Template Date: 2/12/2020

**Drug and Alcohol Testing Policy**

**Transit Provider**

Revised on: (insert date)

Adopted on: (insert date)

All provisions set forth in regular print are consistent with requirements set forth in 49 CFR Part 655 or Part 40, as amended. All underlined provisions are under the authority of **Transit Provider**.

The policy is hereby adopted and signed by:

**Transit Provider**:

|  |
| --- |
|  |
| **Executive Name/Title** |
|  |
| **Executive Signature** |

**Title:**  **Drug and Alcohol Program Manager**

**Contact:** Name

**Address:** Address

**Phone:** Phone

**Email:**  Email

The Drug and Alcohol Program Manager (DAPM) is the person designated by **Transit Provider** to answer employee questions about the employer’s anti-drug use and alcohol misuse programs.

# POLICY UPDATES

**Transit Provider** will stay up to date with Federal Transit Administration (FTA) drug and alcohol requirements and make policy changes as appropriate.

Anytime substantive changes are made to this policy, it will officially be approved by the approving authority of **Transit Provider** and communicated to all employees and the subrecipient, as applicable.

The date the policy was last revised and approved will be clearly indicated on this policy.

**Policy Updates – Activity Log**

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Activity**  **(Review/Update/Addendum/ Adoption/Distribution)** | **Person Responsible** | **Remarks** |
| 2/12/2020 | Updated policy per FTA recommendations (e.g. clarification of statutory references, etc.) | Name |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

# TABLE OF CONTENTS

[POLICY UPDATES 2](#_Toc27141772)

[TABLE OF CONTENTS 3](#_Toc27141773)

[PURPOSE 4](#_Toc27141774)

[A. APPLICABILITY 4](#_Toc27141775)

[B. PROHIBITED SUBSTANCES 5](#_Toc27141776)

[C. PRESCRIPTION DRUGS (Rx) and OVER-THE-COUNTER MEDICATIONS (OTC) 5](#_Toc27141777)

[D. PROHIBITED CONDUCT 5](#_Toc27141778)

[E. DRUG STATUTE CONVICTION 6](#_Toc27141779)

[F. TESTING REQUIREMENTS 6](#_Toc27141780)

[Pre-Employment Testing 7](#_Toc27141781)

[Reasonable Suspicion Testing 8](#_Toc27141782)

[Post-Accident Testing 9](#_Toc27141783)

[Fatal Accidents 9](#_Toc27141784)

[Non-Fatal Accidents 10](#_Toc27141785)

[Random Testing 11](#_Toc27141786)

[Return-to-Duty Testing 12](#_Toc27141787)

[Follow-Up Testing 12](#_Toc27141788)

[G. TESTING PROCEDURES 13](#_Toc27141789)

[Drug Testing Procedures 13](#_Toc27141790)

[Split Sample Test 13](#_Toc27141791)

[Direct Observation Conditions 14](#_Toc27141792)

[Direct Observation Procedures 15](#_Toc27141793)

[Split Specimen Testing 15](#_Toc27141794)

[Negative Dilute 15](#_Toc27141795)

[Alcohol Testing Procedures 15](#_Toc27141796)

[H. RESULT OF DRUG/ALCOHOL TEST VIOLATION 16](#_Toc27141797)

[I. TEST REFUSALS 17](#_Toc27141798)

[Drug Test Refusals 17](#_Toc27141799)

[Alcohol Test Refusals 18](#_Toc27141800)

[J. VOLUNTARY SELF-REFERRAL 19](#_Toc27141801)

[K. GRIEVANCE AND APPEAL 19](#_Toc27141802)

[L. PROPER APPLICATION OF THE POLICY 19](#_Toc27141803)

[M. EDUCATION AND TRAINING 20](#_Toc27141804)

[N. RECORDS MANAGEMENT 20](#_Toc27141805)

[Record Retention Schedule 20](#_Toc27141806)

[Type of Records 21](#_Toc27141807)

[Location of Records 22](#_Toc27141808)

[Information Disclosure 22](#_Toc27141809)

[ATTACHMENT A – SYSTEM CONTACTS 23](#_Toc27141810)

[ATTACHMENT B – SAFETY SENSITIVE POSITIONS 25](#_Toc27141811)

[ATTACHMENT C – RESOURCES 26](#_Toc27141812)

# PURPOSE

This policy complies with 49 CFR Parts 655 and 40, each as amended. Copies are available in the Drug and Alcohol Program Manager’s office and can also be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website:

<http://transit-safety.fta.dot.gov/DrugAndAlcohol/>

All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR part 655.

