

## **DRUG-FREE WORKPLACE AND DRUG TESTING**

### 1. Purpose

This directive establishes the Department of Environmental Protection's policy relating to a drug-free workplace, drug testing and the procedures under which drug testing shall be conducted.

### 2. Authority

Federal Highway Administration (FHWA) Rule 49, Code of Federal Regulation (CFR), known as the Controlled Substance and Alcohol Use and Testing Rule and for required compliance with the Federal Drug-Free Workplace Act of 1988, Section 112.0455, Florida Statutes (F.S.), known as the Drug-Free Workplace Act.

### 3. Policy

- a. The Department of Environmental Protection (DEP) prohibits the unlawful manufacture, distribution, dispensing, possession, use of or being under the influence of a drug, as defined in this directive, in any DEP work location, by any DEP employee while on duty in any location or while on state property, including operating or riding as a passenger on or in state-owned equipment; whether on or off duty, and while traveling in duty status on state business. The intent of this directive is not to prohibit or regulate the lawful consumption of alcoholic beverages by employees while in off-duty status. Off-duty employees are subject to the provisions of this directive and DEP Directive 435 when such activity constitutes a violation of federal, state or agency laws, rules, regulations, directives, general orders, operating procedures and/or Standards of Conduct as specified in the Employee Handbook.
- b. It is the policy of the Department to promote and ensure a drug-free work force, including the use of fair and reasonable drug testing methods, administered only under specified and appropriate conditions.
- c. Nothing in this directive shall be construed to prevent the DEP from establishing reasonable work rules, or alter existing standards of conduct

related to employee possession, use, sale or solicitation of drugs, including convictions for drug-related offenses, and from taking action based upon a violation of such rules or standards of conduct, in the absence of drug testing.

- d. This policy applies to all Department employees including part-time and OPS employees, and contracted drivers when they are on DEP property or when performing job-related activities or business. This policy also applies to off-site or break periods when the individual (employee or contracted driver) is scheduled to return to work.
- e. This directive does not establish a legal duty to request or require an employee or job applicant, to undergo drug testing, except as specified herein.

4. Definitions

- a. Commercial Driver License (CDL) Driver. Department employee or contracted driver who operates a commercial motor vehicle for the Department and required to be in possession of a CDL. For the purposes of pre-employment testing, the term "CDL driver" includes job applicants for such positions.
- b. Commercial Motor Vehicle (CMV). A motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:
  - (1) has a gross vehicle weight rating of 26,001 or more pounds;
  - (2) has a gross combined weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds;
  - (3) is designated to transport 16 or more passengers, including the driver; or
  - (4) transports hazardous materials requiring the vehicle to be placarded.

- c. Contract Driver. Any person contracted and compensated by the Department to perform state business requiring the operation of a commercial motor vehicle on public highways or roads outside the confines of State property; and the possession of a commercial driver's license and not considered an employee of the Department.
- d. Director. A division or regulatory district director or any comparable level of senior management.
- e. Drug. Alcohol, including distilled spirits, wine, malt beverages and intoxicating liquors, amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzo-diazepines, synthetic narcotics, designer drugs, or a metabolite of any of the above substances.
- f. Drug Test. Any chemical, biological or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites.
  - (1) First Test - The initial drug test which is a sensitive, rapid, and reliable immunoassay procedure to identify negative and presumptive positive specimens.
  - (2) Confirmation Drug Test - A second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from an initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy. Confirmation for alcohol will be gas chromatography, and confirmation for all other drugs will be gas chromatography/mass spectrometry (GC/MS).
- g. Job Applicant. Any person who has submitted an application for and been made an offer of appointment for initial employment, promotion, demotion, reassignment or transfer into a position designated as "special risk" or "safety sensitive" conditional on successfully passing a drug test as defined in this directive. This term also applies to any individual offered initial employment to a Senior Management Service (SMS) position.

