

August 25, 2006

**DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL SERVICES**

Proposed Amended Regulation

Article 2: Definitions

1-2-46. Length of service. (a) "Length of service" shall mean total time worked in the classified service or unclassified service, including time spent on an appointment to a position pursuant to K.S.A. 75-2935(1)(i), and amendments thereto. Length of service shall exclude the following:

(1) Time worked as a temporary employee in accordance with the provisions of K.A.R. 1-6-25;

(2) time worked as a student employed by any board of regents institution;

(3) time worked as a resident worker in an institution of mental health, as defined in K.S.A. 76-12a01 and amendments thereto; or in a state veteran's home operated by the Kansas commission on veteran's affairs; and

(4) time worked as an inmate.

(b) Time spent on military leave and time off while receiving workers compensation wage replacement for loss of work time shall be considered to be time worked in the classified or unclassified service. Time on leave while receiving workers compensation wage replacement for a disability attributable to state employment before May 1, 1983, shall not be credited.

(c) Within educational institutions under the control and supervision of the state board of regents or the state board of education, time spent on leave of absence, if imposed by the educational institution based on employment customs arising from an academic or school calendar requiring less than a full calendar year of service, shall be considered to be time worked

in the classified service. However, length of service based on this leave of absence shall not be transferable to other state agencies. For the purposes of layoff, employees of these institutions shall be credited only for actual time worked.

(d)(1) Length of service for computing vacation ~~and sick~~ leave accrual rates and for layoff or compensation purposes shall not be recalculated using prior versions of this regulation for employees who have no break in service.

(2) Length of service for determining vacation ~~and sick~~ leave accrual rates and for layoff or compensation purposes for an individual returning to state service shall be the amount of length of service on record on December 17, 1995, or on the date the individual left state service, whichever date is later.

(e) Authorized leave without pay over 30 consecutive days shall not count toward length of service. However, authorized leave without pay for 30 consecutive days or less shall not be considered a break in service.

(f) Increased rates of vacation leave earnings based on length of service shall not be retroactive.

(g) For purposes of vacation leave accrual, layoff, and longevity bonus pay, the length of service of any ~~retiree returning to~~ person who has retired from state service shall be reduced to zero, and if the person later returns to state service, the length of service shall be calculated on the same basis as that for a new hire.

~~(h) This regulation shall be effective on and after June 5, 2005.~~ (Authorized by K.S.A. 75-3706 and K.S.A. ~~2004~~ 2005 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-87-52, Dec.

19, 1986; amended May 1, 1987; amended Dec. 27, 1993; amended Dec. 17, 1995; amended
Sept. 18, 1998; amended June 5, 2005; amended P-_____.)

October 18, 2005

**DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL SERVICES**

Proposed Amended Regulation
Article 2: Definitions

1-2-77. (Authorized by K.S.A. 75-3706; implementing K.S.A. 20-2608, K.S.A. 1997 Supp. 74-4914 and K.S.A. 75-5517; effective Sept. 18, 1998; revoked P-_____.)

November 9, 2006

**DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL SERVICES**

Proposed New Regulation

Article 3: Equal Employment Opportunity and Affirmative Action

1-3-5. Definitions. (a) “Affirmative action” means a deliberate and sustained effort to identify and eliminate barriers to the employment and advancement of females and minorities. The purpose of affirmative action initiatives shall be to achieve, at all levels, a state government workforce whose composition with respect to female and minority employees approximates the composition of the available, qualified state resident workforce.

(b) “Affirmative action plan” means a written, results-oriented plan detailing the steps that an appointing authority will take to achieve a workforce whose composition with respect to female and minority employees approximates the composition of the available, qualified state resident workforce.

(c) “Equal employment opportunity” means the administration of the civil service personnel system in a manner that promotes the right of all persons to work and to advance on the basis of merit and ability without regard to race, religion, color, sex, national origin or ancestry, age, disability, military or veteran status, or political affiliation, except as otherwise provided by law.