Portions of this policy are not mandated by the U.S. Department of Transportation (USDOT) through the FTA, but instead reflect **Transit Provider’s** policy. Such provisions are identified by underlined text. All tests conducted under the sole authority of **Transit Provider** will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

In addition, USDOT has published 49 CFR Part 32, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

All **Transit Provider** employees are subject to the provisions of the Drug-Free Workplace Act of 1988.

The unlawful manufacture, distribution, dispensing, possession, or use of controlled substances or misuse of alcohol is prohibited in the covered workplace.

# APPLICABILITY

This policy applies to every person, including an applicant or transferee, who performs or will perform a “safety-sensitive function” as defined in 49 CFR 655.4. Volunteers are considered safety sensitive and subject to testing if they are required to hold a Commercial Driver’s License (CDL) orare remunerated for service in excess of their actual expense.

**Transit Provider** employees that do not perform safety-sensitive functions may also be covered under this policy under the sole authority of **Transit Provider**.

A safety-sensitive function is any duty related to the safe operation of public transportation service, including:

1. Operation of a revenue service vehicle, in or out of revenue service
2. Operation of a non-revenue vehicle requiring a CDL
3. Dispatchers or person controlling the movement of revenue service vehicles
4. Maintenance of a revenue service vehicle or equipment used in revenue service
   * Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment.
5. Security personnel who carry firearms.

A list of safety-sensitive positions is provided in **Attachment B**.

# PROHIBITED SUBSTANCES

1. Drugs: The use of illegal drugs is prohibited at all times.

Prohibited drugs include:

* + Marijuana
  + Cocaine
  + Opioids
  + Amphetamines
  + Phencyclidine (PCP)

1. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited.

Under 49 CFR Part 655 (as amended), a reasonable suspicion or random alcohol test can only be performed on a covered employee just before, during, or just after the performance of safety-sensitive job functions.

# PRESCRIPTION DRUGS (Rx) and OVER-THE-COUNTER MEDICATIONS (OTC)

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a **Transit Provider** supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

# PROHIBITED CONDUCT

1. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.
2. All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions.
   * If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty.
   * **Transit Provider** will determine if the safety sensitive employee should be relieved of their on-call responsibilities.
   * If the on-call employee claims the ability to perform his or her safety-sensitive. function, he or she must take an alcohol test with a result of less than 0.02 prior to performance.
3. **Transit Provider** shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
4. All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
5. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee hasn’t consumed the alcohol within (4) four hours of performing a safety-sensitive duty.
   * However, if a safety-sensitive employee has a concentration of 0.02-0.039, USDOT-FTA regulations require the employee to be removed from the performance of safety-sensitive duties until:
     + The employee’s alcohol concentration measures less than 0.02; or
     + The start of the employee’s next regularly scheduled duty period, but not less than (8) eight hours following administration of the test.
6. No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
7. No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
8. **Transit Provider**, under its own authority, also prohibits the consumption of alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is on duty.
9. Consistent with the Drug-free Workplace Act of 1988, all **Transit Provider** employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace, including **Transit Provider** premises, transit vehicles, while in uniform, or while on **Transit Provider** business.

# DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1988, all employees are required to notify **Transit Provider** management of any criminal drug statute conviction for a violation occurring in the workplace within (5) five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in **Section H** of this policy.

# TESTING REQUIREMENTS

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40, as amended.

All covered employees shall be subject to testing prior to performing a safety-sensitive duty, for reasonable suspicion, random and following an accident. Upon notification of a drug or alcohol test, a covered employee will be instructed to proceed directly to the collection site.

A drug test can be performed any time a covered employee is on duty. A reasonable suspicion or random alcohol test can only be performed just before, during, or just after the performance of a safety-sensitive job function. Under **Transit Provider** authority, a non-USDOT alcohol test can be performed any time a covered employee is on duty.

All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with **Transit Provider**. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in **Section H** of this policy.

