
**Building Trades National
Drug and Alcohol Testing Program -
New Nuclear Construction**

Effective January 1, 2011

BUILDING TRADES NATIONAL DRUG AND ALCOHOL TESTING PROGRAM - NEW NUCLEAR CONSTRUCTION

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Section 1. INTRODUCTION

The Building Trades National Drug and Alcohol Testing Program (BTNDAP) has developed this Building Trades National Drug and Alcohol Testing Program – New Nuclear Construction, herein referred to as the BTNDAP-NNC, specifically for use as part of fitness for duty programs for nuclear power plant construction sites. The BTNDAP-NNC incorporates the requirements of and is fully compliant with NEI 06-06 [Revision 5], *Fitness for Duty Program Guidance for New Nuclear Power Plant Construction Sites* and 10 CFR Part 26, Subpart K. The BTNDAP-NNC establishes a single minimum testing standard for testing for drugs and alcohol for employees assigned to work on new nuclear power plant construction sites. The BTNDAP-NNC applies to all bargaining unit employees and potential employees of contractors and subcontractors in the construction site workforce at all tiers. It can also include non-bargaining unit employees working on the site with the concurrence of the Licensee/Contractors. Bargaining unit employees are entitled to union representation at all stages of the BTNDAP-NNC.

Employee training on the hazards of drug use is an important part of a successful drug-free workplace program. Equally important is assuring that employees' dignity and privacy will be respected in reaching the goal of a drug-free and alcohol-free workplace. Therefore, the BTNDAP-NNC includes policies and procedures for: (1) employee education; (2) supervisory training; (3) employee assistance; and (4) identification of illegal/controlled drug and alcohol use through drug testing on a carefully controlled and monitored basis.

Section 2. DEFINITIONS

ACCIDENT

"Accident" shall include any of the following involving human error:

- Work-related injury/illness – an injury or illness resulting in an OSHA Recordable Incident, which is a significant illness or personal injury to the individual to be tested or another individual, which within 4 hours after the event is recordable under the Department of Labor standards in 29 CFR 1904.7.
- Work-related motor vehicle accident – A significant on-site accident that occurs while an individual is in a vehicle performing construction site entity business, as defined in the construction entity's procedures.
- Significant property damage – Damage, during construction, to any safety- or security-related SSC in excess of \$100,000. (For incidents where damage to any safety- or security-related SSC is valued at less than \$100,000 or is undetermined, the individual's behavior will be considered in determining whether drug and alcohol testing is necessary.)
- Radiation exposure or release of radiation – For any event resulting in a radiation exposure or release of radiation in excess of regulatory limits.

- An accident (related to employment) resulting in property (other than any safety- or security-related SSC) or vehicular damage of \$1,000.00 or more.

ALCOHOL SCREENING DEVICE (ASD)

A breath or saliva device, other than an evidential breath testing device (EBT), approved by the National Highway Traffic Safety Administration (NHTSA) and placed on its Conforming Products List (CPL) for such devices.

ALCOHOL CONFIRMATION TEST

A test conducted by a Breath Alcohol Technician using an evidential breath testing device (EBT) listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) to measure the amount of alcohol concentration in a volume of breath. Only those devices listed on the CPL for EBTs without an asterisk (*) may be used for confirmatory alcohol testing under the BTNDAP-NNC.

ALCOHOL SCREENING TEST

A test conducted by a Breath Alcohol Technician (BAT) or a Screening Test Technician (STT) using an alcohol screening device, other than an EBT, listed on the NHTSA's CPL.

BREATH ALCOHOL TECHNICIAN (BAT)

A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

BTNDAP

The Building Trades National Drug and Alcohol Testing Program and Policy.

CHAIN OF CUSTODY (COC)

The COC is a document that tracks the handling of specimens from the time the donor provides the specimen to the collector until the final disposition of the specimen and its aliquots, providing proof that the integrity and identification of the sample have not been violated.

CONFIRMATION TESTING

– For alcohol testing, a second test following a screening test with a result of 0.01 or greater. Confirmation of the screening test must be by use of an evidential breath testing device (EBT) listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) without an asterisk, and must be capable of printing out each test result, must successfully test an air blank, and must sequentially number each test.

– For drug testing, a second test, independent of the screening test, to identify the presence of a specific drug metabolite(s) and which uses the Gas Chromatography/Mass Spectrometry (GC/MS) method for testing.

CONFORMING PRODUCTS LIST (CPL)

The National Highway Traffic Safety Administration’s list of evidential breath testing devices (EBT) and alcohol screening devices (ASD) for use in alcohol testing.

CONSTRUCTION SITE

See definition of New Nuclear Power Plant Construction Site below.

CONSTRUCTION SITE ENTITY

Nuclear Regulatory Commission (NRC) licensees; contractors/vendors; applicants for or holders of a Combined License, Construction Permit, or Limited Work Authorization; or other entities authorized by the NRC to work on a nuclear power plant construction site.

CONSTRUCTION SITE WORKFORCE

All those personnel performing construction or directing the construction of safety or security-related SSCs.

CONTROLLED SUBSTANCES

Any drug that is included in Schedules I to V of the Controlled Substances Act, 21 U.S.C. 812.

CONVICTION

A finding of guilt (including a plea of nolo contendere), or imposition of sentence, or both, by any judicial body charged with responsibility to determine violations of federal or state criminal drug and/or alcohol statutes.

COVERED PROJECT

A project to which the BTNDAP-NNC applies.

CRIMINAL DRUG STATUTE

A federal or non-federal, criminal statute involving the manufacture, distribution, dispensing, possession, or use of any illegal drug as defined in 10 CFR Part 26 and herein.

CURRENT

Employees with “current” status have submitted to testing, have tested negative or have tested positive and a Medical Review Officer (MRO) has determined that there is a legitimate medical explanation for the positive test result and has reported the result as negative.

DATABASE ADMINISTRATOR

The entity that maintains the national database, which indicates whether employees are “current” or “not current” under the BTNDAP and the BTNDAP-NNC.

DRUG TESTING

A method for determining the presence of drugs in a urine sample using a scientifically reliable method performed in accordance with procedures specified herein.

DRUGS

The drugs and substances set forth in the BTNDAP-NNC.

EVIDENTIAL BREATH TESTING DEVICE (EBT)

A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices."

EXECUTIVE DIRECTOR

The Executive Director of the BTNDAP and the BTNDAP-NNC.

ILLEGAL DRUG

Any drug that is included in Schedules I to V of the Controlled Substances Act, 21 U.S.C. 812, but not when used pursuant to a valid prescription and used as otherwise authorized by federal law.

MEDICAL REVIEW OFFICER (MRO)

A licensed physician who is responsible for receiving and reviewing drug test results and determining if there are legitimate medical explanations for positive test results, such that the test result should be deemed negative.

NATIONAL DATABASE

A database maintained by the Database Administrator of all individuals tested pursuant to the BTNDAP and the BTNDAP-NNC and individuals tested under other drug and alcohol testing programs that have been granted reciprocal status.

NEW NUCLEAR POWER PLANT CONSTRUCTION SITE

The defined physical location within or near the footprint of the new power reactor where safety- and security-related SSCs will be installed and operated when the plant begins operation. Nearby areas include, but are not limited to, areas used to fabricate, erect, integrate, and test any safety- or security-related SSCs or materials used to fabricate, erect, integrate, and test any safety- or security-related SSCs (e.g. producing concrete to be used for the foundation of the reactor building in a facility).

NHTSA

National Highway Traffic Safety Administration.

NOT CURRENT

Employees who are not in compliance with the BTNDAP or the BTNDAP-NNC due to missing a scheduled test, or producing a diluted test result, an adulterated test result and/or a positive test result without a legitimate medical explanation, annual test expiration, or for any other violation of the BTNDAP or the BTNDAP-NNC. Employees

with a “not current” status may not work on projects that require compliance with the BTNDAP or the BTNDAP-NNC.

NOTICE, ACKNOWLEDGEMENT AND CONSENT FORM

A notice that there is a substance abuse policy and the consequences of a positive test result or refusal to be tested and a consent form employees must sign acknowledging that they understand the substance abuse policy and consent to be tested under it.

QUALIFIED PROFESSIONAL

A licensed physician (Doctor of Medicine or Osteopathy), licensed or certified social worker, licensed or certified psychologist, licensed or certified employee assistance professional, alcohol and drug counselor certified by the NAADAC Certification Commission (NCC) or the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC), labor assistance professional (LAP), or substance abuse professional (SAP) who: (1) is knowledgeable about and has clinical experience in the diagnosis and treatment of alcohol and drug related disorders; (2) is knowledgeable about the effect of alcohol and drug related disorders as they relate to employer interests in safety-sensitive duties; and (3) is knowledgeable about the rules that govern the particular workplace of the employer for whom the employee has applied for work, works or worked.

RECIPROCAL STATUS

Status granted by the BTNDAP and the BTNDAP-NNC to a regional or national drug and alcohol testing program that meets the minimum standards set forth in Section 16 of the BTNDAP-NNC. A program that has been granted reciprocal status will exchange testing data with the BTNDAP and the BTNDAP-NNC to keep both databases current.

REFUSAL TO TEST

An employee or potential employee has refused to take a drug or alcohol test if he/she:

- a. Fails to appear for any test within a reasonable time without a valid reason after being directed to do so by the employer, the MRO, or another authorized individual.
- b. Fails to remain at the testing site until the testing process is complete;
- c. Fails to provide a specimen for any drug or alcohol test;
- d. In the case of a directly observed or monitored collection of a drug test specimen, fails to permit the observation or monitoring;
- e. Fails without adequate medical justification to provide a sufficient amount of urine, breath, or saliva when directed;
- f. Fails or declines to take an additional drug test the MRO has directed;

- g. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process;
- h. Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process); or
- i. Fails to sign a Notice, Acknowledgement and Consent Form acknowledging the BTNDAP-NNC and consenting to testing thereunder.

SAFETY-RELATED STRUCTURES, SYSTEMS AND COMPONENTS (SSCs)

Those structures, systems, and components that are relied on to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in 10 CFR 50.34(a)(1).

SCREENING TEST TECHNICIAN (STT)

A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device (ASD).

SECURITY-RELATED STRUCTURES, SYSTEMS AND COMPONENTS (SSCs)

Those structures, systems, and components that the licensee will rely on to implement the licensee's physical security and safeguards contingency plans that either are required under 10 CFR Part 73 if the licensee is a construction permit applicant or holder or an early site permit holder, as described in 10 CFR 26.3(c)(3) through (c)(5), respectively, or are included in the licensee's application if the licensee is a combined license applicant or holder, as described in 10 CFR 26.3(c)(1) and (c)(2), respectively.

Section 3. RECORDKEEPING, COMMITMENT TO CONFIDENTIALITY, AND REPORTING

- a. *Recordkeeping.* Contractors shall maintain records that, at a minimum, include a list of the random pool (including all updates), a list of individuals selected for random testing for each day of testing, including those individuals selected but not tested, and the reason individuals were not tested.
- b. *Confidentiality.* Protecting employee confidentiality is a primary concern of labor, owners, and contractors. Towards that end, designated MROs will be the sole individuals who have access to employee medical records. MROs shall be licensed physicians with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results and an employee's medical history and any other relevant biomedical information. Where applicable, MROs shall follow the procedures set forth in 10 CFR Part 26.

1. Contractors will designate a specific representative who will be the only individual to receive information on behalf of the contractor from the MRO, and an alternate representative to receive such information in the primary representative's absence.
2. The following procedures and guidelines regarding confidentiality will be strictly observed:
 - (a). For information stored or transmitted in electronic format, access to personal information will be controlled by password protection.
 - (b). Hard copy records will be maintained in secured storage or lockable file cabinets when not in review.
 - (c). Except as otherwise provided herein, individual test results and medical information shall not be disclosed to third parties without the employee's specific written consent. A "third party" is any person or organization not specifically authorized by the BTNDAP-NNC to receive such information.
 - (d). Information pertaining to an employee's drug or alcohol test may be disclosed without the employee's consent in certain legal proceedings.
 - (1). These proceedings include a lawsuit (e.g., a wrongful discharge lawsuit), grievance (e.g., a grievance/arbitration proceeding concerning disciplinary action), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and concerning a positive drug or alcohol test (including, but not limited to, allegedly adulterated or substituted test results) or a refusal to test.
 - (2). These proceedings also include a criminal or civil action resulting from an employee's performance of job duties, in which a court or other entity of competent jurisdiction determines that the drug or alcohol test information is relevant to the proceedings and issues an order directing production of the information.
 - (3). In such a proceeding, the information may be released to the decision maker in the proceeding (e.g., the court in a lawsuit), with a request that the decision maker to whom it is released will make it available only to the parties to the proceeding.