(d) “Minority,” means a group differing in race or ethnic background from the majority of the available, qualified state workforce, or a member of such a group.

(e) “Underutilization,” with respect to a workforce, means a condition in which the percentage of female or minority employees is less than the percentage of females or minorities in the available, qualified state workforce. (Authorized by K.S.A. 75-3706 and K.S.A. 2005

Supp. 75-3747; implementing K.S.A. 75-2925, 75-2941, 75-3707, and 75-3746; effective P-

_____.)

January 31, 2006

**DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL SERVICES**

Proposed New Regulation

Article 3: Equal Employment Opportunity and Affirmative Action

1-3-6. Equal employment opportunity; affirmative action. In a manner that is consistent with K.S.A. 75-2925 and amendments thereto, each appointing authority shall take the following steps: (a) Each appointing authority shall implement programs and policies designed to promote equal employment opportunity and shall implement an affirmative action plan to identify whether areas of underutilization exist. If areas of underutilization are identified, the appointing authority shall initiate programs designed to address the underutilization.

(b) Each appointing authority shall establish any goals and target dates necessary to effectuate agency-level and statewide affirmative action plans.

(c) Each appointing authority shall ensure that complete and accurate applicant and employment records and statistics are maintained that provide information for the evaluation and analysis of current and past employment practices with respect to affirmative action. Each appointing authority shall provide this data to the director in the manner and on the forms required by the secretary. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-2925, 75-2941, 75-3707, and 75-3746; effective P-_____.)

October 18, 2005

**DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL SERVICES**

Proposed Amended Regulation
Article 9: Hours; Leaves; Employee-Management Relations

1-9-18. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746, K.S.A. 75-2925, as amended by 1995 SB 175, § 2, and K.S.A. 75-2938, as amended by 1995 SB 175, § 4; effective May 1, 1979; amended Aug. 3, 1992; amended Dec. 17, 1995; revoked P-_____.)

August 25, 2006

**DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL SERVICES**

Proposed Amended Regulation
Article 9: Hours; Leaves; Employee-Management Relations

1-9-25. Alcohol and controlled substances ~~test~~ tests for employees in commercial driver positions. (a) ~~The provisions of 49 C.F.R. Part 382, as in effect on February 15, 1994, and 49 C.F.R. Part 40, as in effect on February 15, 1994 and amendments to Part 40, as published in 59 Fed. Reg. 42,996 (1994), are hereby adopted by reference.~~

~~(b)~~(1) For purposes of this regulation, "the act" means the provisions of 49 U.S.C. app. § 2717, as amended, that apply to the alcohol and controlled substance testing of employees in commercial driver positions.

(2) This regulation shall apply to any employee in a commercial driver position who may be required to submit to an alcohol or controlled substances test in accordance with the federal omnibus transportation employees act of 1991, 49 U.S.C. Appx. § 2717, based upon reasonable suspicion of illegal controlled substance use or alcohol abuse by that employee or for the purposes of random testing, post accident testing, return to duty testing, or follow up testing.

~~(c) For the purposes of this regulation, "safety sensitive functions" means any duty required of an employee in a commercial driver position during the following periods:~~

~~(1) All time spent waiting to be dispatched at a state plant, terminal, facility, or other state property or on any public property, unless the driver has been relieved from duty by the agency;~~

~~(2) all time spent inspecting equipment as required by 49 C.F.R. 392.7 and 392.8, as in effect on February 15, 1994, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;~~

~~(3) all driving time as defined in 49 C.F.R. 395.2, as in effect on February 15, 1994;~~

~~(4) all time, other than driving time, spent in or upon any commercial motor vehicle, except time spent resting in a sleeper berth;~~

~~(5) all time spent loading or unloading a vehicle, supervising or assisting in the unloading or loading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments loaded or unloaded;~~

~~(6) all time spent performing the driver requirements relating to accidents as set out in 49 C.F.R. 392.40 and 392.41, as in effect on February 15, 1994; and~~

