



**OFFICE OF THE GOVERNOR
AMERICAN SAMOA GOVERNMENT**

June 14, 2023

GENERAL MEMORANDUM NO. 153 – 23

To: Secretary of Samoan Affairs, CEO's, President and Executive Directors of
Authorities, Directors, Agency and Office Heads

From: Governor of American Samoa

Subject: American Samoa Government Employee Drug and Alcohol Testing Policy

In an ongoing effort to combat the devastating impact of drug and alcohol misuse and abuse in American Samoa, we have updated the American Samoa Government Employee Drug and Alcohol Testing Policy. The updated policy is attached. This new policy is the culmination of cooperation and collaboration of multiple departments. The strategic partnerships among these agencies are crucial in supporting and sustaining our testing and rehabilitation efforts across our government workforce. The proper implementation of these policies will ensure our workforce is serving our people safely and effectively. Please familiarize yourself and your employees with the policy, which is effective immediately.

Any portions of any prior General Memorandums in conflict with this policy are hereby superseded.

LEMANU P. S. MAUGA
Governor

American Samoa Drug and Alcohol Testing Policy

Section 1 Purpose/Rationale – The purpose of this policy is to combine the resources of the Department of Health (DOH) with the statutory responsibilities of Department of Human Resources (DHR)¹ in administering the Drug and Alcohol Testing program. These updated procedures for testing to be conducted at Department of Health (DOH) will better meet the American Samoa Government's (ASG) objectives of protecting the employees and the general public by fostering a workplace environment free of the compromising influence of alcohol and drugs. Ensuring appropriate, uniform, and streamlined alcohol and drug testing procedures are employed will protect the privacy rights of persons tested and achieve reliable and accurate results.²

Section 2. Definitions³

For the purposes of this Program, the following definitions apply:

- (a) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol and including any medication containing alcohol.
- (b) "Alcohol Concentration (AC) or Breath Alcohol Concentration (BAC)" refers to the amount or concentration of alcohol within a person's body. And [sic] evidential breath test ("EBT") may be used to measure the concentration of alcohol in a person's breath, and that measurement is expressed in grams of alcohol per 210 liters of breath.
- (c) "Alcohol Use" means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
- (d) "Breath Alcohol Technician (BAT)" is a person who instructs and assists employees in the alcohol testing process and operates an evidential breath-testing device.
- (e) "Collection Site" means a place used for conducting drug and/or alcohol tests.
- (f) "Collector" is a person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates

¹ DHR is the lead department for ASG employee alcohol and drug testing policies and procedure. A.S.C.A. §7.0504

² A.S.C.A. §7.0501

³ A.S.C.A. 7.0503

and completes the Chain of Custody Form provided by ASG/HR of the specimen taken. Collector may also be the Medical Review Officer (MRO).

(g) "Confirmation Test" means, for drug testing, a second analytical procedure, gas chromatography/mass spectrometry, to identify the presence of a specific drug. ASG/HR shall initiate a confirmation test for alcohol, as a second test to confirm the alcohol concentration of the initial alcohol screening test (e.g. EBT) that resulted in a finding of 0.02% or greater.

(h) "Confirmed Positive Test" for drugs means a finding based on a positive initial or screening test result has been confirmed by another positive test on the same sample.

(i) "Counseling" means assistance provided by qualified professionals to employees, especially, but not limited to those employees whose job performance is, or might be, impaired as a result of alcohol and/or illegal drug use or a medical-behavioral problem. Such assistance may include short-term counseling and assessment, crisis intervention, referral to outside treatment facilities, and follow-up services to the employee after completion of treatment and return to work.

(j) "Drug Certification" means a written assurance signed by an employee with known past illegal drug involvement, which states that said employee will refrain from using or being involved with illegal drugs while employed with ASG. This drug certification shall be a condition for obtaining or retaining employment with ASG.

(k) "Elected official" means any person who is elected to office for either the American Samoa Government or any political office in the territory.

(l) "Employee" means any employee of ASG, including but not limited to elected officials, political appointees, and contract workers with ASG. For the purpose of pre-employment/pre-duty testing the term employee includes a person applying for employment with ASG.

(m) "Employee Assistance" means a program of counseling, referral, and educational services concerning illegal drug use and other medical, mental, emotional, or personal problems of employees, particularly those which adversely affect behavior and job performance.

(n) "Evidential Breath Testing Device (EBT)" means a device that has been approved by the National Highway Traffic Safety Administration for the purpose of verifying the amount or concentration of alcohol within a person's body.

