



**DMA Policy: 3-0015**

**Name: Controlled Substance & Alcohol Testing Policy**

**Reference: MCA 39-2-207 Qualified Testing Program**

**Approval Signature:** \_\_\_\_\_

**Signed Date: November 17, 2105**

**Effective Date: January 17, 2016**

## **INTRODUCTION**

The Department of Military Affairs (DMA) employees are our most valuable resource and it is our goal to prevent accidents and injuries resulting from the misuse of alcohol and controlled substances, as well as to provide a healthy and safe working environment.

This policy applies to all employees who perform in safety sensitive functions, such as Firefighters, MT Youth Challenge Academy employees, and employees in positions subject to Commercial Driver's License (CDL) requirements, hereafter referred to as covered positions. This policy applies to on-duty time, as well as off-site breaks and lunch periods when an employee is scheduled to return to work.

This policy conforms to 49 CFR, part 40, procedures for Workplace Drug and Alcohol Testing programs.

DMA state employees in the covered positions shall follow the provisions of this policy unless it conflicts with specific statutes or negotiated labor contracts which take precedence to the extent applicable.

### **Purpose**

The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the use of alcohol and prohibited substances. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs.

Montana law allows controlled substance and alcohol testing of employees who have safety, security, or fiduciary duties, or who work in hazardous work environments, which includes positions that involve the operation of or work in proximity to industrial machinery and the handling or proximity to flammable materials.

DMA is dedicated to assuring fair and equitable application of this policy. Supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy and is found to have deliberately misused the policy in regard to a subordinate shall be subject to disciplinary action up to and including termination.

Nothing in this policy is intended to preclude disciplinary action being taken under existing Department policy.

## **Definitions**

**Controlled Substance:** Drugs whose general availability is restricted; any one of a number of drugs or other substances which are strictly regulated or outlawed because of their potential for abuse or addiction. Such drugs include those classified as narcotics, stimulants, depressants, hallucinogens, and cannabis.

**Designated Employer Representative (DER):** An individual identified by the employer as able to receive communications and test results from service agents and whom is authorized to make immediate action to remove employees from safety-sensitive duties and make required decisions in the testing and evaluation processes. The individual must be a DMA employee.

**Medical Review Officer (MRO):** A licensed physician (Doctor of Medicine or Osteopathy) responsible for receiving laboratory results generated by an employer's controlled substance testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

**Substance Abuse Professional (SAP):** A licensed physician (Medical Doctor or Doctor of Osteopathy), licensed or certified psychologist, or licensed addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

## **Confidentiality**

Information and records relating to positive test results, drug and alcohol dependencies and legitimate medical explanation provided to the MRO shall be kept confidential to the extent required by law and maintained in secure files separate from personnel files. Such records and information may be disclosed among managers and supervisors on a need-to-know basis and may also be disclosed where relevant to a grievance, charge, claim or other legal proceeding initiated by or on behalf of an employee or applicant.

## **Testing Requirements**

Employees in covered positions will be subject to controlled substance testing and breath alcohol testing. Covered positions will be subject to the following tests: Pre-employment, Post-accident, Random, Reasonable suspicion, Return-to-duty, Follow-up.

## **Supervisor responsibilities**

When notified that an employee has been scheduled for a random test, the supervisor (or designee) must inform the employee that he/she has been selected for random testing and that he/she should report *immediately* to the testing facility.

If there is an emergency or special circumstance that keeps the supervisor (or designee) from informing the employee, the supervisor should make every effort to contact the DER **immediately** to reschedule the test.

Testing facilities reserve the right to charge DMA for tests not performed due to a supervisor (or designee) failing to inform the employee of a scheduled appointment.

Supervisors of covered positions are responsible for requesting reasonable suspicion training. The DER will arrange training as necessary, ensuring it is as cost effective as possible.

DMA shall ensure that all persons designated to supervise covered positions receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on use of controlled substances. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

### **Employee Responsibilities**

When notified that he/she has been scheduled for a random test, the employee must **immediately** stop performing safety-sensitive functions and report to the assigned testing facility.