- h. Medical Review Officer (MRO). A licensed physician responsible for receiving laboratory results generated by the Department's drug testing program who has knowledge of substance-abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant bio-medical information.
- i. Prescription or Nonprescription Medication. A drug or medication obtained pursuant to a prescription as defined by Section 893.02(17), F.S., or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.
- j. Reasonable Suspicion Drug Testing. Drug testing an employee for the presence of drugs based on a belief derived from objective, clear and demonstrable evidence, observable behavior or other facts that an employee is using or has used drugs in violation of this directive or other applicable laws, rules, DEP directives, general orders, policies or the Employee Handbook.
- k. "Recovering" CDL Driver. CDL driver determined by a Substance Abuse Professional (SAP) to need, and is receiving treatment for, alcohol/drug problems.
- l. Refusal to Submit (to an alcohol or controlled-substance test). When an individual has:
  - (1) failed to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing;
  - (2) failed to provide adequate breath or blood without a valid medical explanation after he or she has received notice of the requirement for alcohol-use testing; or
  - (3) engages in conduct that clearly obstructs the testing process.

- m. Safety-Sensitive Position. Any position, including a supervisory position, management position, or positions requiring CDL, in which a drug impairment would constitute an immediate and direct threat to public health or safety.
- n. Special-Risk Position. Any position requiring, as a condition of employment, certification under Chapter 633 or 943, F.S.
- o. Specimen. A tissue or other product of the human body capable of revealing the presence of drugs or their metabolites.
- p. Substance-Abuse Professional (SAP). A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled-substance-related disorders. The Bureau of Personnel Services (BoPS) will maintain a listing of these professionals on behalf of the Agency.

5. Prohibitions for All Employees

The following prohibitions constitute violation of this policy.

- a. No employee of the Department may work, report to work, or return to work after the lunch period or break time under the influence of alcohol, any controlled substance or drug, to the extent that the employee is prevented from satisfactorily carrying out his/her duties or responsibilities or as confirmed by a "positive" drug test result. This includes exhibiting signs of impairment such as slurred speech, odor of alcohol on one's breath, incoherence, reduced mental facilities or other signs of physical impairment normally associated with being under the influence of or impaired by alcohol or abuse of drugs to the extent that the employee presents an unacceptable image of the Department or may be a danger to himself or others.
- b. No employee may, whether on or off duty, within any Department vehicle or vessel, at any Department facility, work site, building or office, or on any adjacent yard, grounds, driveway or parking lot, be in the possession

of or under the influence of any unlawful drug, consume or be under the influence of any alcoholic beverage, or be in the possession of any open or unsealed container of an alcoholic beverage. This includes exhibiting the signs of impairment as described in 5.a. above in this directive. This does not include the lawful possession and consumption of alcohol in a private residence while off-duty or while attending Department sanctioned functions.

- c. The possession with the intent to disburse, sell, or distribute alcoholic beverages or controlled substances (drugs) on State property or on the job is prohibited. Possession, actual sale or attempted sale (dealing) of an open container or unsealed container of alcohol or a controlled substance (drugs) as defined in Section 893.02(3), F.S., in the workplace or on the job shall be considered grounds for disciplinary action up to and including dismissal, in accordance with Department policy.

6. Additional FHWA Prohibitions for CDL Drivers

- a. Alcohol-Related Conduct.
  - (1) No CDL driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
  - (2) No CDL driver shall operate or continue to operate a commercial motor vehicle if, as a result of an alcohol-use test, he/she is found to have an alcohol concentration of 0.02 or greater but less than 0.04. Neither shall such person perform related safety-sensitive functions until the start of the CDL driver's next regularly scheduled duty period, but not less than 24 hours following the administration of the test or a re-test, provided the test or re-test shows the alcohol concentration has fallen below 0.02. The CDL driver, whose blood-alcohol has been shown by such test or re-test to have been at a blood-alcohol concentration of 0.04 or greater, cannot return to a safety-sensitive function until he/she has been evaluated by a substance-abuse provider (SAP) and has received treatment, if required by the SAP, and has been re-tested with a result below 0.02 alcohol concentration.

