



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-038100 Omnibus Drug and Alcohol Testing Program	Issued: 7/08/96 Effective: 7/08/96	Reviewed: 7/31/20 Revised: 2/23/15
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

- A. Omnibus Transportation Employee Testing Act of 1991, 49 USCA §31306 (b) (1) and 49 (fr 382 305(a).
- B. State Personnel Board Rule 1.7.8.8 NMAC.

REFERENCE:

Department of Transportation Regulations, Federal Register Volume 59.

PURPOSE:

To establish procedures for implementing the requirements of the Omnibus Transportation Employee Testing Act of 1991 to ensure a drug-free and alcohol-free workplace consistent with the Federal Transportation Employee Testing Act of 1991.

APPLICABILITY:

Employees of the New Mexico Corrections Department, and any applicants for employment, who are required to possess a Commercial Drivers' License.

FORMS:

Drug and Alcohol Abuse Acknowledgment form (CD-038101.1)

ATTACHMENTS:

Positions Covered List Attachment (CD-038101.A)

DEFINITIONS:

- A. Alcohol: Includes any intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- B. Alcohol Use: Any consumption of a preparation including alcohol (e.g., beverages or medicines) is considered alcohol use.
- C. Collection Site: Any lab or medical facility designated by the contractor as a collection site for drug or alcohol testing.

- D. CDL: Commercial Driver's License that is necessary to operate a commercial motor vehicle.
- E. Commercial Motor Vehicle: Includes any motor vehicle used to transport passengers or property if the vehicle has a gross combination weight rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or is designed to transport 16 or more passengers, including the driver.
- F. Controlled Substance: Includes the following five prohibited classes of drugs: narcotics, depressants, stimulants, hallucinogens and cannabis. This includes any chemical substances having the capacity to affect behavior and regulated by law with regard to possession and use.
- G. Covered Employee: The Act requires any commercial motor vehicle operator who is subject to the commercial drivers' license (CDL) requirement to be tested for alcohol and controlled substances.
- H. Drug: Includes the following five types of controlled substances: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines; metabolites of previously delineated drugs; or non-prescription substances containing previously delineated drugs.
- I. Medical Review Officer (MRO): A New Mexico based licensed physician knowledgeable in the medical use of prescription drugs or alcohol and the pharmacology or toxicology of illicit drugs and alcohol hired by the contractor to render a medical opinion about a positive result.
- J. On Duty: Any time during an employee's normal workday or while operating a state vehicle.
- K. Random Sample: Random selection of a covered employee for alcohol and drug testing based on a scientifically valid method that assures that all covered employees have an equal chance of being selected for testing.
- L. Reasonable Suspicion: A belief drawn from specific objective, articulable facts and the reasonable inferences drawn from those facts.
- N. Substance Abuse Professional (SAP): A licensed physician (Medical Doctor or Doctor of Osteopathy), 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 the clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders.

POLICY:

- A. The Corrections Department shall ensure that Corrections Department employees follow all provisions of the Omnibus Transportation Employee Testing Act of 1991.
- B. The Corrections Department strictly prohibits the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the workplace and violations of this nature shall be just cause for dismissal and will be reported to the appropriate local law enforcement agency.

- C. Employees are prohibited from bringing alcohol onto Corrections Department property at any time. Employees, who use, possess or distribute alcohol while on duty or on Corrections Department property will be subject to discipline, including dismissal.
- D. All test results and information regarding drug and alcohol testing will be confidential and should be made available only to those who need to know. Breach of confidentiality will be grounds for disciplinary action.
- E. Employees occupying the positions listed in the **Positions Covered List** Attachment (*CD-038101.A*) shall receive a copy of this policy and the **Drug and Alcohol Abuse Acknowledgment** Form (*CD-038101.1*).
- F. Nothing in this policy shall be considered as limiting the Corrections Department's right to take administrative or disciplinary action, up to and including dismissal, for involvement with illegal drugs or alcohol not specifically addressed in this policy.