~~(7) all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.~~

~~(d)(1) Each agency shall require each of its employees in commercial driver positions to submit to an alcohol or a controlled substances test when the agency has reasonable suspicion of illegal controlled substance use or alcohol abuse by that employee. Reasonable suspicion shall be based on a judgment supported by specific, contemporaneous, articulable observations regarding the employee's behavior, appearance, speech, or body odor. Testing under this paragraph may be conducted under these conditions:~~

~~(A) Only if the observations are made by a supervisor or other state official trained in accordance with 49 C.F.R. 382.603; and~~

~~(B) for alcohol testing, only if the observations are made during, just preceding, or just after the period of the work day in which the employee is performing a safety sensitive function.~~

~~(2) Each employee in a commercial driver position shall be subject to random testing for alcohol and controlled substances. Random testing for alcohol and controlled substances shall be unannounced, and each employee in a commercial driver position shall have an equal chance of being selected for testing each time selections for testing are made. The number of employees selected for random testing each year shall be based on the percentage established by the federal highway administration under 49 C.F.R. 382.305. The process used to randomly select employees to be tested shall be a scientifically valid method. Random alcohol testing shall be conducted only during, just preceding, or just after the period of the work day in which the employee is performing a safety sensitive function.~~

~~(3) (A) Each employee in a commercial driver position who is involved in an accident shall be tested for alcohol and controlled substances if either of these conditions is met:~~

~~(i) The employee was performing a safety sensitive function with respect to the vehicle, and the accident involved the loss of life.~~

~~(ii) The employee was issued a citation under state or local law for a moving traffic violation arising from the accident.~~

~~The post-accident testing shall be performed as soon as practicable following the accident.~~

~~(B) For purposes of this regulation, an "accident" means an incident involving a commercial motor vehicle in which there is a fatality, an injury treated away from the scene, or a vehicle required to be towed from the scene.~~

~~(C) The driver shall remain available for testing and refrain from consuming alcohol for eight hours or until the driver undergoes a post-accident alcohol test. If the driver is not available, the agency may consider the driver to have refused to be tested. If the alcohol test is not administered within two hours following the accident, the employer shall maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight hours, the agency shall cease attempts to administer the test and shall prepare and maintain the same record. If the controlled substances test is not administered within 32 hours, the agency shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered.~~

~~(4) Each employee who is in a commercial driver position and who has violated one or more of the provisions of 49 C.F.R. Part 382, Subpart B, shall not return to duty requiring the performance of a safety-sensitive function until the employee undergoes a return-to-duty alcohol test with results indicating an alcohol breath content of less than 0.02 grams of alcohol per 210 liters of breath, a controlled substances test with a verified negative result, or both, as appropriate.~~

~~(5) Each employee in a commercial driver position who violates one or more of the provisions of 49 C.F.R. Part 382, Subpart B, and who is identified by a substance abuse professional as needing assistance in resolving problems associated with alcohol or controlled substances, shall be subject to unannounced follow-up controlled substances testing, alcohol testing, or both, following the employee's return to duty. This follow-up testing shall consist of at least six tests in the first 12 months following the driver's return to duty. Alcohol testing shall be performed only before, immediately after, or while performing a safety-sensitive function.~~

~~(e)~~ ~~(b)~~ ~~State agencies~~ Any appointing authority may ask a any current employee in a commercial driver position within that agency to submit to alcohol and controlled substances tests under the provisions of ~~paragraphs (d)(1) through (5)~~ the act as a condition of employment. Refusal to comply with ~~these requirements~~ this requirement shall be considered the equivalent of receiving a confirmed “positive” test result for referral or disciplinary actions.

~~(f)~~~~(c)~~(1) Each employee required to submit to alcohol or controlled substances tests shall be notified of that requirement in writing. Each ~~employer~~ appointing authority shall provide to each current employee in a commercial driver position within that agency detailed materials containing the information identified ~~below~~ in paragraph ~~(f)(2)~~ (c)(2). These materials shall be provided to each current employee before the start of alcohol and controlled substances testing by the agency and to each employee subsequently hired or transferred into a commercial driver position.

