

# FOLEY CARRIER SERVICES, LLC

## “FIRST TERMINATION POLICY”

### INSTRUCTIONS

1. **Issuing a Policy is a DOT Requirement.** This is the FOLEY CARRIER SERVICES' FIRST TERMINATION POLICY. This policy states that the employer may take disciplinary actions, up to and including termination, for any violation of the prohibitions defined herein.
2. **Review the Policy.** Take special note of Section VIII. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES AND REQUIREMENTS *and* Section IX. EMPLOYER'S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES to be sure that they reflect the intentions of your business.
3. **Save the policy** on your “C-drive” to keep as the original – *before* you make changes. Save a second version to which you can make changes under a different name.
4. **Fill in the DAPM/DER name** on the policy's cover page.
5. **Print the policy.**
6. **Copies** - Order copies from Foley Carrier Services' Duplication Service (See ORDER FORM), or make the appropriate number of copies to provide one to each safety-sensitive individual and to each supervisor of covered employees.
7. **Schedule a training meeting** to go over the policy.
8. **Distribute** the policy to your covered employees.
9. **Add Policy to Manual** - Place a copy of the Policy in the Drug and Alcohol Program Manual binder, SECTION IV - POLICY AND EDUCATIONAL MATERIALS.
10. **You now have your policy in place.**

**CONTROLLED SUBSTANCES AND ALCOHOL  
POLICY AND EDUCATIONAL MATERIALS FOR  
COVERED EMPLOYEES**

**Federal Transit Administration (FTA)  
Mandated Program**

**Foley Carrier Services, LLC First Termination Policy**

**EMPLOYER'S DRUG AND  
ALCOHOL PROGRAM  
CONTACT (DAPM/DER)**

Drug and Alcohol Program Manager (DAPM)

Designated Employer Representative (DER)

Listed below is the individual whom Employer has identified as your contact for questions or issues regarding this policy and the drug and alcohol testing program in general.

DAPM/DER: \_\_\_\_\_

In his/her absence, please contact a current or acting DAPM/DER: \_\_\_\_\_

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# TABLE OF CONTENTS

<b>I. GENERAL INFORMATION .....</b>	<b>1</b>
A . TO REVIEW THE POLICY .....	1
B . SCOPE AND OVERVIEW.....	1
C . EDUCATIONAL MATERIALS.....	2
D . SUPPLEMENT TO EMPLOYER’S GENERAL POLICY.....	2
E . CHANGING DOT REGULATIONS .....	3
F . PARTICIPATION IS REQUIRED .....	3
G . CERTIFICATE OF RECEIPT.....	3
H . COVERED EMPLOYEE CATEGORIES SUBJECT TO THIS POLICY .....	3
I . REQUIRED HOURS OF COMPLIANCE.....	4
J . VALID MEDICAL PRESCRIPTION .....	4
<b>II. DEFINITIONS.....</b>	<b>6</b>
<b>III. CIRCUMSTANCES FOR CONTROLLED SUBSTANCES AND/OR ALCOHOL TESTING.....</b>	<b>13</b>
A . PRE-EMPLOYMENT TESTING .....	13
B . POST-ACCIDENT TESTING.....	14
C . RANDOM TESTING .....	15
D . REASONABLE-SUSPICION TESTING .....	16
E . RETURN-TO-DUTY TESTING .....	16
F . FOLLOW-UP TESTING .....	17
G . RETESTING.....	17
H . NEGATIVE-DILUTE.....	17
<b>IV. PROCEDURES USED TO ENSURE THE INTEGRITY OF THE TESTING PROCESS.....</b>	<b>19</b>
A . CONTROLLED SUBSTANCES .....	19
B . ALCOHOL .....	19
C . MAINTENANCE AND RELEASE OF CONFIDENTIAL INFORMATION .....	20
<b>V. PROHIBITED DRUG / ALCOHOL CONDUCT.....</b>	<b>22</b>
<b>VI. REFUSAL-TO-SUBMIT .....</b>	<b>24</b>
<b>VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT .....</b>	<b>26</b>
<b>VIII. EMPLOYER’S INDEPENDENTLY AUTHORIZED CONSEQUENCES AND REQUIREMENTS .....</b>	<b>27</b>
A . FIRST VIOLATION OF A PROHIBITION .....	27
B . OTHER EMPLOYER AUTHORIZED REQUIREMENTS.....	27
<b>IX. EMPLOYER’S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES.....</b>	<b>29</b>
<b>X. EDUCATIONAL MATERIALS .....</b>	<b>30</b>
A. <i>Regulatory Requirements</i> .....	30
B. <i>Policy Issues</i> .....	30
C. <i>Confidential Information</i> .....	30
D. <i>Collection Facilities</i> .....	31
E. <i>Going for a Drug and/or Alcohol Test</i> .....	31
F. <i>Collection Procedure for a Drug Test</i> .....	31
G. <i>Split Specimen</i> .....	33
H. <i>Shy Bladder</i> .....	33
I. <i>Directly Observed Collection</i> .....	34
J. <i>Alcohol Testing Procedure</i> .....	35
K. <i>Shy Lung</i> .....	36
L. <i>Refusal-to-Submit (Refusal-to-Test)</i> .....	36
M. <i>Medical Review Officer (MRO)</i> .....	36