- (e). Absent the employee's written consent or a court order, the MRO, the Executive Director, a Nuclear Regulatory Commission (NRC) licensee's or other entity's representatives who have a need for access to the information to perform their assigned duties under a fitness for duty program, NRC representatives, law enforcement officials under court order, the employee's representative, persons deciding matters on review or appeal, persons who have the authority to change data in electronic records, or other persons pursuant to court order will be the only individuals who have detailed information concerning employee test results.
 - (f). Except as otherwise provided herein, the MRO and the Executive Director may disclose only whether an employee is "current" or "not current" under the BTNDAP-NNC.
- c. *Reporting and Audits.* The following reports will be made under the BTNDAP-NNC:
- 1. Reports to the NRC Operations Center by telephone within 24 hours after discovery of any intentional act that casts doubt on the integrity of the BTNDAP-NNC and any programmatic failure, degradation, or discovered vulnerability of the BTNDAP-NNC.
 - 2. Annual program performance reports for the BTNDAP-NNC. Audits of the BTNDAP-NNC will be performed annually to assure the continuing effectiveness of the BTNDAP-NNC.

Section 4. EMPLOYER RESPONSIBILITIES

- a. Each employer working on a Covered Project must be registered to use the BTNDAP-NNC.
- b. The employer will initiate required initial drug and alcohol testing if the employee has not already been enrolled into the BTNDAP or the BTNDAP-NNC or is "not current" in the national database or is "current" in the national database but the drug and/or alcohol tests were administered more than 30 days prior to the start of his or her employment. Potential employees who are "current" in the national database, were tested 30 days or less prior to the start of their employment, but were tested only for drugs must submit only to initial alcohol testing.
- c. The employer will cooperate fully with directions from the MRO throughout the testing process regarding all testing, including but not limited to, initial (pre-employment), annual, for cause, post-accident, random, re-testing after a dilute test result, return-to-duty, and follow-up testing. The employer will immediately remove employees from work whose status changes from "current" to "not current." Failure of the employer to comply with the BTNDAP-NNC will be

grounds for relinquishing the employer's access to the national database and thus access to projects requiring the BTNDAP and/or the BTNDAP-NNC.

- d. Each employer will monitor its employees' performance by management personnel trained to possess sufficient awareness and sensitivity to detect degradation in performance that may be the result of being under the influence of any substance, legal or illegal, and physical or mental impairment that in any way may adversely affect employees' ability to safely and competently perform their duties. Training shall include the expectation of promptly reporting noticeable changes in behavior or fitness for duty concerns to designated personnel for appropriate evaluation and action in accordance with the BTNDAP-NNC.
- e. Each employer will provide training to its supervisors on substance abuse issues, including training to enable supervisors to identify and document behaviors that constitute a reasonable suspicion for testing. The training will also educate supervisors on how to address refusals to test and how to refer employees for testing or assistance.
- f. Each employer will maintain all records required herein (see Section 3a.) and by the NRC.

Section 5. EMPLOYEE RESPONSIBILITIES

a. Prohibited Behavior

Engaging in any of the following prohibited behaviors is strictly prohibited and will result in immediate loss of "current" status and termination from the Covered Project unless and until the employee regains "current" status by complying with the requirements of Section 14 of the BTNDAP-NNC.

- 1. Alcohol
 - (a). Using, selling, purchasing, transferring, dispensing, distributing, or possessing alcohol while on a Covered Project.
 - (b). Consuming alcohol onsite or within 5 hours of performing construction work involving safety-related or security-related SSCs. Abstinence from alcohol for 5 hours preceding scheduled work is considered the minimum necessary, but may not be sufficient to ensure you are fit for duty.
 - (c). Consuming alcohol within eight hours following an accident, as defined in Section 2 herein, and before undergoing a post-accident alcohol test.
- 2. Drugs

- (a). Using, selling, manufacturing, purchasing, transferring, dispensing, distributing, or possessing illegal drugs, except the purchasing, possession or use of controlled substances with a prescription valid under federal, state and local law from a licensed health care provider is permissible.
 - (b). Failing to notify the employer of any legal action, as defined in Section 2 herein, involving drugs and/or alcohol.
- b. Employees are required to notify their employers of any legal action involving drugs or alcohol. Legal action means a formal action taken by a law enforcement authority or court of law, including an arrest, an indictment, the filing of charges, a conviction, or the mandated implementation of a plan for substance abuse treatment in order to avoid a permanent record of an arrest or conviction, in response to any of the following activities: (1) The use, sale, or possession of illegal drugs; (2) The abuse of legal drugs or alcohol; or (3) the refusal to take a drug or alcohol test.
- c. Each employee shall report for testing as instructed. Failure to report within the specified time without a valid explanation will be considered a refusal to submit to the test, which shall be considered a positive result, and the employee will be classified as “not current”.
- d. Any employee taking any prescription medication(s) under a health care professional’s orders must comply with the drug manufacturer’s, the pharmacist’s, and the health care professional’s recommendations with respect to any possible adverse effect of the medication(s) on the ability to safely perform the employee’s job. Any employee taking prescription medication(s) who has received notice either from a health care professional or the health care professional’s agent, a drug manufacturer, or the entity that filled the prescription that the medication(s) could have an adverse effect on the ability to perform safely any functions that are necessary to the employee’s job must notify the employer prior to starting work.

Section 6. MEDICAL REVIEW OFFICER RESPONSIBILITIES

The MRO’s duties under the BTNDAP-NNC include, but are not limited to:

- a. Promptly evaluating drug laboratory reports.
- b. Assessing the collection process through careful review of custody and control documents, and verifying appropriate documentation through a uniform and systematic set of procedures. The MRO assesses such critical information as name, signature, social security number/identification number, and specimen identification number. The MRO assesses whether the custody and control

documents have proper collection site signatures. In the event of suspicious or adulterated test results, the MRO assesses laboratory results for documentation of suspicious results or adulteration (abnormal pH, GC/MS interference, specific gravity and creatinine levels).

- c. Prompt reporting of negative tests to the employer.
- d. Reviewing positive test results to determine on a case-by-case basis whether there is a legitimate medical explanation for the presence of a drug or class of drugs. When a test result is due to the lawful use of prescription drug(s) that the MRO concludes may raise workplace safety concerns, the MRO shall report the test result as negative, but shall also advise the employer's designated representative that the employee is lawfully using prescription drug(s) that may raise workplace safety concerns.
- e. Determining whether errors occurred in the collection or testing process.
- f. Assessing the employee's medical history and current medical status by interviewing the employee by phone, face-to-face, or as required by employer policy. This shall include discussion with the employee of test results, focusing on specific medications, drugs, or drug-taking experiences. In a face-to-face interview, the MRO shall observe the employee for evidence of illegal drug use. Where required, a clinical examination should occur. Where necessary, the MRO shall contact the employee's physician, dentist, pharmacist, or other health care professional to verify that medications were recently administered, that a drug or drugs were prescribed for medical purposes, or to request patient-approved release of medical records. The MRO shall, on request, assist the employee in obtaining additional laboratory analysis by following the BTNDAP-NNC with respect to the original specimen or split specimens. If the employee denies inappropriate drug use, the MRO shall seek to verify the employee's denial, applying current medical knowledge and any evidence that the drug was medically prescribed or administered, or alternatively the MRO shall document that there was, in fact, inappropriate use.
- g. When the MRO concludes that there is a legitimate medical explanation for a positive test result, reporting the test result as negative, resulting in a "current" status in the national database.
- h. When the MRO concludes that the employee has an alcohol or drug abuse problem, recommending to the employee that he or she contact and seek treatment from an approved, Qualified Professional in the substance abuse field.
- i. Maintaining complete and detailed records in a secure and confidential manner.
- j. Acting as an intermediary in the transmission of drug and alcohol testing information, subject to applicable laws and regulations.

- k. Operating random testing programs for participating employers and assisting (i.e., through contracting with laboratories, collection sites and MRO services) employers with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).
- l. Assisting participating employers in ensuring that follow-up testing is conducted in accordance with the plan established by an approved, Qualified Professional in the substance abuse field.
- m. Receiving and maintaining all records concerning drug and alcohol testing programs, including positive, negative, refusal to test individual test results in a secure and confidential manner.
- n. Notifying the employer to contact the employee or potential employee and direct the employee or potential employee to contact the MRO. If after 24 hours of being notified to do so, the employee or potential employee does not contact the MRO, the MRO will verify the positive test result and will notify the authorized employer representative of the “not current” status by telephone, computer interface, fax, or in writing.
- o. Maintaining all information needed for operating the BTNDAP-NNC (e.g., COCs and associated documentation, names of employees in random pools, random selection lists, copies of notices to employers of selected employees).
- p. Notifying the employer and/or the Database Administrator of the MRO’s findings and whether the employee is “current” or “not current” in the BTNDAP-NNC.

Section 7. ELIGIBILITY FOR EMPLOYMENT

- a. Only individuals who are listed in the national database as “current” and otherwise meet and remain in compliance with the requirements of the BTNDAP-NNC may be employed for work on a Covered Project. However, in the case of Point of Collection testing, individuals who test negative and otherwise meet and remain in compliance with the requirements of the BTNDAP-NNC may be employed for work on a Covered Project. Only laboratory test results are entered into the national database as “current” or “not current”.
- b. The employer will insure that each applicant, upon request, reads and signs a Notice, Acknowledgement, and Consent Form. An applicant’s failure to do so constitutes refusal to submit to a test, and the individual will be considered to have tested positive, will be classified as “not current” and will not be eligible for employment.

Section 8. TYPES OF TESTING

A urine drug test and approved alcohol test shall be administered under the following circumstances:

- a. **Initial Drug and Alcohol Testing:** All potential employees at all levels of the employment hierarchy of the construction site workforce must test negative for drugs and alcohol before starting employment on the construction site. The drug and alcohol tests must be administered no more than 30 days before starting employment. Those potential employees who have previously been tested in the BTNDAP Program, are listed in the database as “current,” and have been tested for drugs within the last 30 days may go to work after passing an alcohol test.

- b. **Random Testing:** A minimum of fifty percent (50%) of the construction site workforce at each site shall be tested each year. The population of individuals subject to random testing includes all individuals in the construction site workforce. Individuals cannot construct or direct construction of safety- or security-related SSCs unless they are in the random testing pool for the time period they are actively constructing or directing the construction of safety- or security-related SSCs. A determination of the current construction site workforce must be made and random testing must be conducted on at least a weekly basis. Random testing will be conducted during all work periods, including weekends and holidays and at various times of the day and night throughout the year, so that the date and time of testing is unpredictable. Selection is statistically random and unannounced, and all individuals in the testing population have an equal probability of being selected and tested. If an employee is selected and is not at work on the day of testing, the employee will not be required to report for random testing at that time, but another employee will be randomly selected for testing. If the employee’s supervisor determines that the employee is performing safety- or security-related construction work in which relief is not reasonably possible or safe (i.e., the immediate disruption of such work would have a high likelihood of causing an unsafe or unsecure work environment), then the employee should report for testing immediately upon the next break or immediately after the employee’s shift, and in all cases, prior to leaving the construction site unless the collection facility is located off-site, in which case a reasonable amount of travel time will be granted. Employees shall be selected for random testing exclusively by the MRO through a random-number generating computer program to ensure complete impartiality and objectivity. The random selection pool shall include all employees on the site. Random testing for individuals concurrently authorized Unescorted Access to an operating power reactor is adequate to maintain access to a nuclear power plant construction site without being subject to additional random testing under the BTNDAP-NNC. Random testing shall test for alcohol and the drugs set forth in Section 9. Once selected for and directed to report for random testing, the employee must report to the collection location within the time specified. If the employee fails to report to the collection location within the time specified, the employer’s representative will be notified, and the employee will be prohibited from being assigned to work on a new nuclear power plant construction site until it is determined if there was a

valid reason for not reporting for testing or until the employee meets the requirements of Section 14. If it is determined that the individual intentionally avoided random testing or that the employee's condition or behavior poses a potential risk to public health and safety or the common defense and security, the individual's access to the construction site will be terminated. Individuals selected for random testing will immediately be available to be selected the next time the random list is generated.

