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**Advisory for Law Enforcement Agencies Regarding DUI Implied Consent
February 26, 2016**

In consultation with the Kansas Department of Revenue, the Office of the Attorney General advises all law enforcement agencies in Kansas immediately to begin using the attached *OAG Substitute for DC-70 (updated 2/26/2016)*. This document is intended to replace the previous *DC-70 (Rev. 07/13)*, which effective immediately no longer should be used. The *OAG Substitute for DC-70 (updated 2/26/2016)* is intended to remain in use until such time as the DC-70 itself can be updated and printed by the Department of Revenue.

This advisory is the result of the Kansas Supreme Court's decisions today in State v. Ryce, No. 111,698, State v. Nece, No. 111,401, State v. Wilson, No. 112,009, and State v. Wycoff, No. 110,393.

IMPLIED CONSENT ADVISORY

INSTRUCTIONS: A copy of this form is required to be provided to the person from whom testing is to be requested. From another copy of the form, the officer must also read each of the notices contained in the "Implied Consent Advisory" to the person. A place is provided on the reverse side for the officer to record the name of the licensee and the date. The officer may retain his copy of this form to document that the notices were provided. The officer must also certify on the DC-27 form that the notices were provided.

Notices are also provided on the reverse side of this form to be used if the person was operating a commercial motor vehicle, pursuant to K.S.A. 8-2,145, or if the person is under 21 years of age, pursuant to K.S.A. 8-1567a. If either of those notices apply and are provided by the officer, the officer must also certify on the appropriate certification form regarding those notices.

IMPLIED CONSENT NOTICES

1. Kansas law (K.S.A. 8-1001) requires you to submit to and complete one or more tests of breath, blood or urine to determine if you are under the influence of alcohol or drugs or both.
2. You have no constitutional right to consult with an attorney regarding whether to submit to testing.
3. If you **refuse** to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, your driving privileges will be suspended for 1 year.
4. If you submit to a breath or blood test requested by a law enforcement officer and produce a completed test result of .15 or greater, your driving privileges will be suspended for 1 year.
5. If you submit to a breath or blood test requested by a law enforcement officer and produce a completed test result of .08 or greater, but less than .15, the length of suspension will depend upon whether you have a prior occurrence. A prior occurrence is a prior test refusal, test failure or conviction or diversion for an alcohol or drug related conviction as defined in K.S.A. 8-1013, and amendments thereto, or any combination thereof, whether before, on or after July 1, 2001.
6. If you fail a test with an alcohol content of .08 or greater, but less than .15, **and do not have any prior occurrences**, your driving privileges will be suspended for 30 days.
7. **If you have a prior occurrence** and fail a test with an alcohol content of .08 or greater, but less than .15, your driving privileges will be suspended for one year.
8. Refusal to submit to testing may be used against you at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.
9. The results of the testing may be used against you at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.
10. After the completion of testing, you have the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

(After completing the above notices, refer to the reverse side of this form.)

.02 ADVISORY FOR DRIVERS UNDER 21

IF THE PERSON IS UNDER 21 YEARS OF AGE AT THE TIME OF THE TEST REQUEST, THE FOLLOWING NOTICES ARE ALSO APPLICABLE. IF THE PERSON IS 21 YEARS OF AGE OR OVER AT THE TIME OF THE TEST REQUEST, THE FOLLOWING NOTICES DO NOT APPLY.

- 1. It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater; and
- 2. If the person is less than 21 years of age at the time of the test request and submits to and completes the test or tests and the test results show an alcohol concentration of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges will be suspended for 30 days and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.

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CDL ADVISORY

IF THE PERSON WAS DRIVING A COMMERCIAL MOTOR VEHICLE, AS DEFINED BY KANSAS LAW, THE FOLLOWING NOTICE IS ALSO APPLICABLE. IF THE PERSON WAS NOT DRIVING A COMMERCIAL MOTOR VEHICLE, AS DEFINED BY KANSAS LAW, THE FOLLOWING NOTICE DOES NOT APPLY.

Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year, pursuant to Kansas law.

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AFTER PROVIDING A COPY OF THIS FORM TO THE PERSON AND READING ALL APPLICABLE NOTICES, THE OFFICER SHOULD THEN REQUEST THAT THE PERSON SUBMIT TO A TEST OR TESTS, AS FOLLOWS:

WILL YOU TAKE A : Breath · Blood · Urine test (indicate the test(s) offered)

RESPONSE: · Yes · No

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The officer who administers testing should complete the following information on the copy of this form retained by the officer. The officer's copy of this form can be retained in the officer's file to document that the required notices were given.

Name of licensee

Name of law enforcement officer administering testing

Date