N. Substance Abuse Professional (SAP) .....	38
O. Prescription/Over-the-Counter Medications .....	38
P. Marijuana .....	39
Q. Dilute, Substituted, Adulterated Specimens .....	39
R. Random Testing .....	40
S. Reasonable Suspicion Testing .....	40
T. Post-Accident Testing .....	41
<b>XI. INFORMATION CONCERNING THE EFFECTS OF ALCOHOL AND DRUG USE ON AN INDIVIDUAL'S HEALTH, WORK AND PERSONAL LIFE .....</b>	<b>42</b>
A. Alcohol (A Non-Controlled Substance) and Its Effects .....	42
B. Controlled Substances And Their Effects .....	43

**LICENSE AGREEMENT - 8-1-2008**

By opening this package and/or using the materials provided, Licensee (Client) agrees to abide by the terms and conditions of the foregoing Licensing Agreement with Licensor (Foley Carrier Services, LLC of Glastonbury, CT 06033).

- I. LICENSE GRANT - Licensor hereby grants to Licensee, subject to the terms and conditions of this agreement, a license to use Licensed Products (forms, manuals, documents, and any drug and alcohol testing policies of any title or form (herein policy), etc. in any media) for implementing, a drug and alcohol testing program. Requirements and protections provided in this agreement are in addition to the rights, responsibilities and obligations under any applicable copyright laws. Licensee has no ownership rights to the licensed materials.
- II. PERMITTED USES - Licensee may duplicate blank forms, policies, and other documents and use as applicable for then-current employees and contractors (herein employees). Licensee may put their business name on materials, but Licensor copyright and license information may not be removed.
- III. PROHIBITED USES - Licensee may not use any materials to derive replacement materials for use after program termination. Any and all derived products become the intellectual property of Licensor and the use of these derived products is governed by this agreement. Licensee may not remove any copyright notice and/or license agreement notice from any derived products and to provide evidence upon written notice.
- IV. OBLIGATIONS UPON PROGRAM TERMINATION OR IF LICENSEE IS NOT IN GOOD STANDING - 1. COMPLETED FORMS MAY BE MAINTAINED AFTER PROGRAM TERMINATION – Forms, policies, etc. that have been completed by Licensee’s employees may be maintained by licensee and/or employees to prove that they meet or have met the requirements. This right is granted after Licensee is no longer in good standing for any Licensee agreement with Licensor or any agreement has been terminated for any reason. Licensee may subsequently duplicate these *completed* forms as necessary to meet DOT requirements, to provide information to subsequent employers, upon request of employees as required or permitted by regulation, and to provide evidence that regulatory requirements were met. All other uses are prohibited.
2. ANY AND ALL POLICIES MUST BE RETRACTED WITHIN TEN DAYS AFTER PROGRAM TERMINATION - Licensee must cease using licensed materials, retract the drug and alcohol testing policy from all individuals covered by any licensed policy, and obtain a written notice from each individual retracting the policy within 10 days when Licensee is no longer in good standing with Licensor for any reason. Upon written notice by Licensor, Licensee must provide licensor copies of completed retraction forms to assure that this requirement has been met.
3. DRUG AND ALCOHOL PROGRAM MANUAL MATERIALS MUST BE RETURNED OR DESTROYED AFTER PROGRAM TERMINATION - Licensee agrees to return or destroy the Drug and Alcohol Program Manual, diskettes, blank policies, computer files, and copies in any media within ten days when Licensee is no longer in good standing with Licensor.
- V. INFRINGEMENT RESOLUTION – License violation, at Licensor’s option, may utilize Commercial Dispute Resolution Procedures, including Supplementary Procedures for Online Arbitration or Mediation, of the American Arbitration Association. Licensee will reimburse Licensor all reasonable costs (including attorney’s fees) incurred by Licensor if Licensor obtains a court or arbitration award for violations of this licensing agreement and/or copyright violations in addition to damages awarded.
- VI. LICENSING AGREEMENT MODIFICATIONS – Licensor may modify this License Agreement by providing Licensee written notice three months in advance of the effective date.