- (3) No CDL driver shall be on duty or operate a commercial motor vehicle while the CDL driver is in the possession of alcohol.
- (4) No CDL driver shall use alcohol while performing safety-sensitive functions associated with the operation of a commercial motor vehicle nor perform such safety-sensitive functions within four hours after using alcohol.
- (5) No CDL driver, required to take a post-accident alcohol test, shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- (6) No CDL driver shall refuse to submit to required post-accident, random, reasonable suspicion, return-to-duty or follow-up alcohol tests. Refusal to submit to such tests shall be grounds for disciplinary action up to and including dismissal.
- (7) No supervisor or manager having actual knowledge of any of the conditions in 6.a.(1)-(6), above, shall permit the CDL driver to operate or continue to operate a commercial motor vehicle or perform related safety-sensitive functions.

b. Controlled Substances (Drug) Related Conduct.

- (1) No CDL driver shall report for duty or remain on duty requiring the operation of a commercial motor vehicle or the performance of related safety-sensitive functions when the CDL driver uses any controlled substance except when the use is pursuant to the instruction of a physician who has advised the CDL driver that the prescribed substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.
- (2) No CDL driver shall report for duty or remain on duty requiring the operation of a commercial motor vehicle or the performance of related safety-sensitive functions if the CDL driver tests positive for a controlled substance.
- (3) No CDL driver shall refuse to submit to required post-accident, random, reasonable suspicion, return-to-duty or follow-up

controlled-substance tests. Such refusal shall constitute grounds for disciplinary action up to and including dismissal.

- (4) CDL drivers will inform their immediate supervisor or designated Agency authority of any therapeutic drug use. It is the CDL driver's responsibility to inquire of a personal physician or medical authority whether such medication will affect the driver's ability to perform safety-sensitive functions.
- (5) No supervisor or manager having actual knowledge of any of the conditions in 6.b.(1)-(4), above, shall permit the CDL driver to operate or continue to operate a commercial motor vehicle or perform related safety-sensitive functions.

7. Procedures

a. The DEP provides for drug testing under the following conditions.

- (1) Job Applicants.
  - (a) Any job applicant offered initial employment or appointment to a special-risk, safety-sensitive position, or CDL Driver, as reflected in the respective position description, will be required to undergo drug testing prior to initial employment or appointment to the position offered. Job applicants will not be tested for the presence of alcohol. Prior to testing, each applicant shall be provided a copy of this directive.
  - (b) The Director or designee is not required to test the CDL driver/applicant if the individual has successfully passed the required alcohol test in the previous six months and/or has successfully participated in the required drug testing program within the previous 30 days. In those cases where the Director or designee exercises the option to allow the applicant to provide verified documentation from a former employer of such successful participation, with the CDL driver's/applicant's written consent, the former employer is required by the FHWA regulations to provide the Department with such drug testing information.

(c) Any job applicant offered initial employment or appointment to the Senior Management Service positions of Secretary or Deputy Secretary, may be required to undergo drug testing prior to initial employment or appointment to the position offered. Such testing will be arranged at the direction of the Executive Office of the Governor. Job applicants will not be tested for the presence of alcohol. Prior to testing, each applicant shall be given a written policy statement.

(2) Reasonable Suspicion.

An employee who is suspected of drug use as defined in this directive may be required to undergo drug testing. Alcohol will only be tested for under reasonable suspicion drug testing. CDL drivers will be subject to a breath-alcohol test and all other Department employees will be subject to a blood-alcohol test. To ensure the circumstances meet the criteria of "reasonable suspicion" as defined in this directive, such testing may take place only upon recommendation of the immediate supervisor, with approval of the applicable Director or designee. It is recommended that the Employee Assistance Program (EAP) Coordinator within the BoPS and the Office of General Counsel (OGC) be consulted prior to requiring such testing. The BoPS will maintain a listing of testing facilities and be available to coordinate such testing.