- c. **Annual Testing:** All employees will be tested for drugs and alcohol at a minimum of once every twelve months to maintain their status as "current" under the BTNDAP-NNC. An initial test, random test, for cause test, post accident test, return-to-duty test, or follow-up test will be counted in determining whether an employee has been tested within the previous twelve months. Employees who have not been tested within the previous twelve months will submit to a test when directed to do so.
- d. **Testing for Cause:** All employees will be tested for cause for drugs and alcohol when a reasonable suspicion exists, as provided in Section 11 of the BTNDAP-NNC.
- e. **Post-Accident Testing:** An employee involved in an Accident, as defined in Section 2 herein, must submit to post-accident testing for the use of drugs and alcohol as set forth in Section 12 of the BTNDAP-NNC.
- f. **Return-to-Duty Testing:** After a confirmed positive test for drugs or alcohol, employees or potential employees will not be eligible for employment until they, inter alia, pass a return-to-duty test as provided in Section 14 of the BTNDAP-NNC. The return-to-duty test need only be for the substance for which the employee tested positive, but a return-to-duty test will be performed for both drugs and alcohol if there is reasonable suspicion of other drug or alcohol misuse at the time of the return-to-duty testing or if recommended by the MRO or Qualified Professional.
- g. **Follow-Up Testing:** After a confirmed positive test for drugs or alcohol, employees are subject to unannounced testing for drugs and alcohol as directed by and within the discretion of an approved, Qualified Professional in the substance abuse field. Such employees will be subject, at minimum, to six unannounced follow-up tests in the first 12 months following their return to duty.
 - 1. The Qualified Professional may require a greater number of follow-up tests during the first 12-month period of duty (e.g., one test a month during the 12-month period; two tests per month during the first 6-month period and one test per month during the final 6-month period).

2. The Qualified Professional can terminate the follow-up testing requirement at any time after the first year of testing, but may require follow-up tests during the 48 months of duty following this first 12-month period.

Section 9. ALCOHOL AND DRUG TESTING LEVELS

Testing shall be performed for the following substances at the levels indicated in Appendix A hereto:

Alcohol
Amphetamines
Barbiturates
Cocaine
Opiates
Phencyclidine
Propoxyphene (Darvon)
THC (Marijuana and Cannabinoids)
Methadone
6-Acetylmorphine
MDMA, MDA, MDEA

Section 10. PROCEDURES FOR DRUG / ALCOHOL TESTING

a. Drug Testing.

1. Specimen collection will be conducted in compliance with 10 CFR Part 26, Subpart E, set forth in the appendix hereto. In all cases in which the collection procedures of 10 CFR Part 26 Subpart E require direct observation, specimen collection shall be conducted under those direct observation requirements.
2. Specimen collection may occur on-site or at an off-site clinic provided no loss of wages results for employees already in the construction site workforce. Wages for employees already in the construction site workforce are the responsibility of the donor's employer. For reasonable suspicion and post-accident testing, if the testing is offsite, a contractor representative will accompany the individual to the off-site clinic.
3. Donors will, upon request, read and sign the certification statement on the Chain of Custody Form for Substance Abuse Testing (COC) and provide the collector with the donor's date of birth, printed name, social security number, and day and evening contact telephone numbers to be entered on the COC by the collector.
4. Urine specimens that have not been shipped to the HHS-certified laboratory within 24 hours of collection and any specimen that is

suspected of having been substituted, adulterated, or tampered with in any way must be maintained cooled to not more than 6°C (42.8°F) until they are shipped to the HHS-certified laboratory. Specimens must be shipped from the collection site to the HHS-certified laboratory as soon as reasonably practical but, except in unusual circumstances, the time between specimen shipment and receipt of the specimen at the laboratory should not exceed two business days.

5. All drug testing, other than Point of Collection testing, is performed by urinalysis by an HHS-certified laboratory, although initial drug tests may be conducted by an HHS-certified instrumented initial test facility. Confirmatory drug testing is performed using GC/MS (gas chromatography) techniques. Any initial test and the confirmatory test performed by an HHS-certified laboratory shall use a process that meets the requirements of the Food and Drug Administration (FDA). Any initial drug test performed must use an immunoassay that meets the requirements of the FDA for commercial distribution. Laboratory testing is the preferred method of testing under the BTNDAP-NNC, and only laboratory test results are entered into the national database. Urine specimens that yield positive, adulterated, substituted, or invalid initial validity or drug test results must be subject to confirmatory testing by the HHS-certified laboratory in accordance with 10 CFR 26.161, except for invalid specimens that cannot be tested. Those specimens that test negative on an initial test will not be subject to further testing unless they are suspected of having been substituted or of being invalid, adulterated, or diluted.

The laboratory that tests the primary urine specimen must retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year. Within the one-year period, the MRO, the employee, the Union, or the employer, may request in writing that the laboratory retain the specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). The laboratory must comply with such a request. In the absence of such a request, the specimen may be discarded at the end of the one-year period. If the split specimen has not been sent to another laboratory for testing, the laboratory must retain the split specimen for the same period of time that it must retain the primary specimen and under the same storage conditions.

6. *Testing the Split Specimen:* If any individual who has tested positive for any drug wishes to dispute the results of a GC/MS test, he/she may do so at his/her option by having a GC/MS test performed on the split specimen at an HHS-certified laboratory of his/her choice. The individual must exercise the option of a second GC/MS test within 72 hours of being notified of the positive test results. The request, made to the MRO, may

be oral, but must be followed by a written request. The MRO will have available a current list of HHS-certified laboratories. The written request must ask the MRO to have the split specimen sent to an HHS-certified laboratory for testing, include the name, address and phone number of the laboratory, and include a money order in the amount specified by the MRO. The specimen will be shipped directly from the BTNDAP-NNC drug testing laboratory to the laboratory of the employee's choice. The cost of this test will be borne by the employee. If the results of this test are negative, the employer will reinstate the employee with full payment for all lost wages and benefits and will reimburse him or her for the cost of the split specimen test.

- b. *Alcohol Testing.* Screening alcohol tests are performed using a breath measurement device or by testing saliva using acceptable alcohol screening devices (ASDs) that meet the requirements of the National Highway Traffic Safety Administration (NHTSA) standards and any applicable State statutes and are listed on the most recent version of the NHTSA's Conforming Products List (CPL). If the initial alcohol test is negative, no confirmatory test is required.

Confirmatory alcohol tests must be conducted using an evidential breath measurement device (EBT) listed in the NHTSA CPL for evidential devices that meet the requirements of 10 CFR 26.91(c) – only those devices listed without an asterisk (*) may be used for confirmatory alcohol testing. The EBT must be able to distinguish alcohol from acetone, to successfully test an air blank prior to each collection of breath, and to perform an external calibration. The EBT must also be:

1. Capable of being attached independently or by direct link to a separate printer, and printing the result of each breath test in triplicate (or three consecutive identical copies);
2. Capable of assigning a unique and sequential number to each test so that the number can be read by the Breath Alcohol Technician (BAT) and the employee before each test and be printed out on each copy of the result;
3. Capable of printing out the name of the manufacturer and the serial number of the device and the time of the test.

A confirmed positive test result for alcohol must be declared under any of the following conditions:

1. When the result of the confirmatory test for alcohol is 0.04 percent BAC or higher;
2. When the result of the confirmatory test for alcohol is 0.03 percent BAC or higher and the donor has been in a work status for at least 1 hour at the

time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.); or

3. When the result of the confirmatory test for alcohol is 0.02 percent BAC or higher and the donor has been in a work status for at least 2 hours at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.).

When the result of the confirmatory test for alcohol is equal to or greater than 0.01 percent BAC but less than 0.02 percent BAC and the donor has been in a work status for 3 hours or more at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.), the collector shall declare the test result as negative and inform the employer's representative. The employer shall prohibit the donor from performing any duties that require the individual to be subject to the BTNDAP-NNC and may not return the individual to such duties until the donor is determined fit to safely and competently perform his or her duties.

- c. *Refusal to Test.* Any employee who refuses to take a drug or alcohol test within the meaning of the BTNDAP-NNC (see Section 2, "Refusal to Test:" herein) will be considered to have tested positive and will be classified as "not current".
- d. An individual's "not current" status will be communicated to the contractor's designated representative by the MRO. The individual will be removed from the Covered Project immediately and paid for all hours worked. The individual will not be eligible for employment with any employer on Covered Projects until he or she has met the conditions set forth in Section 14.
- e. Upon request, the employer will provide a copy of the positive test result to the individual.

Section 11. PREREQUISITES FOR A DRUG / ALCOHOL TEST BASED ON REASONABLE SUSPICION; BEHAVIORAL OBSERVATION

- a. Employees working on a Covered Project must be reported and tested for drugs and/or alcohol if there is a reasonable suspicion that the employee is under the influence of alcohol or any of the other substances identified in Section 9. For the purpose of the BTNDAP-NNC, the term "reasonable suspicion" shall be defined as abnormal or unusual on-duty behavior or performance of an employee who:
 1. is observed on-duty by either his or her immediate supervisor, a higher ranking employee, or other managerial personnel of the contractor who has been trained to recognize the symptoms of drug abuse, mental or physical impairment or intoxication, which observation(s) shall be documented by the observer(s);

2. exhibits accepted symptom(s) of intoxication or impairment caused by drugs or alcohol or addiction to or dependence upon drugs or alcohol or if credible information is received that an individual is engaging in substance abuse; and
 3. exhibits conduct that may not reasonably be explained as resulting from other causes, such as fatigue, lack of sleep, a side effect of prescription or over-the-counter medications, illness, or reaction to inhalation of dust, noxious substances, or smoke.
- b. If there is a smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required.
- c. By way of example only, reasonable suspicion may be based upon any of the following:
1. Observable phenomena, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being impaired by, or under the influence of, a drug or alcohol.
 2. A report by a credible source of on-duty or off-duty drug or alcohol use sufficiently recent to impair performance.
 3. Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs or alcohol while on duty, while on the employer's premises, or while operating the employer's vehicle, machinery, or equipment.
- d. When an employee, supervisor, or other managerial personnel other than the job superintendent or designated manager has a reasonable suspicion to believe that an individual covered by the BTNDAP-NNC is using, consuming, or under the influence of an alcoholic beverage, drug, or a non-prescribed controlled substance (other than over-the-counter medication) while on duty, that person will notify the job superintendent or designated manager for the purpose of observation and confirmation of the reasonable suspicion.
- e. If the job superintendent or designated manager confirms that there is a reasonable suspicion that the individual is using, consuming, or under the influence of an alcoholic beverage, drug, or a non-prescribed controlled substance (other than over-the-counter medication) while on duty, the individual will be provided an opportunity to explain his or her behavior. If the individual is a member of a bargaining unit, he or she will first be advised of his/her right to have a Union steward or designee. If the individual requests a Union Steward or designee, the individual will be given an opportunity first to confer with the Union Steward or designee. The individual will then be offered an opportunity to

explain the cause of his or her condition, such as reaction to a prescribed drug, fatigue, lack of sleep, exposure to noxious substances, dust, or smoke, reaction to over-the-counter medication or illness.

