



**Rules of
Office of Administration**

**Division 30—Division of Facilities Management,
Design and Construction**

**Chapter 7—Drug and Alcohol Testing Program
Contractual Requirement**

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**Title 1—OFFICE OF
ADMINISTRATION****Division 30—Division of Facilities
Management, Design and Construction
Chapter 7—Drug and Alcohol Testing
Program Contractual Requirement****1 CSR 30-7.010 Drug and Alcohol Testing
Program Requirements**

PURPOSE: This rule sets forth the basis and legal requirements, contractual requirements, testing requirements, substance abuse testing protocols, threshold limits, consequences of refusal to submit to testing/confirmed positive results, reinstatement procedures, and compliance determination for a drug and alcohol program pursuant to section 161.371, RSMo Supp. 2010.

(1) Basis and Legal Requirements. In an effort to create safe and healthy schools and workplaces, the state of Missouri requires that contractors and subcontractors shall maintain and enforce a written substance abuse testing program for public works construction projects on public and charter elementary and secondary education construction projects that are subject to the control of the state of Missouri. This policy is not intended to be a substitute for the contractor's or subcontractor's complete written substance abuse policy. These requirements shall be the minimum requirements for complying with section 161.371, RSMo, and may be supplemented at the discretion of the contractor or subcontractor.

The state of Missouri has a vital interest in protecting the safety of students and maintaining safe, healthful, and efficient working conditions for both the state's and its contractors' and subcontractors' employees; and has determined that the educational and work environment is safer and more productive without the presence of illegal or inappropriate drugs, alcohol, or other substances in the body or on state property on which any state elementary or secondary school is located or being constructed or improved.

The use of illegal drugs, on or off duty, is inconsistent with law-abiding behavior expected of all persons. The use of illegal drugs, or abuse of alcohol or prescription drugs, may impair the ability of employees to perform tasks that are critical to proper work performance. The result is an increase in accidents and failures that pose a serious threat to the safety of all students, employees, visitors, and the general public. Impaired employees also tend to be less productive, less reliable, and prone to greater absenteeism, resulting in the potential for increased

cost and delays in the timely completion of contracts.

(2) Contractual Requirements.

(A) Each contract entered into for the performance of work on any public and charter elementary and secondary education construction project subject to the control of the state of Missouri shall require that each contractor or subcontractor have in place a drug and alcohol testing program consistent with this rule. These contractual requirements shall apply to contractor and subcontractor employees on public and charter elementary and secondary education construction projects that are subject to the control of the state of Missouri. The contractor and all subcontractors shall comply with this contractual requirement. The state of Missouri shall determine, in its sole discretion, when this contractual requirement shall be applicable; and in such instances, any bid submitted in response to a request for proposal shall comply with this contractual requirement.

(B) In order to be eligible to perform work on public and charter elementary and secondary education construction projects that are subject to the control by the state of Missouri, a contractor must have and enforce a written drug and alcohol testing program incorporating the following testing requirements and terms and conditions applicable to all its employees and subcontractors. No employee or prospective employee of a contractor or subcontractor shall be permitted to work on public and charter elementary and secondary education construction projects that are subject to this rule unless such employee submits to testing as required by the contractual requirement required by this rule.

(C) Each contractor and each subcontractor subject to this rule shall train its supervisory employees in methods that will allow them to recognize the signs and symptoms of substance abuse and to take action provided by this contractual requirement in a manner consistent with generally accepted safety training procedures.

(D) Each contractor and each subcontractor subject to this rule is responsible for the cost of developing, implementing, and enforcing its drug and alcohol testing program, including the cost of drug and alcohol testing of its employees provided by the contractual requirement required by this rule.

(E) The contractor shall furnish a copy of its drug and alcohol testing program and certify that it and its subcontractors are in compliance with the provisions of this rule to the state of Missouri at the time it submits a bid for any contract with the state of Missouri for

work on public and charter elementary and secondary education construction projects that are subject to the control of the state of Missouri. Each contract of the prime contractor with a subcontractor and each contract of a subcontractor of any tier with another subcontractor shall include as a condition of subcontracting a requirement that the subcontractor has an established drug and alcohol testing program as provided by this rule and that the subcontractor shall include the same contract condition in any subcontract it may enter with another subcontractor. Additionally, each subcontractor, and each subcontractor of any tier with another subcontractor, shall furnish a copy of its drug and alcohol testing program to the prime contractor prior to commencement of work on public and charter elementary and secondary education construction projects that are subject to this contractual requirement. The awarding contractor or the Division of Facilities Management, Design and Construction may reject a subcontractor's program as noncompliant with the contractual requirement required by this rule.

(F) For purposes of this rule, performance of work on any public and charter elementary and secondary education construction project subject to the control of the state of Missouri shall mean construction projects contracted by the Division of Facilities Management, Design and Construction, or construction projects administered by the Division of Facilities Management, Design and Construction.

(3) Testing Requirements.

