

**TITLE 1            GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 7        STATE PERSONNEL ADMINISTRATION**  
**PART 8            DRUG AND ALCOHOL ABUSE**

**1.7.8.1            ISSUING AGENCY:** State Personnel Board.  
[1.7.8.1 NMAC - Rp, 1 NMAC 7.8.1, 07/07/01]

**1.7.8.2            SCOPE:** All state agencies in the classified service.  
[1.7.8.2 NMAC - Rp, 1 NMAC 7.8.2, 07/07/01]

**1.7.8.3            STATUTORY AUTHORITY:** NMSA 1978, Section 10-9-10(A).  
[1.7.8.3 NMAC - Rp, 1 NMAC 7.8.3, 07/07/01; A, 11/14/02]

**1.7.8.4            DURATION:** Permanent.  
[1.7.8.4 NMAC - Rp, 1 NMAC 7.8.4, 07/07/01]

**1.7.8.5            EFFECTIVE DATE:** 07/07/01 unless a later date is cited at the end of a section.  
[1.7.8.5 NMAC - Rp, 1 NMAC 7.8.5, 07/07/01]

**1.7.8.6            OBJECTIVE:** The objective of Part 8 of Chapter 7 is: to require training on the awareness of the effects of drug and alcohol abuse; to require drug and/or alcohol testing for certain employees in specific situations; and to establish required collection, screening, rehabilitative and sanction parameters.  
[1.7.8.6 NMAC - Rp, 1 NMAC 7.8.6, 07/07/01]

**1.7.8.7            DEFINITIONS:**

**A.**            “Alcohol” means all consumable non-prescription substances which contain alcohol, specifically including, without limitation, spirits, wine, malt beverages, and intoxicating liquors.

**B.**            “Aliquot” means a portion of a urine specimen used for testing.

**C.**            “Chain of custody” refers to procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. A chain of custody form approved by the director shall be used for blood and urine samples. In any dispute regarding chain of custody, the identity and integrity of the sample at issue may be shown by a preponderance of the evidence.

**D.**            “Confirmatory test” means a second analytical procedure to identify the presence of a specific drug or metabolite in a urine specimen by gas chromatography/mass spectrometry (GC/MS).

**E.**            “Drug” means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines; a metabolite of those drugs; or any non-prescription substance containing those drugs.

**F.**            “Initial test” means an immunoassay screen which meets the requirements of the food and drug administration to eliminate negative specimens from further consideration.

**G.**            “Medical review officer” means a licensed physician knowledgeable in the medical use of prescription drugs and alcohol and the pharmacology and toxicology of illicit drugs and alcohol.

**H.**            “Non-prescription” refers to all substances other than a substance which has been prescribed for the particular candidate, or employee who has ingested or otherwise used the substance by a doctor or other health professional licensed with authority to prescribe such substances by the state of New Mexico or other governmental entity of the United States.

**I.**            “On duty” means any time during an employee's regular workday or other period during which the employee is required to work by the employer, including authorized lunch and other breaks, and anytime while operating or riding in a state vehicle.

**J.**            “Random selection basis” means a system for selecting employees or groups of employees for drug testing in a statistically random system based on a neutral criterion, such as employment or social security numbers, without individualized suspicion that a particular employee is using drugs.

**K.**            “Reasonable suspicion” means a belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts.

**L.**            “Safety-sensitive position” is a position approved as such by the board, including a supervisory or managerial position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is 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.

[1.7.8.7 NMAC - Rp, 1 NMAC 7.8.7, 07/07/01; A, 11/14/02]

**1.7.8.8 OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991:**

**A.** Employees in safety-sensitive positions within the meaning of the *Omnibus Transportation Employee Testing Act of 1991* ("Act" [49 U.S.C. Section 31-03-06] are exempt from and are not covered by the provisions of **1.7.8.7 NMAC** and **1.7.8.9 NMAC** through **1.7.8.20 NMAC**.

**B.** Agencies with employees covered by the act shall develop plans or a plan and submit it to the director and implement such plans or plan for drug and alcohol abuse testing of employees covered by the act.

**C.** The plans or plan shall contain at the least:

- (1) the positions covered;
- (2) testing requirements for drugs and alcohol;
- (3) the collection of specimen;
- (4) reporting and explanation of test results;
- (5) confidentiality;
- (6) training;
- (7) rehabilitation and sanctions; and
- (8) record retention.

