



**PENAL INSTITUTIONS (DRUG AND ALCOHOL TESTING)
REGULATIONS 1997**

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 15th day of December 1997

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to sections 36BE and 45 of the Penal Institutions Act 1954, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Penal Institutions (Drug and Alcohol Testing) Regulations 1997.

(2) These regulations come into force on 1 February 1998.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“The Act” means the Penal Institutions Act 1954:

“Analyst” means—

- (a) The analyst in charge of a specified laboratory; or
 (b) Any person who works in a specified laboratory and who is authorised, by the analyst in charge of that laboratory, to act as an analyst for the purposes of these regulations, either generally or in any particular case:

“Sample” means a sample of urine:

“Specified laboratory” means—

(a) A laboratory that is registered under the Testing Laboratory Registration Act 1972 for the purposes of analysing samples for the detection and identification of drugs or alcohol, or both:

(b) The laboratory of the Institute of Environmental Science and Research Limited situated at Gracefield Road, Lower Hutt.

(2) In these regulations, unless the context otherwise requires, expressions defined in or for the purposes of the Act have the meanings so defined.

PART 1

DRUG AND ALCOHOL TESTING

3. Procedure for purpose of detecting use of drugs or consumption of alcohol—For the purpose of detecting whether or not an inmate has used drugs, or consumed alcohol, or both, the inmate is required to provide a sample for analysis in the manner provided for by these regulations and by any applicable operational standards.

4. Sample to be collected at reasonable time—An inmate who is required, under section 36BB of the Act, to provide a sample must be required to provide that sample only at a reasonable time, unless the Superintendent or any other staff member authorised for the purpose by the Superintendent, believes, on reasonable grounds, that the inmate has committed an offence against section 32A (1) (a) or section 32A (2) of the Act.

5. Inmate to be given reasonable privacy—Subject to regulation 6, an inmate who is required, under section 36BB of the Act, to provide a sample must be given reasonable privacy as is consistent with the necessity to ensure a sample that is suitable for analysis is obtained.

6. Provision of sample to be supervised—(1) Every sample must be obtained under the supervision of either—

(a) Two officers who are of the same sex as the inmate and who are authorised for the purpose by the Superintendent; or

(b) One—

(i) Officer who is of the same sex as the inmate and who is authorised for the purpose by the Superintendent; and

(ii) Medical officer, or registered nurse, who is, if practicable, of the same sex as the inmate.

(2) Despite subclause (1) (a),—

(a) More than 2 officers who are of the same sex as the inmate and who are authorised for the purpose by the Superintendent may be present at the time the sample is provided if the Superintendent believes, on reasonable grounds, that more than 2 officers are required for the proper supervision and management of the inmate at that time; and

(b) A medical officer, or a registered nurse, who is, if practicable, of the same sex as the inmate may also be present at the time the sample is provided.

7. Requirements in relation to provision of sample—For the purpose of ensuring that an inmate who is required, under section 36BB of the Act, to provide a sample, does not tamper with the sample, an officer may require the inmate to wash his or her hands immediately before, or wear gloves during, the time that the inmate provides the sample.

8. Sample to be collected in sterile container—Any sample to which these regulations apply must be collected in a sterile container.

9. Failure to provide sample—(1) An inmate who is not able to provide a sample immediately, must be—

(a) Placed, under supervision, in an area authorised for the purpose by the Superintendent; and

(b) Given up to a maximum of 3 hours to provide the sample, during which time a reasonable quantity of water must be provided for the inmate to drink.

(2) An inmate who has not provided a sample at the end of the 3-hour period referred to in subclause (1) (b) is deemed to have refused to provide the sample, unless a medical officer has certified that there are medical or psychological reasons why the inmate failed to provide the sample.

(3) If an inmate refuses to provide a sample, or is deemed to have refused to provide a sample under subclause (2), the inmate must be—

(a) Informed again of the consequences for the inmate if the inmate refuses to provide a sample; and

(b) Given a further opportunity to provide a sample.