## Pre-Employment Testing

All applicants for covered transit positions shall undergo USDOT urine drug testing prior to the performance of a safety-sensitive functions in accordance with procedures set forth in 49 CFR Part 40. All applicants for a non-safety-sensitive position shall undergo a non-USDOT pre-employment drug test prior to hire. All offers of employment (including a transfer into a safety-sensitive position) shall be extended conditional upon the applicant passing a pre-employment drug test.

1. A safety sensitive applicant shall not be allowed to perform a safety-sensitive duty unless the applicant takes a USDOT pre-employment drug test with verified negative results.
2. A non-safety-sensitive employee shall not be placed, transferred or promoted into a covered position until the employee takes a USDOT drug test with verified negative results.
3. If the applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded, and the applicant will be referred to a **Substance Abuse Professional** (**SAP**)[[1]](#footnote-1)
   * Before an applicant who fails a pre-employment drug test can be considered again for employment in a covered position, the applicant will be required to have:
     1. A verified negative drug test.
     2. Evidence of the absence of dependency from a **SAP** that complies with 49 CFR Part 40 (as amended).
4. When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with **Section H**.
5. If a pre-employment/pre-transfer test is canceled, **Transit Provider** will require the safety-sensitive applicant to take and pass another pre-employment drug test before performing safety-sensitive functions.
6. If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.
7. A safety-sensitive applicant with a dilute negative test result will be required to retest
   * Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed by the **Medical Review Officer** **(MRO)**[[2]](#footnote-2).
8. Safety-sensitive applicants are required (even if ultimately not hired) to provide their signed written release to **Transit Provider** requesting USDOT drug and alcohol records from all previous, USDOT-covered, employers that the safety-sensitive applicant has worked for within the last two years.
   * Failure to do so will result in the employment offer being rescinded.
9. **Transit Provider** is required to ask all safety-sensitive applicants (even if ultimately not hired) if they have tested positive or refused to test a pre-employment test for a DOT covered employer within the last two years.
   * If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the safety sensitive applicant must provide **Transit Provider** proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

**Transit Provider** reserves the right to re-evaluate the employees job status based on the information received from the background checks.

## Reasonable Suspicion Testing

All **Transit Provider** safety-sensitive employees will be subject to a reasonable suspicion drug and/or alcohol test when **Transit Provider** has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse.

Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance use or alcohol misuse.

A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under **Transit Provider’s** authority, a non-USDOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty.

A reasonable suspicion drug test can be performed any time the covered employee is on duty.

A safety-sensitive employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in **Section H** of this policy.

A written record of the observations, which led to a drug/alcohol test, based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to **Transit Provider** management and shall be attached to the forms reporting the test results.

**Transit Provider** shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in **Section H** of this policy.

Any non-safety-sensitive employees covered under the sole authority of **Transit Provider** will also be subject to non-USDOT reasonable suspicion testing procedures modeled off the provisions in 49 CFR Part 655 and Part 40.

When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits to the abuse of alcohol or other substances to a supervisor in his/her chain of command, **Transit Provider** shall place the employee on administrative leave in accordance with the provisions set forth in this policy. Testing in this circumstance would be performed under the direct authority of **Transit Provider**.

Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in this policy or the associated consequences as specified in **Section H**.

## Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

### Fatal Accidents

As soon as practicable, all covered employees will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle resulting in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other employee whose performance may have been a contributing factor to the accident, as determined by **Transit Provider** using the best information available at the time of the decision.

### Non-Fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

1. The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a continuing factor to the accident.
2. One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.
3. The vehicle is a trolley bus, rail car, trolley car, or vessel, and is removed from operation, unless the covered employee can be completely discounted as a contributing factor to the accident.

As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will:

1. Notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test
   1. The supervisor will make the determination using the best information available at the time of the decision.
2. Ensure that an employee, required to be tested under this section, is tested as soon as practicable following the accident, but no longer than eight (8) hours after the accident for alcohol, and no longer than 32 hours after the accident for drugs.
   1. If an alcohol test is not performed within two hours of the accident, the supervisor will document the reason(s) for the delay.
   2. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
3. Inform any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of their location if they leave the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that **Transit Provider** is unable to perform an FTA drug and alcohol test

(i.e., employee is unconscious, employee is detained by law enforcement agency), **Transit Provider** may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The state and local law enforcement officials must have independent authority for the test and **Transit Provider** must obtain the results in conformance with state and local law.