**D.** Agencies with employees covered by the act shall advise the board by January 1 of each year of those positions covered by the act.

[1.7.8.8 NMAC - Rp, 1 NMAC 7.8.8, 07/07/01]

**1.7.8.9 DESIGNATION OF SAFETY-SENSITIVE POSITIONS:**

**A.** Only those positions specifically designated by the board as such shall be considered to be safety-sensitive positions for purposes of **1.7.8 NMAC**.

**B.** The director shall maintain a list of positions designated by the board as being safety-sensitive.

**C.** The board shall review at least annually the positions designated as safety-sensitive and after proper notice add or delete positions as being safety-sensitive on its own initiative or following a request.

[1.7.8.9 NMAC - Rp, 1 NMAC 7.8.9, 07/07/01]

**1.7.8.10 AWARENESS PROGRAM:**

**A.** Each agency shall appoint a drug abuse coordinator who shall be responsible for the agency's drug and alcohol abuse program.

**B.** The drug abuse coordinator shall administer the drug and alcohol abuse awareness program to inform employees about:

- (1) the dangers of drug and alcohol abuse;
- (2) available counseling, rehabilitation, and employee assistance programs; and
- (3) the sanctions that may be imposed upon employees as provided in **1.7.8.19 NMAC**.

**C.** The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the duties required by **1.7.8 NMAC**.

[1.7.8.10 NMAC - Rp, 1 NMAC 7.8.10, 07/07/01; A, 11/14/02]

**1.7.8.11 AUTHORIZED DRUG AND ALCOHOL TESTING:**

**A.** All external candidates for safety-sensitive positions are required to submit to drug testing after an offer of employment is made and prior to final selection for appointment.

**B.** Prior to assuming a safety-sensitive position from a nonsafety-sensitive position, employees shall be required to submit to drug testing.

**C.** Agencies that require employees in safety-sensitive positions to undergo regular physical examinations shall require such employees to undergo drug testing as part of those physical examinations.

**D.** Each agency shall require employees to undergo drug and/or alcohol testing if the agency has a reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to:

- (1) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty such as liquor on breath, slurred speech, unsteady walk, or impaired coordination; or
- (2) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

**E.** Before an employee is required to submit to reasonable suspicion drug and/or alcohol testing, a supervisor must secure the approval of the next level supervisor unless the requesting supervisor is the agency head.

The supervisor must prepare a memorandum within 24 hours after the specimen collection stating what gave rise to the reasonable suspicion and submit the memorandum to the drug abuse coordinator.

**F.** At least ten percent (10%) of employees in safety-sensitive positions shall be required to undergo drug testing on a yearly basis.

- (1) The director or a contractor shall identify the employees on a random selection basis.
- (2) At the discretion of the director, employees may be excused from random drug testing if:

(a) they have previously requested referral in accordance with the provisions of **Subsection B of 1.7.8.19 NMAC**;

(b) the selection for random drug testing is made during the first 30 calendar days following the request for referral; or

(c) they are on an authorized absence.

[1.7.8.11 NMAC - Rp, 1 NMAC 7.8.11, 07/07/01; A, 7-15-05]

#### **1.7.8.12 COLLECTION OF SPECIMENS:**

**A.** Unless otherwise specified in **1.7.8 NMAC**, urine specimens for drug testing shall be collected by an independent laboratory or under the direction of an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The collection shall be in accordance with the September 1988 edition of the urinalysis collection handbook for federal drug testing programs of the national institute on drug abuse. Any and all consent forms used in, or related to, the collection of urine specimens under **1.7.8 NMAC** shall be approved by the director. Forms and logbooks specified or recommended in the urinalysis collection handbook for federal drug testing programs may not be used at all, may be used in a different form, may contain different information, or may involve different procedures than those used under **1.7.8 NMAC**.

**B.** Breath specimens shall be collected by any appropriately certified person or a medical or laboratory facility selected by the director.

**C.** Blood specimens shall be collected by or under the direction of an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the college of American pathologists.