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AUTHORITY:

Policy *CD-038100*

PROCEDURES:

A. General Provisions:

It is the obligation of the Corrections Department to ensure a drug-free and alcohol-free workplace to increase productivity, reduce costs, ensure employee, inmate, and public safety, and enhance the Department's public image.

Drug use and alcohol abuse negatively impact the Department's ability to effectively and safely achieve its mission in a professional manner. Impairment from drug or alcohol use, as well as the residual effects of drug use and alcohol abuse, adversely affects the efficiency of an employee's performance including, but not limited to, judgment, emotional stability, ability to concentrate, attendance, and professional integrity.

The critical nature of safety-sensitive positions and the unique obligations and responsibilities of those positions creates a compelling obligation to eliminate drug use and alcohol abuse from the workplace. Because the current and residual effects of drug use may not always produce externally observable signs that may be detected by supervisors, the Department recognizes the need for random drug testing of employees in these safety-sensitive positions, or who may operate a state vehicle or equipment.

Department of Transportation (DOT) rules prohibit alcohol misuse that could affect performance of a safety sensitive function.

A covered employee, whether on or off duty, is strictly prohibited from use, possession, distribution, or trafficking of controlled substances.

The positions covered by this policy are listed on the **Positions Covered List** Attachment (*CD-038101.A*)

B. Substance Abuse Coordinator:

1. The Cabinet Secretary shall designate a Substance Abuse Coordinator. The Substance Abuse Coordinator is responsible for implementing, directing, administering and managing the drug program within the Corrections Department. The Substance Abuse Coordinator shall ensure adherence to policies and procedures that pertain to the

maintenance of a drug-free and alcohol-free workplace. The Substance Abuse Coordinator shall serve as the principal contact with the lab.

2. The Substance Abuse Coordinator shall ensure that a confidential system of records exists to properly handle and report drug and alcohol test results and retain records.
3. The Substance Abuse Coordinator shall ensure that the Department submits the annual report on drug and alcohol testing as required by the Federal Highway Administration and the Department of Transportation.
4. The Substance Abuse Coordinator shall receive the random selection list and notify the appropriate personnel of the need to test selected employees.
5. The Substance Abuse Coordinator shall compile, maintain, and update a Drug- Free and Alcohol-Free Workplace Procedures Manual. Changes to the procedures shall be coordinated with the Legal Services Bureau.

C. Assistant Substance Abuse Coordinators:

1. Each facility or division shall have an Assistant Substance Abuse Coordinator assigned to assist the Substance Abuse Coordinator in carrying out the purpose of this policy.
2. Assistant Substance Abuse Coordinators shall assure that applicants for designated positions are tested prior to appointment.
3. Assistant Substance Abuse Coordinators shall assist managers and supervisors in dealing with employees found to be in violation of this program.
4. Assistant Substance Abuse Coordinators shall assist employees requesting referral to a drug or alcohol rehabilitation program.
5. Assistant Substance Abuse Coordinators shall be required to maintain a copy of the Procedures Manual. The Substance Abuse Coordinator shall provide the Assistant Substance Abuse Coordinators with updates as required.

D. Alcohol or Controlled Substances Testing Requirements:

1. The alcohol testing procedure requires that both a screening and a confirmation test be conducted by a trained breath alcohol technician (BAT) using an Evidential Breath Testing (EBT) Device. An alcohol concentration of 0.02 or greater shall be considered a positive result.
2. The controlled substances testing procedure requires the split urine sample collection method.

Federal guidelines specifically mandate the following five-panel drug test:

Amphetamines: Including amphetamines and methamphetamines (speed, uppers, etc.) in concentrations greater than (screening cutoff at 1000 ng/mL, confirmation cutoff at 500 ng/mL). This assay also detects high levels of some compounds found in prescription and non-prescription cold medications such as pseudoephedrine. Any positive test result is automatically subjected to a confirmation process that determines if the compound present is amphetamine or other amphetamine-like substances that might be present in over-the-counter cold preparations and diet aids.