(2) The information provided to each employee in a commercial driver position shall include the following:

(A) The identity of the person designated by the ~~agency~~ appointing authority to answer drivers' questions about the materials;

(B) the categories of drivers who are subject to the provisions of ~~this regulation~~ the act;

(C) sufficient information about the safety-sensitive functions performed by those drivers to ~~make clear~~ specify during which periods of the ~~work-day~~ workday the driver is required to be in compliance with ~~this regulation~~ the act;

(D) specific information concerning driver conduct that is prohibited by ~~this regulation and~~ Subpart B of 49 C.F.R. Part 382 the act;

(E) the circumstances under which a driver will be tested for alcohol or controlled substances under ~~this regulation~~ the act;

(F) the procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;

(G) the requirement that each driver submit to alcohol and controlled substances tests administered in accordance with ~~this regulation~~ the act;

(H) an explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(I) the consequences for drivers found to have violated ~~49 C.F.R. 382, Subpart B~~ the act, including the requirement that the driver be removed immediately from safety-sensitive functions, and the referral, evaluation, and treatment procedures under ~~49 C.F.R. 382.605~~ the act;

(J) the consequences for drivers found to have an alcohol concentration of ~~0.02 grams per 210 liters of breath or greater but less than 0.04 grams~~ exceeding permissible levels established under the act;

(K) information regarding ~~post-accident~~ postaccident procedures and the instructions necessary for the employee to be able to comply with the ~~post-accident~~ postaccident testing requirements; and

(L) information concerning the following:

(i) The effects of the use of alcohol and controlled substances on an individual's health, work, and personal life;

(ii) the signs or symptoms of an alcohol or a controlled substances problem, whether the driver's own problem or that of a coworker; and

(iii) the available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to the state employee assistance program, referral to management, or a combination of these ~~steps~~ methods.

~~(g) Procedures and testing personnel used in collecting, analyzing, and evaluating test samples shall meet the standards established by the director in accordance with 49 C.F.R. Part 40.~~

~~(h) In accordance with 49 C.F.R. 40.25(f)(10)(ii)(E), any employee who receives a confirmed positive result on a controlled substances test may request a retest by the original or a different laboratory on the second half of the original specimen, within 72 hours of being notified of the positive test result.~~

~~(i) (1) An alcohol test shall be considered positive when the alcohol concentration is 0.04 grams of alcohol per 210 liters of breath or greater. However, if the breath alcohol content is 0.02 grams of alcohol per 210 liters of breath or greater and less than 0.04 grams of alcohol, the employee shall not be allowed to perform safety sensitive functions until a 24 hour period has elapsed, in accordance with 49 C.F.R. 382.505. The agency shall not take action against the employee based solely on a test required by 49 C.F.R. Part 382 with a test result of less than 0.04 grams of alcohol.~~

~~(2) A permanent employee who receives a confirmed positive controlled substances test result or an alcohol test result with a concentration of 0.04 or greater or who violates any~~

~~provision of 49 C.F.R. Part 382, Subpart B shall be removed from safety sensitive functions until the employee has met these requirements:~~

~~(A) Been evaluated by a substance abuse professional;~~

~~(B) completed treatment, if required by the substance abuse professional; and~~

~~(C) taken a return to duty alcohol test, controlled substances test, or both, as determined by the substance abuse professional, with results below 0.02 grams of alcohol per 210 liters of breath and a negative result for controlled substances.~~

~~(3) (d) This subsection shall apply only to employees with permanent status, including employees with permanent status who are serving a probationary period due to a promotion.~~

~~(1) Except as provided by paragraph (d)(2), an employee shall not be subject to dismissal solely on the basis of a confirmed “positive” test result or the equivalent or a violation of any other provision of 49 C.F.R. 382, Subpart B the act if the employee has not previously had a confirmed “positive” test result or the equivalent or any other violation of the act and the employee successfully completes an appropriate and approved alcohol and controlled substance assessment and any recommended education or treatment program, as provided in paragraph (i)(2). However, the employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed “positive” test result or the equivalent or any other violation of the act or if the employee fails to successfully complete an appropriate and approved alcohol and controlled substance assessment and any recommended education and treatment program as prescribed by the substance abuse professional. This regulation shall not preclude the agency appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, and K.A.R. 1-~~

~~10-6~~ for other circumstances that occur in addition to a confirmed “positive” test result or another violation of the act and that are normally grounds for discipline.

