

# **Kansas Administrative Regulations**

## **Department of Administration**

### **Article 6.—Recruiting and Staffing**

#### **1-6-33. Candidate alcohol and controlled substances test for commercial driver positions.**

(a) The provisions of 49 C.F.R., Part 382, as in effect on May 1, 1995, 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) Each candidate who has been given a conditional offer of employment for a commercial driver position shall be administered a controlled substances test.

(c) For purposes of this regulation, a "conditional offer of employment" means an offer of a commercial driver position that is contingent upon participating in the controlled substances testing program established under the federal omnibus transportation employee testing act of 1991, 49 U.S.C. Appx. § 2717.

(d) Each candidate who has been given a conditional offer of employment shall be informed of the provisions of subsections (c) and (g) of this regulation in writing and shall sign a statement agreeing to participate in the testing prior to administration of the tests. Failure to accept this condition shall make the conditional offer of employment null and void.

(e) The appointing authority shall advise each candidate required to submit to controlled substances testing 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 result; and
- (4) the reasonable efforts utilized by the state to maintain the confidentiality of results and any medical information that may be provided.

(f) 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.

(g) In the following instances, the conditional offer of employment shall be null and void, and the candidate shall be subject to disqualification from commercial driver positions in accordance with K.S.A. 75-2940 and K.A.R. 1-6-7 for a period of one year from the effective date of the disqualification action:

- (1) the candidate fails to participate in the required controlled substances test;
- (2) the candidate receives a confirmed positive controlled substances test result;
- (3) the candidate refuses to provide written authorization to obtain information from prior employers as required by 49 C.F.R., 382.413; or

- (4) the information obtained from a prior employer under 49 C.F.R., 382.413 indicates that, within the preceding two years, the following has occurred:

- (A) the candidate violated any of the provisions of 49 C.F.R., Part 382, Subpart B; and

- (B) the candidate failed to complete the requirements for returning to work under 49 C.F.R., 382.605, 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.

(h) In accordance with 49 C.F.R., 40.25(f)(10)(ii)(E), any candidate 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) Any candidate who intentionally tampers with a sample provided for controlled substances testing, violates chain-of-custody or identification procedures, or falsifies a test result shall have the conditional offer of employment withdrawn and shall be subject to disqualification for all positions in state service in accordance with K.S.A. 75-2940.

(j) If disqualification of a candidate is warranted under subsection (g) of this regulation, the appointing authority shall afford the candidate due process in accordance with K.S.A. 75-2940 and K.A.R. 1-6-7.

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

(2)(A) Each agency 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) the agency personnel officer, the agency appointing authority, the secretary of administration, the director, or any of their respective designees;

(ii) persons in the supervisory chain of command;

(iii) the agency legal counsel; or

(iv) the department of administration legal counsel.

(B) Further access to these records shall not be authorized without the express consent of the director.

(Authorized by K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 75-3746, K.S.A. 1996 Supp. 75-2940, and K.S.A. 75-3707; effective, T-1-1-26-95, Jan. 26, 1995; effective May 30, 1995; amended Dec. 17, 1995; amended June 20, 1997.)

\*\*\*\*\* Authenticated Kansas Administrative Regulation \*\*\*\*\*