Cannabinoids (marijuana): Major urinary metabolites of THC, which is the active ingredient in marijuana and hashish (using a screening cutoff of 50 ng/mL, confirmation cutoff of 15 ng/mL).

Cocaine: Benzoylcegonine (BE), the primary urinary metabolite of cocaine, is detected at concentrations greater than 150 ng/mL for screening cutoff and 100 ng/mL for confirmation cutoff.

Opiates: Opiates, including morphine (the metabolite of heroin), Codeine, Dilaudid and Percodan can be detected in urine at concentrations greater than 300 ng/mL screening cutoff and 300 ng/mL confirmation cutoff. Under DHHS guidelines, only Codeine and Morphine positives are reported.

Phencyclidine: Phencyclidine (PCP, aka "angel dust") is detected in urine at concentrations greater than 25 ng/mL screening cutoff and 25 ng/mL confirmation cutoff.

3. The Corrections Department shall require covered employees to submit to alcohol and controlled substances testing for the following reasons:
 - a. *Pre-Employment:* Applicants for safety-sensitive positions shall be required to pass a controlled substances test prior to appointment. This requirement applies to both new employees and current employees who transfer to a safety-sensitive position within the Corrections Department that requires possession of a CDL.
 - b. *Random:* Alcohol testing shall be administered at a minimum annual rate of 10 percent of the average number of covered employees. Controlled substances testing shall be administered at an annual rate of not less than 50 percent of the average number of covered employees.

All covered employees have an equal statistical chance of being selected for testing within a specified time frame. Random testing is unannounced and could happen on any workday.

Employees selected for random testing must proceed immediately to a designated testing site upon notification of being selected.

At the time of selection, employees, as determined by the random selection process, shall be subject to testing for controlled substances or alcohol, or both, as appropriate.

The Corrections Department is part of a consortium of agencies for which the State Personnel Office will make the random selection.

- c. *Reasonable Suspicion:* Any covered employee shall be tested if there is a reasonable suspicion that the employee is either under the influence of alcohol, controlled substances or drugs while on duty; or has been observed using or possessing alcohol or controlled substances while on duty.

Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

- d. *Post-Accident:* As soon as practicable following an accident in a state vehicle, the Department shall test each employee for alcohol, drugs and controlled substances whose performance could have contributed to the accident (as determined by a citation for a moving traffic violation) and for all fatal accidents even if the driver is not cited for a moving traffic violation. Employees shall also be tested if the vehicle is inoperable and must be towed.

A covered employee subject to the post-accident testing requirement who fails to remain readily available for testing may be deemed to have refused to submit to testing. However, a covered employee who leaves the scene of the accident may continue to be considered readily available for testing if (1) the employee notifies the Corrections Department of his or her location; (2) the employee left the scene to obtain necessary medical care (for himself, herself or others); or (3) the employee left the scene to obtain assistance in responding to the accident.

- e. *Follow-up Testing:* Each covered employee who self-identifies and has been identified by a Substance Abuse Professional (SAP) as needing assistance in resolving problems with alcohol misuse or controlled substances is subject to a minimum of six follow-up tests within the first 12 months following rehabilitation. At the discretion of the Substance Abuse Coordinator, a covered employee shall be tested any time between 30 calendar days and 180 calendar days from the date of referral. The SAP may require the covered employee to undergo additional alcohol or drug testing for up to 60 months.

Follow-up testing is in addition to, not in substitution for, any other required test. Employees will still be subject to random testing.

4. All controlled substances or alcohol testing shall be conducted in accordance with Drug-Free and Alcohol-Free Workplace Procedures Manual.
5. Records concerning test results shall be maintained in a confidential manner and shall not be placed in the personnel file unless the information is included in the language of a disciplinary action letter.