**Legal Drugs that may affect performance:** The appropriate use of legally prescribed drugs and nonprescription medications is not prohibited; however, employees taking any prescribed or over the counter substance carrying a warning label indicating mental functioning, motor skills or judgment may be adversely affected must immediately report this use to their supervisor.

### **Refusal to Test – Controlled Substances or Alcohol**

The following actions will be considered refusal to test and will be handled accordingly as a positive test. Any employee or prospective employee who:

- Arrives at test clinic without a valid state or federal issued photo identification;
- Fails to comply with a request for testing;
- Fails to arrive at testing site;
- Fails to remain at the testing site until the testing process is complete;
- Provides false information in connection with a test;
- Attempts to falsify test results through tampering, contamination, adulteration or substitution;
- Fails to provide a sufficient urine or breath sample and it has been determined, through a required medical evaluation, that there was not adequate medical explanation for the failure;
- Demonstrates verbal or obstructive behavior that results in the inability to conduct the test;
- Is unavailable for post-accident testing, unless injury prevents testing;
- Fails to undergo a medical examination if directed;

- Fails to permit direct observation collection required for Return-to-Duty or Follow-up testing;
- Fails to sign Step #2 of the Alcohol Testing Form;
- Fails to follow the program recommended by the Substance Abuse Professional.

### **Pre-Employment Testing**

The successful applicant for a covered position will be required to undergo urine drug testing after an offer of employment has been made. The employment offer is conditional upon receipt of a negative controlled substance test results.

A prospective employee with a confirmed positive controlled substance test will be disqualified from further consideration for the position being filled. The disqualification will not prevent the same individual from being considered for any subsequent vacancy if the applicant can document that he/she has sought an SAP and is in compliance with the SAP's recommendations for that positive controlled substance test.

If a prospective employee receives a dilute positive result and if directed by the MRO, the prospective employee must submit to a second test within twenty-four hours; and receive a confirmed negative test result on the second test.

Failure to submit to the second test or failure to bring medical proof within five (5) working days to achieve a negative test result will disqualify the person from further consideration for the position. The disqualification will not prevent the same individual from being considered for any subsequent vacancy if the applicant can document that he/she has sought an SAP and is in compliance with the SAP's recommendations for that positive controlled substance test.

### **Post-Accident Testing**

As soon as is practical following an accident involving damage to the facility, equipment, product or personal injury, the employee may be subjected to controlled substance and alcohol testing.

Testing is mandatory if the accident meets any one of the following criteria:

- bodily injury requiring immediate medical treatment away from the scene  
and/or
- damage to the facility or equipment over \$1,500.

The employee will be immediately removed from his/her duties and will be advised that due to the nature of the accident, testing for alcohol and controlled substances is required, as mandated by procedures.

The employee will be tested within two (2) hours of the accident. If this can't be done, reasons for non-testing must be documented. Attempts to test will cease after eight (8) hours for alcohol testing and thirty-two (32) hours for controlled substance testing following an accident.

The employee will be transported to the testing facility. One member of management or a department designee will accompany the employee. Under no circumstances will the employee be allowed to drive himself or herself to the testing facility; management or a department designee will make arrangements for the employee to be transported home.

If the employee requires medical treatment away from the scene, the employee will be transported to the testing facility immediately upon release of the medical facility. Transportation will be conducted by one member of management or a department designee.

The employee will be placed on paid administrative leave until the test results are returned.

Any employee involved in an accident must refrain from alcohol and controlled substance use for eight (8) hours following the accident or until post-accident tests are conducted. Any employee involved in an accident and who leaves the scene of the accident without appropriate explanation prior to submission to controlled substance and alcohol testing will be considered to have refused the test. This will be considered a positive test.

### **Random Testing**

Employees in covered positions will be subject to random, unannounced alcohol and/or controlled substance testing. Supervisors shall ensure that random alcohol and/or controlled substance tests are unannounced. Testing for alcohol and/or controlled substances may occur anytime during the employee's work shift.

