Rule 0800-2-12-.10;

(h) A statement informing the employee or job applicant of his responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section;

(i) A list of all classes of drugs, including alcohol, for which the covered employer will test, described by brand name or common names, as applicable, as well as by chemical name;

(j) A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the applicable court; and

(k) A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription and nonprescription medicine.

(2) A statement complying with the requirements of notification under TCA §50-9-101(b) that it is a condition of employment in a drug-free workplace for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and if an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for workers' compensation medical and indemnity benefits.

(3) A covered employer shall ensure that at least sixty (60) days elapse between a general one-time notice to all employees that a drug-free workplace program is being implemented and the effective date of the program. Such notice shall also indicate that on the effective date of the program that TCA §50-6-110(c) will apply to that employer.

(4) A covered employer shall include notice of drug or alcohol testing on vacancy announcements for positions for which drug or alcohol testing is required. A notice of the covered employer's drug or alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the covered employer during regular business hours in the covered employer's personnel office or other suitable locations.

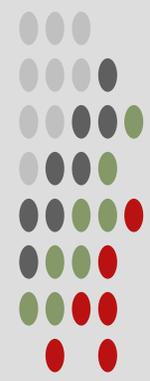
(5) Subject to any applicable provisions of a collective bargaining agreement or any applicable labor law, a covered employer may rescind its coverage under these rules by posting a written and dated notice in an appropriate and conspicuous location on its premises. The notice shall state that the policy will no longer be conducted pursuant to these rules. The employer shall also provide sixty days written notice to the employer's workers' compensation insurer of the rescission. As to the employees and job applicants, the rescission shall become effective no earlier than sixty days after the date of the posted notice.

Authority: T.C.A. §50-9-105. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.05 TYPES OF TESTING.

It is a requirement that a covered employer who establishes a drug-free workplace program conduct the following types of drug tests to the extent permitted by law:

(1) Job applicant drug or alcohol testing. A covered employer must, after a conditional offer of employment, require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. An employer may,



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but is not required to, test job applicants for alcohol after a conditional offer of employment. Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with the following:

(a) A temporary, leased, seasonal or former worker who has tested negative for substance abuse within the preceding twelve (12) months from the date employment is to begin will not be required to undergo job applicant testing by the covered employer. Any such worker who has not been tested or has not tested negative must submit to job applicant testing according to Rules 0800-2-12-.07, .08 and .10.

(2) Reasonable suspicion. A covered employer must require an employee to submit to reasonable suspicion drug or alcohol testing.

(a) Employers shall, within seven days after testing based on reasonable suspicion, detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. If drug-testing is conducted based on reasonable suspicion, the covered employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the covered employer pursuant to TCA §50-9-109 and shall be retained by the covered employer for at least one (a) year.

(3) Routine fitness-for-duty drug or alcohol testing. A covered employer must require an employee to submit to a drug or alcohol test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination where the examinations are required by law or regulation, are part of the covered employer's established policy, or one that is scheduled routinely for all members of an employment classification group.

This Rule does not require a drug or alcohol test if a covered employer's current personnel policy does not include a drug or alcohol testing as part of a routine fitness-for-duty medical exam. If such testing is included, it must be done on a nondiscriminatory basis for all employees. Routine fitness-for-duty drug or alcohol testing of employees would not apply to programs mandated by governmental agencies, volunteer employee health screenings, employee wellness programs, or medical surveillance procedures.

(4) Follow-up drug or alcohol testing. If the employee in the course of employment enters an employee assistance program for drug or alcohol-related problems, or a drug or alcohol rehabilitation program, the covered employer must require the employee to submit to a drug or alcohol test, as appropriate, as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two year period after successful completion of the program. Advance notice of a follow-up testing date must not be given to the employee.

(5) Post-accident testing. After an accident which results in an injury, the covered employer may require the employee to submit to a drug or alcohol test in accordance with these rules:

(a) An employee injured at the workplace and required to be tested shall be taken to a medical facility for immediate treatment of injury. Specimens shall be obtained at the treating facility or a designated collection site under the procedures set forth under these rules and transported to an approved testing laboratory.

(b) No specimens shall be taken prior to the administration of emergency medical care. Once this condition has been satisfied, an injured employee must submit to testing.



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(c) In the case of non-emergency injuries reported to the covered employer after the fact, the injured employee must submit to testing at the time the injury is entered into the covered employer's OSHA 200 Log or any authorized or required replacement for the OSHA 200 Log.

Authority: T.C.A. §§50-6-101, 50-6-419, 50-9-106, and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed August 23, 1999; effective December 29, 1999.

0800-2-12-.06 REFUSAL TO TEST.