~~(4) If an employee is a temporary employee, or is in trainee status or on probation, other than for a promotional appointment, at the time the employee is given written notice of an appointment for an alcohol or controlled substances test and if the employee violates any provisions of 49 C.F.R Part 382, Subpart B or has a confirmed positive result, the employee shall be subject to dismissal pursuant to K.A.R. 1-10-6.~~

~~(j)(2) Any~~ Each employee who takes any of the following actions shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto:

(A) Intentionally adulterates, tampers with, or substitutes a sample provided for alcohol or controlled substances testing;

(B) violates the chain-of-custody or identification procedures; or

(C) falsifies a test result shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto.

~~(k)(3) If disciplinary action is warranted under the provisions of this regulation, the appointing authority shall afford the employee shall be afforded~~ due process in accordance with K.S.A. 75-2949, and amendments thereto, ~~and K.A.R. 1-10-6.~~

~~(l)(1) Individual results and medical information shall be considered confidential and shall not be disclosed publicly. Each employee shall be granted access to the employee's information upon written request to the director, in accordance with 49 C.F.R. 382.405.~~

(e) An employee shall be subject to dismissal if both of the following conditions are met:

(1) At the time the employee is given written notice of an appointment for an alcohol or controlled substances test, the employee is a temporary employee, is in trainee status, or is serving a probationary period, other than an employee with permanent status who is serving a probationary period due to a promotion.

(2) The employee has a confirmed “positive” test result or the equivalent or takes any of the following actions:

(A) Adulterates, tampers with, or substitutes a sample provided for controlled substances testing;

(B) violates the chain-of-custody or identification procedures;

(C) falsifies a test result; or

(D) violates any other applicable provision of the act.

~~(2)(A)~~ (f)(1) Each ~~agency~~ appointing authority shall be responsible for maintaining strict security and confidentiality of the alcohol and controlled substances records in that agency.

Access to these records shall be restricted to the following personnel:

~~(i)~~ (A) The ~~agency~~ agency’s personnel officer, the ~~agency~~ agency’s appointing authority, the secretary of administration, the director, or any of their respective designees;

~~(ii)~~ (B) persons in the supervisory chain of command;

~~(iii)~~ (C) the ~~agency~~ agency’s legal counsel; or

~~(iv)~~ (D) the department of ~~administration~~ administration’s legal counsel.

~~(B)~~ (2) Further access to these records shall not be authorized without the express consent of the director. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing

K.S.A. 75-3746 and 75-3707; effective, T-1-1-26-95, Jan. 26, 1995; effective May 30, 1995;
amended Sept. 18, 1998; amended October 1, 1999; amended P-_____.)

August 25, 2006

**DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL SERVICES**

Proposed Amended Regulation

Article 9: Hours; Leaves; Employee-Management Relations

1-9-26. ~~Pre-duty~~ Preduty controlled substances testing for employees in positions assigned commercial driver functions. (a) ~~The provisions of 49 C.F.R. Part 382, as in effect on February 15, 1994, and 49 C.F.R. Part 40, as in effect on May 1, 1995, and amendments to Part 40, as published in 59 Fed. Reg. 42,996 (1994), are hereby adopted by reference.~~

~~(b) For purposes of this regulation, the term "safety sensitive function" shall be as defined in K.A.R. 1-9-25(e).~~

~~(c) When an agency assigns duties to an~~ (1) For purposes of this regulation, "the act" means the provisions of 49 U.S.C. app. § 2717, as amended, that apply to the preduty controlled substances testing of employees in positions assigned commercial driver functions.

