

**FREQUENTLY ASKED QUESTIONS  
DRUG TESTING PROGRAM FOR LARGE PUBLIC WORKS PROJECTS**

<b>Question:</b>	Which State projects require that contractors have a Drug Testing program in place?
<b>Answer:</b>	Large Public Works (PW) projects as defined by Title 29, Chapter 69 of <u>Del Code</u> . Large Public Works projects are those projects which are required to be bid at a threshold level set by the Procurement Council; currently that level is those projects \$100,000 and over. Letter bids (not formally advertised) are not subject to testing.
<b>Question:</b>	Which Contractors are subject to testing?
<b>Answer:</b>	The Prime or General Contractor and all known, <i>listed</i> subcontractors.
<b>Question:</b>	What do I submit with my bid to certify compliance with the Regulation?
<b>Answer:</b>	An Affidavit Form is submitted with your bid for your firm certifying compliance or will have program in place prior to award. For those bids including a Prime Contractor and listed Subcontractors, only the Prime Contractor must submit an affidavit at the time of bid.
<b>Question:</b>	Do we have to use the Drug Affidavit and Reporting Forms that come with the bid forms?
<b>Answer:</b>	Use the Affidavit Form as contained in the Bid Documents.
<b>Question:</b>	Is there an expiration for the Drug Affidavit Forms? Can they be used on multiple projects? Do the forms have to be originals?
<b>Answer:</b>	The Drug Affidavit Forms do not expire unless they are no longer valid. They can be used on multiple projects and are not "project specific" but must be submitted with every bid. Original signatures and raised seal are NOT required; copies of the form are acceptable.
<b>Question:</b>	What do I submit prior to contract award?
<b>Answer:</b>	A copy of the Drug Testing program for your firm and from <i>listed</i> subcontractors that meets the requirements in the Regulation is submitted at least 2 days prior to award.
<b>Question:</b>	Which employees are tested?
<b>Answer:</b>	Based on amendments effective January 1, 2018, Prime and Subcontractors will be in compliance with the regulations as follows: <ul style="list-style-type: none"> <li>• Employers may comply by deeming all employees that will be working on the public works jobsite as being subject to testing. Home office employees and other workers not located on the jobsite and not under control of the contractor are not subject to testing. -OR-</li> <li>• Employers who have in place a company-wide testing program which includes an incidence of testing that meets or exceeds the requirements in this regulation. -OR-</li> <li>• Employers that participate in a Consortium provided that the incidence of testing of the Consortium's pool meets or exceeds the requirements in this regulation.</li> </ul>

<b>Question:</b>	When are employees tested?
<b>Answer:</b>	Employees commencing work on a jobsite must be tested with the exception that an employee that has passed a random or scheduled drug test within the past 180 days from the date of commencing work or an employee who passed a pre-employment drug test administered pursuant to a Contractor's or Subcontractor's Program and is subject to testing as part of a Contractor's or Subcontractor's ongoing Program or as part of a Consortium shall be permitted to work at the jobsite without further testing.
<b>Question:</b>	How is the 30 days in Section 7.1.1.3 calculated?
<b>Answer:</b>	The 30 days refers to a consecutive number of calendar days, including weekend days.
<b>Question:</b>	Does the 180 day prior test in Section 5.1 necessarily include alcohol testing?
<b>Answer:</b>	No.
<b>Question:</b>	How many employees are tested randomly?
<b>Answer:</b>	At least 5% of the Contractor's workforce, not less than one, are randomly tested during the contract period. If in a Consortium, at least 5% of the Consortium's pool must be randomly tested.
<b>Question:</b>	What is considered a "scientific valid method of randomly generating an Employee identifier" for the random testing requirement as noted in 5.2.2?
<b>Answer:</b>	Any method, mechanical (pulling names from a hat) or electronic (random number generator) that provides an unbiased and equal chance of selection to all employees in the pool to be tested.
<b>Question:</b>	If a contractor/subcontractor tests all their employees randomly are they covered if the person tested that period isn't in the "pool"?
<b>Answer:</b>	Yes.
<b>Question:</b>	Because manpower ramps up and down on a construction site and sometimes very quickly, at what point in the month do you make the determination of how many employees are on site for the pool to determine what constitutes 5%?
<b>Answer:</b>	For those using the jobsite methodology, the measurement of the number of employees is addressed in 5.2.3 as follows: "No less than 5% of a Contractor's or Subcontractor's anticipated workforce based on construction schedules validated by certified payrolls shall be randomly selected each month for testing". The key word is "anticipated"; the random number pull for a particular month would be based on how many employees you anticipate to be on the job during that month.
<b>Question:</b>	What if there is only one person working for a sub on a project? Since at least 5%, not less than one, need to be tested, are they tested every month/quarter?
<b>Answer:</b>	Yes, unless the subcontractor has a program in place to randomly test at least 5% of <u>all</u> of their employees monthly or participates in a Consortium. Please refer to Section 5.2.3.