# I. GENERAL INFORMATION

## A. TO REVIEW THE POLICY

### SUBJECT SUMMARY

*The policy is separated by section headings and includes text boxes that provide a summary of the information covered in that section. Review each text box to have an overview of the requirements.*

The regulations mandating the drug and alcohol testing program are lengthy and detailed. The policy is one of the most important components of the program since it informs the covered employee of what his/her requirements are and the consequences for not complying with those requirements. It is the covered employee's responsibility to understand the requirements in order to be compliant with the regulations.

The policy is divided into major sections, which include minor sections that cover detailed information. To make the review of the policy less arduous, the covered employee has the opportunity to choose the level of detail that he/she feels is necessary. To the left of each section is a text box that summarizes the information covered in that section. The covered employee can read all of the text boxes and have an overview of the requirements. If the covered employee wants more information, he/she can read the accompanying text in each section.

**EDUCATIONAL MATERIALS** - This section has headings that indicate the criteria covered in that section. The information is provided in a question and answer format, addressed directly to the covered employee.

**For the purposes of this policy and the management of the drug and alcohol testing program, Foley Carrier Services, LLC** considers the Drug and Alcohol Program Manager (DAPM) and the Designated Employer Representative (DER) to have equal roles in fulfilling the duties of the program, as they pertain to a covered employee.

## B. SCOPE AND OVERVIEW

### SUBJECT SUMMARY

*A covered employee is responsible for being aware of all federal regulations regarding drugs and alcohol (those defined in this policy and Other Controlled Substances defined in federal regulation).*

*This policy covers serious consequences for violations of the regulations. It is not an employment contract and shall not be construed as such.*

*As Independently Authorized, and allowed by state law, employee may be an "Employee at will" of employer.*

In order to promote public safety, the Federal Transit Administration (FTA) requires this employer (herein "employer") to have in place a drug and alcohol testing program for certain covered employees who perform safety sensitive functions as defined in this policy. This program is subject to all of the requirements and conditions stated in 49 CFR Parts 655 and 40 as they may change over time. The covered individuals will be tested in a variety of circumstances for the presence of controlled substances (also referred to herein as "drugs") and alcohol at or above the current threshold levels. This program is subject to complex procedural safeguards as regulated by the U.S. Department of Transportation (DOT) in 49 CFR Part 40. These policies and guidelines are formulated to protect the safety and security of the public, employees, facilities, and assets, and to be in compliance with the mandates of the U.S. DOT, FTA, and/or state governments and supported by the force of federal and/or state law and/or regulation where applicable.

Controlled Substances use and alcohol misuse have a significant negative impact on an individual's health, work, and personal life. When a covered employee has used controlled substances or misused alcohol and is performing a safety-sensitive function, the risk to society in general significantly increases.