- f. If after the individual's explanation, the job superintendent or designated manager still has a reasonable suspicion to believe that the individual is using, consuming and/or under the influence of an alcoholic beverage, drug, or a non-prescribed controlled substance while on duty, then, by a written order signed by the job superintendent or designated manager, the individual may be ordered to submit to a drug and/or alcohol test. Refusal to submit to testing after being ordered to do so will be treated as a positive test result and the individual will be categorized as "not current" and ineligible for employment by any contractor on a Covered Project.
- g. Reasonable suspicion drug testing will not be conducted without the written approval of the contractor's job superintendent or designated manager who has been trained in identifying conduct constituting reasonable suspicion for testing. A job superintendent or designated manager must document in writing who is to be tested and why the test was ordered, including the specific objective facts constituting reasonable suspicion, and the name of the source(s) of this information. One copy of this document shall be given to the employee before he/she is required to be tested, and one copy shall immediately be provided to the Union steward, if requested by the employee. After being given a copy of the document, the affected employee shall be allowed enough time to be able to read the entire document. Failure to follow any of these procedures shall result in the invalidation of the test results. The test results shall be destroyed, and no disciplinary action shall be taken against the employee.
- h. For other reasonable suspicions of impairment that do not create a reasonable suspicion of substance abuse, the individual will be referred to the MRO, and the individual may return to work only after the impairing or questionable conditions are resolved and the MRO has determined that the individual is fit to safely and competently perform his or her duties.
- i. If the project owner has an existing reasonable suspicion testing/behavioral observation policy that exceeds the standards set forth herein, that policy may be implemented by the project owner in place of this section of the BTNDAP-NNC.

Section 12. PREREQUISITES FOR POST-ACCIDENT TESTING

- a. *Post Accident:* As soon as practical after an accident, as defined in Section 2 herein, committed by an employee subject to the BTNDAP-NNC where human error may have caused or contributed to the accident, the employee(s) who committed the error(s) will be required to submit to post-accident testing for the use of drugs and/or alcohol. Individuals who were affected by the event but whose actions likely did not cause or contribute to the event will not be required

to submit to post-accident testing. The employee(s) to be tested must be escorted by an employer representative to the testing site. Post-accident alcohol testing should be administered within 2 hours of the accident, but in no instance shall it be administered more than 8 hours after the accident. Post-accident drug testing must be performed within 32 hours of the accident. An employee who is subject to post-accident testing shall not consume alcohol for 8 hours following the accident, or until tested.

- b. No test will be required if it reasonably appears that the accident was solely attributable to another individual's or individuals' actions, or circumstances beyond the control of the employee.
- c. Post-accident testing may be delayed only if necessary to seek urgent medical care. "Urgent medical care" could include, but is not limited to: head trauma, broken bones, internal organ problems, and burns or other wounds requiring a medical doctor, paramedic, or nursing care. An employee who is seriously injured and cannot provide a specimen at the time of the accident shall consent to a blood test or provide the MRO necessary authorization for obtaining hospital reports and other documents that would indicate whether there were drugs and/or alcohol in his or her system. If an employee refuses to comply with this provision, the MRO shall note such refusal and such refusal shall be treated as a positive result, and the employee will be classified as "not current".
- d. If the project owner has an existing post-accident testing policy that exceeds the standards set forth herein, that policy may be implemented by the project owner in place of this section.

Section 13. TAMPERING WITH A TEST / DILUTE TEST RESULTS

a. *Tampering with a Test.*

Any employee who attempts to introduce a substituted or adulterated specimen shall be classified as "not current" under the BTNDAP-NNC, as if the test were positive. The determination whether a specimen is dilute, substituted or adulterated shall be made by the laboratory / collector and reported to the MRO in accordance with procedures set forth at 10 CFR Part 26.

b. *Dilute Test Results.*

1. Positive Dilute Test Results: The MRO will treat a positive-dilute result as a positive test. The MRO must not direct the donor to take another test based on the fact that the specimen was dilute.
2. Negative Dilute Test Results: A drug test issued as negative-dilute will require a retest. The MRO will contact the contractor of the donor to report the invalid test result and provide written instructions to the donor,

including the instruction to limit fluid intake prior to the retest. The employer will be responsible for directing the donor to retest the following day. The donor's employer or the MRO will give the donor written instructions. The donor should refrain from consumption of fluids after 9:00 p.m. the night before recollection and limit fluid intake to a minimum the day of and up to the collection time. Any deviation from the requirement that the employee be retested the day after notification must be approved by the MRO. If a retest is not completed within the time allowed by the MRO, the donor's status will be "not current". A second consecutive dilute test will be considered a positive test result unless the MRO determines that a verified legitimate medical explanation caused the dilute test result. If the employer directs the donor to take another test and the donor declines to do so, the donor has refused to test for purposes of the BTNDAP-NNC and the donor's status will therefore be "not current".

Section 14. CONSEQUENCES OF A CONFIRMED POSITIVE DRUG OR ALCOHOL TEST

- a. If the test is confirmed positive, any potential employee will not be eligible for employment on a Covered Project. Any current employee will be removed from the Covered Project immediately and paid for all hours worked. The individual will not be eligible for employment unless and until the individual has met all applicable requirements set forth in this Section.
- b. Individuals whose tests are confirmed positive, and local union representatives, when allowed for by the applicable collective bargaining agreement, local union rules or apprenticeship policy and procedures, shall have the right to secure a copy of all data relating to the test procedures and results.
- c. Any current employee whose test is confirmed positive for drugs or alcohol must undergo a comprehensive assessment and clinical evaluation with an approved, Qualified Professional in the substance abuse field to determine what level of assistance the employee needs to resolve problems associated with alcohol or drug abuse. The employee must successfully complete any recommended course of education and/or treatment prior to returning to duty. Treatment recommendations may include, but are not limited to: in-patient treatment, partial in-patient treatment, outpatient treatment, education programs, and aftercare. Education recommendations may include, but are not limited to, bona fide drug and alcohol education courses, self-help groups, and community lectures. If recommended by the Qualified Professional, the employee must undergo a follow-up evaluation to determine if the individual has demonstrated successful compliance with treatment recommendations. The employee must then receive a return-to-duty release from the Qualified Professional following the period of suspension, submit a cashier's check or money order in the amount specified for return-to-duty testing, and submit to and pass a return-to-duty test

at the approved collection site. Thereafter, the employee must submit to and pass all required follow-up tests. The employee is responsible for the costs of the follow-up testing. The employee will then be eligible for employment on a Covered Project after the suspension periods set forth below.

- d. *First Violation of the BTNDAP-NNC:* An employee whose test is confirmed positive for the first time will be ineligible for employment on all Covered Projects for thirty (30) days from the date that he/she was notified by the MRO of the positive result. The employee may thereafter become eligible for employment on Covered Projects, contingent on a review by an approved, Qualified Professional in the substance abuse field, approval by the MRO, and a negative drug/alcohol test.
- e. *Second Violation of the BTNDAP-NNC:* An employee who has a second confirmed positive test will be ineligible for employment on all Covered Projects for ninety (90) days from the date that he/she was notified by the MRO of the second positive result. The employee may thereafter become eligible for employment on Covered Projects, contingent on a review by a Qualified Professional, approval by the MRO, and a negative drug/alcohol test.
- f. *Third Violation of the BTNDAP-NNC:* An employee who has a third confirmed positive test will be ineligible for employment on all Covered Projects for one year from the date that he/she was notified by the MRO of the third positive result. The employee may thereafter become eligible for employment on Covered Projects, contingent on a review by a Qualified Professional, approval by the MRO, and a negative drug/alcohol test.
- g. *Violations of the BTNDAP-NNC Greater than Three:* Each confirmed positive result greater than three will result in an additional one year ineligible period for each violation from the date that he/she was notified by the MRO of the latest positive result (e.g., a fourth positive test results in 2-year ineligible period, a fifth positive test results in 3-year ineligible period, etc.). The employee may thereafter become eligible for employment on Covered Projects, contingent on a review by a Qualified Professional, approval by the MRO, and a negative drug/alcohol test.
- h. The fees of the approved, Qualified Professional in the substance abuse field are the employee's responsibility.

Section 15. VOLUNTARY DISCLOSURE

Employees are encouraged to seek help for a drug or alcohol problem before it deteriorates into a disciplinary matter. If an employee voluntarily notifies supervision that he or she may have a substance abuse problem, the employer and/or union will assist in locating a suitable employee assistance program for treatment, and will

counsel the employee regarding medical benefits available under the employer and/or union health and welfare insurance program.

If treatment does not necessitate time away from work and an approved, Qualified Professional in the substance abuse field deems the employee capable of continuing to work without posing a danger to the employee or others, and/or the safety and security of the Covered Project, the employee will retain his/her employment status. If treatment necessitates time away from work, the employer shall, if the project or work permits, provide the employee with an unpaid leave of absence for purposes of participation in an agreed upon treatment program. An employee who successfully completes a rehabilitation program and provides a negative substance abuse test shall be reinstated, if the project is ongoing and work for which the employee is qualified is available.

Since the key to this provision's effectiveness is an employee's willingness to admit his or her problem, this provision is not available to an employee who requests protection under this provision after: (a) being asked to submit to a drug or alcohol test in accordance with the BTNDAP-NNC; or (b) having been found to have violated any of the provisions of the BTNDAP-NNC.

Section 16. RECIPROCITY

The goals of the BTNDAP-NNC will be met by recognizing similar efforts, either on a regional or national basis, that meet or exceed the minimum standards set forth herein. A regional or national program can obtain reciprocal status with a goal to exchange data with the national database when all of the following conditions are satisfied:

- a. The program is embodied in a written policy;
- b. Alcohol and the panel of drugs tested include those set forth herein;
- c. The cutoff values for each drug and alcohol meet or exceed the values set forth herein;
- d. Testing is at least as frequent as set forth herein;
- e. The program implements substantially similar procedural safeguards to ensure the integrity of the testing process, including the use of MROs;
- f. The program provides for applicant testing, annual testing, random testing, reasonable suspicion testing, post-accident testing, return-to-duty testing and follow-up testing;
- g. The program contains a bona fide dispute resolution process;
- h. The program uses a bona fide method of discipline that imposes similar consequences for failing a drug test;

- i. The program provides means and methods for employee rehabilitation through referral to a Qualified Professional in the substance abuse field;
- j. The program provides for reasonable suspicion training;
- k. The program incorporates all the requirements of NEI 06-06 [Revision 5] and 10 CFR Part 26, Subpart K.

Programs that have been granted reciprocal status will submit, on a daily basis, employee testing data to the national database. All regional and national programs with reciprocal status are responsible for administering their own programs but shall provide the BTNDAP and BTNDAP-NNC Executive Director with current copies of all governing policies and procedures.

Section 17. RESOLUTION OF DISPUTES

- a. The following procedure shall be used to resolve all disputes concerning the BTNDAP-NNC, with the exception of those disputes involving employees covered by a collective bargaining agreement that references the BTNDAP or the BTNDAP-NNC or a policy that has been granted reciprocal status. The parties to such a collective bargaining agreement should use the dispute resolution procedure contained in that collective bargaining agreement. However, the parties to such a collective bargaining agreement may, at their discretion, use the following procedure, or any portion thereof, in any particular dispute if so agreed by all parties to the dispute. If the employee is covered by a policy that has been granted reciprocal status, the employee should raise any disputes in accordance with the terms of that policy.
- b. When a dispute arises concerning the administration of the BTNDAP-NNC, it shall be the responsibility of the employee's Union and the employer to attempt to resolve the matter. If the employee is not covered by a collective bargaining agreement, the employee and the employer will attempt to resolve the matter. In either case, the parties may consult with the Executive Director of the BTNDAP and the BTNDAP-NNC in seeking to resolve the matter.
- c. Oversight Committee. If the parties are not able to resolve the matter as described in Section 17, subsection b., above, the parties will have 5 days to refer the problem to the Oversight Committee. The Oversight Committee will consist of equal numbers of Union and contractor representatives. The Oversight Committee shall be chaired by an individual elected by the full Oversight Committee who will serve as the tiebreaker in case a vote is necessary to reach decision. The Oversight Committee will convene a meeting within 10 days of receipt of a request from a Local Union, unrepresented employee, or Employer. The Oversight Committee will accept verbal and written statements, review testimony and exhibits, and will render a decision as to the merits of the

grievance within 5 days of the meeting. The Oversight Committee will attempt to reach consensus, and if unable to reach consensus, decision will be by majority vote. The Oversight Committee's decision will be final and binding.

