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**1. MATERIAL CHANGES**

- 1.1. Reformatted to conform to new format.
- 1.2. Policy number changed to conform to new policy numbering convention.
- 1.3. Material Changes section added.
- 1.4. Next review due date added.

**PURPOSE**

- 1.5. The purpose of this policy is to assure that TRD employees are fit for duty and to protect TRD and the public from the risks posed by the misuse of alcohol and use of prohibited drugs.

**2. ORGANIZATION AFFECTED**

- 2.1. This policy and these procedures apply to all TRD employees.

**3. AUTHORITY**

- 3.1. Alcohol Misuse in Transit Operations Rule, Federal Transit Administration, US Department of Transportation.
- 3.2. Controlled Substance & Alcohol Use and Testing Rule, Federal Highway Administration, US Department of Transportation.
- 3.3. The Federal Drug Free Workplace Act (1988).
- 3.4. 1.7.8 NMAC (02/12/2010, as amended through 10/30/2012).
- 3.5. 1.7.9.9(E) NMAC (07/01/2001, as amended through 03/31/2004).
- 3.6. Omnibus Transportation Employee Testing Act of 1991.

**4. DEFINITIONS**

- 4.1. **Alcohol:** all consumable non-prescription substances which contain alcohol, specifically including, without limitation, spirits, wine, malt beverages, and intoxicating liquors.
- 4.2. **Drug:** marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines; a metabolite of those drugs; or any non-prescription substance containing those drugs.

- 4.3. **DUI:** Driving Under the Influence; the criminal offense of operating a motor vehicle while under the influence of alcohol or drugs, including prescription drugs, at a level which prevents the driver from thinking clearly or driving safely, under the “impaired to the slightest degree” standard or under the statutory standard pursuant to NMSA 1978, 66-8-102. State laws specify the levels of blood-alcohol content at which a person is presumed to be under the influence and this is the level that has been determined that an individual cannot safely operate a motor vehicle.
- 4.4. **DWI:** Driving While Intoxicated. See DUI above.
- 4.5. **Omnibus:** refers to the federal Omnibus Transportation Employee Testing Act of 1991 requiring alcohol and drug testing of certain transportation employees in aviation, trucking, railroads, mass transit and other transportation industries.
- 4.6. **On duty:** for the purposes of this policy, means any time during employees’ regular workday or other period during which employees are required to work by TRD, including authorized lunch and other breaks, and any time while operating or riding in a TRD-owned, -leased, -rented or -operated vehicle.
- 4.7. **Safety-Sensitive Position:** positions identified by the Human Resources Bureau (HRB) in which impairment by alcohol or drugs while on duty would constitute an immediate and direct threat to employees, employees’ coworkers, or the public’s health and safety. These positions include, but are not limited to, peace officers, correctional officers, employees who are required to regularly carry a firearm and employees who regularly transport other people as their principal job. (See 1.7.8.7 NMAC.)
- 4.8. **SoNM:** State of New Mexico.
- 4.9. **SPO:** State of New Mexico Personnel Office.
- 4.10. **TRD:** State of New Mexico Taxation and Revenue Department.

## 5. REFERENCES

- 5.1. The Federal Drug Free Workplace Act (1988).
- 5.2. NMSA 1978, 66-8-102 § Driving under the influence of intoxicating liquor or drugs; aggravated driving under the influence of intoxicating liquor or drugs; penalties
- 5.3. 1.7.8.7 NMAC Definitions, Drug and Alcohol Abuse (07/01/01; 11/14/02).
- 5.4. Omnibus Transportation Employee Testing Act of 1991.

## 6. POLICY

- 6.1. All TRD employees are prohibited from possessing, using, distributing, or being under the influence of alcohol, drugs and/or controlled substances without a valid prescription while in the performance of their job or duty and/or while operating or riding in a TRD-owned, -leased, -rented, or –operated vehicle.
- 6.2. TRD employees who report to work impaired by alcohol, drugs, or controlled substances without a valid prescription are subject to alcohol and/or drug testing based on reasonable suspicion and shall result in employees being considered absent without leave until they are determined to be unimpaired and ready or fit for work.
  - 6.2.1. Reasonable suspicion is direct observation of physical symptoms or manifestations of being under the influence of alcohol or drugs while on duty. Such symptoms or manifestations include, but are not limited to,

odor of alcohol on employees' breath, slurred speech, bloodshot, watery eyes, unsteady walk, or other impaired coordination or condition.

