



POLICY

SUBJECT: Alcohol and Controlled Substances

POLICY:

I. POLICY STATEMENT

The objective of this Policy is to set forth the Cooperative's requirements for drug and alcohol testing. This policy is designed to provide employees with information and resources.

All employees must comply with the requirements of this policy. Failure to comply may result in employee discipline, including, but not limited to, immediate termination.

II. DEFINITIONS OF TERMS, AS USED WITHIN THIS POLICY:

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Controlled Substance: For employees required to hold a CDL, The U.S. Department of Transportation 5-panel list of drugs, as described in Appendix 1 to this Policy, and as may be amended from time to time by the U.S. Department of Transportation in Code of Federal Regulation Part 382. As of May 10, 2020, per New York law, non-CDL positions will not be tested for marijuana or THC, whether for current or prospective employees.

Post-Incident Screening: Alcohol and controlled substances screening required after motor vehicle crashes or other incidents involving:

- a human fatality,
- bodily injury with immediate medical treatment away from the scene
- cases where a citation is issued to the employee, and
- disabling damage to any motor vehicle requiring tow away where a citation is issued to the driver.
- Estimated damages in excess of \$5000.00 to equipment and/or property

Drug and alcohol testing should be done promptly after removing the employee from duty. If the drug or alcohol test is not collected on-site, contact a collection site to schedule the test within 4 hours. Depending upon circumstances and condition of the employee, blood test may be required instead of usual method of random and reasonable suspicion testing.

The employee under suspicion shall not be allowed to drive themselves to the collection site.

Random Screening: Monthly alcohol and controlled substance screening whereby employees are selected randomly, by the Cooperative's independent 3rd party testing service, from a list of all employees. Percentage rates for selection of CDL drivers and those in the supervisory chain of



CDL drivers, shall comply with minimum annual percentage rates as defined in §382.305 of the Code of Federal Regulations.

Reasonable Suspicion Screening: Alcohol and controlled substances screening required any time the Cooperative has reasonable suspicion to believe that the employee is under the influence of alcohol or a controlled substance while on the clock, either on Cooperative property or in the field. Reasonable Suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations for Reasonable Suspicion Screening shall be made by a supervisor or Cooperative employee who is trained in accordance with §382.603.

- It is strongly encouraged that at least two (2) supervisory personnel concur that there is reasonable suspicion for a drug test. This protects both the supervisor and the employee.
- Drug and alcohol testing should be done within 4 hours after removing the employee from duty. If the drug or alcohol test is not collected on-site, contact a collection site to schedule the test.
- The employee under suspicion should not be allowed to drive themselves to the collection site. A supervisory employee or member of management shall accompany the employee to/from the testing facility.

Second Chance: The Cooperative's position with respect to a failed drug or alcohol test for a **current employee**, which allows the Cooperative's General Manager to apply judgement in certain aspects of the Cooperative's response to a failed drug or alcohol test by a current employee in accordance with paragraph XII of this policy.

Zero Tolerance: The Cooperative's position with respect to a failed drug or alcohol test for a **prospective employee**, which prohibits the hiring of any prospective employee who fails a drug or alcohol test as part of their pre-employment screening in accordance with paragraph XI of this policy.

III. APPLICABILITY

Except as noted in Article VI (Prescription Drugs) and Article VIII (Alcohol and Controlled Substances Screening), this Policy applies equally to all employees of the Cooperative, including exempt and non-exempt, those with and without CDLs, those with and without supervisory responsibility, those within and outside of the collective bargaining units, and those with and without employment contracts.

IV. ALCOHOL AND CONTROLLED SUBSTANCES PROHIBITION

Consumption of alcoholic and/or controlled substances while working or on Cooperative property is prohibited during working and non-working hours. Consumption of alcoholic and/or controlled substances while on-call is prohibited.

Additionally, employees who hold a CDL license must not consume alcohol four hours prior to arriving on duty, and must not consume alcohol for eight hours following an accident, or until the employee receives a post-accident test, whichever comes first.