Prior to testing, the Director or designee shall document in writing the circumstances forming the basis that reasonable suspicion exists. Upon the employee's request, and prior to testing, the employee shall be provided a copy of this documentation. The original of such documentation shall be maintained in a confidential file in the BoPS and retained for at least one year. No other copies of such documentation may be maintained.

Grounds for reasonable suspicion may be formed from facts and inferences such as:

- (a) observable phenomena at work, such as direct observation of drug use or the physical symptoms or manifestations of being under the influence of a drug;
  - (b) abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
  - (c) a report of drug use in violation of this directive, provided by a reliable and independently corroborated credible source;
  - (d) evidence that an individual has tampered with a drug test during his/her employment with the Department;
  - (e) information that an employee has caused, or contributed to, an accident while at work; and
  - (f) evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while at the Department's workplace or while operating state-owned or leased vehicles, machinery, vessel, or equipment.
- (3) Post-Accident Testing (CDL driver).
- (a) The Director or designee shall, as soon as practical following an accident involving a commercial motor vehicle, request testing, both for alcohol and controlled substances, for its surviving CDL driver if:
    - 1 the accident resulted in a loss of human life; or
    - 2 the Department's CDL driver was issued a moving-vehicle violation citation arising from the accident.
  - (b) The Director or designee is responsible for arranging for required post-accident testing. Alcohol testing will be administered within two hours following the accident. The controlled-substances test will be administered within 32 hours. Otherwise, a report must be prepared and maintained on file for FHWA stating the reasons the test(s) was/were not promptly administered.

- (c) In lieu of administering a post-accident test, the Director or designee may substitute a breath or blood test for use of alcohol and a urine test for the use of controlled substances administered by on-site law enforcement officials under their separate authority.
  - (d) As specified in FHWA regulations, no CDL driver, required to take a post-accident alcohol test, shall use alcohol for eight hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
  - (e) Any CDL driver subject to post-accident testing, leaving the scene of an accident before a test is administered, or failing to remain readily available for testing shall be deemed to have refused to submit to testing. Such refusal will be treated as if the CDL driver has a "verified positive" controlled-substances test result or had an alcohol test result of 0.04 or greater. If the CDL driver refuses to submit to a post-accident test after a fatal accident, the FHWA will disqualify such driver for one year under the procedures in FHWA regulation 49 CFR Part 386. Such refusal shall be grounds for disciplinary action, up to and including dismissal.
- (4) Random Testing.
- (a) The selection of CDL drivers for random alcohol and controlled-substance testing shall be made by a scientifically valid method, such as a computer-generated random-number table. Each CDL driver shall have an equal chance of being tested each time selections are made. The applicable Director or designee shall ensure that the required random alcohol and controlled-substances tests are unannounced and the dates for administering such tests are spread reasonably throughout the year. Upon request, the BoPS will coordinate such testing on behalf of the Director.
  - (b) Initially, the applicable Director or designee shall randomly select a sufficient number of CDL drivers each calendar year

as follows: for random alcohol testing, a minimum of 25 percent of the average number of CDL driver positions; and for random controlled-substances testing, a minimum of 50 percent of the average number of CDL driver positions.

- (c) The applicable Director or designee shall ensure that each CDL driver who is notified of selection for random alcohol and/or controlled-substances testing proceeds to the test site immediately. CDL drivers actually driving a commercial motor vehicle at the time will be first relieved of such duty to take the required test(s) as soon as possible.
  - (d) A CDL driver may be tested for alcohol and/or controlled-substances at any time while performing safety-sensitive functions.
  - (e) CDL driver employees are subject to random drug testing. No other Department employees are subject to random drug testing.
- (5) Follow-up.
- (a) An employee who has been confirmed positive for drug use through drug testing, as defined in this directive, and who has completed a treatment program, may be required to undergo follow-up testing on a quarterly, semi-annual, or annual basis for a period up to two years following release from the treatment program.
  - (b) A CDL driver retained by the Department following a confirmed positive test shall be subject to a minimum of six unannounced follow-up alcohol and controlled-substances tests in the first twelve months following the CDL driver's return to duty. As deemed appropriate, the SAP may direct additional tests during this period or for an additional period up to a maximum of sixty (60) months from the CDL driver's return to duty.