(A) Pre-Engagement Testing. Testing for all substances other than alcohol as described in this rule shall be conducted by each contractor and subcontractor for its employees within one hundred twenty (120) days prior to any employee's appearance on a public and charter elementary and secondary education construction project that is subject to this contractual requirement. Contractors' or subcontractors' employees that can provide certification of a previous drug test occurring within one hundred twenty (120) days or employees that have been subject during the preceding consecutive two (2) years to a random and periodic selection program that meets the standards as set forth in this rule and, if the employee actually has been tested, that indicates a negative result for each of the substances listed herein, may be exempted from pre-engagement testing provided by this rule. If the employee was not employed by the contractor or subcontractor that is his or her current employer at the time of the previous test, the employee may be exempted from pre-engagement testing only upon certification of the non-negative test directly from the administrator of the testing



program that conducted the previous test.

(B) Random Testing. All employees of the contractor and subcontractor shall be subject to random testing by the contractor or subcontractor. For employees holding a commercial driver's license, the annualized drug and alcohol testing rate shall comply with 49 CFR Part 382, as may be amended from time-to-time, and similar applicable regulations of the Federal Highway Administration. All other employees of the contractor or subcontractor shall be subject to testing for all substances other than alcohol at the random annualized selection rate of fifty percent (50%) of the contractor's or subcontractor's employees. Employees selected for random testing shall report in a timely manner to the drug and alcohol testing laboratory or collection site where directed for drug and/or alcohol testing.

(C) Periodic Testing. All employees working on public and charter elementary and secondary education construction projects that are subject to this rule shall be subject to periodic and random testing for all substances other than alcohol on at least a biannual basis. Contractors' or subcontractors' employees that have been subjected to pre-engagement testing or randomly tested during the preceding consecutive two (2) years as provided by this rule and such testing indicates a negative result for each of the substances listed herein may be exempted from periodic testing provided by this rule. Employees subject to periodic testing shall report in a timely manner as directed to the drug and alcohol testing laboratory or collection site for drug testing.

(D) Reasonable Suspicion Testing. All employees of the contractor and each subcontractor on public and charter elementary and secondary education construction projects that are subject to this rule shall be subject to a drug and alcohol test when an employee is acting in an abnormal manner that leads a supervisory employee of the contractor or subcontractor to have reasonable suspicion that the employee is under the influence of alcohol or controlled substances. Reasonable suspicion means suspicion based on specific personal observations by the supervisory employee concerning the appearance, behavior, speech, or breath odor of the employee.

(E) Post-Accident/Incident Testing. All employees of contractors and subcontractors on public and charter elementary and secondary education construction projects that are subject to this rule shall be subject to a drug and alcohol test following an on-the-job injury requiring medical treatment or following a serious or potentially serious incident, including near misses, during which safety precautions were violated; persons were or

could have been injured; unsafe instructions or orders were given; vehicles, equipment, or property was damaged; careless acts were performed; or when prescribed personal protective or safety equipment was not worn. Employees involved or that may have contributed to the incident shall be subject to a drug and alcohol test. If it is impossible or impractical, because of the physical condition of the person involved in the accident to be subjected to drug and alcohol testing, and if in subsequent medical treatment that person's blood or other bodily fluid will be drawn, then that blood or other bodily fluids may be analyzed for drugs and alcohol.

(4) Substance Abuse Testing Protocols.

(A) A contractor or subcontractor subject to the provisions of this rule shall perform pre-engagement, random, periodic, reasonable suspicion, and post accident/incident testing in the following manner:

1. Drug Testing—

A. All urine samples collected under this program shall be analyzed by a laboratory certified by the National Institute on Drug Abuse/Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services and shall include an initial Enzyme Multiplied Immunoassay Screening Test (EMIT) and, when necessary, confirmed by a Gas Chromatography/Mass Spectrometry (GC/MS) confirmation test. All samples confirmed by the laboratory as non-negative shall be interpreted as positive or negative by a Medical Review Officer licensed by the American Association of Medical Review Officers, American College of Occupational and Environmental Medicine, Medical Review Officer Certification Council, or American Society of Addiction Medicine;

2. Alcohol Testing—

A. The initial screening tests for alcohol shall be performed by using either a saliva test or a Department of Transportation (DOT) approved breathalyzer; and

B. Alcohol confirmatory tests shall be performed by either a blood alcohol test or a DOT approved breathalyzer.

(B) Testing for the presence of drugs or alcohol in an employee's system and the handling of test specimens shall be conducted in accordance with guidelines for laboratory testing procedures and chain-of-custody procedures established by the Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services.

(C) The program shall require notification to the employer and employee of the results of any non-negative drug and alcohol test, and

the Division of Facilities Management, Design and Construction shall be notified of the action taken to protect the safety of students as a result of such positive test, provided that no requirement of individual confidentiality of test results provided by federal law or regulation or state statute shall be violated in providing such notifications. The provisions of this rule shall not be construed to require the contractor or subcontractor or person conducting a drug or alcohol test to inform the Division of Facilities Management, Design and Construction of the name of an employee receiving a non-negative drug or alcohol test result.