An employee shall not report for duty or remain on duty when the employee uses any controlled substance, except when the use is at the instruction of a physician who has advised the employee that the substance does not adversely affect the employee's ability to perform safety-sensitive functions including operation of a motor vehicle.

V. IMPAIRMENT DISCLOSURE REQUIREMENT

If an employee is asked to report for duty, either for a scheduled shift or for unscheduled overtime, he/she must immediately disclose if he/she has consumed alcohol or ingested or been exposed to controlled substances which would impair his/her ability to immediately respond to work and work safely and effectively. As soon as responsibly possible thereafter, the employee which was impaired needs to report his/her availability to the proper dispatcher or supervisor.

VI. CONVICTION DISCLOSURE REQUIREMENT

In accordance with the federal Drug-Free Workplace Act of 1988, the employee must notify the Cooperative within five (5) calendar days if the employee is convicted of a criminal drug violation in the workplace.

VII. PRESCRIPTION DRUGS

The employee is responsible for reporting impairment caused by drugs even if the employee has a valid prescription to take the drug. Employees who do not hold a CDL license and who are not in the supervisory chain of CDL drivers are permitted by New York State law to use medical marijuana in accordance with a legal prescription. Under New York State law, employees who use medical marijuana are provided protections as "disabled."

Employees who hold a Commercial Driver's License (CDL) and employees in the supervisory chain of CDL holders are prohibited by the US Department of Transportation (DOT) from taking certain controlled substances, including marijuana, even if the employee has a valid prescription for the controlled substance. Notwithstanding any New York State law to the contrary, if a CDL driver or an employee in the supervisory chain of CDL drivers fails a controlled substance test due to marijuana, that employee will be subject to appropriate disciplinary action in accordance with DOT regulation (Code of Federal Regulation, Part 382), regardless of whether the employee has a valid prescription for the marijuana.

VIII. SELF-REFERRAL

The Cooperative encourages self-referral for employees who are struggling with drug or alcohol issues. The Cooperative requires a confidential Employee Assistance Program (EAP), which can assist an employee in need of counseling and treatment. Being in a treatment program does not excuse an employee from their obligation to disclose impairment to the Cooperative.

Appropriate disclosure by an impaired employee will be a favorable factor in determining that employee's status with respect to appropriate disciplinary actions or Return To Work agreements.

IX. ALCOHOL AND CONTROLLED SUBSTANCES SCREENING

All prospective employees for full-time, part-time, temporary, or any other form of employment at the Cooperative shall be subject to a pre-hire drug and alcohol screening. All employees,



regardless of whether they possess CDLs, shall be subject to the following types of alcohol and controlled substances testing:

- Random Screening
- Reasonable Suspicion Screening
- Post-Accident Screening

All alcohol and controlled substances screening shall be administered by a third-party alcohol and controlled substances screening company selected and hired by the Cooperative. Except as provided in Article VI (Prescription Drugs) of this Policy, the quantity, type, and procedure of tests to be performed on all employees by the third-party alcohol and controlled substances screening company shall be in accordance with DOT regulations governing CDL drivers, regardless of whether the employee being tested is a CDL driver or not. For CDL drivers and employees in the supervisory chain of CDL drivers, the quantity, type, and procedure of tests to be performed shall be in accordance with all DOT regulations governing CDL drivers.

X. BLOOD ALCOHOL CONCENTRATION LEVELS

A Blood Alcohol Concentration (BAC) greater than or equal to 0.04 shall be a positive test and shall constitute a failed test for an employee. A BAC greater than 0.02 but less than 0.04 shall not perform or continue to perform safety-sensitive functions, including operating a motor vehicle, for twenty-four (24) hours following the BAC test. A BAC less than 0.02 shall be a negative test and shall be treated the same as a BAC of 0.0.

XI. ZERO TOLERANCE FOR A FAILED ALCOHOL AND CONTROLLED SUBSTANCES TEST BY A PROSPECTIVE EMPLOYEE

All prospective employees will be tested for alcohol and controlled substances. The Cooperative has zero tolerance for any failed drug or alcohol test by any prospective employee. Prospective employees who fail a drug or alcohol test shall not be permitted to work at the Cooperative.