## Random Testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at:

[www.transportation.gov/odapc/random-testing-rates](http://www.transportation.gov/odapc/random-testing-rates)

The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees. Non-safety-sensitive employees covered under **Transit Provider** authority will be selected from a pool of non-USDOT covered employees.

1. Each covered employee shall be in a pool from which the random selection is made.
   * Each covered employee in the pool shall have an equal chance of selection each time the selections are made.
   * Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested.
   * There is no discretion on the part of management in the selection.
2. Random drug testing may occur anytime an employee is on duty.
3. Alcohol random tests can only be performed just before, during, or just after the performance of a safety-sensitive duty:
   * However, under **Transit Provider’s** authority, a non-USDOT random alcohol test may be performed any time the covered employee is on duty.
   * Testing can occur during the beginning, middle or an end of an employee’s shift.
   * Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift.
     + Employees who provide advance, verifiable notice of scheduled medical or child/family care commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift.

1. Covered employees are required to proceed immediately to the collection site upon notification to report for a random drug and/or alcohol test.
2. Covered employees wo are randomly selected will be sent for testing only in the period for which the selection has occurred.

## Return-to-Duty Testing

**Transit Provider** will terminate the employment of any employee that tests positive or refuses a test as specified in this policy. In the event that the employer is required by legal authorities to reinstate the covered employee, the employer will comply with all mandated Return-to-Duty testing as follows:

* Before returning to perform a safety-sensitive function, all covered employees who previously tested positive for a prohibited drug on a DOT drug test or had a breath alcohol test result 0.04 or greater (or refused a test), must do both of the following:
  + Test negative for drugs, alcohol (below 0.02 BAC), or both
  + Be evaluated and released by the **SAP**, per 49 CFR Part 40, Subpart O
* For an initial positive drug test, a Return-to-Duty drug test is required and an alcohol test is allowed.
* For an initial breath alcohol test 0.04 or greater, a Return-to-Duty alcohol test is required and a drug test is allowed.
* Following the initial assessment, the **SAP** will recommend a course of rehabilitation unique to the individual.
  + The **SAP** will recommend the Return-to-Duty test only when:
    - The employee has successfully completed the treatment requirement, and
    - Is known to be drug and alcohol-free, and
    - There are no undue concerns for public safety

## Follow-Up Testing

**Transit Provider** will terminate the employment of any employee that tests positive or refuses a test as specified in this policy. In the event **Transit Provider** is required by legal authorities to reinstate the covered employee, the employer will comply with all mandated Follow-Up testing as follows:

Covered employees will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year.

The frequency and duration of the follow-up tests will be determined by the **SAP**, reflecting the **SAP’s** assessment of the employee’s unique situation and recovery progress.

Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to random, post-accident, reasonable suspicion and return-to-duty testing.

In the instance of a self-referral or management referral, the safety-sensitive employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40, as amended.

However, all non-USDOT follow-up tests and all paperwork associated with an employee’s return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations and will be conducted under **Transit Provider** authority and performed using non-USDOT testing forms.

# TESTING PROCEDURES

## Drug Testing Procedures

All drug testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. See **Section B** for a list of drugs that will be tested.

After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a USDOT Custody and Control Form (CCF) and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a DHHS certified laboratory.

The test results from the DHHS certified laboratory will be reported to a **MRO**. The **MRO** will:

* Review the test results to determine whether there is a legitimate medical explanation for a confirmed positive, substituted, invalid, or adulterated test result.
* Attempt to contact the employee to notify the employee of the non-negative laboratory result and provide the employee with an opportunity to explain the confirmed laboratory test result.
* Subsequently review the employee’s medical history/ medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result:
  + If no legitimate medical explanation is found, the test will be verified positive, will be considered a refusal to test, or will be cancelled and reported to the **Transit Provider** DAPM.
  + If a legitimate explanation is found for a positive lab result, the **MRO** has the responsibility to raise fitness-for-duty considerations with **Transit Provider** during the verification process.
    - Once verified, the **MRO** will report the test result as negative to **Transit Provider**.
    - If the test is invalid without a medical explanation, a retest will be conducted under direct observation
      * Employees do not have access to a test of their split specimen following an invalid result.