6. When directed by the Corrections Department, time spent providing a breath sample or urine specimen, including travel time to and from the collection site, to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by the rules is considered on-duty time.

E. Medical Review Officer:

Although the laboratory analysis will determine whether the specimen is positive, any confirmed positive test results from the laboratory must be reviewed and interpreted by a Medical Review Officer (MRO) prior to transmission of the results to local government administrative officials. The MRO's review must include a review of the chain of custody to ensure that it is complete and sufficient on its face.

The MRO must be a licensed physician with knowledge of both substance abuse disorders and possible alternate medical explanations for a positive test result.

It is the responsibility of the MRO to review and interpret confirmed positive test results obtained through the locality's testing program. As part of his or her responsibilities, the MRO must examine alternate medical explanations for any positive test result and review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO may not consider results of urine samples that were not obtained or processed in accordance with the DOT controlled substances testing program requirements.

F. Employee Assistance:

1. Self-Identification:

All employees have the opportunity to voluntarily admit to being a user of illegal drugs or abuser of alcohol for the purpose of referral to a treatment program. The Department will not initiate disciplinary action against any employee who meets all four of the following criteria:

- a. The employee voluntarily identifies himself or herself as a user of illegal drugs or an abuser of alcohol prior to the initiating of an investigation into or being reasonably suspected of drug or alcohol use or prior to notification of a required or random drug or alcohol test;
- b. The employee obtains counseling or rehabilitation as arranged through the Assistant Substance Abuse Coordinator; and
- c. The employee participates in the treatment program as required by the counselor and fully cooperates with the Substance Abuse Coordinator and successfully completes the treatment program.
- d. The employee does not have a positive test result for drug or alcohol use during

treatment or at any time in the future after having successfully completed the treatment program.

2. Employees in safety-sensitive positions who have requested referral shall be assigned to non-safety-sensitive duties while in an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Non-safety-sensitive duties shall not require the use of a state vehicle.
3. Employees are subject to a minimum of six follow-up tests within the first 12 months following rehabilitation. The SAP may require the covered employee to undergo additional alcohol or drug testing for up to 60 months. Employees will still be subject to random drug testing. Follow-up testing is in addition to, not in substitution for, any other required test.
4. Any costs for assessments, counseling, or rehabilitation shall be borne by the employee.

G. Record Retention Requirements:

Types of records that must be maintained

1. Decisions to administer reasonable suspicion alcohol or drug tests.
2. Records of a covered employee's verified positive drug test results, including the Department's copy of the custody and control form and documents presented by a covered employee to dispute the result of a required controlled substances test.
3. Documents verifying the existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.
4. MRO documents verifying the existence of medical explanation of the inability of a covered employee to provide adequate urine sample.
5. Test forms, including test results.
6. Documents related to a covered employee's refusal to submit to a required alcohol or drug test.
7. Documents presented by a covered employee to dispute the result of a required alcohol or drug test.
8. Documentation of the Department's compliance with the requirement that it adopt a policy on alcohol misuse and drug abuse, distribute the policy and educational materials to employees, and provide written notice to each covered employee and representative of employee organizations regarding the availability of such information.
9. Documentation of training provided to supervisors with respect to their qualification to make a determination that reasonable suspicion exists to require the administration of an

alcohol or drug test.

10. Certification that any required training was conducted in accordance with the rules governing such training.
11. Records related to other violations of the alcohol misuse and drug abuse rules.
12. Records on any required follow-up testing.
13. Records related to a determination by an SAP with respect to a covered employee's need for assistance, including records concerning the employee's compliance with the recommendations of the SAP.
14. Copies of the annual Management Information Systems (MIS) reports submitted to each DOT agency.