(o) "Illegal Drug," subject to the further provisions herein, means a controlled substance, as specified in A.S.C.A. Title 13, Chapter 10, et. Seq. and CFR Title 21, Chapter II, Part 1308, Schedule of Controlled Substances.

(p) "Independent contractor" means a person or entity that undertakes to perform work for ASG pursuant to a contract, express or implied, without being subject to the control of ASG except as to the result of the work performed.

(q) "Medical Review Officer (MRO)" means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an ASG's drug testing procedures under this Chapter and evaluating medical explanations for certain drug test results.

(r) "Occurrence" means any incident that is a deviation from the expected behavior or planned course of events in connection with any ASG employee or ASG- controlled operation that impacts or could impact public health, public safety, or the environment. Incidents having such significance include but are not limited to the following:

- (1) Injury or fatality to any person;
- (2) An accident, explosion, or significant damage to property;
- (3) An accidental release of pollutants; or
- (4) Any moving violation that results in a citation.

(s) "Political Appointee" means any person appointed to a position, with or without compensation, with either the American Samoa Government, or any semi- autonomous authorities or quasi-governmental entities.

(t) "Random Testing" means the unscheduled, unannounced drug testing of randomly selected employees by a process designed to ensure that selections are made in a non-discriminatory manner.

(u) "Reasonable Suspicion" refers to an articulated belief that is drawn from particularized facts and reasonable inferences from those facts that an employee improperly uses or used alcohol or illegal drugs.

(v) "Referral" means the direction of an employee toward an Employee Assistance Program or to an outside treatment facility by the Employee Assistance Program professional, for assistance with prevention of illegal drug use, treatment, or rehabilitation from alcohol or illegal drug use or other problems. Referrals to an Employee Assistance Program can be made by the employee (self-referral) or immediate supervisors or managers or by the Director of Human Resources or his/her designee.

(w) "Rehabilitation" means a formal treatment process aimed at the resolution of behavioral-medical problems, including alcohol or illegal drug use, and resulting in such resolution.

(x) "Safety-Sensitive Position" means:

- (1) Any position, the performance of which would present a serious and immediate danger to the employee, co-workers, or the public if the employee is under the influence of alcohol or drugs or which demands the exercise of discriminating judgment or a high degree of care and caution where the health or safety of the employee, co- workers, or the public is significantly involved or impacted; or
- (2) Any position directly related to enforcement of any territorial or federal law prohibiting the illegal use, sale, manufacture, or transporting of alcohol or drugs.

(y) "Substance Abuse Professional (SAP)" means a licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The role of the SAP in the program is to evaluate the need for a rehabilitation plan for employees referred to the

SAP, develop a rehabilitation program as required, monitor and assist the employee in their progress to return to full duties and schedule return-to-duty and follow-up tests.

Section 3 Policy – This policy also provides a framework for testing, education, rehabilitation and counseling, and potential discipline rising from drug and alcohol abuse. This policy applies to all employees of ASG, applicants for ASG employment, political appointees, contract workers, and elected officials (hereinafter referred to collectively as "employees").⁴

Employees shall not:

- a. Report for or remain on duty with a breath alcohol concentration (BAC) of 0.02% or greater;
- b. Possess alcohol (including possession of prescription or over the counter (OTC) medication containing alcohol) while on the job;
- c. Use alcohol while performing or 4 hours prior to performing a safety-sensitive function;
- d. Use alcohol 8 hours following an accident or before a post-accident alcohol test is completed;
- e. Use cocaine, opiates, phencyclidine, amphetamines, and/or controlled substances listed in A.S.C.A. §13.10 et seq. and 21 CFR § 1308 Schedule of Controlled Substances, except as prescribed by a physician, and then only if the physician has advised the employee that the drug will not adversely affect the employee's ability to safely perform his job responsibilities;
- f. Report or remain on duty while on any of the above named drugs;
- g. Refuse to take a required alcohol or drug test.⁵

When an employee is called to work outside of their regularly-scheduled work hours, if the employee has consumed alcohol within the previous four hours or has reason to believe their alcohol concentration level is 0.02% or greater or would otherwise be ineligible for duty due to other prohibitions of the law, the employee shall inform their Supervisor of that circumstances. This disclosure shall not subject the employee to disciplinary actions; however, ASG is not required to offer work to the employee.⁶