## Split Sample Test

Any covered employee who questions the results of a required drug test as stated in this policy may request that the split sample be tested. There is no split specimen testing for an invalid result.

The split sample test must be conducted at a different DHHS-certified laboratory from the laboratory that analyzed the primary specimen.

The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample.

The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the **MRO** within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the **MRO** if the delay was due to documentable facts that were beyond the control of the employee.

**Transit Provider** will ensure that the cost for the split specimen is covered in order for a timely analysis of the sample. However, **Transit Provider** will seek reimbursement for the split sample test from the employee if the result of the split specimen analysis confirms the original result.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the **MRO** will declare the original test to be canceled.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. Within the one-year period, the **MRO**, employee, employer or a DOT agency may request in writing that a specimen be retained for an additional period of time (e.g. for the purpose of preserving evidence for litigation or a safety investigation).

## Direct Observation Conditions

Consistent with 49 CFR Part 40 (as amended), observed collections[[3]](#footnote-3) are required in the following circumstances:

1. The laboratory reports to the **MRO** that a specimen is invalid, and the **MRO** reports there was not an adequate medical explanation for the result.
2. The **MRO** reports the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed.
3. Anytime the collector observes materials brought to the collection site or the covered employee’s conduct clearly indicates an attempt to tamper with a specimen.
4. The laboratory reports to the **MRO** that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the **MRO** reports the specimen as negative-dilute and requires a second collection under direct observation.
   * See 49 CFR 40.197(b)(1)
5. The original specimen appeared to have been tampered with.
   * See 49 CFR 40.65(c)(1)
6. The temperature on the original specimen was out of range.
   * See 49 CFR 40.65(b)
7. The test is a return-to-duty test or follow-up test.

## Direct Observation Procedures

The employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collector, by turning around that they do not have a prosthetic device. The direct observation must be conducted by a person of the same gender as the employee being tested.

## Split Specimen Testing

Employees do not have access to a test of their split specimen following an invalid result.

## Negative Dilute

If there is a negative dilute test result, **Transit Provider** will require that one additional retest be conducted. The result of the second test will be the test of record.

When a negative dilute result of 2-5 mg/dl is reported by the **MRO**, the covered employee will be required to undergo another test. The **MRO** will direct the test to be conducted under direct observation.

## Alcohol Testing Procedures

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT).

Alcohol screening tests may be performed using a non-evidential testing device, which is also approved by NHTSA. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the privacy of the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

* If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test.
* The confirmatory test must occur using a NHTSA-approved EBT operated by a trained BAT.
* The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test.
* The EBT will identify each test by a unique sequential identification number.
* This number time and unit identifier will be provided on each EBT printout.
* The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee.
* An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered to have a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in **Section H** of this policy.
* Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in **Section H** of this policy.
* An alcohol concentration of less than 0.02 will be considered a negative test.

**Transit Provider** affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign Step 2 of the ATF will be considered a refusal to submit to testing.

# RESULT OF DRUG/ALCOHOL TEST VIOLATION

Following a positive drug or alcohol test result – blood alcohol content (BAC) at or above 0.04 – or test refusal, the covered employee will be immediately removed from their safety-sensitive duty and referred to a **SAP**.

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties for at least eight hours, unless a retest results in the employee’s BAC being less than 0.02.

Any covered employee that has a verified positive drug or alcohol test, or who refuses to test, will be immediately removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, referred to at least (2) two Substance Abuse Professionals and will be terminated.

The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider.

A voluntary referral does not shield an employee from:

1. Disciplinary action or guarantee employment with **Transit Provider** and
2. The requirement to comply with drug and alcohol testing.

No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the **SAP**.

Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

# TEST REFUSALS

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety sensitive functions and referred to a **SAP**.