If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. If the injured worker refuses to submit to a drug or alcohol test, it shall be presumed in the absence of a preponderance of the evidence to the contrary that the proximate cause of the injury was the influence of drugs or alcohol as defined in these rules.

Authority: T.C.A. §§50-6-110(c)(2) and 50-9-108(f). **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.07 TESTING.

(1) A covered employer shall be required to test employees and job applicants for the following drugs:

- (a) Alcohol-Not required for job applicant testing.
- (b) Amphetamines
- (c) Cannabinoids, (THC)
- (d) Cocaine
- (e) Opiates
- (f) Phencyclidine

(2) The initial screen for all drugs, except alcohol, shall use an immunoassay in a certified laboratory.

(3) All specimens identified as positive on the initial test, excluding tests for alcohol, shall be confirmed using gas chromatography/mass spectrometry (GC/MS).

(4) Threshold detection levels of these drugs shall be in accordance with Substance Abuse & Mental Health Services Administration (SAMHSA) or (CAP-FUDT) guidelines unless modified according to TCA §50-9-111.

(5) All specimens must be tested by a certified laboratory.

(6) All testing for drugs and alcohol shall be in accordance with the procedures compiled at 49 C.F.R., Part 40. However, if a certified laboratory under TCA §50-9-110 is used for testing, no further quality assurance monitoring or proficiency testing is required by the employer under these rules.

(7) As technology develops faster, more convenient, and more cost effective testing methods, covered employers shall be allowed to use those technologies and devices which have been approved by the Commissioner of Labor and the Substance Abuse & Mental Health Services Administration (SAMHSA) or the College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT) guidelines, provided that none of the established rules regarding security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen, and transportation of the specimen to the laboratory are compromised. Any modification or change to this rule shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.



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(8) These rules and guidelines do not prohibit an employer from conducting any drug or alcohol testing of employees which is otherwise permitted by law.

(9) Should an employee/job applicant receive a positive confirmed test result for an otherwise legal medication for which he/she does not hold a valid prescription, a covered employer is not barred from discharging the employee or refusing to hire the job applicant. Such an employee/job applicant will also forfeit his/her workers' compensation benefits; provided, that the drug or alcohol test was conducted according to these rules and guidelines. Drug or alcohol tests which are not conducted according to these rules and guidelines shall not be used as a basis to terminate benefits.

(10) A covered employer may test a job applicant for alcohol or for any drug described in TCA §50-9-103; provided, that for public employees such testing shall be limited to the extent permitted by the Tennessee and Federal constitutions. [A covered employer may test an employee for any drug defined in TCA §50-9-103(4) and at any time set out in TCA §50-9-106.]

(11) It is intended that any employer required to test its employees pursuant to the requirements of any federal statute or regulation, shall be deemed to be in conformity with these rules and guidelines as to the employees it is required to test by those standards and procedures designated in that federal statute or regulation. All other employees of such employer shall be subject to testing as provided in this chapter in order for such employer to qualify as having a drug-free workplace program.

(12) An employee who is not in a safety-sensitive position, as defined in TCA §50-9-103(15), may be tested for alcohol only when the test is based upon reasonable suspicion as defined in TCA §50-9-103(14).

An employee in a safety-sensitive position may be tested for alcohol use at any occasion described in TCA §50-9-106(a)(2)-(5), inclusive.

Authority: T.C.A. §§50-9-101(a) and (b), 50-9-104, 50-9-106 (a)(1), 50-9-107 (a) and (c), 50-9-110, and 50-9-111.

Administrative History: Original rule filed January 26, 1998; effective April 11, 1998.

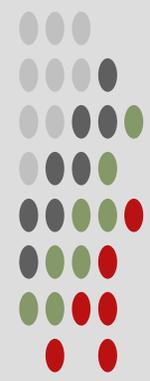
0800-2-12-.08 COLLECTION PROCEDURES.

(1) The employer shall provide the employee or job applicant with a form to provide any information that he/she considers relevant to the test, including the identification of currently or recently used prescription or nonprescription medication or other information. The information provided shall be treated as confidential and reviewed by a medical review officer in interpreting any positive confirmed results.

(2) Collection procedures shall be in accordance with procedures compiled at 49 C.F.R., Part 40, and must be collected according to those prescribed procedures using the split sample method. No inference or presumption of intoxication or impairment may be made in a case where a physician prevents a specimen collection based on his or her medical expertise. Where additional drugs are to be included in a drug test other than those listed in Rule 0800-2-12-.07, a separate specimen collection is not required provided that all other collections procedures/protocols are consistent with those compiled at 49 C.F.R., Part 40.