H. Training:

1. Supervisors or Managers have a key role in establishing a drug-free and alcohol-free workplace. The Department shall provide training to assist supervisors and managers in recognizing and addressing drug use by employees. Supervisory training for supervisors and managers is mandatory.
2. Training shall provide information on the Department's drug and alcohol policy and procedures to include reasonable suspicion testing procedures, employee assistance programs, and supervisory responsibilities under this program.
3. Supervisors shall receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse and controlled substances use.
4. Assistant Substance Abuse Coordinators shall be responsible for informing supervisory staff of any procedural changes.

I. Sanctions:

1. Positive test results for covered employees in a safety sensitive position or who operate a state vehicle or who operate state equipment, shall be grounds for dismissal.
2. Failure to successfully complete a treatment program shall be grounds for dismissal.
3. Refusal or failure to submit to drug or alcohol testing shall be grounds for dismissal. The following is a non-exhaustive list of acts or omissions that shall constitute refusal:
 - a Failure or refusal to complete specified forms including the release and consent form;

- b. Failure or refusal to submit a specimen;
 - c. Failure or refusal to appear for testing;
 - d. Failure or refusal to obey an order or directive reasonably related to the request to submit to a drug or alcohol test including, but not limited to:
 - 1) Refusal to be driven to the collection site;
 - 2) Refusal to proceed promptly to the collection site for testing.
 - e. Leaving the facility prior to testing.
4. Refusal of treatment or failure to participate in a treatment program after referral shall be grounds for dismissal.
 5. Assaultive or combative behavior towards any person(s) who gives a directive or order related to implementing this policy and procedure shall be grounds for disciplinary action.
 6. Adulteration or substitution of the specimen provided shall be grounds for disciplinary action up to and including dismissal.
 7. Employees who illegally sell, purchase, or transfer drugs or any controlled substance while on duty shall be dismissed and reported to the local law enforcement agency.
 8. Employees who, while on duty, possess drugs or any controlled substance without a valid prescription shall be dismissed and reported to the local law enforcement agency.
 9. Employees who consume alcohol while on duty shall be dismissed. Employees who report for duty displaying behavior or signs of being under the influence of alcohol or drugs shall be dismissed.
 10. An applicant for a safety-sensitive position who tests positive for drugs and is unable to satisfactorily explain the positive result shall be rejected for selection.
 11. An applicant for a new job assignment (transfer or promotion) to a safety-sensitive position from a non-safety-sensitive position who tests positive and is unable to satisfactorily explain the positive results shall be referred to treatment.
 12. Covered employees who test positive 30 to 180 days after referral to a treatment program shall be grounds for dismissal.
 13. Breach of confidentiality may be grounds for disciplinary action.

**NEW MEXICO CORRECTIONS DEPARTMENT
DRUG AND ALCOHOL ABUSE ACKNOWLEDGMENT FORM**

I, _____ (print name), acknowledge that I have received a copy of the Omnibus Drug and Alcohol Testing Program Policy, CD-038100. I realize that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on the premises of the Corrections Department and violation of this policy can subject me to discipline up to and including dismissal. I realize that, as a condition of employment, I must abide by the terms of this policy and will notify the Corrections Department of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction. I further realize that federal law mandates that the Corrections Department communicate this conviction to the federal agency.

I further acknowledge that the position I am presently occupying, _____
(position # and title)
is considered safety sensitive as defined by the Omnibus Transportation Employee Testing Act of 1991. I understand that the Corrections Department intends to have a drug-free and alcohol-free workplace and wants to provide assistance to any employee who has a problem.

Employee's Signature

Date

Witness's Signature

Date

**NEW MEXICO CORRECTIONS DEPARTMENT
POSITIONS COVERED LIST**

5002505640 (#16987)	Correctional Officer 1
5002505640 (#17208)	Correctional Officer 1
5002505640 (#17213)	Correctional Officer 1
5002505640 (#17214)	Correctional Officer 1

Employees in these positions shall immediately notify the Assistant Substance Abuse Coordinator at their facility if their CDL has been suspended or revoked. Failure to do so will be grounds for disciplinary action.