- 6.2.2. Reasonable suspicion also includes the direct observation of using or possessing alcohol, illegal drugs or drug paraphernalia while on duty.
- 6.3. Before employees are required to submit to alcohol or drug testing based on reasonable suspicion, supervisors must secure approval from HRB. Within 24 hours following an alcohol or drug test, supervisors must prepare and submit a memorandum outlining the facts causing reasonable suspicion. (See 1.7.8.11 NMAC.)
- 6.4. Alcohol or drug testing procedures may include, but are not limited to, completing specific forms and the submission of urine, blood, or breath specimens. (See 1.7.8.14 NMAC.)
- 6.5. TRD employees shall not refuse to cooperate with or to submit to alcohol or drug testing without good cause.
- 6.6. No laboratory reports or test results shall appear in an employee's employment history unless they are part of disciplinary actions. Laboratory reports or test results shall be placed in special locked files maintained by HRB. (See 1.7.8.18 NMAC.)
- 6.7. TRD reserves the right to inspect the status of employees' driver licenses when a valid driver license is required for their position.
- 6.8. Applicants for TRD positions that are safety-sensitive or are federally-mandated positions (e.g., Commercial Driver's License holders) are required to submit to drug testing after offers of employment are made and prior to final selections for appointment. (See 1.7.8.11 NMAC.)
- 6.9. Employees holding safety-sensitive and Omnibus-designated positions are required to undergo drug testing yearly on a random selection basis. (See 1.7.8.11 NMAC.)
- 6.10. TRD employees found to have engaged in the illegal possession, selling, transfer or consumption of drugs or controlled substance(s) while on duty or in the workplace will be reported to law enforcement authorities.
- 6.11. TRD employees must disclose to their supervisor or anyone up their chain of command within five (5) days after any arrest or conviction of an alcohol or drug-related offense occurring while on or off duty.
- 6.12. Once employees disclose an alcohol- or drug-related arrest or conviction, or supervisors learn of an incident, supervisors:
  - 6.12.1. Shall not permit employees to drive a TRD-owned, -leased, -rented, or – operated vehicle pending the outcome of an administrative inquiry;
  - 6.12.2. Shall assign employees to duties that do not require driving;
  - 6.12.3. Shall not place employees on administrative leave solely because of an alcohol- or drug-related arrest or conviction.
- 6.13. To be hired by TRD, applicants must not have a drug-related or DWI/DUI conviction on their record in the past three years.

6.14. Upon determination that an employee has more than one alcohol- or drug-related offense during the course of their employment at TRD, the employee's division director can take action to discipline employees up to and including termination from TRD employment.

6.14.1. If there are certain exceptional mitigating facts and circumstances, managers may seek exceptions to required removal of employees who have more than one alcohol- or drug-related offense by submitting a written request to the Cabinet Secretary explaining mitigating facts and circumstances for their request of an exception. Approvals or disapprovals of exception requests must be in writing.

### **Rehabilitation-Employees Who Voluntarily Self-Identify**

6.15. HRB shall refer employees who voluntarily self-identify as needing help and request a referral to an employee assistance program (EAP), counseling, or an alcohol or drug rehabilitation program.

6.15.1. Any costs for counseling or rehabilitation shall be borne by employees. (See 1.7.8.19 NMAC.)

6.15.2. HRB will verify the completion of the program.

6.16. HRB may grant up to 240 hours of administrative leave to employees to participate in HRB-approved programs for first-time voluntary self-identifications only. (See 1.7.8.19 NMAC.)

6.17. Employees in safety-sensitive or Omnibus-designated positions who have requested referrals shall be assigned to non-safety-sensitive duties while in HRB-approved programs.

6.18. Following self-identification, employees are subject to alcohol and/or drug testing at the discretion of HRB at any time between 30 and 180 calendar days after requesting referral. (See 1.7.8.19 NMAC.)

6.18.1. Employees in safety-sensitive or Omnibus-designated positions who test positive on alcohol or drug tests or who fail to successfully complete a program are subject to disciplinary action.

6.18.2. Employees in non-safety-sensitive or non-Omnibus-designated positions who test positive on alcohol or drug tests or who fail to successfully complete a program are subject to disciplinary action.

A. HRB, in consultation with employees' supervisors, may allow employees to use annual or sick leave or leave without pay for additional counseling or rehabilitation after considering all factors relevant to employees' condition and job performance history.

