GENERAL ADMINISTRATION
EMPLOYEE

047 SUBSTANCE ABUSE POLICY AND PROCEDURES

047.1 Drug and Alcohol Free Workplace Policy

047.1.1 Purpose

The purpose of this policy is to assure employees are fit for duty and to protect Human Services Department (HSD) employees and the public from the risks posed by the misuse of alcohol and use of prohibited drugs through compliance with the federal Drug Free Workplace Act (DWFPA) of 1988.

047.1.2 Applicability

All HSD employees.

047.1.3 Definitions

A. "Alcohol" means all consumable non-prescription substances which contain alcohol, specifically including, without limitation, spirits, wine, malt beverages, and intoxicating liquors. (1.7.8.7 NMAC)

B. "Controlled substance" means a drug which has been declared by federal or state law to be illegal for sale or use, except when dispensed under a physician's prescription. The basis for control and regulation is the danger of addiction, abuse, physical and mental harm (including death), the trafficking by illegal means, and the dangers from actions of those who have used the substances.

C. "Drug" includes, but is not limited to, marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines (including methamphetamines); a metabolite of those drugs; or any non-prescription substance containing those drugs. (1.7.8.7 NMAC)

D. "Drug Free Workplace Act of 1988" means legislation passed by Congress designed to keep drugs out of the workplace. The DFWPA states that government employees and all companies and organizations that receive any federal grants, or federal contracts of $25,000 or more must comply with its provisions.

E. "Employee" means any career, term, temporary, probation, or emergency employee.

F. "Omnibus" means the federal Omnibus Transportation Employee Testing Act of 1991 requiring drug and alcohol testing of certain transportation employees in aviation, trucking, railroads, mass transit and other transportation industries.

G. "On duty", for the purposes of this policy, 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. (1.7.8.7 NMAC)

H. "Program" means an OHR-approved employee assistance program, counseling, or a drug or alcohol rehabilitation program.

I. "Reasonable suspicion" means a belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts. (1.7.8.7 NMAC)

J. "Refusal to submit" means that an employee (1) fails to provide an adequate breath sample to allow for testing without providing a valid medical explanation; (2) fails to provide an adequate urine sample for controlled substances testing without providing a valid medical explanation; or (3) employee engages in conduct that clearly obstructs the testing process.

K. "Safety-sensitive position" means a position identified by SPO Board in which impairment by drug or alcohol use would constitute an immediate and direct threat to either the employee's, the employees' co-workers or the public's 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)

L. "Substance abuse" means the use of drugs or alcohol in violation of any State or Federal law, including but not limited to, ingestion to the point of individual impairment or exceeding the legal limits of State or Federal law.

M. "Workplace" means state-owned or leased HSD facilities, property or the location of work-related events during the employee's tenure with HSD.

047.1.4 Policy

The policy of HSD shall be to prohibit any employee from possessing, using, distributing, or being under the influence of alcohol, drugs and/or controlled substances without a valid prescription; and from possessing, using, or distributing drug paraphernalia while at the workplace, while operating or riding in a state-owned vehicle, or in the performance of duty on duty time in accordance with The Drug Free Workplace Act (DFWPA) of 1988. Employees must disclose within five (5) days after any conviction for an alcohol or drug-related offense committed in the workplace, while on duty, or which will impact their ability to carry out their job duties to HSD. (Drug Free Workplace Act 1988) HSD Management reserves the right to inspect the status of an employee's driver license when a valid license is required for the position. Additional federally-compliant regulations apply for those employees in safety sensitive positions or Omnibus-designated positions requiring a Commercial Driver's License (CDL).

047.1.5 Awareness Program:

A. HSD's Office of Human Resources (OHR) has a Substance Abuse Coordinator and is responsible for HSD's drug and alcohol abuse awareneness program as required by the federal Drug Free Workplace Act (DFWPA) of 1988.

B. The awareness program informs employees about:

1. the dangers of drug and alcohol abuse;

2. available counseling, rehabilitation, and the employee assistance program; and

3. the sanctions that may be imposed upon employees.