10. Procedure immediately after provision of sample—

(1) Immediately after a sample has been provided by an inmate, an officer authorised for the purpose by the Superintendent must, in the presence of the inmate who provided the sample,—

(a) Pour the sample into 2 sterile bottles; and

(b) Immediately after the sample has been poured into each bottle, secure the cap on each bottle.

(2) Immediately after the caps on the bottles have been secured, an officer authorised for the purpose by the Superintendent must,—

(a) In the presence of the inmate, complete the form prescribed for the purposes of this regulation by any applicable operational standards; and

(b) Give the inmate an opportunity to sign the form.

(3) Immediately after the form referred to in subclause (2) has been completed, an officer authorised for the purpose by the Superintendent must, in the presence of the inmate, label each bottle with a label that—

(a) Contains the combination of characters, or numbers, or both, that is recorded on the form referred to in subclause (2) for the purposes of identifying the inmate who provided the sample contained in the bottle; and

(b) Contains the names and signatures of the persons referred to in regulation 6 who supervised the provision of the sample; and

(c) Contains the time and date that the sample was provided; and

(d) Is initialised by the inmate who provided the sample (if the inmate so wishes).

11. Despatch of sample to specified laboratory—The Superintendent must, as soon as practicable after the procedure set out in regulation 10 has been completed, ensure that the bottles containing the sample are delivered to a specified laboratory.

12. Analysis and storage of sample—(1) That part of the sample provided by an inmate and that is contained in 1 of the bottles that have been delivered to the specified laboratory under regulation 11 must be analysed in accordance with any applicable operational standards.

(2) That part of the inmate's sample that is contained in the other bottle and that has not been analysed must be stored and dealt with in accordance with any applicable operational standards.

13. Certificate containing result of sample analysis—An analyst who analyses a sample to which these regulations apply must—

(a) Complete a certificate containing the result of the sample analysis in accordance with any requirements set out in any applicable operational standards; and

(b) Forward the certificate to the Superintendent.

14. Copy of certificate containing result of sample analysis to be given to inmate and others—(1) The Superintendent must, upon receipt of the certificate referred to in regulation 13, give a copy of that certificate to—

(a) The inmate who provided the sample; and

(b) If the result is positive, to a medical officer, or to a registered nurse who has been delegated by the medical officer to carry out the function of supplying a certificate, for the purpose set out in regulation 15 (d).

(2) A copy of the certificate must be placed on the inmate's file.

15. Requirements before result of sample analysis can be used in proceedings—The result of a sample analysis may only be used as evidence in any proceedings for an offence against section 32A of the Act if—

- (a) A chain of evidence form prescribed by any applicable operational standards has been completed in accordance with any applicable operational standards; and
- (b) The analyst from the specified laboratory that analysed the sample has certified in writing that the result was positive; and
- (c) The inmate has been—
 - (i) Advised of the right to have the sample independently analysed, at the inmate's own expense; and
 - (ii) Given not more than 21 days to produce the result of that sample analysis as evidence in the proceedings; and
- (d) A medical officer, or a registered nurse delegated by the medical officer for the purpose has certified, in writing, that any drug found in the inmate's sample was not administered to the inmate in accordance with instructions from a medical practitioner.

16. Secretary authorised to issue operational standards regulating procedure for drug and alcohol testing—The Secretary is authorised to issue operational standards relating to any of the matters in respect of which regulations may be made under section 36BE (1) (b) of the Act, not inconsistent with the Act or these regulations.

PART 2

RANDOM TESTING PROGRAMMES

17. Purposes of random testing programmes—The Secretary may, by issuing operational standards, only establish a random testing programme for all or any of the following purposes:

- (a) Collecting information about patterns of drug use and alcohol consumption by inmates, in order to develop, monitor, or evaluate, a drug and alcohol strategy issued under section 36B of the Act;
- (b) Deterring drug use and alcohol consumption by individual inmates;
- (c) Permitting the assessment and appropriate management of inmates in relation to their drug use and alcohol consumption;
- (d) Checking compliance with conditions attached to an inmate's participation in any programme, or to an inmate's obtaining leave under sections 21, 21A, or 28 of the Act;
- (e) Reducing the risk of personal injury or property damage that may arise if an inmate is under the influence of drugs or alcohol.

