

March 7, 2016

To: Canadian Nuclear Safety Commission
P.O. Box 1046, Station B
280 Slater Street
Ottawa, Ontario, Canada K1P 5S9

RE: CannAmm Occupational Testing Services comments on REGDOC-2.2.4, *Fitness for Duty*

CannAmm Occupational Testing Services has completed a review of "REGDOC-2.2.4, Fitness for Duty", from the perspective of an integrated provider of many of these services to organizations across Canada. We commend the Canadian Nuclear Safety Commission for making Fitness for Duty regulations a priority and are thankful for the opportunity to provide comments.

For the purpose of context, CannAmm has been providing occupational testing to clients across Canada for over 20 years. A significant proportion of our client base strive to create safe workplaces in safety sensitive environments. CannAmm provides those clients with the information, tools, and processes needed to help prevent workplace injuries, and damage to property and the environment.

While CannAmm agrees with the overall spirit of the draft regulation, we do have feedback that we wish to share in the spirit of collaboration and continual improvement. Further to the specific points herein, we would encourage the CNSC to consider adopting, where possible, leading practices that have already been successfully implemented in Canada, especially with respect to alcohol and drug testing. In our extensive experience, the application of leading practices in alcohol and drug testing increases the likelihood of achieving the desired results while balancing stakeholder interests. Essentially, they increase the effectiveness of testing programs while also enhancing legal defensibility.

CannAmm appreciates the opportunity to provide its comments in respect of Draft Regulatory Document, and offer our continued support in further consultation on issues of fitness for duty. CannAmm is prepared to elaborate on points made should you request.

Sincerely,

(submitted via email)

Peter Deines

Vice President, Sales and Marketing

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Section	Comments
2. Background	<p>We recommend a change to the second paragraph of section 2. The change to include modifying “free of any impairment” to “free from impairment or the reasonable potential for impairment.” The rationale: we see this as an opportunity to bring consistency with section 3.1 point 4.</p> <p>We also recommend adding to the definition of Fit for Duty “...and adequately responding to emergency operating conditions.” The rationale is this would bring consistency with section 4.1 point 1 under Guidance. The addition can also help support stakeholders to legitimize current testing methods as reasonable, and to justify disqualification of select medical treatment courses.</p>
3. Programmatic Elements Applicable to the Broad Population	<p>We recommend adding to the beginning of 3.1 point 4 “upon receiving written physician clearance, by a physician qualified in occupational health with clear knowledge of the safety considerations of the job...” The rationale is that physician clearance to work is valid when there is documentation the physician understands the inherent risks and demands of the job and is qualified to make occupational recommendations of this nature. We believe this is important because even responsible use of medication, as prescribed, can still lead to a safety risk if the context of work duties and environment are not considered.</p> <p>We recommend in 3.3 defining the role and qualifications on behalf of licensees for: duly qualified health professionals, duly qualified psychologists, duly qualified forensic toxicologists, duly qualified pharmacists, fitness consultants, breath alcohol technicians, urine collectors, medical review officers (MROs), accredited laboratories, third-party providers, employee assistance program (EAP) providers, and substance abuse evaluation providers. We strongly believe these roles, responsibilities, and qualifications need clear definition in order to ensure actionable and defensible results. Ambiguity can lead to significantly divergent programs that will undermine the legitimacy of the industry standard as a whole.</p>



4.2 Identification of fitness-for-duty requirements	<p>We recommend considering an additional general set of criteria to support the identification of fitness-for-duty requirements applicable to positions beyond the scope of Appendix A.</p> <p>The objective of the general set of criteria would be to provide a reasonable tool to support determining the scope and frequency of occupational evaluations necessary to ensure fitness for duty. We recommend the determining criteria to be based on positional demands, exposures and responsibilities of the position.</p> <p>To design this criteria/checklist, the following questions may need to be answered for each evaluative subset of fitness for duty (M,P,OF & Drug & Alcohol):</p> <ol style="list-style-type: none">1. What is the minimum positional demands, environment and/or level of responsibility that would require this standard of fitness?2. What is the minimum positional demands, environment and/or level of responsibility that would require this standard of fitness to be met on an ongoing basis, for cause/reasonable grounds and/or as a condition of return to work?3. What are the threshold positional demands, environmental characteristics and/or level of responsibility that would qualify for a standard frequency of testing (i.e. 6, 12, 24, 48 month intervals)?
4.6 Alcohol and drug testing	<p>4.6.2 The text “receiving credible information” as a legitimate reason for initiating a reasonable grounds test may not be sufficiently specific to pass legal scrutiny. Clear definition of what credible information is and who can provide it should be considered. For example: “A supervisor expertly trained to recognize signs and symptoms of drug and alcohol abuse” would be an example of a credible source.</p> <p>4.6.3 We recommend that you consider “follow up” drug testing recommendations be issued by qualified Substance Abuse Professional (SAP). This form of objective evaluation would reduce the likelihood of the testing being perceived as punitive to the employee, because qualified SAPs follow objective standards in the formation of their recommendations.</p>



5.1 Medical Assessment Process

We have three recommendations to ensure medical validity in the conclusions of fitness, which falls in line with best practices in Canada.