The purpose of this regulation was to establish programs to be implemented

by employers that receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

This policy defines serious consequences required by federal regulation, as well as consequences imposed by this employer, for covered employees who violate the drug and alcohol testing regulations. There are also administrative actions required by federal regulation for a covered employee with an alcohol concentration as low as 0.02. To put this in perspective, many states have charges of "driving while intoxicated" when the alcohol concentration is 0.10 or 0.08.

Employers who must implement this program are recipients, sub-recipients, operators, contractors or other entities that provide mass transportation services or perform safety-sensitive functions for such recipient or other entity.

Items in this policy relating to disciplinary actions, terminations, leaves of absence, and all financial issues are not FTA or DOT requirements. These elements are based on employer's authority independent of DOT regulations and are discussed in the policy sections: EMPLOYER'S *INDEPENDENTLY AUTHORIZED* CONSEQUENCES FOR VIOLATIONS OF THIS POLICY and EMPLOYER'S *INDEPENDENTLY AUTHORIZED* FINANCIAL RESPONSIBILITIES.

This policy is not an employment contract and shall not be construed as such. *As Independently Authorized*, and allowed by state law, an employee may be an "Employee at will" of employer.

## C. EDUCATIONAL MATERIALS

### SUBJECT SUMMARY

*Educational Materials section is written in Q & A format and contains detailed information not covered in the policy.*

Section XI. EDUCATIONAL MATERIALS is located at the end of this policy. It is important that you read this section in addition to this policy since that is where many of the items covered in the policy are explained in greater detail. Foley Carrier Services, LLC formatted this section in question and answer format. It covers some of the questions most commonly asked by individuals covered by the DOT drug and alcohol testing programs.

Covered Topics Include: Collection Process, Post-Accident Testing, Shy Bladder, Adulteration and Substitution of a Specimen, etc.

## D. SUPPLEMENT TO EMPLOYER'S GENERAL POLICY

### SUBJECT SUMMARY

*If your employer issued a general policy and there is a conflict – this policy shall be controlling.*

Employees remain subject to the prohibitions, rules, and benefits of employer's General Policy, whether in force now, or implemented in the future, and should view this *Controlled Substances and Alcohol Policy for Covered Employees* as a supplement to employer's General Policy.

To the extent that there may be a conflict between any provision of the General Policy and a provision of this policy, this *Controlled Substances and Alcohol Policy for Covered Employees* and applicable federal and/or state regulations shall be controlling.

## E. CHANGING DOT REGULATIONS

### SUBJECT SUMMARY

*Employer shall implement changes in DOT requirements, as they become effective.*

DOT regulations change from time to time and it is employer's procedure to implement the new requirements, as they become effective.

Such changes may be added to this policy as an addendum and/or amendment.

## F. PARTICIPATION IS REQUIRED

### SUBJECT SUMMARY

*In order to perform safety-sensitive functions for this employer, covered employee must participate in this drug and alcohol testing program.*

Participation in this FTA mandated controlled substances and alcohol testing program and submission to tests administered in accordance with 49 CFR Parts 655 and 40 is a requirement of employment for covered employees and volunteers, when applicable. This policy also requires a covered employee to provide all mandatory information that can be obtained by the covered employee and to cooperate with the MRO and/or SAP if the situation arises. The covered employee must provide correct prior employment information and prior controlled substances and/or alcohol information relating to the DOT controlled substances and alcohol testing program.

## G. CERTIFICATE OF RECEIPT

### SUBJECT SUMMARY

*Covered employee is required to certify that he/she received and reviewed the policy.*

Each covered employee is required by regulation to certify that he/she has received a copy of these materials. The ACKNOWLEDGEMENT OF RECEIPT AND REVIEW OF EMPLOYER'S CONTROLLED SUBSTANCES AND ALCOHOL POLICY AND EDUCATIONAL MATERIALS is the last page of this document. The DAPM/DER will answer any questions a covered employee may have about signing the form.