XII. SECOND CHANCE FOR A FAILED ALCOHOL AND CONTROLLED SUBSTANCES TEST BY AN ACTIVE EMPLOYEE

An employee who has a verified controlled substances test result, or who has an alcohol concentration of 0.04 or greater shall be removed immediately from his or her safety sensitive functions and must also be evaluated by a substance abuse professional.

The Cooperative may, at the discretion of Cooperative's General Manager, in consultation with the Board President and Cooperative's attorney, offer a second chance to an active employee who has failed a drug or alcohol screening, depending on the nature and circumstances of the failed drug or alcohol screening. The following is a partial list of factors that may be considered by Cooperative management in determining whether a second chance will be offered to an employee who has failed a drug or alcohol test and is provided for illustration only:

- Did the employee willfully place the health and safety of other employees, members, or the public in jeopardy?
- Did the employee operate Cooperative vehicles or equipment while under the influence of drugs or alcohol?



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- Did the employee take drugs or alcohol on Cooperative property or while on the clock for the Cooperative?

If an employee is given a second chance, the employee may, at the sole discretion of Cooperative management, be required to participate in appropriate treatment or counseling, show proof of participation in appropriate treatment or counseling, submit to additional scheduled drug and/or alcohol screenings, and work in a different position and at a different pay rate than his or her normal position, until Cooperative management determines, at their sole discretion, that the employee is ready to return to a normal status.

XIII. REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST

No employee shall refuse to submit to any alcohol or controlled substance test as required by this Policy. "Refusal to submit" includes refusal to take the test; inability to provide sufficient quantities of breath, saliva, or urine to be tested without a valid medical explanation; tampering with or attempting to adulterate the specimen; interfering with the collection procedure; not immediately reporting to the collection site; failing to remain at the collection site until the collection process is complete; having a test result reported by a Medical Review Officer as adulterated or substituted; or leaving the scene of an accident without a valid reason before the tests have been conducted.

Refusal to submit shall preclude the employee from performing or continuing to perform safety-sensitive functions and shall make the employee subject to the same requirements and disciplinary actions as if the employee had failed the required alcohol or controlled substance test.

XIV. RETURN TO WORK AGREEMENTS

The Cooperative may require an employee who has self-referred or who has failed a drug or alcohol test to execute a Return To Work agreement.

If an employee, prior to being subjected to disciplinary action, or where disciplinary action has been held in abeyance during the pendency of treatment -- engages in appropriate treatment, he or she may be required to execute a Return To Work Agreement prior to returning to work.

Such Return To Work Agreement will include:

- verification of the employee's participation in a treatment program,
- the employee's commitment to maintain the prescribed regimen for continued wellness and aftercare
- authorization by the employee to appropriate Cooperative representatives to discuss compliance with the foregoing requirements, but limited to a need-to-know basis and maintaining privacy particularly with respect to medical records,
- the employee's commitment to adhere to the Cooperative's policies and requirements of the DCEC Employment Manual,
- the employee's authorization to conduct additional drug or alcohol testing if appropriate, and



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- an acknowledgement that a violation of the Return To Work Agreement will result in immediate termination.

XV. REPEATED VIOLATIONS

An employee who has failed an alcohol or controlled substances screening, and then subsequently fails another alcohol or controlled substances screening, shall be terminated, to the extent permitted by law. Specifically, the Cooperative shall comply with federal or New York State law in cases where employees' use of alcohol or a controlled substance is protected under federal or New York State law as a condition of their "disability." Notwithstanding any New York State law to the contrary, CDL drivers and employees in the supervisory chain of CDL drivers shall be prohibited from using marijuana, in accordance with superseding federal statute.

When interpreting this article, a second failed alcohol or controlled substance screening could be a Random Screening, a Reasonable Suspicion Screening, or a Post-Accident Screening.

XVI. USE OF PAID TIME OFF (PTO) FOR TREATMENT OF DRUG OR ALCOHOL RELATED ISSUES

Active employees of the Cooperative are permitted to use their PTO, including sick time, personal time, and vacation time for the purpose of participating in drug or alcohol treatment programs, subject to the limitation of other Cooperative policies and applicable collective bargaining agreements.