**Refusals to test are listed in 49 CFR Part 40 (as amended): 49 CFR 40.191 (as amended) for drug tests, and 49 CFR 40.261 (as amended) for breath tests. An up-to-date copy of 49 CFR Part 40 is available upon request.**

## Drug Test Refusals

An employee is considered to have refused to take a drug test if the employee:

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
2. Fails to remain at the testing site until the testing process is complete.
   * An employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
3. Fails to provide a urine specimen.
   * An employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen.
5. Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
6. Fails or declines to take an additional drug test **Transit Provider** or collector has directed you to take.
7. Fails to undergo a medical examination or evaluation, as directed by the **MRO** or as directed by the **Transit Provider** DAPM.
   * In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.
     + If there was no contingent offer of employment, the **MRO** will cancel the test.
8. Fails to cooperate with any part of the testing process; for example:
   * Refuses to empty pockets when directed by the collector.
   * Behaves in a confrontational way that disrupts the collection process.
   * Fails to wash hands after being directed to do so by the collector.
9. For an observed collection, fails to follow the observer’s instructions to raise and lower clothing and to turn around to permit the observer to determine the presence of a prosthetic or other device that could be used to interfere with the collection process.
10. Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
11. Admits to the collector or **MRO** that the specimen was adulterated or substituted.
12. The **MRO** verifies a test result as adulterated or substituted.
13. Fails to remain readily available for testing following an accident, including notifying a supervisor of their location if they leave the scene of the accident prior to submission to such tests.

## Alcohol Test Refusals

An employee is considered to have refused to take an alcohol test if the employee:

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable USDOT agency regulations, after being directed to do so by the employer.
   * This includes the failure of an employee to appear for a test when called by a Third-Party Administrator (TPA).
2. Fails to remain at the testing site until the testing process is complete.
   * An employee who leaves the testing site before the testing process commences (see 49 CFR 40.243(a)) for a pre-employment test is not deemed to have refused to test.
3. Fails to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations.
   * An employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process for a pre-employment test has not deemed to have refused to test.
4. Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
5. Fails to undergo a medical examination or evaluation, as directed by **Transit Provider**.
6. Fails to sign the certification at Step 2 of the ATF (Alcohol Testing Form).
7. Fails to cooperate with any part of the testing process.
8. Fails to remain readily available for testing following an accident, including notifying a supervisor of their location if they leave the scene of the accident prior to submission of such tests.
9. Fails to take an additional test when directed by **Transit Provider** or collector.

# VOLUNTARY SELF-REFERRAL

Any employee who has a drug and/or alcohol use problem and has not been selected for reasonable suspicion, random or post-accident testing or has not refused a drug or alcohol test may voluntarily refer her or himself to the **Transit Provider**, Transit Manager/Drug and Alcohol Program Manager, who will refer the individual to a substance abuse counselor for evaluation and treatment.

The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.

Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program.

A voluntary referral does not shield an employee from disciplinary action or guarantee employment with **Transit Provider**.

In the instance of a self-referral or a management referral, disciplinary action against the employee shall include mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan and execution of a return to work agreement.

Failure to execute or remain compliant with the return-to-work agreement shall result in termination from **Transit Provider** employment.

# GRIEVANCE AND APPEAL

The consequences specified by 49 CFR 40.149 (a)(5) and (c), as amended, for a positive test or test refusal are not subject to arbitration.

# PROPER APPLICATION OF THE POLICY

**Transit Provider** is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, 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, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

# EDUCATION AND TRAINING

Every covered employee will:

1. Receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, each as amended.
2. Undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment.
   * The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive:

1. 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use, and
2. 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Information on the signs, symptoms, health effects, and consequences of alcohol misuse can be found using resources listed in **Attachment C** of this policy.

**Transit Provider** will display and distribute to every covered employee informational material and if available, display and distribute a community service hot-line telephone number for employee assistance.

# RECORDS MANAGEMENT

According to 49 CFR Parts 655 and 40, each as amended, the following minimum record retention schedule shall be maintained by **Transit Provider**. Sometimes, additional records will be kept to thoroughly document the decision-making process.

## Record Retention Schedule

| **Record** | **Retention Period (Years)** |
| --- | --- |
| * Alcohol Tests Results < 0.02 * Records of Negative Test Results | 1 |
| * Education and Training Records * Evidential breath device calibration documentation | 2 |
| * Information obtained through previous employer record checks | 3 |
| * Records of covered employee verified positive drug test results * Alcohol test results with readings of 0.02 or greater * Documentation of refusal to take required drug or alcohol test * Documentation of employee disputes * Employee evaluation and referrals * Annual MIS reports | 5 |

## Type of Records

The following specific records will be maintained:

1. Records related to general policies and procedures:
   1. Current policy statement listing effective date and the approval by the highest-ranking official of **Transit Provider**.
   2. Employee and new hire policy receipt acknowledgements.
   3. Previous policy statements listing effective dates and the corresponding approvals by the highest ranking official.
   4. Employee and new hire policy receipt acknowledgements.
2. Records related to employee training:
   1. Training materials on drug use awareness and alcohol misuse, including a copy of **Transit Provider’s** policy on prohibited drug use and alcohol misuse.
   2. Names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training.
   3. Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.
   4. Certification that any training conducted complies with the requirements for such training.
3. Records related to the collection process:
   1. Collection logbooks, if used.
   2. Documents relating to the random selection process.
   3. Documents generated in connection with decisions:
      1. To administer reasonable suspicion drug or alcohol tests
      2. On post-accident drug and alcohol testing
   4. **MRO** documents verifying existence of medical explanation of the inability of a covered employee to provide an adequate urine or breath sample.
4. Records related to test results:
   1. **Transit Provider’s** copy of the CCF.
   2. Documents related to the refusal of any covered employee to submit to a required test.
   3. Documents presented by a covered employee to dispute the result of a test
5. Records related to referral and return to duty and follow-up testing:
   1. Records concerning a covered employee’s entry into and completion of the treatment program recommended by the **SAP**.
6. Records related to the employers MIS annual testing data:
7. Records related to credentials documenting that each service agent (i.e. **MRO**, **SAP**, Certified Labs, etc.) meets the minimum basic knowledge, qualifications training, certification/examination, error-correction training, and refresher training
   1. If the service agents maintain these records, the employer should perform and keep documents of periodic spot checks to ensure that the minimum requirements are met.

## Location of Records

Drug and alcohol testing records shall be maintained by the **Transit Provider** DAPM in a locked and secure manner so that disclosure of information to unauthorized persons does not occur.

## Information Disclosure

Records will be released to the entities/individuals listed below in the following circumstances:

1. The employee, upon written request, is entitled to obtain copies of any record(s) pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records.
   1. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications.
   2. Employees may not have access to **SAP** follow-up testing plans.
2. The **Transit Provider** DAPM and other transit system management personnel for records of a verified a positive drug/alcohol test.
3. A third party only as directed by specific, written instruction of the employee.
4. A subsequent employer
   1. Only upon receipt of a written request from the employee.
5. The National Transportation Safety Board (NTSB) during an accident investigation.
6. An agency with regulatory authority over **Transit Provider** or any of its employees, such as the USDOT or WisDOT.
7. The adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test.
   1. The records will be released to the decision-maker in the proceeding.
8. A federal, state, or local safety agency with regulatory authority over **Transit Provider** or the employee.
9. In cases of a contractor or subrecipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.
10. To the decision-maker in a criminal or civil action proceeding resulting from an employee’s performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to **Transit Provider** to release the information.
    1. **Transit Provider** will release the information with a binding stipulation that it will only be released to parties of the proceeding.

If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of 49 CFR Part 40 (as amended), necessary legal steps to contest the issuance of the order will be taken.

# ATTACHMENT A – SYSTEM CONTACTS

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s):

**Transit Provider**

|  |  |
| --- | --- |
| **Name:** |  |
| **Title:** | Drug and Alcohol Program Manager |
| **Address:** |  |
| **Phone:** |  |
| **Email:** |  |

**Collection Site – #1**

|  |  |
| --- | --- |
| **Name:** |  |
| **Address:** |  |
| **Phone:** |  |
| **Hours:** |  |

**Collection Site – #2** (if applicable)

|  |  |
| --- | --- |
| **Name:** |  |
| **Address:** |  |
| **Phone:** |  |
| **Hours:** |  |

**Third Party Administrator (TPA)**

|  |  |
| --- | --- |
| **Third Party Administrator** | |
|  |  |
| **Name:** |  |
| **Email:** |  |
|  | |
| **Address:** |  |
| **Phone:** |  |
| **Fax:** |  |

**Medical Review Officer (MRO)**

**Primary – MRO**

|  |  |
| --- | --- |
| **Name:** |  |
| **Address:** |  |
| **Phone:** |  |
| **Email:** |  |

**Back Up – MRO**

|  |  |
| --- | --- |
| **Name:** |  |
| **Address:** |  |
| **Phone:** |  |
| **Emaill:** |  |

**DHHS Certified Laboratory – Primary Lab**

|  |  |
| --- | --- |
| **Name:** |  |
| **Web:** |  |
| **Phone:** |  |

**DHHS Certified Laboratory – Backup Lab**

|  |  |
| --- | --- |
| **Name:** |  |
| **Web:** |  |
| **Phone:** |  |

**Substance Abuse Professional** (SAP)

Per 49 CFR 40.287, **Transit Provider** is required to provide each employee (including an applicant or new employee) who violates a USDOT drug and alcohol regulation a listing of at least (2) two readily available **SAPs**.