Section 18. LICENSEE / OWNER REQUIREMENTS

Where a Licensee / Owner has more stringent drug and alcohol testing requirements than those set forth herein, the Licensee / Owner's requirements shall prevail.

Section 19. BTNDAP-NNC FORMS

The following forms, found at Appendix C, shall be used in administering the BTNDAP-NNC:

- a. Notice, Acknowledgement of and Consent to Building Trades National Drug and Alcohol Testing Program – New Nuclear Construction.
- b. Building Trades National Drug and Alcohol Testing Program – New Nuclear Construction Contractor Authorization for Specimen Collection.

Additional forms required for the administration of the BTNDAP-NNC are available at website <http://www.safesitesforhardhats.com>.

Section 20. GENERAL PRINCIPLES

- a. The BTNDAP-NNC shall apply to individuals whose employment is regulated by the Department of Transportation or is subject to a full operating plant Fitness for Duty program under NRC regulations only to the extent that the BTNDAP-NNC does not conflict with such regulation.
- b. No employee or employer may modify any BTNDAP-NNC forms or test result documents.
- c. Should any provision(s) of the BTNDAP-NNC be declared illegal by any court of competent jurisdiction, such provision(s) shall immediately become null and void, leaving the remainder of the BTNDAP-NNC in full force and effect and the parties shall, thereupon seek to negotiate substitute provision(s) that are in conformity with applicable law.

Appendix A –Testing Levels

Initial Test Cutoff Levels

Substance	Cutoff Level
Marijuana metabolites	50 ng/mL
Cocaine metabolites	150 ng/mL
Opiate metabolites	300 ng/mL ¹
Phencyclidine	25 ng/mL
Amphetamines	500 ng/mL
Alcohol ²	≥ 0.02% BAC
Barbiturates	300 ng/mL
Benzodiazepine	300 ng/mL
Methadone	300 ng/mL
Propoxyphene	300 ng/mL

¹ 25 ng/mL is immunoassay specific for free morphine; includes Extended Opiates.

² Applicable only to breath measurement devices and ASDs.

Confirmatory Test Cutoff Levels

Substance	Cutoff Level
Marijuana metabolites	15 ng/mL ³
Cocaine metabolites	100 ng/mL ⁴
Opiates: Morphine	300 ng/mL
Opiates: Codeine	300 ng/mL
Opiates: 6-acetylmorphine	10 ng/mL ⁵
Phencyclidine (PCP)	25 ng/mL
Amphetamines: Amphetamine	250 ng/mL
Amphetamines: Methamphetamine	250 ng/mL ⁶
Alcohol ⁷	≥ 0.01% BAC
Barbiturates	200 ng/mL
Benzodiazepine	300 ng/mL
Methadone	300 ng/mL
Propoxyphene	300 ng/mL

³ As Delta-9-tetrahydrocannabinol-9-carboxylic acid.

⁴ As Benzoyllecgonine.

⁵ Test for 6-AM when the confirmatory test shows a morphine concentration exceeding 2000 ng/mL.

⁶ Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/mL.

⁷ Applicable only to breath measurement devices.

Appendix B – Alcohol Testing Procedures

10 CFR Part 26, Subpart E—Collecting Specimens for Testing

Purpose and applicability.

This subpart contains requirements for collecting specimens for drug testing and conducting alcohol tests by or on behalf of the licensees and other entities in §26.3(a) through (d) for the categories of individuals specified in §26.4(a) through (d) and (g). At the discretion of a licensee or other entity in §26.3(c), specimen collections and alcohol tests must be conducted either under this subpart for the individuals specified in §26.4(e) and (f) or the licensee or other entity may rely on specimen collections and alcohol tests conducted under the requirements of 49 CFR Part 40 for the individuals specified in §26.4(e) and (f). The requirements of this subpart do not apply to specimen collections and alcohol tests that are conducted under the requirements of 49 CFR Part 40, as permitted in this paragraph and under §§26.4(j) and 26.31(b)(2) and Subpart K.

Specimens to be collected.

Except as permitted under §26.31(d)(5), licensees and other entities who are subject to this subpart shall—

(a) Collect either breath or oral fluids for initial tests for alcohol. Breath must be collected for confirmatory tests for alcohol; and

(b) Collect only urine specimens for both initial and confirmatory tests for drugs.

Collector qualifications and responsibilities.

(a) *Urine collector qualifications* . Urine collectors shall be knowledgeable of the requirements of this part and the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to urine collection procedures. Collectors shall receive qualification training that meets the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the custody-and-control form;

(2) Methods to address “problem” collections, including, but not limited to, collections involving “shy bladder” and attempts to tamper with a specimen;

(3) How to correct problems in collections; and

(4) The collector's responsibility for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(b) *Alcohol collector qualifications* . Alcohol collectors shall be knowledgeable of the requirements of this part and the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to alcohol collection procedures. Collectors shall receive qualification training meeting the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) The alcohol testing requirements of this part;

(2) Operation of the particular alcohol testing device(s) [i.e., the alcohol screening devices (ASDs) or EBTs] to be used, consistent with the most recent version of the manufacturers' instructions;

(3) Methods to address “problem” collections, including, but not limited to, collections involving “shy lung” and attempts to tamper with a specimen;

(4) How to correct problems in collections; and

(5) The collector's responsibility for maintaining the integrity of the specimen collection process, carefully ensuring the privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(c) *Alternative collectors* . A medical professional, technologist, or technician may serve as a collector without meeting the collector qualification requirements in paragraphs (a) or (b) of this section, as applicable, only if all of the following conditions are met:

(1) A collector who meets the requirements of paragraphs (a) or (b) of this section cannot reasonably be made available at the time the collection must occur;

(2) The individual is not employed by the licensee's or other entity's FFD program and his or her normal workplace is not at the licensee's or other entity's facility;

(3) The individual does not routinely provide FFD program services to the licensee or other entity;

(4) The individual is licensed or otherwise approved to practice in the jurisdiction in which the collection occurs; and

(5) The individual is provided with detailed, clearly-illustrated, written instructions for collecting specimens under this subpart and follows those instructions.

(d) *Personnel available to testify at proceedings* . The licensee or other entity shall ensure that qualified collection site personnel, when required, are available to testify in an administrative or disciplinary proceeding against an individual when that proceeding is based on positive drug or alcohol test results or adulterated or substituted test results from specimens collected by or under contract to the licensee or other entity.

(e) *Files* . Collection site personnel files must include each individual's resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluations and advancement; incident reports, if any; results of tests to establish employee competency for the position he or she holds, including, but not limited to, certification that collectors are proficient in administering alcohol tests consistent with the most recent manufacturer's instructions for the instruments and devices used; and appropriate data to support determinations of honesty and integrity conducted under §26.31(b).

Collection sites.

(a) Each FFD program must have one or more designated collection sites that have all necessary personnel, materials, equipment, facilities, and supervision to collect specimens for drug testing and to perform alcohol testing. Each collection site must provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a drug testing laboratory; the collection of oral fluids or breath specimens; and the security of alcohol testing devices and test results. A properly equipped mobile facility that meets the requirements of this section is an acceptable collection site.

(b) The collection site must provide for the donor's visual privacy while the donor and collector are viewing the results of an alcohol test, and for individual privacy while the donor is submitting a urine specimen, except if a directly observed urine specimen collection is required. Unauthorized personnel may not be present for the specimen collection.

(c) Contracts for collection site services must permit representatives of the NRC, licensee, or other entity to conduct unannounced inspections and audits and to obtain all information and documentation that is reasonably relevant to the inspections and audits.

(d) Licensees and other entities shall take the following measures to prevent unauthorized access to the collection site that could compromise the integrity of the collection process or the specimens.

(1) Unauthorized personnel may not be permitted in any part of the designated collection site where specimens are collected or stored;

(2) A designated collection site must be secure. If a collection site is dedicated solely to specimen collection, it must be secure at all times. Methods of assuring security may include, but are not limited to, physical measures to control access, such as locked doors, alarms, or visual monitoring of the collection site when it is not occupied; and

(3) If a collection site cannot be dedicated solely to collecting specimens, the portion of the facility that is used for specimen collection must be secured and, during the time period during which a specimen is being collected, a sign must be posted to indicate that access is permitted only for authorized personnel.

(e) The following steps must be taken to deter the dilution and adulteration of urine specimens at the collection site:

(1) Agents that color any source of standing water in the stall or room in which the donor will provide a specimen, including, but not limited to, the toilet bowl or tank, must be placed in the source of standing water, so that the reservoirs of water are neither yellow nor colorless;

(2) There must be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs, or the source of water must be rendered unusable; and

(3) Chemicals or products that could be used to contaminate or otherwise alter the specimen must be removed from the collection site or secured. The collector shall inspect the enclosure in which urination will occur before each collection to ensure that no materials are available that could be used to subvert the testing process.

(f) In the exceptional event that a designated collection site is inaccessible and there is an immediate requirement to collect a urine specimen, including, but not limited to, an event investigation, then the licensee or other entity may use a public rest room, onsite rest room, or hospital examining room according to the following procedures:

(1) The facility must be secured by visual inspection to ensure that no unauthorized persons are present, and that undetected access (e.g., through a rear door not in the view of the collector) is impossible. Security during the collection may be maintained by restricting access to collection materials and specimens. In the case of a public rest room, a sign must be posted or an individual assigned to ensure that no unauthorized personnel are present during the entire collection procedure to avoid embarrassment of the donor and distraction of the collector.

(2) If practical, a water coloring agent that meets the requirements of §26.87(e)(1) must be placed in the toilet bowl to be used by the donor and in any other accessible source of standing water, including, but not limited to, the toilet tank. The collector shall instruct the donor not to flush the toilet.

(3) A collector of the same gender as the donor shall accompany the donor into the area that will be used for specimen collection, but remain outside of the stall, if it is a multi-stalled rest room, or outside of the door to the room, if it is a single rest room, in which the donor will provide the specimen. If a collector of the same gender is not available, the collector shall select a same-gender person to accompany the donor. This person shall be instructed on the collection procedures specified in this subpart and his or her identity must be documented on the custody-and-control form.

(4) After the collector has possession of the specimen, the collector shall inspect the toilet bowl and area to ensure that there is no evidence of a subversion attempt and shall then flush the toilet. The collector shall instruct the donor to participate with the collector in completing the chain-of-custody procedures.

(5) If it is impractical to maintain continuous physical security of a collection site from the time a urine specimen is presented until the sealed container is transferred for shipment, the specimen must remain under the direct control of an individual who is authorized by the licensee or other entity until the specimen is prepared for transfer, storage, or shipping, as required by §26.117. The authorized individual shall be instructed on his or her responsibilities for maintaining custody and control of the specimen and his or her custody of the specimen must be documented on the custody-and-control form.

Preparing to collect specimens for testing.

(a) When an individual has been notified of a requirement for testing and does not appear at the collection site within the time period specified by FFD program procedures, the collector shall inform FFD program management that the individual has not reported for testing. FFD program management shall ensure that the necessary steps are taken to determine whether the individual's undue tardiness or failure to appear for testing constitutes a violation of the licensee's or other entity's FFD policy. If FFD program management determines that the undue tardiness or failure to report for testing represents an attempt to subvert the testing process, the licensee or other entity shall impose on the individual the sanctions in §26.75(b). If FFD program management determines that the undue tardiness or failure to report does not represent a subversion attempt, the licensee or other entity may not impose sanctions but shall ensure that the individual is tested at the earliest reasonable and practical opportunity after locating the individual.

(b) Donors shall provide acceptable identification before testing.

(1) Acceptable identification includes photo-identification issued by a licensee or other entity who is subject to this part, or by the Federal, State, or local government. Licensees and other entities may not accept faxes or photocopies of identification.