047.1.6 Authorized Drug and Alcohol Testing

A. All employees are subject to drug and/or alcohol testing if there is reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to: (1.7.8.11 NMAC):

1. direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty. Such symptoms or manifestations include odor of alcohol on the employee's breath, slurred speech, unsteady walk, or impaired coordination;

2. direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

B. Before an employee is required to submit to reasonable suspicion alcohol or drug testing, the supervisor must secure approval from OHR's Substance Abuse Coordinator. Within 24 hours following the alcohol or drug test, the supervisor must prepare and submit a memorandum to setting forth the facts that gave rise to the reasonable suspicion. (1.7.8.11 NMAC).

C. Drug or alcohol testing procedures may include, but are not limited to completion of specified forms and the submission of urine, blood, or breath specimens. (1.7.8.14 NMAC)

D. Refusing or failing to cooperate without good cause in the alcohol or drug testing procedure by the employee is prohibited.

E. No laboratory reports or test results shall appear in the employee's employment history unless they are part of a disciplinary action. Laboratory reports or test results shall be placed in a special locked file maintained by OHR. (1.7.8.18 NMAC)

F. All external candidates for safety-sensitive or federally mandated positions (CDL

holders) are required to submit to drug testing after an offer of employment is made and prior to final selection for appointment. (1.7.8.11 NMAC)

G. Prior to assuming a safety-sensitive or federally mandated position from a nonsafety-sensitive or federally mandated position, employees shall be required to submit to drug testing. (1.7.8.11 NMAC)

H. Safety-sensitive and Omnibus designated positions are required to undergo drug testing yearly on a random selection basis in accordance with SPO Board Rules. (1.7.8.11 NMAC)

047.1.7 Rehabilitation and Sanctions

A. Employees Who Voluntarily Self-Identify

1. OHR's Substance Abuse Coordinator shall refer those employees who voluntarily request a referral 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. (1.7.8.19 NMAC). OHR may require verification of the completion of the program.

2 OHR may grant up to 240 hours of administrative leave to an employee to participate in an OHR-approved program for the initial voluntary self-identification only. (1.7.8.19 NMAC).

3. Employees in safety-sensitive or Omnibus-designated positions who have requested referral shall be assigned to nonsafety-sensitive duties while in an OHR-approved program. (1.7.8.19 NMAC).

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

a. Employees in safety-sensitive or Omnibus-designated positions who test positive or fail to successfully complete such a program are subject to disciplinary action.

b. Employees in nonsafety- sensitive or Omnibus-designated positions who test positive or fail to successfully complete such a program may be subject to disciplinary action. The OHR Substance Abuse Coordinator, in consultation with the employee's supervisor, 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

B. Employees Who Do Not Voluntarily Self-Identify

1. Nonsafety-Sensitive or Non Omnibus-Designated Positions

a. HSD may grant up to 240 hours of administrative leave to an employee who tests positive on a reasonable suspicion drug or alcohol test and who fails to provide a satisfactory explanation for the positive test results. The grant of administrative leave shall be for the initial reasonable suspicion referral only and shall be for the purpose of allowing the employee to participate in an OHR-approved program. (1.7.8.19 NMAC). OHR may require verification of the completion of the program.

b. Employees are then subject to drug or alcohol testing at the discretion of OHR at any time between 30 calendar days and 180 calendar days after the first positive test. Any such employee who tests positive for drugs or alcohol 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.(1.7.8.19 NMAC)

2. Safety-Sensitive or Omnibus-Designated Positions

Employees in safety-sensitive or Omnibus-designated positions who have not requested referral to a program and test positive on a reasonable suspicion drug or alcohol test shall be subject to disciplinary action if they do not have a satisfactory explanation for the positive test results. (1.7.8.19 NMAC)

047.1.8 References

Effective March 17, 1994, the Department of Transportation (DOT) through the Federal Highway Administration (FHWA) implemented the Controlled Substance & Alcohol Use and Testing Rule; and the DOT through the Federal Transit Administration (FTA) implemented the prevention of Alcohol Misuse in Transit Operations Rule.
The Federal Drug Free Workplace Act (1988)
1.7.8 NMAC 07/01/01; 11/14/02

APPROVED:

PAMELA S. HYDE, J.D., Secretary

DATE: 10/2/09