## H. COVERED EMPLOYEE CATEGORIES SUBJECT TO THIS POLICY

### SUBJECT SUMMARY

*A covered employee, whose job classification is described in any of the categories listed to the right, is subject to the requirements of this policy.*

This policy applies to covered employees and volunteers who perform safety-sensitive functions for this employer, as well as to applicants for such positions.

49 CFR Part 655 defines the following as safety-sensitive functions performed by an employee of a recipient, sub-recipient, operator, or contractor:

- Operating a revenue service vehicle, including when not in revenue service;
- Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;
- Carrying a firearm for security purposes.

## I. REQUIRED HOURS OF COMPLIANCE

### SUBJECT SUMMARY

*A covered employee is not allowed to use:  
Drugs - at any time on or off the job (unless under doctor's care).  
Alcohol - 4 hours prior to working, while working, immediately after working, or up to 8 hours after an accident requiring testing.*

The required hours of compliance for controlled substances and/or alcohol are as listed below:

**Controlled Substances:** A covered employee shall not use controlled substances at any time on or off the job unless that use is pursuant to the instructions of a licensed medical practitioner who has advised the covered employee that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle.

**Alcohol:** A covered employee shall not use alcohol:

- General: Four hours prior to performing a safety-sensitive function.
- On-Call: No alcohol consumption for the specified on-call hours while the employee is on-call
- While performing a safety-sensitive function.
- Immediately after performing a safety-sensitive function, (to allow for alcohol testing immediately after a shift).
- Up to eight hours following an accident or until the covered employee undergoes a post-accident alcohol test, whichever occurs first.

## J. VALID MEDICAL PRESCRIPTION

Medications, whether prescription or over-the-counter, can cause drowsiness or have other effects that may affect the employee's ability to operate a vehicle or other equipment safely. Safety-sensitive employees taking a prescription or over-the-counter medication are responsible for taking precautions and actions necessary to ensure that the medication does not affect their ability to operate the vehicle safely. Precautions that should be considered are:

### **Information about prescription medications:**

Safety sensitive employees should consult with their physician or dentist who has prescribed the medication, with the pharmacist who dispenses the medication, or with another qualified medical professional, regarding the probable affect of the medication on their ability to safely operate a vehicle or perform safety sensitive functions.

### **Information about over-the-counter medications:**

The employee must read the information on the label or literature that is included with the medication to be aware of potential side effects.

### **Find out about alternative medications:**

When the employee's physician, dentist or pharmacist understands the requirements of the job, he or she can suggest medications that will not effect the employee's ability to perform safety sensitive functions.

### **The employee must be sensitive to their own reactions to medication(s):**

The information the employee obtains from the physician, dentist, pharmacist or other medical professional will assist them in evaluating their own reaction to the medication(s).

**MRO's requirement to report applicable medical information**

In accordance with 49 CFR, Part 40, during the MRO review of drug testing results, the MRO is required to provide to the employer test result information and medical information affecting the performance of safety-sensitive duties. Medical information includes information on medications or other substance affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having.

The person(s) to whom this information may be provided to include the employer, a SAP evaluating the employee as part of the return-to-duty process, DOT, another Federal safety agency, or state safety agency as required by state law.

## II. DEFINITIONS

### SUBJECT SUMMARY

*The terms defined here are not all used in this policy. We have included terms which are used in 49 CFR Parts 655 and 40.*

*There are specific definitions that we feel the covered employee should review in detail. We have noted those definitions with an arrow (➡).*

### SUBJECT SUMMARY

*The terms defined here are not all used in this policy. We have included terms which are used in 49 CFR Parts 382 and 40.*

*There are specific definitions that we feel the driver should review in detail. We have noted those definitions with an arrow (➡).*

**Accident** for the purposes of drug and alcohol testing means an occurrence associated with the operation of a vehicle, if as a result:

- An individual dies; or
- An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
- With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
- With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

**Administrator** means the Administrator of the Federal Transit Administration or the Administrator's designee.

**Adulterated Specimen** is a urine specimen that contains a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration. Once verified by the MRO, this is reported as a "refusal-to-test."