⁴ See A.S.C.A. §7.0502 Scope, but see Chandler vs. Miller, 520 U.S. 305 (1997), finding suspicionless drug testing of political candidates an impermissible intrusion

⁵ A.S.C.A. §7.0505

⁶ A.S.C.A. §7.0507 Call Back Duty

Section 4 Procedure –

ASG conducts testing of employees on the following occasions:⁷

- a. All **new applicants**⁸ for employment are subject to drug testing as part of their pre-employment medical check⁹ before final selection for employment. Any offer of employment extended by ASG is contingent upon drug test results. This provision also applies to:
 1. current employees transferring to another ASG Department whether full or part time who have not been screened in the past six months,
 2. contract employees converting to career service who have not been screened in the past six months, and
 3. contract specialist renewals.
- b. ASG, under the direction of DHR, shall schedule the test date and time.¹⁰ Applicants may not reschedule a drug test except for an emergency. Applicants must provide a release for ASG/DHR to verify their last two years of employment history, including results of prior drug tests.
- c. In the event of an **occurrence**¹¹, drug and alcohol tests are required as soon as reasonably possible.
 1. An alcohol test must be conducted within 4 hours of the occurrence, and
 2. a drug test must be conducted within 24 hours of the occurrence.
- d. All employees are subject to testing based on **reasonable suspicion**¹² when two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, agree and document the testing is appropriate. Reasonable suspicion may be based on
 1. direct observation of use or possession of alcohol or drugs;
 2. physical symptoms of being under the influence;
 3. a pattern of abnormal or erratic behavior;
 4. conviction of a drug related offense or; identification as the focus of a criminal investigation into illegal drug possession, use or trafficking;
 5. information from a credible source or that is independently corroborated;
 6. evidence the employee has tampered with a drug test; and
 7. specimen temperature outside the range of 90.5 or 99.8 degrees Fahrenheit.
- e. Employees in **safety sensitive positions**¹³ are subject to random, suspicionless testing:
 1. At least 25% of these employees will be tested annually for alcohol.
 2. 50% of these employees will be tested annually for drugs.

⁷ A.S.C.A. §7.0506

⁸ A.S.C.A. §7.0506(a)(4)

⁹ The pre-employment medical check is required by A.S.A.C. §4.0301 and 4.1002(d).

¹⁰ A.S.C.A. §7.0506(a)(4)

¹¹ A.S.C.A. §7.0506(b)

¹² A.S.C.A. §7.0506(c)

¹³ A.S.C.A. §7.0506(d)

DHR will randomly select Employees through a scientifically-valid, random-position number selection method that will give each Safety Sensitive employee an equal chance of selection each time a random test is administered.

The code *describes* safety sensitive positions as those identified by ASG/HR where failure of an employee to adequately discharge his or her position could significantly harm the employee, co-workers, public health, public safety or the environment, including but not limited to:

- i. Police Officers, other law enforcement officers, Homeland Security Special Agents, Immigration Officers, Customs Officers;
- ii. Firemen, Emergency Medical Technicians;
- iii. Public health officers, quarantine officers; or
- iv. Any ASG employee with an employee driver's license, who operates a motor vehicle, including water-borne vessels, for ASG as a part of their job responsibilities¹⁴, and any other position determined by the ASG/HR Director to be a safety-sensitive position.¹⁵

However, the code *defines* safety sensitive position as:

1. Any position, the performance of which would present a serious and immediate danger to the employee, co-workers, or the public if the employee is under the influence of alcohol or drugs or which demands the exercise of discriminating judgement or a high degree of care and caution where the health or safety of the employee, co-workers, or the public is significantly involved or impacted; or
2. Any position directly related to the enforcement of any territorial or federal law prohibiting the illegal use, sale, manufacture, or transporting of alcohol or drugs.¹⁶

Alcohol and Drug Testing Procedures¹⁷

Alcohol tests¹⁸ may be obtained by:

- a. An individual who is trained, authorized and certified to conduct an evidential breath testing (EBT) device may administer an EBT.
- b. Blood test by a certified collector or technician, such as a phlebotomist, nurse, or other person who is qualified to draw blood.

For initial alcohol screening, ASG may use an EBT or any other industry accepted test considered reasonable by the Medical Review Officer (MRO).

For confirmation alcohol testing, a certified breath alcohol technician (BAT) may use an EBT device approved by the National Highway Traffic Safety Administration to measure Breath Alcohol Concentration (BAC).