The selection for random testing will be made by a scientifically valid method and each employee shall have an equal chance of being tested each time selections are made. A segment of those tested for controlled substances will also be subject to alcohol testing.

### **Reasonable Suspicion Testing**

Employees in covered positions may be subject to a fitness-for-duty evaluation that includes urine and breath testing when there is reason to believe that controlled substance or alcohol use is a potential factor in affecting job performance.

A supervisor must complete Reasonable Suspicion Training in identifying controlled substance and alcohol misuse symptoms before they can require an employee to be tested based on reasonable suspicion.

### **Return-to-Duty and Follow-Up Testing**

Return-to-duty and follow-up testing shall be collected under direct observation. Employees who previously had a confirmed positive controlled substance or alcohol test must be evaluated and released to duty by the SAP and have a negative return-to-duty test result before returning to perform his/her covered position functions for DMA.

Employees will be required to undergo unannounced follow-up alcohol and/or controlled substance testing as directed by the SAP. The employee is subject to Random testing in addition to Return to Duty and Follow-Up testing.

### **Dilute Urine Samples**

**If directed by the MRO to conduct a recollection due to a dilute result, the following applies:**

The employee will be immediately removed from safety-sensitive work and immediately retested. The employee may not return to work until a negative test result with non-dilute urine is received from the subsequent test, no sooner than the start of the employee's next regularly scheduled duty period, and not less than twenty-four (24) hours following administration of the test.

If the subsequent test is dilute, the Department may send the employee to a physician to determine if there's a medical reason for the dilute sample.

If the physician determines there is no medical reason for a dilute urine sample, the test will be treated as a positive test. The Department will refer the employee to a SAP for evaluation and require a negative, non-dilute return to duty test or certification from a physician that the appearance of a dilute sample is normal for the employee.

### **Alcohol Testing**

Employees who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. Employees who have engaged in alcohol misuse cannot return to safety-sensitive duties until they have been evaluated by a SAP and have complied with any treatment recommendations. To further safeguard transportation safety, employees who have an alcohol concentration (defined as 0.02 or greater) when tested just before, during or just after performing safety-sensitive functions must be removed from performing such duties for 24 hours. If an employee's behavior or appearance suggests alcohol misuse, a reasonable suspicion alcohol test must be conducted. If a breath test cannot be administered, the employee must be removed from performing safety-sensitive duties for at least 24 hours.

Alcohol testing shall be performed only when the employee is **performing** safety-sensitive functions, **immediately prior** or **immediately after**, performing safety-sensitive functions.

If an employee is unable to provide sufficient breath for the alcohol test, the Department will require the employee to be examined by a physician within five (5) working days to determine whether there is a medical condition that prevents him/her from providing adequate breath for a test. If no medical reason exists for inability to provide adequate breath, the employee will be subject to discipline for refusal to test.

A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test, the employee will be subject to disciplinary action and must obtain an evaluation and return to duty plan by a SAP.

**Alcohol Concentration 0.02 – 0.04:**

An employee with a confirmed alcohol concentration from 0.02 up to 0.04 may not perform safety-sensitive functions, and while they are not subject to disciplinary action, they may be subject to follow-up procedures described below:

**First Occurrence:**

Removal from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period, not less than twenty-four (24) hours following administration of the test and completion of a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02.

**Second and any Additional Occurrences:**

Removal from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test. The employee will be referred to the SAP for evaluation to determine what assistance the employee needs in resolving problems associated with alcohol misuse. The employee must be released to duty by the SAP, with completion of a return-to-duty alcohol test indicating an alcohol concentration of less than 0.02, prior to being allowed to resume normal work duties.

This also applies to an employee whose first confirmed test alcohol concentration test results are 0.04 up to 0.08 and a second test with concentration results of 0.02 up to 0.04.