[1.7.8.12 NMAC - Rp, 1 NMAC 7.8.12, 07/07/01]

#### **1.7.8.13 DRUG TESTS:**

**A.** The initial and confirmatory drug tests, shall be performed in accordance with DHHS/DOT testing guidelines and by an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The laboratory shall have the capability, on the same premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

**B.** The following initial cutoff levels shall be used when screening specimens on the initial drug tests to determine whether they are negative for these five drugs or classes of drugs:

- (1) Marijuana metabolites .....50 (ng/ml)
- (2) Cocaine metabolites .....300 (ng/ml)
- (3) Opiate metabolites.....2,000 (ng/ml)
- (4) Phencyclidine .....25 (ng/ml)
- (5) Amphetamines.....1,000 (ng/ml)

**C.** All specimens identified as positive on the initial drug test, shall be confirmed by the laboratory at the cutoff values listed below for each drug. All confirmations shall be by quantitative analysis:

- (1) Marijuana metabolites<sup>1</sup> .....15 (ng/ml)
- (2) Cocaine metabolites<sup>2</sup> .....150 (ng/ml)
- (3) **Opiates:**
  - (a) Morphine .....2,000 (ng/ml)
  - (b) Codeine.....2,000 (ng/ml)
- (4) Phencyclidine .....25 (ng/ml)
- (5) **Amphetamines:**
  - (a) Amphetamine.....500 (ng/ml)
  - (b) Methamphetamine.....500 (ng/ml)
- (6) <sup>1</sup>Delta - 9-tetrahydrocannabinol - 9-carboxylic acid
- (7) <sup>2</sup>Benzoyllecgonine

**D.** The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.

**E.** The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

[1.7.8.13 NMAC - Rp, 1 NMAC 7.8.13, 07/07/01; A, 11/14/02; A, 7-15-05]

#### **1.7.8.14 ALCOHOL TESTS:**

**A.** A test for alcohol shall be administered by breath or blood. A test for any indication of alcohol in the 30 to 180 calendar day period following an employee's request to be referred to alcohol rehabilitation in accordance with the provisions of *Paragraph (1) of Subsection B of 1.7.8.19 NMAC* may be performed by urinalysis.

**B.** A test for alcohol by blood shall be performed by an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the college of American pathologists.

**C.** A test result of a blood-alcohol content (BAC) level of .06 or more shall be deemed positive for alcohol. For employees who have been required to undergo alcohol rehabilitation in accordance with the provisions of *Paragraph (1) of Subsection D of 1.7.8.19 NMAC*, any indication of alcohol at any level for the 30 to 180 calendar day period following an employee's request to be referred for rehabilitation shall be considered a positive test result.

[1.7.8.14 NMAC - Rp, 1 NMAC 7.8.14, 07/07/01; A, 11/14/02]

#### **1.7.8.15 REPORTING OF TEST RESULTS:**

**A.** Drug and alcohol test results shall be reported only to the drug abuse coordinator or designee.

**B.** The test report shall contain the specimen number assigned by the agency, the laboratory accession number and results of the tests. All specimens negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive. Results may be transmitted to the drug abuse coordinator by various means including certified mail with return receipt requested, courier service, and/or electronic mail in a secure area (e.g., teleprinter, facsimile, or computer). Certified copies of all analytical results and chain-of-custody forms shall be available from the laboratory when requested by appropriate authority.

**C.** The drug abuse coordinator shall advise candidates and employees in writing of the test results. The drug abuse coordinator may also advise candidates and employees verbally of the test results.

**D.** All records pertaining to a given urine specimen shall be retained by the laboratory for a minimum of two years.

**E.** Only those members of management who need to know shall be made aware of the test results. Breach of confidentiality may be grounds for disciplinary action.

[1.7.8.15 NMAC - Rp, 1 NMAC 7.8.15, 07/07/01]

#### **1.7.8.16 EXPLANATION OF POSITIVE TEST RESULTS:**

**A.** Candidates for employment who test positive for drugs may, within 2 workdays of being advised of the test results, submit a written request to the agency's drug abuse coordinator for a review of the test results by the medical review officer. The test results of all employees who test positive for drugs and/or alcohol shall be referred by the agency's drug abuse coordinator to the medical review officer.

**(1)** If the candidate does not request a review of the test results within two work days, the candidate waives review by the medical review officer and any retesting of the sample and consents to rejection for selection.

**(2)** The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications and/or medical or dental treatment. The medical review officer shall also review the results of any retest done according to the provisions of *1.7.8.17 NMAC*.