(2) If the donor cannot produce acceptable identification before any testing that is required under this part other than pre-access testing, the collector shall proceed with the test and immediately inform FFD program management that the donor did not present acceptable identification. When so informed, FFD program management shall contact the individual's supervisor to verify in-person the individual's identity, or, if the supervisor is not available, take other steps to establish the individual's identity and determine whether the lack of identification was an attempt to subvert the testing process. The donor may not leave the collection site except under supervision until his or her identity has been established.

(3) If the donor is scheduled for pre-access testing and cannot produce acceptable identification, the collector may not proceed with the collection, and shall inform FFD program management that the individual did not present acceptable identification. When so informed, FFD program management will take the necessary steps to determine whether the lack of identification was an attempt to subvert the testing process.

(4) The collector shall explain the testing procedure to the donor, show the donor the form(s) to be used, and ask the donor to sign a consent-to-testing form. The donor may not be required to list prescription medications or over-the-counter preparations that he or she has recently used.

(c) The collector shall inform the donor that, if the donor refuses to cooperate in the specimen collection process (including, but not limited to, behaving in a confrontational manner that disrupts the testing process; admitting to the collector that he or she adulterated, diluted, or adulterated the specimen; is found to have a device, such as a prosthetic appliance, the purpose of which is to interfere with providing an actual urine specimen; or leaving the collection site before all of the collection procedures are completed), it will be considered a refusal to test, and sanctions for subverting the testing process will be imposed under §26.75(b). If the donor refuses to cooperate in the collection procedures, the collector shall inform FFD program management to obtain guidance on the actions to be taken.

(d) In order to promote the security of specimens, avoid distraction of the collector, and ensure against any confusion in the identification of specimens, a collector shall conduct only one collection procedure at any given time. For this purpose, a urine collection procedure is complete when the urine specimen container has been sealed and initialed, the chain-of-custody form has been executed, and the donor has departed the collection site.

Acceptable devices for conducting initial and confirmatory tests for alcohol and methods of use.

(a) *Acceptable alcohol screening devices*. Alcohol screening devices (ASDs), including devices that test specimens of oral fluids or breath, must be approved by the National Highway Traffic Safety Administration (NHTSA) and listed in the most current version of NHTSA's Conforming Products List (CPL) for such devices. An ASD that is listed in the NHTSA CPL may be used only for initial tests for alcohol, and may not be used for confirmatory tests.

(b) *Acceptable evidential breath testing devices* . Evidential breath testing devices listed in the NHTSA CPL for evidential devices that meet the requirements of paragraph (c) of this section must be used to conduct confirmatory alcohol tests, and may be used to conduct initial alcohol tests. Note that, among the devices listed in the CPL for EBTs, only those devices listed without an asterisk (*) may be used for confirmatory alcohol testing under this subpart.

(c) *EBT capabilities* . An EBT that is listed in the NHTSA CPL for evidential devices that has the following capabilities may be used for conducting initial alcohol tests and must be used for confirmatory alcohol tests under this subpart:

- (1) Provides a printed result of each breath test;
- (2) Assigns a unique number to each completed test, which the collector and donor can read before each test and which is printed on each copy of the test result;
- (3) Prints, on each copy of the test result, the manufacturer's name for the device, its serial number, and the time of the test;
- (4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
- (5) Tests an air blank; and
- (6) Permits performance of an external calibration check.

(d) *Quality assurance and quality control of ASDs*. (1) Licensees and other entities shall implement the most recent version of the quality assurance plan submitted to NHTSA for any ASD that is used for initial alcohol testing.

(2) Licensees and other entities may not use an ASD that fails the specified quality control checks or that has passed its expiration date.

(3) For ASDs that test breath specimens and meet EBT requirements for confirmatory testing, licensees and other entities shall also follow the device use and care requirements specified in paragraph (e) of this section.

(e) *Quality assurance and quality control of EBTs*. (1) Licensees and other entities shall implement the most recent version of the manufacturer's instructions for the use and care of the EBT consistently with the quality assurance plan submitted to NHTSA for the EBT, including performing external calibration checks no less frequently than at the intervals specified in the manufacturer's instructions.

(2) When conducting external calibration checks, licensees and other entities shall use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests."

(3) If an EBT fails an external check of calibration, the licensee or other entity shall take the EBT out of service. The EBT may not be used again for alcohol testing under this subpart until it is repaired and passes an external calibration check.

(4) In order to ensure that confirmed positive alcohol test results are derived from an EBT that is calibrated, the licensee or other entity shall implement one of the following procedures:

- (i) If an EBT fails any external check of calibration, cancel every confirmed positive test result that was obtained using the EBT from any tests that were conducted after the EBT passed the last external calibration check; or
- (ii) After every confirmed positive test result obtained from using an EBT, conduct an external check of calibration of the EBT in the presence of the donor. If the EBT fails the external calibration check, cancel the donor's test result and conduct another initial and confirmatory test on a different EBT as soon as practicable.

(5) Inspection, maintenance, and calibration of the EBT must be performed by its manufacturer or a maintenance representative or other individual who is certified either by the manufacturer or by a State health agency or other appropriate State agency.

Preparing for alcohol testing.

(a) Immediately before collecting a specimen for alcohol testing, the collector shall—

(1) Ask the donor whether he or she, in the past 15 minutes, has had anything to eat or drink, belched, or put anything into his or her mouth (including, but not limited to, a cigarette, breath mint, or chewing gum), and instruct the donor that he or she should avoid these activities during the collection process;

(2) If the donor states that he or she has not engaged in the activities listed in paragraph (a)(1) of this section, alcohol testing may proceed;

(3) If the donor states that he or she has engaged in any of the activities listed in paragraph (a)(1) of this section, inform the donor that a 15-minute waiting period is necessary to prevent an accumulation of mouth alcohol from leading to an artificially high reading;

(4) Explain that it is to the donor's benefit to avoid the activities listed in paragraph (a)(1) of this section during the collection process;

(5) Explain that the initial and confirmatory tests, if a confirmatory test is necessary, will be conducted at the end of the waiting period, even if the donor has not followed the instructions; and

(6) Document that the instructions were communicated to the donor.

(b) With the exception of the 15-minute waiting period, if necessary, the collector shall begin for-cause alcohol and/or drug testing as soon as reasonably practical after the decision is made that for-cause testing is required. When for-cause alcohol testing is required, alcohol testing may not be delayed by collecting a specimen for drug testing.

Conducting an initial test for alcohol using a breath specimen.

(a) The collector shall perform the initial breath test as soon as practical after the donor indicates that he or she has not engaged in the activities listed in §26.93(a)(1) or after the 15-minute waiting period has elapsed, if required.

(b) To perform the initial test, the collector shall—

(1) Select, or allow the donor to select, an individually wrapped or sealed mouthpiece from the testing materials;

(2) Open the individually wrapped or sealed mouthpiece in view of the donor and insert it into the device as required by the manufacturer's instructions;

(3) Instruct the donor to blow steadily and forcefully into the mouthpiece for at least 6 seconds or until the device indicates that an adequate amount of breath has been obtained;

(4) Show the donor the displayed or printed test result; and

(5) Ensure that the test result record can be associated with the donor and is maintained secure.

(c) Unless problems in administering the breath test require an additional collection, only one breath specimen may be collected for the initial test. If an additional collection(s) is required, the collector shall rely on the test result from the first successful collection to determine the need for confirmatory testing.

Conducting an initial test for alcohol using a specimen of oral fluids.

(a) To perform the initial test, the collector shall—

(1) Check the expiration date on the device and show it to the donor (the device may not be used after its expiration date);

(2) Open an individually wrapped or sealed package containing the device in the presence of the donor;

(3) Offer the donor the choice of using the device or having the collector use it. If the donor chooses to use it, instruct the donor to insert the device into his or her mouth and use it in the manner described by the device's manufacturer;

(4) If the donor chooses not to use the device, or in all cases when a new test is necessary because the device failed to activate, insert the device into the donor's mouth, and gather oral fluids in the manner described by the device's manufacturer (wear single-use examination or similar gloves while doing so and change them following each test); and

(5) When the device is removed from the donor's mouth, follow the manufacturer's instructions regarding necessary next steps to ensure that the device has activated.

(b) If the steps in paragraph (a) of this section could not be completed successfully (e.g., the device breaks, the device is dropped on the floor, the device fails to activate), the collector shall—

(1) Discard the device and conduct a new test using a new device. The new device must be one that has been under the collector's control before the test;

(2) Record the reason for the new test;

(3) Offer the donor the choice of using the device or having the collector use it unless the donor, in the opinion of the collector, was responsible for the new test needing to be conducted. If the collector concludes that the donor was responsible, then the collector shall use the device to conduct the test; and

(4) Repeat the procedures in paragraph (a) of this section.

(c) If the second collection attempt in paragraph (b) of this section could not be completed, the collector shall—

(1) End the collection of oral fluids and document the reason(s) that the collection could not be completed; and

(2) Immediately conduct another initial test using an EBT.

(d) The collector shall read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases, the collector shall read the result within 15 minutes of the test. The collector shall then show the device and its reading to the donor, record the result, and record that an ASD was used.

(e) Devices, swabs, gloves, and other materials used in collecting oral fluids may not be re-used.

Determining the need for a confirmatory test for alcohol.

(a) If the initial test result is less than 0.02 percent BAC, the collector shall declare the test result as negative.

(b) If the initial test result is 0.02 percent BAC or higher, the collector shall ensure that the time at which the test was concluded (i.e., the time at which the test result was known) is recorded and inform the donor that a confirmatory test for alcohol is required.

Conducting a confirmatory test for alcohol.

- (a) The confirmatory test must begin as soon as possible, but no more than 30 minutes after the conclusion of the initial test.
- (b) To complete the confirmatory test, the collector shall—
- (1) In the presence of the donor, conduct an air blank on the EBT before beginning the confirmatory test and show the result to the donor;
 - (2) Verify that the reading is 0.00. If the reading is 0.00, the test may proceed. If not, then conduct another air blank;
 - (3) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, take the EBT out of service and proceed with the test using another EBT. If an EBT is taken out of service for this reason, the EBT may not be used for further testing until it is found to be within tolerance limits on an external check of calibration;
 - (4) Open an individually wrapped or sealed mouthpiece in view of the donor and insert it into the device as required by the manufacturer's instructions;
 - (5) Read the unique test number displayed on the EBT, and ensure that the donor reads the same number;
 - (6) Instruct the donor to blow steadily and forcefully into the mouthpiece for at least 6 seconds or until the device indicates that an adequate amount of breath has been obtained; and
 - (7) Show the donor the result displayed on or printed by the EBT, record the result, and document the time at which the confirmatory test result was known.
- (c) Unless there are problems in administering the breath test that require an additional collection, the collector shall collect only one breath specimen for the confirmatory test. If an additional collection(s) is required because of problems in administering the breath test, the collector shall rely on the breath specimen from the first successful collection to determine the confirmatory test result. Collection procedures may not require collectors to calculate an average or otherwise combine results from two or more breath specimens to determine the confirmatory test result.
- (d) If an EBT that meets the requirements of §26.91(b) and (c) was used for the initial alcohol test, the same EBT may be used for confirmatory testing.

Determining a confirmed positive test result for alcohol.

- (a) A confirmed positive test result for alcohol must be declared under any of the following conditions:
- (1) When the result of the confirmatory test for alcohol is 0.04 percent BAC or higher;
 - (2) When the result of the confirmatory test for alcohol is 0.03 percent BAC or higher and the donor had been in a work status for at least 1 hour at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.); or
 - (3) When the result of the confirmatory test for alcohol is 0.02 percent BAC or higher and the donor had been in a work status for at least 2 hours at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.).
- (b) When the result of the confirmatory test for alcohol is equal to or greater than 0.01 percent BAC but less than 0.02 percent BAC and the donor has been in a work status for 3 hours or more at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.), the collector shall declare the test result as negative and inform FFD program management. The licensee or other entity shall prohibit the donor from performing

any duties that require the individual to be subject to this subpart and may not return the individual to performing such duties until a determination of fitness indicates that the donor is fit to safely and competently perform his or her duties.