- (6) Routine Fitness-for-Duty of "Special-Risk" and "Safety-Sensitive" Positions. Prior to conducting routine fitness-for-duty drug testing, the Director or designee is responsible for:
  - (a) contacting the BoPS to obtain the Department of Management Service's (DMS) approval for fitness-for-duty medical examinations for the specified position(s) and/or occupation(s) as a prerequisite;
  - (b) preparing a written policy identifying the position(s) and/or occupation(s) of employees to be examined, delineating the timeframes for recurrent testing dates, (i.e., anniversary dates, or specified annual dates) and stating that regularly scheduled routine fitness-for-duty medical examinations will be conducted for all employees in such specifically designated position(s) or occupation(s);
  - (c) distributing the written policy to all affected employees; and
  - (d) annotating the position descriptions of all affected employees of the examination and testing requirements therein.

b. Testing Procedures.

(1) Testing Facility.

All drug testing will be conducted at a laboratory approved by the Agency for Health Care Administration (AHCA) as a laboratory meeting AHCA criteria for specimen collection and drug testing pursuant to Chapter 59A-24, F.A.C. and/or the FHWA Rule. The BoPS will maintain a listing of approved testing facilities.

(2) Test Scheduling.

- (a) The Director, Division of Law Enforcement or designee is responsible for scheduling drug tests for individuals attending the Division of Law Enforcement Training Academy.

- (b) The Director, Division of Law Enforcement or designee or the Inspector General or designee is responsible for scheduling drug tests for applicants of safety-sensitive positions in the Division of Law Enforcement, and for routine fitness-for-duty purposes for employees of the Division of Law Enforcement.
  - (c) Drug test scheduling for safety-sensitive positions other than Law Enforcement, special-risk positions not attending the Division of Law Enforcement Training Academy, reasonable-suspicion drug testing or follow-up testing, and/or routine fitness-for-duty testing may be coordinated and scheduled by the BoPS.
- (3) Noticing Requirements.
- (a) The Director or designee will be responsible for indicating on the job announcement or requisition that a vacant position is special risk or safety sensitive and therefore requires drug testing.
  - (b) The hiring manager will publish job announcements or job requisitions in the People First System for safety-sensitive, special-risk, and CDL positions with language included in the request stating: "An applicant offered appointment to this position is required to submit to a drug test. A positive confirmed drug test, or a refusal to submit to a drug test, will be used as a basis for denying appointment to this position."
  - (c) The Secretary or designee will be responsible for notifying the job applicants for Senior Management Service positions of the requirement to successfully complete a pre-employment drug test following the job offer and prior to appointment to their position.
  - (d) Prior to testing, the Secretary or designee, the applicable Director or designee, or Inspector General or designee, or

the BoPS representative, will provide the applicant or employee with a copy of this directive and, when applicable, the material/information required by CFR 49. The applicant or employee's signature shall be obtained by the Inspector General or designee, or the BoPS representative acknowledging receipt of the documents, and that the contents were explained to the applicant or employee, as applicable. In addition, the applicant or employee shall be made aware of the existence of Section 112.0455, F.S., and Chapter 59A-24, F.A.C. and, upon request, be provided a copy.

- (4) In addition to reasonable-suspicion drug testing for alcohol, the following is a list of drugs for which DEP will test, under conditions as specified in this directive.