(5) Threshold Limits. All samples collected shall be analyzed by a laboratory certified by the Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services and shall include an initial Enzyme Multiplied Immunoassay Screening Test (EMIT) and, when necessary, confirmed by a Gas Chromatography/Mass Spectrometry (GC/MS) Confirmation Test. Said testing must screen, at a minimum, for the substances and levels of such substances provided by 49 CFR Part 40 and for alcohol as provided by 49 CFR Part 382, as may be amended from time-to-time. The levels that shall be deemed to result in a negative test result shall be defined by 49 CFR Part 40 and 49 CFR Part 382, as may be amended from time-to-time; provided that if such regulations shall no longer define substances and testing levels in the future, testing as required by this rule shall screen for the following substances that shall not exceed the following levels in order to be deemed a negative test result:



	(EMIT) Confirmed Initial Level (ng/ml)	(GC/MS) Confirmation Test Cut-Off Level (ng/ml)
Drugs tested:		
Amphetamines (*See Note below)	500	250
Barbiturates	300	200
Benzodiazepines	300	200
Cocaine Metabolite	150	100
Cannabinoids (Marijuana THC)	50	15
Methadone	300	200
Opiates:		
Codeine/Morphine	2000	2000
Heroin Metabolite	10	10
Phencyclidine (PCP)	25	25
Propoxyphene	300	200
Breath/Blood Alcohol Content (BAC)	.04%	.04%
Removal from jobsite	.0200-.0399%	.0200%-.0399%

*Note—includes Amphetamines, Methamphetamines, and Ecstasy (MDMA).

(6) Refusal to Submit to Testing/Confirmed Positive Results.

(A) Any employee of a contractor or subcontractor performing any duties or work that are subject to this rule who refuses to submit to testing or receives a confirmed positive test result for any of the substances indicated in section (5) shall be required to immediately leave the construction site and be prohibited from returning to any construction site subject to control of the state of Missouri until evidence is provided of the completion of the reinstatement procedures as set forth in section (7).

(B) Determination for Violation of Policy.

1. A confirmed positive drug or alcohol test.

2. Failure to contact the Medical Review Officer as directed.

3. Failure to report as directed for random testing.

4. The use, possession, sale, or distribution of alcohol or a controlled illegal or unauthorized substance, or the presence of any employee with such ingested substances for non-medical reasons on a public and charter elementary and secondary education construction project subject to the control of the state of Missouri.

5. Working, reporting to work, being on a public and charter elementary and secondary education construction project that is subject to the control of the state of Missouri, or in a state or employer owned, leased, or rented vehicle, while under the influence of alcohol (0.04% BAC or greater).

6. Switching, adulterating, or attempting to tamper with any sample submitted for drug or alcohol testing or otherwise interfering or attempting to interfere with the testing

process.

7. Refusal to submit a specimen for testing shall be deemed to be a positive test result and shall be subject to the same consequences as specimens tested and confirmed as positive.

8. The use of a controlled substance by an individual other than the individual for whom the controlled substance was prescribed or the abuse of a controlled substance by the individual for whom it was prescribed.

(7) Reinstatement Procedures. An employee receiving a confirmed positive test result for any of the substances indicated in section (5) may return to work on a public and charter elementary and secondary education construction project that is subject to the control of the state of Missouri only after the following conditions have been satisfied:

(A) Evidence is submitted to the contractor or subcontractor that the employee has completed or is actively participating in an approved drug/alcohol assessment, treatment, and/or counseling program. The costs of this assessment, treatment, or program need not be borne by the contractor or subcontractor;

(B) Evidence is submitted of the employee passing a drug and alcohol test that meets the requirements of sections (4) and (5) of this rule. The costs of this subsequent retesting need not be borne by the contractor or subcontractor;

(C) The employee shall be subject to additional random drug and alcohol testing on a monthly basis while on any public and charter elementary and secondary education construction project that is subject to the control of the state of Missouri. The costs of this

additional testing, treatment, or program need not be borne by the contractor or subcontractor; and

(D) An employee known by the contractor or subcontractor to have previously had a positive test result who receives a second or subsequent confirmed positive test result in connection with subsequent testing required by this section (7) of this rule shall be removed by the contractor or subcontractor from all public and charter elementary and secondary education construction projects that are subject to the control of the state of Missouri. The employee shall not return to work on any public and charter elementary and secondary education construction project subject to this rule until the employee has completed an approved drug/alcohol assessment, treatment, and/or counseling program and until after evidence is submitted of the employee passing a drug and alcohol test that meets the requirements of sections (4) and (5) of this rule and that indicates a blood alcohol concentration of less than 0.02 percent.

(8) Compliance Determination.

(A) The state of Missouri may audit any substance abuse testing program implemented pursuant to this contractual requirement to verify compliance, upon at least twenty-four (24) hours' notice by the state to the contractor of its intent to audit. The state shall have free access to all relevant records of the contractor and its subcontractors for this purpose.

(B) Any portion of this program that is in violation of applicable federal or state law or regulation shall be deemed unenforceable.



*AUTHORITY: section 161.371, RSMo Supp. 2010. * Original rule filed June 1, 2011, effective Dec. 30, 2011.*

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