(3) It is a requirement that covered employers must use the chain of custody form developed by the Department of Labor specifically for the Tennessee Drug-Free Workplace Program.

(4) Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity, identity, and retention of the specimen, and transportation of the specimen to the laboratory shall be in accordance with the Substance Abuse & Mental Health Services Administration (SAMHSA) guidelines or United States Department of Transportation regulations (49 C.F.R., Part 40).



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(Rule 0800-2-12-.11, continued)

Authority: T.C.A. §50-9-107(a) and (c). **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.09 COST OF TESTING.

(1) The covered employer shall pay the cost of initial and confirmation testing which it requires of employees and job applicants. The employee or job applicant shall pay the costs of any additional drug or alcohol tests not required by the employer.

(2) Where re-testing of a split-specimen is requested, the party requesting the re-test (i.e., covered employer or employee/job applicant) shall pay the cost.

Authority: T.C.A. §50-9-107(d) and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.10 REPORTING AND REVIEW OF RESULTS.

(1) Except for Rules 0800-2-12-.10(2) and 0800-2-12-.10(3), the procedures for laboratory reporting and MRO review and reporting of specimen test results shall be in accordance with those described in 49 C.F.R., Parts 40.29 and 40.33.

(2) Any specimens with evidence of dilution, contamination, tampering, or any question normally requiring an MRO opinion shall be reported to the MRO for disposition. The MRO may determine the need to re-test, re-collect, or otherwise modify the collection procedure to ensure adequate and appropriate testing.

(3) An employee or job applicant who receives a positive confirmed test result upon notification by the MRO may contest or explain the result to the medical review officer within five (5) working days after receiving written notification of the test result from the MRO. If an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the covered employer.

Authority: T.C.A. §§50-9-105(a), 50-9-107(a), and 50-9-111(a)(3). **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.11 EMPLOYEE PROTECTION.

(1) A covered employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer.

(2) A covered employer shall not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the covered employer, for a drug or alcohol-related problem if the employee has not previously tested positive for drug or alcohol use, entered an employee assistance program for drug or alcohol related problems, or entered a drug or alcohol rehabilitation program. Unless otherwise provided by a collective bargaining agreement, a covered employer may (but need not) select the employee assistance program or drug or alcohol rehabilitation program if the covered employer pays the cost of the employee's participation in the program.

Authority: T.C.A. §50-9-107(b) and (e). **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.



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(Rule 0800-2-12-.13, continued)

0800-2-12-.12 EMPLOYER PROTECTION.

(1) An employee or job applicant whose drug or alcohol test result is confirmed as positive in accordance with these rules shall not, by virtue of the result alone, be deemed to have a “handicap” or “disability” as defined under federal, state, or local handicap and disability discrimination laws.

(2) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with these rules is considered to have discharged, disciplined, or refused to hire for cause.

(3) No physician-patient relationship is created between an employee or job applicant and a covered employer or any person performing or evaluating a drug or alcohol test, solely by the establishment, implementation, or administration of a drug or alcohol-testing program. This rule in no way relieves the person performing the test from responsibility for his or her acts of negligence in performing the tests.

(4) Nothing in these rules shall be construed to prevent a covered employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs or alcohol, including convictions for drug or alcohol-related offenses, and taking action based upon a violation of any of those rules.

Authority: T.C.A. §50-9-108. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.13 SUBSTANCE ABUSE EDUCATION/AWARENESS.

(1) Employee Education/Awareness Required for Certification.

Each year, covered employers must provide at least one-hour of an education/awareness program for all employees about substance abuse in the workplace.

The Employee Education/Awareness Program may include, but is not limited to, the following information (Employers may choose any of the following suggested topics and/or combine them in order to fulfill this requirement):

(a) General explanation about the addictive disease of substance abuse; sample topics:

1. The disease of addiction.
2. Defining use versus abuse.
3. The recovering employee in the workplace.
4. Why people abuse substances.
5. Avoiding relapse in the workplace.
6. The role of the family in addressing substance abuse and addiction.
7. The role of co-workers in addressing substance abuse and addiction.
8. The role of co-workers in maintaining a drug-free workplace.
9. Alcoholics Anonymous: History of the AA Program.

(b) The effects and dangers of the commonly abused substances in the workplace; sample topics:

1. Stress and the workplace.
2. Safety and the workplace.
3. Warning signs.
4. The most commonly abused drugs in the workplace (e.g.; marijuana, cocaine/crack, inhalants, alcohol, opiates, hallucinogens, or prescription drugs, etc.).
5. The physical and psychological effects related to the abuse of the above drugs, and others.



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6. The health & medical risks of substance abuse.