**Note**: **Transit Provider** is responsible under the federal regulations to ensure the **SAPs** listed for a referral are actually USDOT-qualified **SAPs**.

**A list of USDOT qualified SAPs in Wisconsin**: [www.saplist.com](http://www.saplist.com)

|  |  |
| --- | --- |
| **Name:** |  |
| **Address:** |  |
| **Email and Phone:** |  |

|  |  |
| --- | --- |
| **Name:** |  |
| **Address:** |  |
| **Email and Phone:** |  |

# ATTACHMENT B – SAFETY SENSITIVE POSITIONS

The table below outlines all the safety sensitive positions covered by this policy.

|  |  |  |
| --- | --- | --- |
| **Check**  **All that**  **Apply** | **TITLE** | **Testing Authority** |
|  | Supervisor (if performing a covered function) | FTA |
|  | Revenue Vehicle Control/Dispatch | FTA |
|  | Revenue Vehicle Driver | FTA |
|  | Revenue Vehicle & Equipment Maintenance | FTA |
|  | Other – specify | FTA |

The table below outlines all additional positions covered by this policy.

|  |  |  |
| --- | --- | --- |
| **Check**  **All that**  **Apply** | **TITLE** | **Testing Authority** |
|  | Other – specify | **Transit Provider** |
|  | Other – specify | **Transit Provider** |

**Note**:

Volunteer drivers are not subject to testing unless the volunteer is required to hold a CDL or receives remuneration in excess of expenses incurred while engaged in safety sensitive functions.

# ATTACHMENT C – RESOURCES

Note: Always consult FTA’s website for the most current version.

**USDOT Office of Drug and Alcohol Policy and Compliance**

USDOT Office of Drug and Alcohol Policy and Compliance (ODPAC)

<http://www.dot.gov/ost/dapc/>

What Employers Need to Know About DOT Drug and Alcohol Testing <https://www.transportation.gov/odapc/employer_handbook>

What Employees Need to Know About DOT Drug and Alcohol Testing

<https://www.transportation.gov/odapc/employee-handbook-english>

ODPAC – Email Notification Updates

<https://www.transportation.gov/odapc/ListServe_Notices>

**Federal Transit Administration (FTA)**

Federal Transit Administration

<https://www.transit.dot.gov/>

FTA – Legislation and Regulations

<http://transit-safety.fta.dot.gov/DrugAndAlcohol/Regulations/Default.aspx>

FTA – Regulation Updates

<http://transit-safety.fta.dot.gov/DrugAndAlcohol/Newsletters/Topics.aspx>

MIS – Drug and Alcohol Reporting

<https://www.transportation.gov/odapc/MISreporting>

Best Practices Manual: FTA Drug and Alcohol Testing Program

<https://www.transportation.gov/odapc/best-practices-dot-random-drug-and-alcohol-testing>

Prescription and Over-the-Counter Medications Toolkit

<https://transit-safety.fta.dot.gov/DrugAndAlcohol/Publications/DocumentInfo.aspx?DocID=223>

**Training Information**

FTA Training

<http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training/Default.aspx>

RTAP Scholarship Program

<http://www.dot.wisconsin.gov/localgov/transit/rtap.htm>

Alcohol Facts and Statistics

<https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics>

1. A Substance Abuse Professional (SAP) is a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap> with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders. [↑](#footnote-ref-1)
2. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. To be qualified to act as an MRO in the USDOT drug testing program an MRO must meet the requirements listed in 49 CFR Part 40 Section 40.121. [↑](#footnote-ref-2)
3. 49 CFR Part 40.67, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended, outlines when and how a directly observed collection is conducted. [↑](#footnote-ref-3)