**(a)** Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the state to order a reanalysis of the original sample and such retests are authorized to be performed only at an independent laboratory that meets applicable provisions of any

state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

(b) Prior to making a final decision to verify a positive test result, the medical review officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the medical review officer and the candidate or employee may be in person or by telephone.

(c) The medical review officer shall advise the appropriate drug abuse coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the medical review officer shall not attempt to resolve that factual conflict, but shall report it along with his or her medical conclusions to the drug abuse coordinator for the agency. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol, but shall simply report such claims to the drug abuse coordinator for the agency, all with his or her medical opinion as to the possibility that such occurrence could have affected the test results.

**B.** Based upon the medical review officer's report and such other inquiries or facts as the agency may consider, the agency shall determine whether the candidate's or employee's explanations or challenges of the confirmed positive test results are satisfactory.

(1) If the candidate's or employee's explanations or challenges of the positive test results are unsatisfactory to the agency:

(a) a written explanation as to why the explanation is unsatisfactory, along with the test results, shall be provided to the candidate or employee within 11 calendar days of the agency's determination; and

(b) such records shall be kept confidential by the agency and shall be retained for one year.

(2) If the candidate's or employee's explanations or challenges of the positive test results are satisfactory to the agency:

(a) the agency shall notify the candidate or employee of the agency's determination within 11 calendar days of the determination; and

(b) such records shall be kept confidential by the agency and shall be retained for one year.

[1.7.8.16 NMAC - Rp, 1 NMAC 7.8.16, 07/07/01; A, 11/14/02; A, 7-15-05]

#### **1.7.8.17 RETESTING:**

**A.** Candidates who have sought review of their positive drug tests by the medical review officer and all employees who tested positive for drugs may elect to have, at their expense, an aliquot of the original urine specimen retested by another independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The drug testing laboratory shall arrange for the shipment of the aliquot to the laboratory of the candidates' or employees' choosing. The agency shall pay for the retest if the retest is negative.

**B.** Employees who test positive for alcohol by blood may elect to have, at their expense, a tube of the original blood sample retested by another independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the college of American pathologists. The laboratory shall arrange for the shipment of the blood sample to the laboratory of the employee's choosing. The agency shall pay for the retest if the retest is negative.

[1.7.8.17 NMAC - Rp, 1 NMAC 7.8.17, 07/07/01]

**1.7.8.18 CONFIDENTIALITY:** No laboratory reports or test results shall appear in the employee's employment history unless they are a part of a disciplinary action taken in accordance with the provisions of **1.7.8 NMAC**, but shall be placed in a special locked file maintained by the drug abuse coordinator. Files relating to laboratory reports or test results maintained by the drug abuse coordinator are confidential within the meaning of **1.7.1.12 NMAC**.

[1.7.8.18 NMAC - Rp, 1 NMAC 7.8.18, 07/07/01]

#### **1.7.8.19 REHABILITATION AND SANCTIONS:**

##### **A. Candidates for Employment:**

(1) A candidate for employment in a safety-sensitive position who tests positive for drugs and who does not seek review by the medical review officer or who is unable to satisfactorily explain the positive test results shall be rejected for selection.

(2) An employee for transfer or promotion to a safety-sensitive position who tests positive for drugs and is unable to satisfactorily explain the positive test results shall be subject to disciplinary action including

dismissal if the employee occupies a safety-sensitive position. If the employee is not in a safety-sensitive position, the employee shall be treated in accordance with the provisions of *Subsection D of 1.7.8.19 NMAC*.

**B. Voluntary Self-Identification by Employees:**

(1) The drug abuse coordinator shall refer those employees who request such a referral prior to selection for drug or alcohol testing to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Any costs for counseling or rehabilitation shall be borne by the employee.

(2) The agency may grant administrative leave to an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial voluntary self-identification only.

(3) Employees in safety-sensitive positions who have requested referral shall be assigned to nonsafety-sensitive duties while in an employee assistance program, counseling, or a drug or alcohol rehabilitation program.

(4) Employees are subject to drug and/or alcohol testing at the discretion of the drug abuse coordinator at any time between 30 calendar days and 180 calendar days of requesting referral.

(a) Employees in safety-sensitive positions who test positive during this time period or fail to successfully complete such program are subject to disciplinary action including dismissal.