¹⁴ A.S.A.C. §7.0506(d)(2)(A) and (B)

¹⁵ A.S.C.A. §7.0506(d)(2)(C)

¹⁶ A.S.A.C. §7.0503(x)

¹⁷ A.S.C.A. §7.0510

¹⁸ A.S.C.A. §7.0510(a)

Initial Drug Screens may use saliva, urine, blood, or hair by a certified collector or technician or any other acceptable tests as determined by the MRO.¹⁹

Employees requesting confirmation of their test results may select a third-party certified laboratory, approved by the MRO, to analyze their sample at their own cost if they exercise this option within 72 hours. Otherwise, the confirmation test will be conducted by the test vendor's laboratory.²⁰

Drug Testing Procedures

1. Scheduling

- a. DHR will request a testing date and time through the Drug & Alcohol Testing Center (DATC) at DOH²¹.
- b. DHR will provide the DATC a list of employee(s) to be tested and their referral form(s); however, for occurrence and reasonable suspicion testing, referring department will provide the DATC a list of employee(s) to be tested and their referral form(s). Only the listed individuals may be tested.
- c. Selected Employees shall report to the DATC at the testing date and time. However, the employee's department director or director's designee will escort random, occurrence and reasonable suspicion employees to the DATC. Employees shall not be provided advance notice of random testing.

2. Orientation

- a. Upon arrival, Employees will provide the DATC a valid photo ID showing date of birth (DOB); Social Security Number (SSN); Medical Records Number (MRN); and list of all medications prescribed to them and any over the counter (OTC) medications/supplements recently taken.
- b. At the testing date and time, DATC staff will provide employees an orientation at the collection and testing site.
- c. At orientation, employees will complete the Drug and Alcohol Acknowledgement Form; Release Information Agreement; and Testing Consent Form

3. Testing

Employees will be tested individually.

- a. Lab tech will give each employee a sterile cup clearly labeled with the employee's initials, DOB and MRN
- b. Assigned staff of DATC or DOH Lab will:
 - i. closely monitor collection with a monitor who is the same gender as the employee; transgender individuals should be allowed to use the restroom which and assigned a monitor who corresponds with their gender identity;
 - ii. observe for the presence of items that could be used to adulterate, substitute or dilute the specimen;

¹⁹ A.S.C.A. §7.0510(b)

²⁰ A.S.C.A. §7.0510(c)(3)

²¹ General Memorandum No. 009-22

- iii. allow employees providing urine specimens privacy, unless there is a reason to believe a particular employee may alter or substitute the specimen provided;²²
- iv. within 4 minutes of collection, read and note the temperature of the sample in the presence of the employee ;
- v. Current statute provides in the case of an insufficient specimen, for additional collections and “When collection is complete, the partial specimens will be combined in a single container.”²³ However, combining of samples is not only unsanitary but also interferes with the accurate reading process. The Substance Abuse and Mental Health Services Administration’s (SAMHSA) Urine Specimen Collection Handbook, effective May 31, 2014, p. 27, emphasizes, “The collector must NOT under any circumstances combine urine collected from separate voids to create one specimen of sufficient volume.”
- vi. utilize a chain of custody procedure for maintaining control and accountability from point of collection to final disposition of specimens²⁴
- c. Lab will
 - i. provide results to MRO within 24 hours
 - ii. use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with 49 CFR §40 et. seq.²⁵

4. Initial Results

- a. Negative result - MRO will notify DHR and referring department director within 24 hours, and the process is complete for all employees. Applicants for ASG employment may be considered for employment.
- b. Positive result: MRO reviews result and list of medications with employee to determine whether the result is medication related.²⁶
 - i. If medication related: DOH will notify DHR and the referring department within 24 hours, and the process is complete for all employees. Applicants for ASG employment may be considered for employment.
 - ii. If not medication related: MRO will immediately inform employee, DHR and referring department of the findings and referring department director will explain options to employee:

²² A.S.C.A. §7.0511

²³ A.S.C.A. §7.0511. Current AS law provides, “When collection is complete, the partial specimens will be combined in a single container.” However, combining of samples is not only unsanitary but also interferes with the accurate reading process. The Substance Abuse and Mental Health Services Administration’s (SAMHSA) Urine Specimen Collection Handbook, effective May 31, 2014, p. 27, emphasizes, “The collector must NOT under any circumstances combine urine collected from separate voids to create one specimen of sufficient volume.”

²⁴ A.S.C.A. §7.0511(a)

²⁵ 49 CFR §40 is regulations on drug testing for transportation employees. 49 CFR §40.87 cutoff concentrations for drug tests.