- 1 We recommend specifying “qualified, licensed and registered to practice”.
- 2 We recommend the medical certificate/certification be required to be completed by a physician.
- 3 We recommend providing more detail on the minimum examination criteria in Appendix B. The following is the typical scope of a medical examination for review and consideration. A sample medical is included with this submission.

Medical Questionnaire

Workplace History

- Hazardous Exposures
- Past workplace injury details

Current Health Information

- Current medical conditions/medications
- Future anticipated treatment and/or surgery within the year

Personal Habits

- Tobacco use, current or history of substance dependency
- Exercise habits
- Review of Systems
 - Skin
 - Ears, nose, throat
 - Musculoskeletal
 - Gastrointestinal
 - Respiratory
 - CNS
 - Endocrine

Medical Examination

- Age, height, weight, body mass index,
- Blood Pressure
- Vision (with and without correction), colour and peripheral
- Urine dip (Screen for presence of glucose / protein in the urine)
- Nutrition/General Appearance
- Eyes
- Ears/Nose/Throat
- Teeth and Gums
- Thyroid Gland and Neck
- Lymph Nodes
- Thorax
- Lungs
- Heart
- Peripheral Pulses
- Abdomen
- Hernia
- Upper Extremities
- Lower Extremities
- Spine and Back
- Skin



5.4 Alcohol and drug testing process

5.4.1 We recommend that consideration be made to expanding the list of evidential breath testing instruments to include devices approved by the US Department of Transportation. Rationale: this is the industry standard currently used across Canada for breath alcohol testing and offers the most legal defensibility.

5.4.1 **We very strongly recommend** adherence to the leading practice for workplace breath alcohol testing, which includes a 15 minute deprivation period after the initial screening followed by a confirmation test as a minimum requirement. Such a process:

- Allows the test to accurately account for alcohol absorption time.
- Eliminates residual mouth alcohol as a legal point of dispute.
- Aligns to North American Workplace Testing Standards.
- Enhances the legal defensibility of the test.

5.4.2 **We very strongly recommend** that only Substance Abuse and Mental Services Administration (SAMHSA)-HHS Certified Laboratories be considered to analyze and report the results of urine drug specimens. SAMSHA-HHS certified laboratories specialize in workplace drug testing and assure accurate results by:

- Performing all work by its own personnel and equipment (no subcontracting to other labs may occur).
- Having met requirements for rigorous quality control and chain-of-custody procedures.
- Testing each specimen using the same procedures in a consistent method.
- Are required to meet quarterly performance proficiency testing and semi-annual inspections in order to remain HHS certified.
- Must undergo compliance audits that are performed by nationally recognized toxicology experts every 6 months.

Adopting a SAMHSA-HHS standard for laboratory services will greatly enhance the legal defensibility of drug testing performed under this regulation.

5.4.2 **We very strongly recommend** a requirement that only certified Medical Review Officers (MROs) be designated to review, interpret, and verify test results.

- MROs act as independent and impartial gatekeepers for the accuracy and integrity of the drug testing process.
- They are certified through the American Association of Medical Review Officers or Medical Review Officer Certification Council.

Adopting a third-party leading practice standard for MRO qualifications will greatly enhance the legal defensibility of drug testing performed under this regulation.

5.4.3 We suggest amending this section to include: “Workers who provide a verified positive drug or positive alcohol test shall be removed from safety-sensitive duties or jobsites and referred to a SAP for assessment. If recommended by the SAP, the employer’s EAP provider may be engaged in the process of ensuring a safe and timely return to duty.”

- In the case of a positive test the employer has a stake in the return to duty process. Using an EAP without first consulting a SAP will deprive the employer from necessary knowledge of process in order to ensure a safe workplace.



5.5 Substance abuse evaluation process	We recommend that assessments be performed by a certified Substance Abuse Professional (SAP) or Substance Abuse Expert (SAE) in accordance with leading practice in Canada.
5.6 Investigative and impairment screening tools	<p>We recommend change to the text “Impairment risk screening tools”</p> <ul style="list-style-type: none">• This testing is initiated with a Licensee having a belief, through the use of investigative tools, that the employee represents a heightened safety risk. A drug test, in and of itself, does not show impairment. Measuring specific impairment in a person requires individual observation and analysis of that person by a professional who is trained and experienced in observing impairment.
5.7 Records	We recommend that records be accessible for 10 years or in accordance with legislative standards, whichever is greater.
Appendix A	Medical clearance does not specify which specific tests to be performed. We recommend that this be clarified.
Appendix C	We recommend that Nuclear Security Officer (NSO) physical fitness test should be based on Bona Fide Occupational Requirements (BFORs) supported by a job specific Physical Demands Analysis (PDA). This would best meet the legal tests established in prior case law.
Appendix D	We recommend that the appendix be reviewed to ensure that cutoff levels and dilution protocols are consistent with current lab operations.