**Air Blank** is a reading by an EBT of ambient (circulating) air containing no alcohol. (In EBT's using gas chromatography technology, a reading of the device's internal standard.)

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

**Alcohol Concentration (herein AC)** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

**Alcohol Confirmation Test (Confirmation Test for Alcohol Testing)** is a subsequent test using an EBT that provides quantitative data of alcohol concentration which is administered following a screening test that had a result of 0.02 AC or greater.

**Alcohol Misuse** means use in a manner that is prohibited by federal regulation.

**Alcohol Screening Device (ASD)** is a breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

**Alcohol Testing Form (ATF)** is the form used by the Breath Alcohol Technician to document an alcohol test.

**Alcohol Testing Site** is where the individual presents himself/herself for the purpose of providing a specimen for alcohol testing. The site must provide visual and aural privacy, sufficient to prevent unauthorized persons from seeing or hearing the test results.

**Alcohol Use** means the drinking or swallowing of any beverage, liquid

mixture, or preparation (including any medication) that contains alcohol.

**Aliquot** is a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

**Anti-drug program** means a program to detect and deter the use of prohibited drugs as required by this part.

**Blind Specimen or Blind Performance Test Specimen** is a urine specimen submitted to a laboratory for quality control testing purposes. It has a fictitious identifier, so the laboratory cannot distinguish it from an employee specimen.

**Breath Alcohol Technician (BAT)** is an individual who instructs and assists in the alcohol testing process and operates an evidential breath testing device (EBT).

**Cancelled Test** is a drug or alcohol test that has a problem identified that cannot be or has not been corrected or otherwise requires it to be cancelled. A cancelled test is neither a positive nor a negative test.

**Chain of Custody** refers to the procedures used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

**Collection Container** is the container into which the employee urinates to provide the urine sample used for a drug test.

**Collection Site** is a place designated by the employer where individuals present themselves for the purpose of providing a urine specimen to be analyzed for the presence of controlled substances.

**Collector** is a person who instructs and assists employees at a collection site and who receives and makes an initial inspection of the urine specimen provided by those employees, and who initiates and completes the CCF.

**Commercial Driver's License (CDL)** means a license that is issued to an individual by a State or other jurisdiction in accordance with the standards contained in 49 CFR Part 383 which authorizes the individual to operate a class of a commercial motor vehicle.

**Confirmation (or Confirmatory) Drug Test** means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/ mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

**Confirmatory Validity Test** is a second test performed on a different aliquot of the original urine specimen to further support a validity test result.

**Confirmed Drug Test** is the test result received by the MRO from the laboratory.

**Confirmed Alcohol Test Result** refers to the result of the confirmation test conducted by a BAT on an EBT.

**Consortium/Third-Party Administrator (C/TPA)** means a service agent that provides or coordinates one or more drug and/or alcohol testing services to

DOT-regulated employers. C/TPAs typically coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for the purposes of these regulations.

**Contractor** means a person or organization that provides a safety-sensitive service for a recipient, sub-recipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

➔ **Controlled Substances (Drugs)** are the following substances or derivatives thereof:

- Amphetamines
- Cocaine
- Marijuana
- Opiates
- Phencyclidine

**Covered Employee** means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part.

- A volunteer is a covered employee if:
  - The volunteer is required to hold a commercial driver's license to operate the vehicle; or
  - The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

**Custody and Control Form (CCF)** is the laboratory form used to track the chain of custody of a urine specimen that has been collected for drug testing.

**Designated Employer Representative (DER)** is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. This individual must be an employee of the company. Service agents cannot serve as DAPMs/DERs.

**Dilute Specimen** means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

**Disabling Damage** means damage which precludes departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs.

Inclusions -

- Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

Exclusions -

- Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- Tire disablement without other damage even if no spare tire is available.
- Headlamp or taillight damage.
- Damage to turn signals, horn, or windshield wipers that make the vehicle inoperative.