(2) This regulation shall apply to any existing, filled position to which the appointing authority assigns duties that would result in the position becoming a commercial driver position, the incumbent employee in the position shall be subject to a thereby subjecting the incumbent employee to the requirements of the act, including its controlled substances test testing requirements and the provisions of 49 C.F.R. 382.413 the act regarding release of alcohol and controlled substances test information by previous employers.

~~(d)~~ (b) Each employee who is an incumbent in a position to which commercial driver functions are assigned shall be informed of the provisions of subsections (c) and (g) through (i) of the act and this regulation in writing and shall sign a statement agreeing to participate in the

controlled substances testing before administration of the ~~tests~~ test. The appointing authority shall advise each employee required to submit to controlled substances testing under ~~this regulation~~ the act of the following aspects of the testing program:

(1) The methods of controlled substances testing that may be used;

(2) the substances that may be identified;

(3) the consequences of a refusal to submit to a controlled substances test or of a confirmed “positive” test result; and

(4) the reasonable efforts utilized by the state to maintain the confidentiality of results and any medical information that may be provided.

~~(e) Procedures and testing personnel used in collecting, analyzing, and evaluating test samples shall meet the standards established by the director in accordance with 49 C.F.R. Part 40.~~

~~(f) In accordance with 49 C.F.R. 40.25(f)(10)(ii)(E), any employee who receives a confirmed positive result on a controlled substances test may request a retest by the original or a different laboratory on the second half of the original specimen within 72 hours of being notified of the positive test result.~~

~~(g)~~ (c) If an incumbent employee fails to participate in the required controlled substances test, refuses to sign the written authorization required under subsection ~~(d)~~ (b) of this regulation, or refuses to provide written authorization for release of alcohol and controlled substances test information by previous employers, the employee shall not begin performing the safety-sensitive functions. A subsequent refusal to participate in the required testing or to sign the written authorization shall be grounds for the following consequences:

(1) Discipline under K.S.A. 75-2949f, and amendments thereto, for any employee with permanent status, including an employee serving a probationary period due to a promotion from a position in which the employee had permanent status; or

(2) termination, for any temporary employee, any employee in trainee status, or any employee serving a probationary period, other than an employee with permanent status who is serving a probationary period due to a promotion.

~~(h)(1) If an incumbent employee receives a confirmed positive controlled substances test result, the employee shall not perform any safety sensitive functions until the employee has completed the steps listed below:~~

~~(A) Been evaluated by a substance abuse professional;~~

~~(B) completed treatment, if required by the substance abuse professional; and~~

~~(C) taken a subsequent alcohol test, controlled substances test, or both, as determined by the substance abuse professional, with results below 0.02 grams of alcohol per 210 liters of breath and a negative result for controlled substances.~~

(2)(d) This subsection shall apply only to employees with permanent status, including employees with permanent status who are serving a probationary period due to a promotion.

(1) Except as provided by paragraph (d)(3), an incumbent employee with permanent status in a position to which commercial driver functions are assigned shall not be subject to dismissal solely on the basis of a confirmed “positive” test result if the employee successfully completes an appropriate and approved alcohol and controlled substance assessment and any recommended education or treatment program, as provided in paragraph (h)(1) by the act. However, the employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments

thereto, if the employee has previously had a confirmed "positive" test result or the equivalent, if the employee committed some other violation of the act, or if the employee fails to successfully complete an appropriate and approved alcohol and controlled substance assessment and any recommended education and treatment program, ~~as prescribed by the substance abuse professional.~~ This regulation shall not preclude the ~~agency~~ appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, ~~and K.A.R. 1-10-6~~ for other circumstances that occur in addition to a confirmed "positive" test result or another violation of the act and that are normally grounds for discipline.