CHEMICAL NAME

TRADE OR COMMON NAME

NARCOTICS

Opium	Dover's powder, Paregoric, Parepectalin
Morphine	Morphine, Pectoral Syrup
Codeine	Tylenol with Codeine, Empirin Compound with Codeine, Robitussin A-C
Heroin	Diacetylmorphine, Horse, Smack
Hydromorphone	Dilaudid
Meperidine (Pethidine)	Demerol, Mepergan
Methadone	Dolophine, Methadone, Methadose
Other Narcotics	LAAM, Leritine, Numorphan, Percodan, Tussionex, Fentanyl, Darvon, Talwin, Lomotil

DEPRESSANTS

Chloral Hydrate	Noctec, Somnos
Barbiturates	Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate
Benzodiazepines	Ativan, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranxene, Valium, Verstran, Halcion, Paxipam, Restoril
Methaqualone	Quaalude
Glutethimide	Doriden
Other Depressants	Equanil, Miltown, Noludar, Placidyl, Valmid

STIMULANTS

Cocaine	Coke, Flake, Snow, Crack
Amphetamines	Biphphetamine, Delcobese, Desoxyn, Dexedrine, Mediatric
Phenmetrazine	Preludin
Methylphenidate	Ritalin
Other Stimulants	Adipex, Bacarate, Cylert, Didrex, Ionamin, Plegine, Pre-Sate, Sanorex, Tenuate, Tepanil, Voranil

HALLUCINOGENS

LSD	Acid, Microdot
Mescaline and Peyote	Mes, Buttons, Cactus
Amphetamine Variants	2,5-DMA, PMA, STP, MDA, MDMA, TMA, DOM, DOB
Phencyclidine	PCP, Angel Dust, Hog
Phencyclidine Analogs	PCE, PCPy, TCP
Other Hallucinogens	Bufotenine, Ibogaine, DMT, DET, Psilocybin, Psilocyn

CANNABIS

Marijuana	Pot, Acapulco Gold, Grass, Reefer, Sinsemilla, Thai Sticks
Tetrahydrocannabinol	THC
Hashish	Hash
Hashish Oil	Hash Oil

- (5) Testing Provisions.
  - (a) Drug testing may occur before, during, or immediately following the regular work period of an employee, and such time shall be considered work time for the purpose of determining compensation and benefits for the employee.
  - (b) The Division/District in which the employee works or in which the job applicant may be employed shall pay the cost of required drug tests.
  
- (6) Procedures for Positive-Confirmation Test Result.
  - (a) Within five working days after receipt of a positive confirmed test result, the applicable Director or designee, the Inspector General or designee, or the BoPS representative shall inform the employee or job applicant, in writing, by certified mail, return receipt requested, of the positive test results, the consequences of such results and the options available to the employee or job applicant. A hand-delivered copy of the notice may also be given to the employee or job applicant. A mailed notice or attempted hand delivery shall constitute full and complete notice, even if the mailed or hand-delivered notice is refused or ignored by the employee or job applicant.
  - (b) Upon request, the applicable Director or designee, the Inspector General or designee, or the BoPS representative shall provide a copy of the laboratory test report to the employee or job applicant.
  - (c) Within five working days after receipt of notice of a positive-confirmed drug test, the employee or applicant may submit information explaining or contesting the test results, and explaining why the results do not constitute a violation of FHWA, or this directive.
  - (d) If an employee or job applicant's explanation or challenge of the positive test results is unsatisfactory, the BoPS

representative, the Inspector General or designee, or the Director or designee shall provide to the employee or job applicant a written explanation as to why the employee or job applicant's explanation is unsatisfactory, together with the report of positive test results.