**DOT, The Department, DOT Agency**, refer to terms that encompass all DOT agencies (or “operating administrations”) of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing in accordance with Part 40. They include, but are not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA), and the Office of the Secretary (OST). This term also refers to any designee of a DOT agency.

**Drug and Alcohol Program Manager (DAPM)** is the individual responsible for the implementation of the drug and alcohol testing program. This individual may also perform the duties of a DER. (See Designated Employer Representative)

**Drugs** (See “Controlled Substances”).

**EBT (Evidential Breath Testing Device)** is a device which has been approved by the National Highway Traffic Safety Administration (NHTSA) for the testing of breath and placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices” (CPL), and identified on the CPL as conforming with the model specifications available from NHTSA, Office of Alcohol and State Programs.

**Employer** means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes sub-recipients, operators, and contractors.

**FTA** is the Federal Transit Administration, an operating administration of the Federal DOT.

**HHS** is The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

**Initial Drug Test** (Screening Drug Test) is an immunoassay test to eliminate “negative” urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

**Initial Validity Test** is the first test used to determine if a urine specimen is adulterated, diluted, or substituted.

**Invalid Result** is the result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

**Laboratory** is the facility where the actual testing of a urine specimen takes place.

**Licensed Medical Practitioner** means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

**Limit of Detection (LOD)** is the lowest concentration at which an analyte can be reliably shown to be present under defined conditions.

**Medical Review Officer (MRO)** means a licensed physician (Medical Doctor or Doctor of Osteopathy) who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

**Non-Negative Specimen** is a urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

**Office of Drug and Alcohol Policy and Compliance (ODAPC)** means the office within the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of Part 40.

**Oxidizing Adulterant** is a substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

➔ **Performing (a safety-sensitive function)** means a covered employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. (See the definition of a Safety Sensitive Function.)

**Prohibition** refers to the actual conduct that is prohibited under the drug and alcohol testing regulations as defined in 49 CFR Parts 655 and 40. Any violation of these prohibitions will result in the individual not being able to perform safety-sensitive functions until the return-to-duty requirements are met. See Section V. PROHIBITED DRUG / ALCOHOL CONDUCT

**Primary Specimen** is the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

**Railroad** means:

- All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:
  - Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and
  - High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.
- Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

**Recipient** means an entity receiving Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311; or under 23 U.S.C. 103(e)(4).

➔ **Refusal (or Refuse) to Submit** is a detailed and involved issue. Please refer to Section VI. REFUSAL-TO-SUBMIT which completely explains the situations that an individual could be deemed to have refused to submit to testing.

➔ **Safety-Sensitive Function** means any of the following duties, when performed by employees of recipients, sub-recipients, operators, or contractors:

- Operating a revenue service vehicle, including when not in revenue service;
- Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;
- Carrying a firearm for security purposes.

**Screening Test** (also known as Initial Test)

- In alcohol testing, it means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in a breath or saliva specimen.
- In drug testing, it means a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs/drug metabolites.

**Screening Test Technician (STT)** is a person who instructs and assists employees in the alcohol testing process and operates an Alcohol Screening Device (ASD).

**Secretary** is the Secretary of Transportation or the Secretary’s designee.

**Service Agent** means any person or entity, other than an employee of the employer, who provides services specified under Parts 655 and 40 to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, SAPs, and C/TPAs. To act as service agents, persons and organizations must meet applicable qualifications. Service agents are not employers for purposes of these regulations.

**Shipping Container** is a container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

**Specimen Bottle** is the bottle that, after being labeled and sealed according to the procedures of 49 CFR Part 40 is used to hold the urine specimen during transportation to the laboratory.

**Split Specimen** is applicable only in drug testing. It is a part of the urine specimen that is sent to a first laboratory and retained unopened. It is

transported to a second laboratory in the event that the employee requests that it be tested following a verified positive, adulterated or substituted test result of the primary specimen.

**Substance Abuse Professional (SAP)** means a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. (See Educational Materials for more information.)

**Substituted Specimen** is a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine. Once verified by the MRO, this is reported as a "Refusal-to-test."