**Disciplinary Action – Positive controlled substance and/or alcohol test result:**

The following actions will occur as a result of a confirmed positive controlled substance test or a confirmed positive alcohol test. Additional disciplinary actions may be levied outside of this policy if the employee violates other DMA policies.

**First Occurrence:**

Once notified, the supervisor removes the employee from performing safety-sensitive functions and conducts a meeting with the DMA HR Officer and the employee to discuss results, policy and the employee's responsibilities. The employee will be given a minimum of ten working days (Firefighters 80 hours) disciplinary suspension without pay. The DER will refer the employee to a SAP for evaluation and program recommendations for return to duty and completion of a return-to-duty alcohol or controlled substance test with a verified negative result.

Drug testing: Direct observation collection follow-up tests will be required in accordance with the SAP's program recommendations.

Employee's failure to follow SAP recommendations will be considered as a refusal to submit to testing and will be handled as a second positive test.

**Second Occurrence:**

Once notified, the supervisor will immediately remove the employee from performing safety-sensitive functions. The supervisor will have a discussion with DMA State HR Officer in regard to the employee's second occurrence positive test result, which will include a recommendation for termination of employment.

**Employee Admission of Alcohol or Controlled Substance Use**

No adverse action will be taken against an employee in a covered position who admits to misuse of alcohol or use of a controlled substance covered by this policy if the following conditions apply.

The employee:

- Makes the admission prior to reporting to duty.
- Has not been notified to report for a random test for which he/she has not yet been tested.

The supervisor must document this admission and notify the DER contact for this policy. The employee must sign a release allowing the SAP to notify DMA of successful completion of the program and of the return-to-duty test results.

An employee who admits to alcohol or controlled substance use in accordance with this policy will be allowed to use sick or annual leave to complete evaluation, education or treatment and complete the return-to-duty testing. The employee may not perform safety-sensitive functions until he/she has successfully completed the treatment program and has a verified negative test result.

**Prescription Drugs and Over-the Counter Medication**

Prescription drugs or over-the-counter medications are not prohibited when taken according to a physician's prescription or manufacturer's instructions.

Employees taking prescribed medications are responsible for consulting with the prescribing physician and/or pharmacist to find out if the medication may interfere with safe job performance.

If the use of a medication could compromise the safety of the employee, fellow employees, or the public, the employee shall report this to the immediate supervisor, in person and in writing, prior to reporting for work.

Employees who fail to provide this information, prior to reporting for work, shall be subject to disciplinary action.

Employees taking prescribed drugs or over the-counter drugs that affect performance of their duties, will engage in an interactive process with their supervisor to determine if other types of work are available or if leave is necessary until the employee is able to return to work. A written return to work statement from the prescribing authority is required before the employee may resume their duties. If the employee is required to be away from work, the employee will have the option of voluntarily taking leave or their supervisor may place the employee on



mandatory leave. Leave options include vacation, sick, comp-time, leave-without-pay, or a combination of those options.

This section does not apply to the use of medical marijuana, which is prohibited at all times.

**Confidentiality**

Information and records relating to positive test results, drug and alcohol dependencies and legitimate medical explanation provided to the MRO shall be kept confidential to the extent required by law and maintained in secure files separate from normal personnel files. Such records and information may be disclosed among managers and supervisors on a need-to-know basis and may also be disclosed where relevant to a grievance, charge, claim or other legal proceeding initiated by or on behalf of an employee or applicant.

**Program Contact**

Any questions regarding this policy should be directed to the DMA State HR Officer who serves as the DMA Designated Employer Representative (DER) at (406)324-3334.

DMA will protect individual dignity, privacy, and confidentiality throughout the testing process. If you feel your rights have been violated please contact the DMA State HR Officer who serves as the DMA Designated Employer Representative (DER).

**ACKNOWLEDGEMENT**

I hereby acknowledge receipt of the DMA Drug and Alcohol Testing Policy.

I understand that it is my duty to read and understand this policy. I am also aware that failure to comply with the policy is cause for disciplinary action, up to and including termination.

\_\_\_\_\_  
Employee's Printed Name

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee ID Number