- (e) No action may be taken against an employee or job applicant on the sole basis of an initial positive test result that has not been verified by a confirmation test. However, if an employee or job applicant refuses to submit to an initial or confirmation drug test, disciplinary action in accordance with DEP Directive 435 may be administered to the employee. The employee will not be permitted to return to a safety-sensitive or special-risk position. If a job applicant refused to submit to an initial or confirmation drug test, the job applicant shall be refused appointment to the position sought.
- (f) A position need not be held vacant while a job applicant pursues administrative action. Should the applicant prevail in his actions, the employing Director shall provide him with the next available comparable position.
- (g) Except as provided for in Section (6)(h), an employee with a **first-time** positive confirmed drug test result may not be disciplined or discharged without first having been referred to an alcohol and drug rehabilitation program. Such referral may be through the DEP EAP. If the employee refuses to participate in treatment, fails to attend or complete a treatment program, fails or refuses to sign a written consent form allowing DEP to obtain information regarding the progress and successful completion of an alcohol or drug rehabilitation program, or if the results of a subsequent confirmed drug test are positive, the employee may be disciplined or dismissed from employment in accordance with DEP Directive 435.
- (h) An employee in a **special-risk or safety-sensitive** position may be disciplined or discharged in accordance with

DEP Directive 435 for the first positive confirmed drug test, when illicit drugs, pursuant to Section 893.13, F.S., are confirmed. Under no circumstances shall the employee be permitted to continue work in a special-risk or safety-sensitive position. If the employee is not dismissed from employment, s/he may be allowed to perform the duties of or be temporarily placed in either a non-special-risk or non-safety-sensitive position if one is available for which s/he is qualified, or be placed on leave status while voluntarily participating in an alcohol and/or drug rehabilitation program. Such program may be accessed through the DEP EAP.

- (i) Any employee shall be permitted to use any accumulated leave credits prior to being placed on leave without pay while participating in any alcohol and drug rehabilitation program, whether on an outpatient or inpatient basis.
  - (j) An employee placed on leave status, given the duties of or placed in a non-special-risk or non-safety-sensitive position who successfully completes an alcohol or drug rehabilitation program, shall be returned to the same or equivalent position and salary that was held prior to entering the program.
  - (k) Participation in any alcohol or drug rehabilitation program as the result of a confirmed positive drug test shall be at the employee's own expense or pursuant to coverage under a health insurance plan.
- (7) Training for Supervisors.

The BoPS shall ensure that each supervisor or person designated to make reasonable-suspicion determinations receives training on alcohol misuse and controlled-substances use. The training must cover the physical, behavioral, speech and performance indicators of alcohol misuse and drug abuse.

- (8) Confidentiality of Records.
- (a) All information, interviews, reports, statements, memoranda and drug test results, applicant or employee disclosures, written or otherwise, obtained through drug testing and received by a Director or designee, the Inspector General or designee, or the BoPS representative, as applicable, are confidential communications and may not be used or received in evidence obtained in discovery, or disclosed in any public or private proceeding, except in accordance with Florida law.
  - (b) Release of such information shall be solely pursuant to a written consent form signed voluntarily by the person tested, except where such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal or grievance taken under the provisions of Florida law, or where deemed appropriate by a professional or occupational board in a related disciplinary proceeding. The release form must contain the following information:
    - 1 name of the person authorized to obtain the information.
    - 2 the purpose of the disclosure.
    - 3 the precise information to be disclosed.
    - 4 the duration of the consent.
    - 5 the signature of the person authorizing the release of the information.
  - (c) Information on drug test results shall not be released or used in any criminal proceeding against an employee or job applicant. Information released to the contrary shall be inadmissible as evidence in any such criminal proceeding, pursuant to Florida law.
  - (d) Nothing contained in this directive, however, shall be construed to prohibit certifying bodies of special-risk and/or safety-sensitive employees from receiving information on positive confirmed drug test results for the purpose of

reviewing law enforcement or other professional certification.