²⁶ A.S.C.A. §7.0513

1. If Employee accepts positive initial results, proceed to step 5. b. below as for Confirmed positive test result.
 2. If Employee challenges by notifying MRO – DOH sends results for confirmation test²⁷
 - a. if, within 72 hours, employee exercises option to select at employee's expense, by making all necessary arrangements including payment, send to laboratory selected by employee and approved by MRO; or
 - b. to test vendor's laboratory, at ASG's expense.
5. Confirmation results
- a. Negative: MRO notifies DHR and referring department director; process complete; applicants for ASG employment may be considered for employment
 - b. Confirmed positive test result
 - i. MRO to inform the DHR and referring department director
 - ii. Referring Department refers applicants for ASG employment to DOH BHS Drug and Alcohol Unit for a Brief intervention and to be offered opportunity to attend treatment voluntarily. Applicants for ASG employment cannot be offered employment at this time, and the process is complete for this individual.
 - iii. Referring Department explore with Conversion, Transfer/Part Time Employee, Contract Renewal Employee, Random, Occurrence and Reasonable Suspicion employee options to accept or challenge results.
 1. Employee agrees with Findings
 - a. Referring department prepares referral packet with Drug and Alcohol Treatment Program Consent form,
 - b. Referring department provides referral packet to MRO, and
 - c. MRO forwards referral packet to DOHBHS for SA assessment/treatment.
 2. Employee disagrees with Findings
 - a. DOH sends specimen to off-island lab at employee's expense.
 - b. Referring department recommends next step and sends recommendation to DHR:
 - i. Whether to Convert or Transfer employee, or
 - ii. Reassignment of safety-sensitive employee,²⁸
 - iii. Removal of employee who is twice determined to have improperly used alcohol or illegal drugs,²⁹ and
 - iv. What disciplinary action should be taken:
 1. Suspension without pay,³⁰ or
 2. Termination³¹

²⁷ A.S.C.A. §7.0510(c)

²⁸ A.S.C.A. §7.0514(c)

²⁹ A.S.C.A. §7.0514(f)

³⁰ A.S.C.A. §7.0801, 7.0802

³¹ A.S.C.A. §7.0801, 7.0803

- c. DHR determines next step and notifies referring department and employee³².

6. Consequences of Positive Test³³

An employee found with a 0.02 or higher alcohol reading will be released from duty without pay for 24 hours.³⁴ An employee with 0.04% or higher BAC may not perform in a safety-sensitive position until released by the Substance Abuse Professional (SAP) and after having a negative test result.³⁵

Tampering with an alcohol or drug sample constitutes reasonable suspicion for testing³⁶ and will be considered a positive test. Refusal to submit to drug or alcohol testing will be treated as a positive test.³⁷ Actions which may constitute a refusal include:

1. refusal to test either by statement or action;
2. refusal to sign appropriate forms as required;
3. failure to provide adequate breath for alcohol testing without a valid medical explanation;
4. behavior or conduct that clearly obstructs the testing process; and
5. leaving the scene of an accident without a valid reason before the tests have been conducted.³⁸

When an applicant for employment tests positive for improper use of alcohol or an illegal drug, ASG will terminate processing of their application and notify the Applicant.³⁹

When an employee tests positive for improper use of alcohol or an illegal drug, ASG may, for the first determination, offer a reasonable opportunity for rehabilitation, consistent with ASG/HR's general policies.⁴⁰ When an employee returns to duty after a determination of improper drug or alcohol use, the employee shall be subject to periodic unannounced alcohol or drug testing for 12 months.⁴¹

7. Return to Duty - a. All employees

If after counseling or rehabilitation, it is determined that an employee can return to duty safely, ASG may offer the employee reinstatement in the same or a comparable position to the one held

³² A.S.C.A. §7.0802

³³ A.S.C.A. §7.0514

³⁴ A.S.C.A. §7.0510(a)(4)

³⁵ A.S.C.A. §7.0510(a)(4)

³⁶ A.S.C.A. §7.0506(c)(2)(F)

³⁷ A.S.C.A. §7.0514(d)

³⁸ A.S.C.A. §7.0512

³⁹ A.S.C.A. §7.0514(a)

⁴⁰ A.S.C.A. §7.0514(b)

⁴¹ A.S.C.A. §7.0514(h)

prior to counseling or rehabilitation.⁴² An employee who has been referred to a substance abuse professional for drug or alcohol evaluation or treatment must submit to a return to duty test. Only the SAP may require the employee to take both alcohol and drug tests.⁴³