Preparing for urine collection.

(a) The collector shall ask the donor to remove any unnecessary outer garments, such as a coat or jacket, which might conceal items or substances that the donor could use to tamper with or adulterate his or her urine specimen. The collector shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments outside of the room or stall in which the urine specimen is collected. The donor may retain his or her wallet.

(b) The collector shall also ask the donor to empty his or her pockets and display the items in them to enable the collector to identify items that the donor could use to adulterate or substitute his or her urine specimen. The donor shall permit the collector to make this observation. If the donor refuses to show the collector the items in his or her pockets, this is considered a refusal to test. If an item is found that appears to have been brought to the collection site with the intent to adulterate or substitute the specimen, the collector shall contact the MRO or FFD program manager to determine whether a directly observed collection is required. If the item appears to have been inadvertently brought to the collection site, the collector shall secure the item and continue with the normal collection procedure. If the collector identifies nothing that the donor could use to adulterate or substitute the specimen, the donor may place the items back into his or her pockets.

(c) The collector shall instruct the donor to wash and dry his or her hands before urinating.

(d) After washing his or her hands, the donor shall remain in the presence of the collector and may not have access to any water fountain, faucet, soap dispenser, cleaning agent, or other materials that he or she could use to adulterate the urine specimen.

(e) The collector may select, or allow the donor to select, an individually wrapped or sealed collection container from the collection kit materials. Either the collector or the donor, with both present, shall unwrap or break the seal of the collection container. With the exception of the collection container, the donor may not take anything from the collection kit into the room or stall used for urination.

Collecting a urine specimen.

(a) The collector shall direct the donor to go into the room or stall used for urination, provide a specimen of the quantity that has been predetermined by the licensee or other entity, as defined in §26.109(a), not flush the toilet, and return with the specimen as soon as the donor has completed the void.

(1) The donor shall provide his or her urine specimen in the privacy of a room, stall, or otherwise partitioned area (private area) that allows for individual privacy, except if a directly observed collection is required, as described in §26.115;

(2) Except in the case of a directly observed collection, no one may go with the donor into the room or stall in which the donor will provide his or her specimen; and

(3) The collector may set a reasonable time limit for voiding.

(b) The collector shall pay careful attention to the donor during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (e.g., substitute urine is in plain view or an attempt to bring an adulterant or urine substitute into the private area used for urination). If any such conduct is detected, the collector shall document the conduct on the custody-and-control form and contact FFD program management to determine whether a directly observed collection is required, as described in §26.115.

(c) After the donor has provided the urine specimen and submitted it to the collector, the donor shall be permitted to wash his or her hands. The collector shall inspect the toilet bowl and room or stall in which the donor voided to identify any evidence of a subversion attempt, and then flush the toilet.

Urine specimen quantity.

(a) Licensees and other entities who are subject to this subpart shall establish a predetermined quantity of urine that donors are requested to provide when submitting a specimen. At a minimum, the predetermined quantity must include 30 milliliters (mL) to ensure that a sufficient quantity of urine is available for initial and confirmatory validity and drug tests at an HHS-certified laboratory, and for retesting of an aliquot of the specimen if requested by the donor under §26.165(b). The licensee's or other entity's predetermined quantity may include more than 30 mL, if the testing program follows split specimen procedures, tests for additional drugs, or performs initial testing at a licensee testing facility. Where collected specimens are to be split under the provisions of this subpart, the predetermined quantity must include an additional 15 mL.

(b) If the quantity of urine in the first specimen provided by the donor is less than 30 mL, the collector shall take the following steps:

(1) The collector shall encourage the donor to drink a reasonable amount of liquid (normally, 8 ounces of water every 30 minutes, but not to exceed a maximum of 40 ounces over 3 hours) until the donor provides a specimen containing at least 30 mL. The collector shall provide the donor with a separate collection container for each successive specimen;

(2) Once the donor provides a specimen of at least 30 mL, the collection must end. If the specimen quantity is at least 30 mL but is less than the licensee's or other entity's predetermined quantity, the licensee or other entity may not require the donor to provide additional specimens and may not impose any sanctions on the donor. If the donor provides a specimen of 30 mL or more, but the specimen quantity is less than the predetermined quantity, the collector shall forward the specimen to the HHS-certified laboratory for testing. If the donor provides a specimen of at least the predetermined quantity, the specimen may be processed under the FFD program's usual testing procedures;

(3) If the donor has not provided a specimen of at least 30 mL within 3 hours of the first unsuccessful attempt to provide a specimen of the predetermined quantity, the collector shall discontinue the collection and notify the FFD program manager or MRO to initiate the "shy bladder" procedures in §26.119; and

(4) Neither the donor nor the collector may combine specimens. The collector shall discard specimens of less than 30 mL, except if there is reason to believe that the donor has diluted, adulterated, substituted, or otherwise tampered with the specimen, based on the collector's observations of the donor's behavior during the collection process or the specimen's characteristics, as specified in §26.111. If the collector has a reason to believe that a specimen that is 15 mL or more, but less than 30 mL, has been diluted, adulterated, substituted, or altered, the collector shall prepare the suspect specimen for shipping to the HHS-certified laboratory and contact FFD program management to determine whether a directly observed collection is required, as described in §26.115.

Checking the acceptability of the urine specimen.

(a) Immediately after the donor provides the urine specimen to the collector, including specimens of less than 30 mL but greater than 15 mL, the collector shall measure the temperature of the specimen. The temperature-measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement may not exceed 4 minutes. If the temperature of a urine specimen is outside the range of 90 °F to 100 °F (32 °C to 38 °C), that is a reason to believe the donor may have altered or substituted the specimen.

(b) Immediately after the donor provides a urine specimen, including specimens of less than 30 mL but equal to or greater than 15 mL, the collector shall also inspect the specimen to determine its color and clarity and look for any signs of contaminants or adulteration. The collector shall note any unusual findings on the custody-and-control form.

(c) If there is reason to believe that the donor may have attempted to dilute, substitute, or adulterate the specimen based on specimen temperature or other observations made during the collection, the collector shall contact the designated FFD program manager, who may consult with the MRO, to determine whether the donor has attempted to subvert the testing process or whether other circumstances may explain the observations. The FFD program manager or MRO may require the donor to provide a second specimen as soon as possible under direct observation.

In addition, the collector shall inform the donor that he or she may volunteer to submit a second specimen under direct observation to counter the reason to believe the donor may have altered or substituted the specimen.

(d) Any specimen of 15 mL or more that the collector suspects has been diluted, substituted, or adulterated, and any specimen of 15 mL or more that has been collected under direct observation under paragraph (c) of this section, must be sent directly to the HHS-certified laboratory for initial and, if required, confirmatory testing, and may not be subject to initial testing at a licensee testing facility.

(e) As much of the suspect specimen as possible must be preserved.

(f) An acceptable specimen is free of any apparent contaminants, meets the required basic quantity of at least 30 mL, and is within the acceptable temperature range.

Splitting the urine specimen.

(a) Licensees and other entities may, but are not required to, use split-specimen methods of collection.

(b) If the urine specimen is to be split into two specimen bottles, hereinafter referred to as Bottle A and Bottle B, the collector shall take the following steps:

(1) The collector shall instruct the donor to urinate into a specimen container;

(2) The collector, in the presence of the donor and after determining specimen temperature as described in §26.111(a), shall split the urine specimen. The collector shall pour 30 mL of urine into Bottle A and a minimum of 15 mL of urine into Bottle B. If the quantity of urine available for Bottle B is less than 15 mL, the collector shall pour the remaining urine into Bottle B and forward the specimens in Bottles A and B to the HHS-certified laboratory for drug and validity testing; and

(3) The collector shall ask the donor to observe the splitting of the urine specimen and to maintain visual contact with both specimen bottles until the custody-and-control form(s) for both specimens are completed, the specimens are sealed, and the specimens and form(s) are prepared for secure storage or shipping.

(c) Licensees and other entities may use aliquots of the specimen collected for validity screening and initial validity and drug testing at the licensee testing facility, as permitted under §26.31(d)(3)(ii), or to test for additional drugs, as permitted under §26.31(d)(1)(i)(A), but only if sufficient urine is available for this testing after the specimen has been split into Bottle A and Bottle B.

Collecting a urine specimen under direct observation.

(a) Procedures for collecting urine specimens must provide for the donor's privacy unless directed by this subpart or the MRO or FFD program manager determines that a directly observed collection is warranted. The following circumstances constitute the exclusive grounds for performing a directly observed collection:

(1) The donor has presented, at this or a previous collection, a urine specimen that the HHS-certified laboratory reported as being substituted, adulterated, or invalid to the MRO and the MRO reported to the licensee or other entity that there is no adequate medical explanation for the result;

(2) The donor has presented, at this collection, a urine specimen that falls outside the required temperature range;

(3) The collector observes conduct clearly and unequivocally indicating an attempt to dilute, substitute, or adulterate the specimen; and

(4) A directly observed collection is required under §26.69.

(b) Before collecting a urine specimen under direct observation, the collector shall obtain the agreement of the FFD program manager or MRO to obtain a urine specimen under direct observation. After obtaining agreement, the collector shall ensure that a specimen is collected under direct observation as soon as reasonably practicable.

(c) The collector shall explain to the donor the reason for direct observation of the collection under paragraph (a) of this section.

(d) The collector shall complete a new custody-and-control form for the specimen that is obtained from the directly observed collection. The collector shall record that the collection was observed and the reason(s) for the directly observed collection on the form.

(e) The collector shall ensure that the observer is the same gender as the individual. A person of the opposite gender may not act as the observer under any conditions. The observer may be a different person from the collector and need not be a qualified collector.

(f) If someone other than the collector is to observe the collection, the collector shall instruct the observer to follow the procedures in this paragraph. The individual who observes the collection shall follow these procedures:

(1) The observer shall instruct the donor to adjust his or her clothing to ensure that the area of the donor's body between the waist and knees is exposed;

(2) The observer shall watch the donor urinate into the collection container. Specifically, the observer shall watch the urine go from the donor's body into the collection container;

(3) If the observer is not the collector, the observer may not take the collection container from the donor, but shall observe the specimen as the donor takes it to the collector; and

(4) If the observer is not the collector, the collector shall record the observer's name on the custody-and-control form.

(g) If a donor declines to allow a directly observed collection that is required or permitted under this section, the donor's refusal constitutes an act to subvert the testing process.

(h) If a collector learns that a directly observed collection should have been performed but was not, the collector shall inform the FFD program manager, or his or her designee. The FFD program manager or designee shall ensure that a directly observed collection is immediately performed.

Preparing urine specimens for storage and shipping.

(a) Both the donor and the collector shall keep the donor's urine specimen(s) in view at all times before the specimen(s) are sealed and labeled. If any specimen or aliquot is transferred to another container, the collector shall ask the donor to observe the transfer and sealing of the container with a tamper-evident seal.

(b) Both the collector and the donor shall be present (at the same time) during the procedures outlined in this section.

(c) The collector shall place an identification label securely on each container. The label must contain the date, the donor's specimen number, and any other identifying information provided or required by the FFD program. The collector shall also apply a tamper-evident seal on each container if it is separate from the label. The specimen bottle must be securely sealed to prevent undetected tampering.

(d) The donor shall initial the identification label(s) on the specimen bottle(s) for the purpose of certifying that the specimen was collected from him or her. The collector shall also ask the donor to read and sign a statement on the custody-and-control form certifying that the specimen(s) identified as having been collected from the donor is, in fact, the specimen(s) that he or she provided.

(e) The collector shall complete the custody-and-control form(s) and shall certify proper completion of the collection.

(f) The specimens and chain-of-custody forms must be packaged for transfer to the HHS-certified laboratory or the licensee's testing facility. If the specimens are not immediately prepared for transfer, they must be appropriately safeguarded during temporary storage.