(b) Employees in non-safety-sensitive positions who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal. The agency may allow the employee to use annual leave, sick leave, or leave without pay for additional counseling or rehabilitation by the agency after considering all factors relevant to the employee's condition and job performance history.

(5) For employees who have been required to undergo an alcohol rehabilitation program, any indication of alcohol at any level during the 30 calendar day to 180 calendar day period following the request for referral shall be considered a positive test result.

**C. Safety-Sensitive Positions:** Employees in safety-sensitive positions who have not requested referral to an employee assistance program, counseling, or a drug or alcohol rehabilitation program and test positive on a required drug or alcohol test shall be subject to disciplinary action including dismissal if they do not have a satisfactory explanation for the positive test results.

**D. Nonsafety-Sensitive Positions:**

(1) Employees in nonsafety-sensitive positions who test positive on a reasonable suspicion drug or alcohol test required by *Subsection D of 1.7.8.11 NMAC* and do not have a satisfactory explanation for the positive test results shall be referred to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Employees are subject to drug or alcohol testing at the discretion of the drug abuse coordinator at any time between 30 calendar days and 180 calendar days of the first positive test. Any such employee who tests positive for drugs or alcohol between 30 calendar days and 180 calendar days of the first positive test or has a second positive test without a satisfactory explanation or who fails to enter and successfully complete a program shall be subject to disciplinary action including dismissal.

(2) The agency may grant an employee administrative leave to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial reasonable suspicion referral only.

**E. Refusal to Cooperate in Testing Procedure:** Any employee who refuses or fails without good cause to cooperate in the drug or alcohol testing procedure by refusing or failing to complete the specified forms, by refusing or failing to submit a urine, blood, or breath specimen, or otherwise refuses or fails to cooperate shall be subject to disciplinary action including dismissal.

**F. Possession of Drugs or Alcohol:**

(1) Employees who illegally sell, purchase, or transfer drugs or any substance in *Schedules I and II of the Controlled Substances Act NMSA 1978, Sections 30-31-1 to 30-31-41 (Repl. Pamp. 1994)*, while on duty shall be subject to disciplinary action including dismissal and reported to the local law enforcement agency.

(2) Employees who, while on duty, possess drugs or any substance in *Schedules I and II of the Controlled Substances Act NMSA 1978, Sections 30-31-1 to 30-31-41 (Repl. Pamp. 1994)* without a valid prescription or as otherwise authorized by law shall be subject to disciplinary action including dismissal and reported to the local law enforcement agency.

(3) Employees who consume alcohol while on duty shall be subject to disciplinary action including dismissal.

**G. Application of Other Sanctions:** Nothing in *1.7.8 NMAC* shall prevent or limit the imposition of other or additional sanctions that may be applicable under any of these rules merely because an incident involves drug or alcohol abuse.

[1.7.8.19 NMAC - Rp, 1 NMAC 7.8.19, 07/07/01; A, 11/14/02]

**1.7.8.20 PILOT PROGRAM:** The board may authorize a pilot program to evaluate impairment testing. Such pilot programs may authorize variances from provisions of **1.7.8 NMAC**, including random drug testing for participants in the pilot program.

[1.7.8.20 NMAC - Rp, 1 NMAC 7.8.20, 07/07/01]

**HISTORY OF 1.7.8 NMAC:**

**Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

SPB-14, Drug and Alcohol Abuse, filed 04-04-90;

SPB-14, Drug and Alcohol Abuse, filed 10-17-90;

SPB-14, Drug and Alcohol Abuse, filed 12-13-90;

SPB 11, Drug and Alcohol Abuse, filed 12-15-92;

SPB 11, Drug and Alcohol Abuse, filed 03-18-94;

SPB 11, Drug and Alcohol Abuse, filed 12-29-94.

**History of Repealed Material:**

1 NMAC 7.8, Drug and Alcohol Abuse, filed 06-13-97.

**Other History:**

1 NMAC 7.10, Drug and Alcohol Abuse, filed 01-12-96 **replaced** SPB 11, filed 12-29-94;

1 NMAC 7.10, Drug and Alcohol Abuse, filed 05-02-96 **1 replaced by** 1 NMAC 7.8, Drug and Alcohol Abuse, filed 06-13-97;

1 NMAC 7.8, Drug and Alcohol Abuse, filed 06-13-97 **replaced by** 1.7.8 NMAC, Absence and Leave, effective 07/07/01.