7. Avoiding substance abuse through wellness, exercise, diet, etc.

(c) This program is also a good opportunity to reinforce the employer's policies and procedures regarding workplace substance abuse. Also, the employer should remind employees of their EAP and/or substance abuse treatment options.

(2) Supervisor Training Required for Certification.

(a) In addition to the employee substance abuse education/awareness program (one-hour each year), employers must provide all supervisory personnel with a minimum of two-hours per year of workplace substance abuse recognition training. Training should include: recognizing the signs of substance abuse in the workplace, how to document and collaborate signs of employee substance abuse, and how to refer substance abusing employees to proper providers for treatment. The minimum two-hours of training may be completed on one specific date, or two one-hour training sessions may be held on different dates during the year. (Supervisors should receive a minimum total of three-hours of substance abuse education/awareness & recognition training per year.)

It is recommended that supervisors complete workplace substance abuse recognition training before an employer implements a drug and alcohol testing program that includes testing based on "reasonable suspicion", and/or attempting to refer an employee to an EAP or other provider for substance abuse treatment.

(b) The Supervisor Training Program should include, but is not limited to, the following information. Employers may choose from these suggested topics and/or combine them in order to fulfill the supervisor training requirement:

1. Legal aspects of "reasonable suspicion" employee testing for drug and alcohol: Building and establishing through observation and measurement.
2. Legal aspects regarding EAP and/or substance abuse treatment referrals: Supervisor referral, voluntary/self referral, last chance agreement.
3. How to recognize signs of employee substance abuse.
4. How to refer substance abusing employees to proper treatment providers.
5. How family problems can affect an employee's performance.
6. How to interview and detect potential workplace substance abusers.
7. When and if to test. When and how to intervene and confront potential workplace substance abusers.
8. Conducting the performance review.
9. Using positive peer pressure and management to gain support for mutual goals.

(c) Because resources available to employers across the state will vary from community to community, the employee education/awareness and supervisory training component of the drugfree workplace program is meant to be flexible so that employers may be creative in conducting these programs. For example, employers may utilize speakers, workshops, videos, written material, in-house supervisors that have been educated on how to train employees and/or supervisors regarding aspects of workplace substance abuse, any combination of the above, and/or other means of educating employees about the benefits of a drug-free workplace. Please refer to the "Directory of National and State Resources" located on the inside of the back cover of your Tennessee Drug-Free Workplace Employer's Program Development and Implementation Guide, if you would like assistance with this aspect of your drug-free workplace program. (Note: The "Directory of National, State, and Local Resources" referred to above is presented on page 82 of these Rules).



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(Rule 0800-2-12-.13, continued)

Important: Covered employers should keep appropriate records in order to document the completion of the employee education/awareness program and supervisor training requirements.

Authority: T.C.A. §50-9-101. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.14 CONFIDENTIALITY.

(1) All information, interviews, reports, statements, memoranda, and drug or alcohol test results, written or otherwise, received by the covered employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with these rules or in determining compensability under these rules.

(2) Covered employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug or alcohol test results shall keep all information confidential. Release of such information under any other circumstances is authorized solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this rule, relevant to a legal claim asserted by the employee or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:

- (a) The name of the person who is authorized to obtain the information;
- (b) The purpose of the disclosure;
- (c) The precise information to be disclosed;
- (d) The duration of the consent; and
- (e) The signature of the person authorizing the release of the information.

(3) Information on drug or alcohol test results for tests administered pursuant to these rules shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding.

(4) These rules do not prohibit a covered employer, agent of such employer, or laboratory conducting a drug or alcohol test from having access to employee drug or alcohol test information or using such information when consulting with legal counsel in connection with actions brought under or related to these rules or when the information is relevant to its defense in a civil or administrative matter. Neither are these rules intended to prohibit disclosure among management as is reasonably necessary for making disciplinary decisions relating to violation of drug or alcohol standards of conduct adopted by an employer.

Authority: T.C.A. §50-9-109. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

0800-2-12-.15 APPLICATION FORM.

(1) Any employer seeking any benefits conferred by the Drug-Free Workplace Program shall file with the Workers' Compensation Division of the Department of Labor the form promulgated by the Commissioner for that purpose. From the date of receipt, such employer shall be rebuttably presumed to be entitled to all applicable benefits under the Drug-Free Workplace Program.

(2) Before granting any premium credit to an employer, an insurance carrier or self-insured pool shall obtain a true copy of the form described in subsection (a) from the employer. Upon granting such



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(Rule 0800-2-12-.14, continued)

credit to the employer, the insurer shall notify the Workers' Compensation Division of the Department of Labor of such action by filing the form promulgated by the Commissioner for that purpose.

Authority: T.C.A. §§50-6-418 and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