XVII. CLEARINGHOUSE REQUIREMENTS

As of January 6, 2020, the Federal Motor Carrier Safety Administration (FMCSA) created a repository that collects information on drivers' DOT drug and alcohol violations occurring under an employer's testing program. Employers are required to report DOT drug and alcohol testing program violations to the Clearinghouse, including when a driver:

- Tests positive for drugs or alcohol;
- Refuses drug and alcohol testing; and
- Undergoes the return-to-duty drug and alcohol rehabilitation process.

The Clearinghouse will collect and maintain the following records:

- Verified positive, adulterated, or substituted drug test result;
- Alcohol confirmation test with a concentration of 0.04 or higher;
- Refusal to submit to any test required by Subpart C of Part 382;
- Employer's report of *actual knowledge*, as defined by § 382.107, including:
 - On duty alcohol use (§ 382.205)
 - Pre-duty alcohol use (§ 382.207)
 - Alcohol use following an accident (§ 382.209)
 - Controlled substance use (§ 382.213)
- Substance Abuse Professional report of the successful completion of the return-to-duty process; and
- Employer's report of completion of follow-up testing.



The Clearinghouse will assist the Cooperative in learning of a driver's need to start or continue with the necessary steps mandated in the DOT return-to-duty process in order to safely operate a commercial motor vehicle.

FMCSA requires the Cooperative to:

- Query the system for information on driver applicants; and
- Search the database annually for current employees.

Before the Cooperative may gain access to the Clearinghouse information, a driver is required to provide consent. Failure to provide such consent would effectively prevent the Cooperative from using the driver in a safety-sensitive function.

A driver can review his or her report at no cost by registering with the Clearinghouse.

XVIII. EDUCATION

A goal of this policy is to assist employees to proactively manage their own relationships with drugs and alcohol. Doing so can reduce health and safety risks and promote healthy productive employees of the Cooperative. The Cooperative shall provide information to all active employees about this policy, the Cooperative's drug and alcohol testing program, and resources available to assist employees with drug or alcohol related issues. This information shall be provided at least annually.

XIX. QUESTIONS – WHO TO CONTACT

If you have questions about the Cooperative's policy or programs related to Alcohol and Controlled Substances, please contact the Cooperative's CEO/General Manager at 607-746-9282 or visit in person at 5 North Depot Street, Delhi, NY. If for any reason you are not comfortable contacting the CEO/General Manager to discuss these matters, you may contact the Cooperative's Ombudsman, Attorney Jeff Clark at 585-362-4721.

If you have questions about the effects of alcohol misuse and controlled substances on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; and available methods of intervening when an alcohol and/or controlled substance problem is suspected, please contact the Cooperative's Employee Assistance Program confidentially at (800) 252-4555 or (800) 225-2527.

PROCEDURE: Offender subject to disciplinary action up to and including termination.

RESPONSIBILITY: General Manager

DELAWARE COUNTY ELECTRIC COOPERATIVE, INC.

Adopted by Board of Directors

Aug 26, 1986

Reviewed by Board of Directors

Apr 24, 1990

Renumbered, was No. 91

Apr 25, 1990



Revised by Board of Directors	Jan 26, 2010
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Revised by Board of Directors	Sep 22, 2020
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<u>Revised by Board of Directors</u>	<u>Jan 25, 2022</u>



APPENDIX 1 – U.S. DEPARTMENT OF TRANSPORTATION
“CONTROLLED SUBSTANCES”

As of the publication date of this Policy, the U.S. Department of Transportation includes the following 14 drugs in their 5-panel test:

- Marijuana (THC)
- Cocaine
- Amphetamines
 1. Amphetamine
 2. Methamphetamine
 3. MDMA (common name Ecstasy/Molly)
 4. MDA (common name Sally or “Love Drug”)
- Opioids
 1. Codeine
 2. Morphine
 3. 6-AM (heroin)
 4. Hydrocodone
 5. Hydromorphone
 6. Oxycodone
 7. Oxymorphone
- Phencyclidine (PCP)