<b>Question:</b>	If a subcontractor hires another firm to do portions of their work but they aren't employees (i.e. a "sub of a sub"), do they need to drug test those employees or require the firm to have a program in place?
<b>Answer:</b>	There is nothing in the regulation that requires "subs of subs" to have a testing program in place.
<b>Question:</b>	Are temp agencies or temp employees required to be tested?
<b>Answer:</b>	If they are a listed subcontractor, yes. If they are a "sub of a sub", no.
<b>Question:</b>	We are an Architectural/Engineering sub-consultant firm currently providing services to (State agency). Does this new regulation concerning drug testing apply to A/E contracts, or is it just for general contractors and for bid public works contracts?
<b>Answer:</b>	Reference the definition of "subcontractor" as reflected in the regulation 2.1: " <b>Subcontractor</b> " means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for, or supply services to a Contractor as defined in section 2.1." As you are providing services to (state agency) directly and not to the Contractor you would not be included in this definition.
<b>Question:</b>	For the 5% random requirement, what happens at 11 employees?
<b>Answer:</b>	Because Section 5.2.3 currently states that "no less than 5%..." per month must be tested, if a contractor or a subcontractor has 11 employees on the jobsite, they must randomly test one per month unless the contractor or subcontractor has a program in place to randomly drug test at least 5% of their employees monthly or participates in a Consortium.
<b>Question:</b>	If there are 10 employees working 4 job sites and each are required to have programs under this regulation, do 4 of the 10 (5% per jobsite) have to be tested each month?
<b>Answer:</b>	No, 5% of the total need to be tested unless the Contractor or Subcontractor has a program in place to randomly drug test at least 5% of their employees monthly or participates in a Consortium.
<b>Question:</b>	If a company or firm has several State Large Public Works jobs going at the same time and uses the jobsite methodology, may they put all employees from each job into one random testing pool?
<b>Answer:</b>	Yes, as long as the program meets all other requirements of the Regulation.
<b>Question:</b>	If office or administrative staff goes to a jobsite for just a site visit or meeting, will they be required to be tested since they are not doing any work onsite?
<b>Answer:</b>	No, the Regulation only covers workers performing work at the jobsite. Note that covered employees DOES also include supervisors/foremen working on the jobsite and delivery personnel delivering materials and equipment to and from the jobsite.

<b>Question:</b>	What are the reporting requirements during the contract?
<b>Answer:</b>	No random testing is reported. Any Positive Test Results are reported to the Owner within 24 hours (name is included in a sealed envelope). However, during the term of the contract, Contractors and Subcontractors on the jobsite for more than 30 days shall maintain testing data that includes but is not limited to the following data elements: <ul style="list-style-type: none"> <li>• The number of Employees who worked on the jobsite during the previous month or quarter.</li> <li>• The number of Employees subjected to random testing during the previous month or quarter.</li> <li>• The number of negative results and the number of positive results.</li> <li>• Action taken by the Contractor or Subcontractor or an Employee who failed or tested positive to a random test.</li> </ul>
<b>Question:</b>	Is Alcohol screening a requirement for the Initial Drug Test (within 180 days in advance of employee at the jobsite)?
<b>Answer:</b>	No.
<b>Question:</b>	Does alcohol testing have to be urine alcohol?
<b>Answer:</b>	The Regulation does not specify the specific methodology for urine testing.
<b>Question:</b>	What are the consequences of a Positive Result?
<b>Answer:</b>	Employee is immediately suspended from the jobsite. Not eligible on any State PW jobsite until 30 days after a subsequent negative test result. Also subject to one year of unscheduled random testing. More than one positive within a 3 year period results in a permanent ban for the employee from State of Delaware PW jobsites.
<b>Question:</b>	What is the definition of “significant damage” in Section 5.5?
<b>Answer:</b>	As of the current version, it is not defined in the regulation. Generally it is an amount of damage that has a large monetary effect or delays the project schedule.
<b>Question:</b>	What constitutes an injury requiring drug testing as required in 5.5?
<b>Answer:</b>	Any injury requiring medical care beyond first aid.

Updated 3/1/18