6.18.3. Employees who are requested to take an alcohol or drug test based on reasonable suspicion cannot self-identify at that time; they must self-identify before an alcohol or drug test based on reasonable suspicion is requested by TRD.

6.18.4. Employees who self-identify at the time of disclosing an arrest or conviction may still be subject to disciplinary action based on their arrest or conviction.

## **Rehabilitation-Employees Who Do Not Voluntarily Self-Identify**

### **Non-Safety or Non-Omnibus-Designated Positions**

6.19. TRD/HRB may grant up to 240 hours of administrative leave to employees who test positive on alcohol or drug tests based on reasonable suspicion and who fail to provide satisfactory explanations for positive test results.

6.19.1. Administrative leave shall be granted only for first-time reasonable suspicion referral and shall be for the purpose of allowing employees to participate in HRB-approved programs. (See 1.7.8.19 NMAC.)

6.19.2. HRB may require verification of completion of programs.

6.20. Employees are then subject to alcohol or drug testing at the discretion of HRB at any time between 30 and 180 calendar days after the first positive test.

6.20.1. Employees who test positive for alcohol or drugs or have a second positive test without a satisfactory explanation or who fail to enter and successfully complete a program shall be subject to disciplinary action, up to and including termination. (See 1.7.8.19 NMAC.)

### **Non-Safety or Non-Omnibus-Designated Positions**

6.21. Employees in safety-sensitive or Omnibus-designated positions who have not requested referral to a program and test positive on alcohol or drug tests based on reasonable suspicion shall be subject to disciplinary action if they do not have a satisfactory explanation for the positive test results.

## **7. PROCEDURES**

7.1. Immediately upon learning of an employee's alcohol or drug-related charge, arrest or conviction and in addition to reporting the charge, arrest or conviction to HRB, supervisors must initiate an administrative review of the facts and circumstances. Reviews should include obtaining statements from offending employees, copies of official police reports (if they exist), court pleadings, and consultation with HRB and TRD General Counsel.

7.2. Next, the supervisor shall issue to the employee a TRD Notice of Contemplated Action (NCA) for Suspension of ten (10) working days. NCAs include, among other things, directions for employees to enroll in and successfully complete an HRB-approved program, at the employee's own expense. NCAs should be issued without regard to ultimate outcomes of any criminal proceeding.

7.3. In cases where an employee's driver's license has not been revoked or suspended, the supervisor shall determine whether or not the employee can safely perform his/her job duties, and at the division directors' discretion, may return the employee to full duties once the employee enrolls in a HRB-approved program or after the employee has successfully complete the a HRB-approved program.

7.3.1. If the employee cannot perform his/her essential job functions, which may include driving a State vehicle, the supervisor shall review the employee's work duties and reassign them to positions that do not require driving and/or to discipline them up to and including termination.

7.4. Supervisors may initiate action that is more severe than an NCA for a 10-day suspension if there are aggravating factors in employees' first alcohol or drug-related offence. Examples of aggravating factors include offences that:

- 7.4.1. occurred during working hours;
  - 7.4.2. occurred en route to or from a TRD work location;
  - 7.4.3. occurred on TRD-owned or -leased property; or
  - 7.4.4. involved other incidents of serious aggravating factors in which case TRD General Counsel’s advice must be obtained.
- 7.5. Upon determination that employees have more than one alcohol or drug-related charge, TRD may discipline employees up to and including termination from TRD employment.
- 7.6. Disciplinary actions must be supported by a preponderance of the evidence. In the majority of the cases, a blood-alcohol reading by law enforcement officials will determine employees’ level of intoxication. Employees’ refusal to submit to blood-alcohol tests, for the purpose of this policy, will be considered conclusive evidence of employees’ intoxication.
- 7.7. The standards of evidence and proof of guilt required to support disciplinary actions are that of a preponderance of evidence, which is not the same standard required for a criminal conviction. Therefore, in instances where court cases may be dismissed on jurisdictional or technical grounds or employees are found guilty of non-DUI/DWI offenses such as “reckless endangerment”, TRD may still impose disciplinary actions. In many of those cases, the disciplinary actions described in this policy are still appropriate based on the facts relating to alcohol- and drug-related incidents.
- 7.8. Cases where disciplinary actions are not taken because of final court decisions that are contrary to original arrest reports must be approved by the Cabinet Secretary.

**9. ATTACHMENTS**

- 9.1. None

**10. APPROVAL**

- 10.1. Approved by:

  
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Stephanie Schardin Clarke, Secretary

10/16/19  
\_\_\_\_\_  
Date