

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 638. DRUG AND ALCOHOL TESTING**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 5. Drug Screen Testing Facilities

OAC 310:638-5-5 [AMENDED]

Subchapter 5. Alcohol Testing Facilities

OAC 310:638-7-9 [AMENDED]

SUMMARY:

This amended law requires Alcohol and Drug Testing Facilities to report test results for the single-use test as soon as available and no later than the next working day after the sample is obtained.

AUTHORITY:

Commissioner of Health, Title 63 O.S. § 104; Title 40 O.S. § 559.1

COMMENT PERIOD:

October 16, 2023 through the close of the Department's normal business hours, 5 PM, on November 17, 2023. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on November 17, 2023 submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

PUBLIC HEARING:

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on November 17, 2023 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of an office closure due to inclement weather is November 20, 2023 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through November 17, 2023, to the contact person identified below.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from the contact person identified below or via the agency website at www.ok.gov/health.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.ok.gov/health.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail AudreyT@health.ok.gov.

INITIAL RULE IMPACT STATEMENT

(This document may be revised based on comment received during the public comment period.)

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 638. DRUG AND ALCOHOL TESTING**

1. DESCRIPTION:

HB 1045 was passed and became effective November 1, 2023. This bill changed the requirement for single sample drug testing results to be reported as soon as available or the next working day.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

The Drug and Alcohol Testing Facilities are affected in that the testing facility will be required to shorten response time of reporting results of single use drug and alcohol test results. Over the duration of time, there is minimal to no impact of cost.

3. DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:

The health outcomes affiliated with the change are safety and compliance. Improved customer support, service, and satisfaction. Persons being tested and entities requesting testing will benefit from a faster processing time for reporting of results. This will provide additional time for client care and focus on services provided.

4. ECONOMIC IMPACT, COST OF COMPLIANCE, AND FEE CHANGES:

There will be no economic impact, cost of compliance, or fee change.

5. COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:

There will be no cost. Benefit is compliance and guidance that establishes minimal standards.

6. IMPACT ON POLITICAL SUBDIVISIONS:

There is no anticipated impact, with minimal cost to agency.

7. ADVERSE EFFECT ON SMALL BUSINESS:

There is no known adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

8. EFFORTS TO MINIMIZE COSTS OF THE RULE:

There are no less costly means currently identified.

9. EFFECT ON PUBLIC HEALTH AND SAFETY:

Timely reporting of single sample results.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

There is the potential for noncompliance with the law.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on September 11, 2023.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 638. DRUG AND ALCOHOL TESTING**

SUBCHAPTER 5. DRUG SCREEN TESTING FACILITIES

310:638-5-5. Internal review and certification of test results

- (a) The drug screen testing facility shall report positive test results to the employer's Review Officer within an average of five (5) working days after receipt of the specimen by the drug screen testing facility. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the employer, and the drug screen testing facility specimen identification number.
- (b) A testing facility shall report single-use test results that meet the standard to be sent to the laboratory for confirmation testing to an employer's review officer, or a designee of the employer's review officer, as soon as the results for the single-use test become available or the next working day. The final conclusion of the testing, which shall include the results of the single-use tests, confirmatory tests, or quality control data, shall be reviewed and the test certified as an accurate report by the responsible individual. [Title 40 O. S. § 559.1]
- ~~(b)~~ (c) drug screen testing facility shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported as positive for a specific drug.
- ~~(c)~~ (d) The Review Officer may request from the drug screen testing facility and the drug screen testing facility shall provide quantitation of test results. The Review Officer shall not disclose quantitation of test results to the employer but shall report only whether the test was positive or negative.
- ~~(d)~~ (e) The drug screen testing facility may transmit results to the Review Officer by electronic means, i.e., teleprinters, facsimile, or computer, in a manner designed to ensure confidentiality of the information. Results shall not be provided verbally by telephone. The drug screen testing facility shall ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.
- ~~(e)~~ (f) The drug screen testing facility shall send to the Review Officer the positive drug test results, which shall be signed by the individual responsible for the day-to-day management of the drug screen testing facility or the individual responsible for attesting to the validity of the test reports.
- ~~(f)~~ (g) All results reported to the employer shall be by the same source.

SUBCHAPTER 7. ALCOHOL TESTING FACILITIES

310:638-7-9. Internal review and certification of results

- (a) The testing facility shall report positive test results to the employer's Review Officer within an average of five (5) working days after receipt of the specimen by the testing facility. Before any test result is reported, including the results of initial tests, confirmatory tests, or quality control data, it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall quantify the concentration of alcohol (ethanol), whether positive or negative, the cutoff, the specimen number assigned by the employer, and the testing facility specimen identification number.
- (b) A testing facility shall report single-use test results that meet the standard to be sent to the laboratory for confirmation testing to an employer's review officer, or a designee of the employer's review officer, as soon as the results for the single-use test become available or the next working day. The final conclusion of the testing, which shall include the results of the single-use tests, confirmatory tests, or quality control data, shall be reviewed and the test certified as an accurate report by the responsible individual. [Title 40 O. S. § 559.1]

- ~~(b)~~ (c) The testing facility shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported as positive.
- ~~(e)~~ (d) The Review Officer shall not disclose quantitation of test results to the employer but shall report only whether the test was positive or negative.
- ~~(e)~~ (e) The testing facility may transmit results to the Review Officer by electronic means, i.e., teleprinters, facsimile, or computer, in a manner designed to ensure confidentiality of the information. Results shall not be provided verbally by telephone. The testing facility shall ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.
- ~~(e)~~ (f) The testing facility shall send to the Review Officer positive alcohol test results, which shall be signed by the individual responsible for the day-to-day management of the testing facility or the individual responsible for attesting to the validity of the test reports.
- ~~(f)~~ (g) All results reported to the employer shall be by the same source.