~~(3) Any employee who was on probation, other than for a promotional appointment, at the time the employee was given notice of the assignment of commercial driver functions to the employee's position and written notice of the controlled substances testing requirement and who has a confirmed positive result shall be subject to dismissal pursuant to K.A.R. 1-10-6.~~

~~(4) An alcohol test shall be considered "positive" when the alcohol concentration is 0.04 grams of alcohol per 210 liters of breath or greater. However, if the breath alcohol content is 0.02 grams of alcohol or greater and less than 0.04 grams of alcohol, the employee shall not begin performing safety sensitive functions until a 24 hour period has elapsed, in accordance with 49 C.F.R. 382.505.~~

~~(i)(2)~~ The provisions of ~~paragraphs (h)(1) and (2)~~ (d)(1) relating to a confirmed "positive" test shall apply if the information obtained from a prior employer under 49 C.F.R., 382.413 the act indicates that, within the preceding two years, both of the following have occurred:

~~(1)(A)~~ The employee violated any of the provisions of 49 C.F.R. Part 382, Subpart B the act.

~~(2)(B)~~ The employee failed to complete the requirements for returning to work under ~~49 C.F.R. 382.605~~ the act, including an evaluation by a substance abuse professional, a return-to-duty alcohol test, controlled substances test, or both, and completion of any rehabilitation or treatment program prescribed by the substance abuse professional.

~~(j)(3)~~ Any Each employee who takes any of the following actions shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto:

(A) Intentionally adulterates, tampers with, or substitutes a sample provided for alcohol or controlled substances testing;

(B) violates the chain-of-custody or identification procedures; or

(C) falsifies a test result shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto.

~~(k)(4)~~ If disciplinary action is warranted based on the provisions of this regulation, the appointing authority shall afford the employee due process in accordance with K.S.A. 75-2949, and amendments thereto, ~~and K.A.R. 1-10-6.~~

~~(l)(1) Individual results and medical information shall be considered confidential and shall not be disclosed publicly. Each employee shall be granted access to the employee's information upon written request to the director, in accordance with 49 C.F.R. 382.405.~~

~~(2)(A)(e)~~ An employee shall be subject to termination if both of the following conditions are met:

(1) At the time the employee is given notice of the assignment of commercial driver functions to the employee's position, the employee is a temporary employee, is in trainee status,

or is serving a probationary period, other than an employee with permanent status who is serving a probationary period due to a promotion.

(2) One or more of the following has occurred:

(A) The employee has a confirmed “positive” test result or the equivalent.

(B) The information obtained from a prior employer under the act indicates that, within the preceding two years, both of the following occurred:

(i) The employee violated any of the provisions of the act.

(ii) The employee failed to complete the requirements for returning to work under the act, including an evaluation by a substance abuse professional, a return-to-duty alcohol test, controlled substances test, or both, and completion of any rehabilitation or treatment program prescribed by the substance abuse professional.

(C) The employee takes any of the following actions:

(i) Intentionally adulterates, tampers with, or substitutes a sample provided for controlled substances testing;

(ii) violates the chain-of-custody or identification procedures;

(iii) falsifies a test result; or

(iv) violates any other applicable provision of the act.

(f)(1) Each agency appointing authority shall be responsible for maintaining strict security and confidentiality of the alcohol and controlled substance testing records in that agency. Access to these records shall be restricted to the following individuals:

(i) ~~(A)~~ (A) The ~~agency~~ agency's personnel officer, the ~~agency~~ agency's appointing authority, the secretary of administration, the director, or any of their respective designees;

(ii) ~~(B)~~ (B) persons in the supervisory chain of command;

(iii) ~~(C)~~ (C) the ~~agency~~ agency's legal counsel; or

(iv) ~~(D)~~ (D) the department of ~~administration~~ administration's legal counsel.

~~(B)~~ (2) Further access to these records shall not be authorized without the express consent of the director. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-3746 and 75-3707; effective, T-1-1-26-95, Jan. 26, 1995; effective May 30, 1995; amended June 20, 1997; amended Sept. 18, 1998; amended P-_____.)