(g) While any part of the chain-of-custody procedures is being performed, the specimens and custody documents must be under the control of the involved collector. The collector may not leave the collection site during the interval between presentation of the specimen by the donor and securing of the specimens with identifying labels bearing the donor's specimen identification numbers and seals initialed by the donor. If the involved collector momentarily leaves his or her workstation, the sealed specimens and custody-and-control forms must be secured or taken with him or her. If the collector is leaving for an extended period of time, the specimens must be packaged for transfer to the HHS-certified laboratory or the licensee testing facility and secured before the collector leaves the collection site.

(h) The specimen(s) sealed in a shipping container must be immediately transferred, appropriately safeguarded during temporary storage, or kept under the personal control of an authorized individual until transferred. These minimum procedures apply to the transfer of specimens to licensee testing facilities from collection sites (except where co-located) as well as to the shipping of specimens to HHS-certified laboratories. As an option, licensees and other entities may ship several specimens via courier in a locked or sealed shipping container.

(i) Collection site personnel shall ensure that a custody-and-control form is packaged with its associated urine specimen bottle. Unless a collection site and a licensee testing facility are co-located, the sealed and labeled specimen bottles, with their associated custody-and-control forms that are being transferred from the collection site to the drug testing laboratory must be placed in a second, tamper-evident shipping container. The second container must be designed to minimize the possibility of damage to the specimen during shipment (e.g., specimen boxes, shipping bags, padded mailers, or bulk insulated shipping containers with that capability), so that the contents of the shipping containers are no longer accessible without breaking a tamper-evident seal.

(j) Collection site personnel shall arrange to transfer the collected specimens to the HHS-certified laboratory or the licensee testing facility. Licensees and other entities shall take appropriate and prudent actions to minimize false negative results from specimen degradation. Specimens that have not been shipped to the HHS-certified laboratory or the licensee testing facility within 24 hours of collection and any specimen that is suspected of having been substituted, adulterated, or tampered with in any way must be maintained cooled to not more than 6 °C (42.8 °F) until they are shipped to the HHS-certified laboratory. Specimens must be shipped from the collection site to the HHS-certified laboratory or the licensee testing facility as soon as reasonably practical but, except under unusual circumstances, the time between specimen shipment and receipt of the specimen at the licensee testing facility or HHS-certified laboratory should not exceed 2 business days.

(k) Couriers, express carriers, and postal service personnel do not have direct access to the custody-and-control forms or the specimen bottles. Therefore, there is no requirement that such personnel document chain of custody on the custody-and-control forms during transit. Custody accountability of the shipping containers during shipment must be maintained by a tracking system provided by the courier, express carrier, or postal service.

Determining “shy” bladder.

(a) When a donor has not provided a specimen of at least 30 mL within the 3 hours permitted for urine collection, FFD program personnel shall direct the donor to obtain, within 5 business days, an evaluation from a licensed physician who is acceptable to the MRO and has expertise in the medical issues raised by the donor's failure to provide a sufficient specimen. The MRO may perform this evaluation if the MRO has the appropriate expertise.

(b) If another physician will perform the evaluation, the MRO shall provide the other physician with the following information and instructions:

(1) The donor was required to take a drug test, but was unable to provide a sufficient quantity of urine to complete the test;

(2) The potential consequences of refusing to take the required drug test; and

(3) The physician must agree to follow the requirements of paragraphs (c) through (f) of this section.

(c) The physician who conducts this evaluation shall make one of the following determinations:

(1) A medical condition has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of urine; or

(2) There is an inadequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the donor from providing a sufficient quantity of urine.

(d) For purposes of this section, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.

(e) The physician who conducts this evaluation shall provide a written statement of his or her determination and the basis for it to the MRO. This statement may not include detailed information on the donor's medical condition beyond what is necessary to explain the determination.

(f) If the physician who conducts this evaluation determines that the donor's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the donor from providing a sufficient amount of urine for a very long or indefinite period of time, the physician shall set forth this determination and the reasons for it in the written statement to the MRO.

(g) The MRO shall seriously consider and assess the information provided by the physician in deciding whether the donor has a medical condition that has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of urine, as follows:

(1) If the MRO concurs with the physician's determination, then the MRO shall declare that the donor has not violated the FFD policy and the licensee or other entity shall take no further action with respect to the donor;

(2) If the MRO determines that the medical condition has not, or with a high degree of probability could not have, precluded the donor from providing a sufficient amount of urine, then the MRO shall declare that there has been a refusal to test; or

(3) If the MRO determines that the medical condition is highly likely to prevent the donor from providing a sufficient amount of urine for a very long or indefinite period of time, then the MRO shall authorize an alternative evaluation process, tailored to the individual case, for drug testing.

Appendix C

BTNDAP-NNC Forms (attached):

1. Notice, Acknowledgement of and Consent to Building Trades National Drug and Alcohol Testing Program – New Nuclear Construction.
2. Building Trades National Drug and Alcohol Testing Program – New Nuclear Construction Contractor Authorization for Specimen Collection.

**NOTICE, ACKNOWLEDGEMENT OF AND CONSENT TO
BUILDING TRADES NATIONAL
DRUG AND ALCOHOL TESTING PROGRAM – NEW NUCLEAR CONSTRUCTION**

PART 1: NOTICE AND ACKNOWLEDGEMENT

This is to inform you that all current employees and applicants for employment with _____ (employer) must, as a condition of employment, abide by the Building Trades National Drug and Alcohol Testing Program – New Nuclear Construction (BTNDAP-NNC), which includes testing to identify job applicants and current employees who may be abusing drugs and/or alcohol.

A copy of the BTNDAP-NNC and a summary of the Program accompany this notice, and contain important information explaining:

1. That the BTNDAP-NNC includes mandatory drug and alcohol testing required by the Nuclear Regulatory Commission (NRC) as part of the determination whether an individual is fit-for-duty, and the results of this determination may be available to other construction site employers;
2. That testing information may be released, electronically or otherwise, to a licensee's or other entity's representatives who have a need for access to the information to perform their assigned duties under the Fitness for Duty Program, including determinations of fitness, Fitness for Duty Program audits, or other human resources functions. Testing information may also be released to NRC representatives, law enforcement officials under court order, your representatives designated in writing, persons deciding matters on review or appeal, persons with authority to change personal data in electronic records, other construction owners, employers, contractors, or subcontractors, or the agents of each, and other persons pursuant to court order, and will include, but is not limited to: (a) name and social security number; (b) dates of any drug and alcohol tests; (c) dates when access has been authorized, denied, or terminated; and (d) dates associated with drug and/or alcohol follow-up testing;
3. The availability and procedures necessary to obtain counseling and rehabilitation through the Employee Assistance Program (EAP);
4. The circumstances under which testing may occur, including (a) applicant testing; (b) periodic (*i.e.*, annual) testing; (c) random testing; (d) reasonable suspicion testing; (e) accident or unsafe practice testing; and (f) testing as a condition of returning to duty or as part of or as a follow-up to counseling or rehabilitation;

5. That the laboratory assessment is a series of tests that are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by a Medical Review Officer;
6. That an opportunity will be afforded to submit medical documentation to the Medical Review Officer of lawful use of a controlled substance. If the Medical Review Officer concludes that the lawful use of a controlled substance may raise workplace safety concerns, the Medical Review Officer will advise the employer's designated representative of the use for the employer's further review with the applicant or employee and possible action;
7. That employees will have the opportunity before being asked to submit to a drug and/or alcohol test or being found in violation of the BTNDAP-NNC to voluntarily admit to being users of illegal drugs and to receive counseling or rehabilitation, in which case disciplinary action is not required;
8. That upon my written request to _____ (employer), and at no cost to me, I will be provided within 10 working days a copy of the information about me that is in the BTNDAP-NNC files. If, after my review of such information, I can show that any of the information is incorrect or incomplete, such information shall be corrected and/or completed as soon as is reasonably practical.

A refusal to test or to cooperate in testing by an applicant for employment will result in termination of the pre-employment selection process, and a refusal to test or cooperate in testing by an employee will result in disciplinary action up to and including discharge. An applicant for employment who is not in compliance with or current under the BTNDAP-NNC will not be hired for employment on a new nuclear power plant construction site, and an employee who fails to remain in compliance with or current under the BTNDAP-NNC will be removed from employment on a new nuclear power plant construction site.

Part II: Consent

I acknowledge receipt and understanding of the above written notice and agree to abide by the terms of the BTNDAP-NNC pertaining to drugs and alcohol. The BTNDAP-NNC has my consent to perform drug and alcohol testing necessary to determine whether to grant me access to a nuclear power plant construction site and to allow me to maintain such access. I authorize the individual, organization, institution, or entity that now has, or obtains in the future, drug and/or alcohol testing information about me to release such information to perform an evaluation required for access.

I hereby release the BTNDAP-NNC, and its officers, employees, representatives, agents and records custodians as well as the officers, employees, representatives, agents and records custodians of my employer and any other entity or individual supplying or using such information from any and all liability based on their authorized receipt, disclosure, or use of the

information obtained pursuant to this Notice, Acknowledgement and Consent and to determine my eligibility for construction site access.

I understand that at any time and upon written notice to _____ (employer), I may withdraw this Consent, but this will also constitute a withdrawal of my request for access. I understand that any processing activities that were initiated before receipt of my withdrawal of Consent shall continue and the resulting information will be retained. No new activities shall be initiated after receipt of my withdrawal of Consent and other contractors are not permitted to receive information, other than my name and the fact that my Consent has been withdrawn, thereafter unless I provide a currently valid Consent or it is required by NRC regulation.

I understand that this Consent is not intended to and does not affect any right or responsibility that I, my employer, or others may have under Section 211 of the Energy Reorganization Act of 1974, as amended. I further understand that nothing herein (1) affects my right or my responsibility to bring potential safety concerns to my employer and/or others, or the NRC; or (2) prohibits me from participating in any proceeding or investigation regarding such a potential safety concern.

I have read and understand this Notice, Acknowledgement and Consent and authorize the BTNDAP-NNC and _____ (employer) to take such actions as are described herein. While I understand that construction site access is dependent upon my accepting the regulatory requirements of this Program, the statements made by me in this Notice, Acknowledgement and Consent and my decision to sign it are voluntary. The statements were not induced by any promise nor have I been subjected to any threat, duress, or coercion to sign this Notice, Acknowledgment and Consent.

Applicant or Employee Printed Name

Social Security Number

Applicant or Employee Signature

Date



Building Trades National Drug & Alcohol Testing Program –
 New Nuclear Construction
 Contractor Authorization for Specimen Collection

You are hereby authorized to collect a urine sample and/or alcohol sample for the following employees/applicants and to forward the specimens to Alere for analysis

Date: _____ **Contractor:** _____
Authorized by: _____
Project Name: _____ **Alere Facility#:** _____
Type of Test: Urine Drug Test Alcohol Test
Reason for Test:
 Pre-employment Random Post Accident Annual
 Reasonable Cause Return to Duty Follow-up

First Name	Last Name	SS#	Intl. Union Code	Local #

ALL demographic information MUST be transferred from this form to the chain of custody form. If the facility number listed above is different than the pre-printed facility number, please draw a line through the pre-printed number and write in the facility number listed above.

Employer Name, Address, Phone, & Fax	MRO Services provided by:	
PREPRINTED	PREPRINTED	
Facility Number	Project Name	PROJECT NAME
PREPRINTED	International Union Local Number	INTERNATIONAL & LOCAL UNION NUMBERS
SS#	Donor Social Security Number/ID	PHONE
	Donor Phone Number	
LAST NAME	Donor Name (Last Name, First Name, Middle)	FIRST NAME, MID INIT.
ADDRESS	Address	
CITY,ST,ZIP	City State Zip Code	
REASON	Reason for Test:	
	<input type="checkbox"/> Pre-Employment <input type="checkbox"/> Random <input type="checkbox"/> Post Accident <input type="checkbox"/> Reasonable Cause <input type="checkbox"/> Follow-up <input type="checkbox"/> Annual <input type="checkbox"/> Return to Duty	

Send Specimen and Chain of Custody to: Alere, 1111 Newton St., Gretna, LA 70053, 800-433-3823, Fax: 504-361-8298