- (e) Nothing contained in this directive, however, shall be construed to prohibit the DEP, DEP's agents or representatives, or a laboratory conducting a drug test from having access to employee drug test information, when consulting with legal counsel in connection with actions brought under or related to Florida law, or where the information is relevant to DEP's defense in a civil or administrative matter.
  - (f) The Chief, BoPS, shall be the sole official custodian of any and all records relating to any job applicant or employee's drug test, except for job applicants and routine fitness-for-duty exams scheduled for drug testing through the Division of Law Enforcement. The Director, Division of Law Enforcement, shall be the sole official custodian of any and all records pertaining to drug testing of non-employee job applicants, whose drug tests are scheduled through the Division of Law Enforcement. No other records or copies of records relating to drug testing job applicants may be maintained.
  - (g) This directive and the establishment of DEP's drug testing program does not create a physician-patient relationship between an employee or job applicant and the DEP or any person performing or evaluating a drug test.
- (9) Employee and Job Applicant Rights.
- (a) Prior to drug testing, an employee or job applicant shall be given a copy of this directive and shall be informed of the existence of Section 112.0455, F.S., and Chapter 59A-24, F.A.C. Upon request, the employee or job applicant shall be furnished a copy of these documents.
  - (b) An employee or job applicant shall be given the opportunity to confidentially disclose to the Drug Testing Laboratory or any of its agents, the Inspector General or designee, the

applicable Director or designee, or the BoPS representative, as applicable, the use of any lawful prescription or nonprescription medications which may affect a drug test. Such disclosure may occur prior to or immediately following the drug test.

- (c) An employee shall not be dismissed, disciplined or discriminated against, nor shall a job applicant be denied employment based on any prior medical history revealed as a result of compliance with the provisions of this directive.
- (d) Within five days after receiving notice of a positive confirmed drug test result, an employee or job applicant shall be given an opportunity to submit information to the Inspector General or designee, the applicable Director or designee, or the representative explaining or contesting the test results, and why the results do not constitute a violation of this directive.
- (e) During the 180-day period after written notification of a positive confirmed drug test, the employee or job applicant who has provided the specimen shall be permitted to have a portion of the specimen re-tested, at the employee's or job applicant's expense. The laboratory re-testing the specimen must be licensed by the AHCA, and must test at equal or greater sensitivity for the drug in question, as did the first laboratory.
- (f) An employee may not be dismissed, disciplined or discriminated against solely upon voluntarily seeking treatment for a drug-related problem, provided the employee has not previously been tested as confirmed positive for drug use. However, special-risk and safety-sensitive employees may be subject to disciplinary action when the presence of illicit drugs, pursuant to Section 893.13, F.S., are confirmed.
- (g) If, as the result of a positive confirmed drug test, any Career Service employee is disciplined, or is not appointed to a

special-risk or safety-sensitive position for which he applied, he may file an appeal with the Public Employee Relations Commission (PERC) in accordance with rules adopted by the Commission. Appeals to the Commission shall be the exclusive administrative remedy for any Career Service employee who is disciplined or who is not selected, notwithstanding the provisions of Chapter 120, F.S. However, nothing in this directive shall affect the right of a Career Service employee to file a collective bargaining grievance in accordance with the provisions of the applicable collective bargaining agreement; provided, however, that a Career Service employee may not file both an appeal and a grievance.

- (h) A Career Service employee who has been disciplined or who has not been selected, pursuant to a positive confirmed drug test, must exhaust either the PERC appeal process or collective bargaining grievance process, prior to instituting any civil action.
- (i) Any Senior Management Service, Selected Exempt Service, OPS, or contract employee alleging a violation of the provisions of this directive, must institute a civil action for injunctive relief or damage, or both, in a court of competent jurisdiction within 180 days of the alleged violation, pursuant to Section 112.0455 (15), F.S., or be forever barred from obtaining relief. Any such employee is not required to exhaust any administrative appeal prior to the implementation of the civil action.
- (j) Employees and job applicants have the right to consult the testing laboratory for technical information regarding prescription and non-prescription medications. The Director or designee, Inspector General or designee, or the BoPS representative, as applicable, will provide employees at the time of a required drug test, with a current list of drug testing laboratories (and their addresses) certified by the AHCA.