Upon a second determination of improper use of alcohol or illegal drugs, the employee shall be removed from employment with ASG.⁴⁴

b. Safety Sensitive Employees

When an employee in a safety-sensitive position tests positive for improper use of alcohol or an illegal drug, ASG shall immediately remove that employee from any safety-sensitive position. If ASG offers rehabilitation, the employee will be placed in an acceptable non-safety-sensitive position.⁴⁵ If there is no acceptable position, the employee will be placed on sick, annual, or other leave.⁴⁶ The employee will not be protected from disciplinary action which may result from violation(s) of work rules other than the positive drug or alcohol test result.⁴⁷ For example, an employee who abuses government property and tests positive for improper use of alcohol or drugs may be demoted, suspended or removed for the property abuse.⁴⁸ An employee who has been removed from a safety-sensitive position because of use of alcohol drugs may not be returned to that position until he or she has:

- a. Successfully completed Counseling or a rehabilitation program as coordinated by ASG/HR;
- b. Undergone a urine drug test with a negative result;⁴⁹ and
- c. Been evaluated by a Substance Abuse Professional, who determines the employee is capable of safely returning to duty.⁵⁰

In order to return to a safety-sensitive position, an employee's test results must be:

- a. less than 0.02% BAC for alcohol, and
- b. negative for controlled substances.⁵¹

If the SAP determines that an employee in a safety-sensitive position, following a satisfactory "Return to Duty Test", is in need of additional assistance to maintain resolve, the SAP may:

- a. require both drug and alcohol tests,
- b. prescribe the duration of testing, and
- c. prescribe the frequency of testing.

These tests will be unannounced and will be in addition to any other alcohol and drug tests the employee may be subject to.⁵²

⁴² A.S.C.A. §7.0514(e)

⁴³ A.S.C.A. §7.0508

⁴⁴ A.S.C.A. §7.0514(f)

⁴⁵ A.S.C.A. §7.0514(c)(1)

⁴⁶ A.S.C.A. §7.0514(c)(2)

⁴⁷ A.S.C.A. §7.0514(c)(3)

⁴⁸ A.S.C.A. §7.0801

⁴⁹ See also A.S.C.A. §7.0508 which requires an alcohol test, apparently only if ordered by the SAP, with results less than 0.02% BAC

⁵⁰ A.S.C.A. §7.0514(g)

⁵¹ A.S.C.A. §7.0508

⁵² A.S.C.A. §7.0509

8. Confidentiality⁵³

(a) Except as provided by law or regulation, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of alcohol and drug testing under this chapter, shall remain confidential.

(b) Except as provided by law or regulation, ASG/HR shall report drug test results to the Director of the employee's department. Neither the Director nor a department shall release information on tests required under this policy.

(c) Written test results will be provided to employees who tests positive for either or [sic] alcohol or drugs or both.

(d) This section does not prohibit consultations with legal counsel regarding drug-testing information.

9. Authorities

- A.S.C.A. Title 7, Ch. 5 Alcohol and Drug Testing of American Samoa Government Employees
- A.S.A.C. Title 4, Government Employees especially Chapter 7 Conduct and Chapter 8 Termination, Layoff, & Adverse Actions
- Supreme and Appellate Court Decisions - Can the government perform suspicionless drug testing?
 - All Accidents & rule violations Yes⁵⁴
 - All Promotions/Transfers to safety sensitive positions Yes⁵⁵
 - All government employment applicants Maybe⁵⁶
 - All Political candidates No⁵⁷
 - All government employees No⁵⁸
 - Random, unannounced of ½ safety sensitive workforce annually Yes⁵⁹

⁵³ A.S.C.A. §7.0515

⁵⁴ Skinner v. Railway Labor Executives' Association, 489 U.S. 601 (1989)

⁵⁵ National Treasury Employees Union v. Von Raab, 489 U.S. 656, 665-666 (1989)

⁵⁶ Willner v. Thornburgh, 928 F.2d 1185 (D.C. Cir. 1991)

⁵⁷ Chandler vs. Miller, 520 U.S. 305 (1997)

⁵⁸ American Federation of State, County and Municipal Employees Council 79 v. Scott, 717 F.3d 851, 880 (2013)

⁵⁹ Railway Labor Executives' Ass'n v. Skinner, 934 F.2d 1096, 1099 (1991)