18. Application of random testing programmes—The Secretary may, by issuing operational standards, establish random testing programmes that apply to all or any of the following classes of inmates:

- (a) Any inmate held in custody on remand who has been in custody for a continuous period of 30 days or more;
- (b) Any inmate serving a sentence of imprisonment within the meaning of section 12 (3) of the Act, other than an inmate who has served less than 30 days of his or her sentence and an inmate who is within 10 days of—
 - (i) The inmate's final release date; or
 - (ii) The inmate's applicable release date (within the meaning of section 105 (9) (a) of the Criminal Justice Act 1985); or

(iii) The date on which the inmate is to be released on parole in accordance with a decision made by the Parole Board or a District Prisons Board:

(c) Any class of inmate that is defined by any applicable operational standards.

19. Requirements for random testing programmes—Each random testing programme must fulfil all of the following requirements:

(a) Every inmate in any of the classes referred to in regulation 18 must be eligible for selection on each occasion that a sample is drawn:

(b) In the course of a month, no more than—

(i) Ten percent of eligible inmates may be selected in a random testing programme that applies to a class of inmates referred to in paragraph (a) or paragraph (b) of regulation 18; and

(ii) Twenty percent of eligible inmates may be selected in a random testing programme that applies to a class of inmates referred to in regulation 18 (c):

(c) The selection of inmates for testing must be in accordance with any methodology set out in any applicable operational standards:

(d) Every procedure for implementing the selection process must be in accordance with any procedure set out in any applicable operational standards:

(e) An inmate who has been selected for testing must undergo the testing, unless—

(i) The Superintendent, or an officer authorised for the purpose by the Superintendent, has certified that the selection of that inmate was not in accordance with any methodology or procedures laid down in any applicable operational standards; or

(ii) A medical officer has certified that there are medical or psychological reasons why the inmate should not be required to provide a sample.

20. Secretary authorised to issue operational standards relating to random testing programmes—The Secretary is authorised to issue operational standards relating to any of the matters in respect of which regulations may be made under section 36BE (1) (c), not inconsistent with the Act or these regulations.

PART 3

MISCELLANEOUS PROVISIONS

21. Superintendent to keep record of drug and alcohol testing—

(1) The Superintendent, or any other officer authorised for the purpose by the Secretary, must enter, in a record kept specially for the purpose, a note of—

(a) Any direction under section 36BB of the Act to an inmate to provide a sample, and the result of the sample analysis; and

(b) Any random testing programme that is operating, including a summary of the results of that random testing programme.

(2) The Superintendent must, upon request, send a copy of, or an extract from, the record kept under this regulation to the Secretary.

22. Revocations—(1) The principal regulations are amended by revoking regulations 74A to 74G, and the heading above regulation 74A.

(2) Regulation 24 of the Penal Institutions Regulations 1961, Amendment No. 3 is consequentially revoked.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 February 1998, are consequential on the bringing into force of the Penal Institutions Amendment Act 1997, which contains provisions relating to the testing of inmates of penal institutions to detect drug use and alcohol consumption.

In particular, the regulations—

- (a) Prescribe that the procedure for detecting drug use or alcohol consumption is by means of a urine sample that is analysed in the manner provided for by the regulations and by any operational standards issued by the Secretary; and
- (b) Prescribe how the procedure is to be carried out; and
- (c) Prescribe how any sample obtained from the procedure is to be analysed and stored; and
- (d) Regulate access to, and the use and disclosure of, information obtained from the analysis of such samples; and
- (e) Prescribe the purposes for which random testing programmes may be established; and
- (f) Prescribe some specifications for random testing programmes, such as defining the class of inmates to which a programme applies, and specifying the frequency of testing and the percentage of inmates to be tested; and
- (g) Authorise the Secretary to issue operational standards relating to some of the matters in respect of which regulations may be made under section 36BE (1) (b) and (c) of the Penal Institutions Act 1954.

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These regulations are administered in the Department of Corrections.