**Validity Testing:**

- Initial Validity Test is the first test used to determine if a specimen is adulterated, diluted, or substituted.
- Confirmation (or Confirmatory) Validity Test is the second test performed on a urine specimen to further support a validity test result.

**Vehicle** means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A mass transit vehicle is a vehicle used for mass transportation or for ancillary services.

**Verified Test Result** is a drug test result or validity testing result from a HHS-certified laboratory that has undergone review and final determination by the MRO.

**Violation rate** means the sum of the annual number of results from random alcohol tests conducted under this part that have alcohol concentrations of .04 or greater plus the annual number of refusals to submit to alcohol tests authorized under this part, divided by the sum of the annual number of random alcohol tests conducted under this part plus the annual number of refusals to submit to a drug test authorized under this part.

# III. CIRCUMSTANCES FOR CONTROLLED SUBSTANCES AND/OR ALCOHOL TESTING

Covered employees must submit to alcohol and/or controlled substances tests in the circumstances listed below. A covered employee is subject to controlled substances testing at any time while on the job. He/she is also subject to alcohol testing any time during the required hours of compliance for: random, post-accident, reasonable-suspicion, and follow-up testing.

## A. PRE-EMPLOYMENT TESTING

### *Controlled Substances*

Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the **employer must** ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result.

When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in §655.62.

An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.

If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

**Note:** When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

### *Alcohol Testing*

An **employer may**, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

- The employer must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
- The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).
- The employer must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee

#### SUBJECT SUMMARY

*An individual applying for or transferring into a safety-sensitive position must have a pre-employment drug test with a negative result.*

*An individual with a non-negative test result must fulfill the return-to-duty requirements prior to beginning safety-sensitive functions for this employer or any other employer.*

*Employer may conduct pre-employment alcohol testing.*

passing the pre-employment alcohol test.

- The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40.
- The employer must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02.

## B. POST-ACCIDENT TESTING

### SUBJECT SUMMARY

***Fatal Accidents - Post-accident testing is required as soon as practicable, on each surviving covered employee who was operating the vehicle at the time unless the individual was tested under the fatal testing requirements of FMCSA. Employer shall test any other covered employee who could have contributed to the accident.***

***Nonfatal Accidents – A covered employee shall be tested unless employer determines that the employee's performance was not a contributing factor to the accident.***

***Time Parameters – Alcohol Testing is to be conducted as soon as practicable. If not conducted within 2 hours, it must be documented why it was not conducted and attempts are to continue. If testing was not conducted within 8 hours, attempts are to cease.***

***Time Parameters – Drugs Collection is to be conducted as soon as practicable but within 32 hours.***

### FATAL ACCIDENTS

There has been a loss of human life.

**As soon as practicable** following a fatal accident, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident.

**Note:** Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1).

The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

### NONFATAL ACCIDENTS

There is no loss of human life, however:

- An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
- There is disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle

**As soon as practicable** following a nonfatal accident, employer shall drug and alcohol test each covered employee operating the mass transit vehicle unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident.

The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

### TIME PARAMETERS

If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator.

An employer shall ensure that a covered employee required to be drug tested

under this section is tested as soon as practicable but within 32 hours of the accident.

A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.

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.

The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period noted in paragraphs (a) and (b) of this section. In a situation where the blood alcohol test is used to meet the FTA testing requirement, it is understood that the blood alcohol concentration shall be considered equivalent to the breath alcohol concentration.

## C. RANDOM TESTING

### SUBJECT SUMMARY

*All covered employees are subject to random drug and alcohol testing. The random selections are computer generated by Foley Carrier Services, LLC in accordance with DOT requirements and without bias.*

*An individual may be selected multiple times or not at all during any given year.*

Covered employees are subject to unannounced random controlled substances and alcohol testing. The random selections are made at not less than the current minimum-testing rates established by the FTA. Foley Carrier Services, LLC generates the random selections using a scientifically valid computer-based random number generator that is matched to an individual's ID number (social security number or employee ID). Once the selections are generated, Foley Carrier Services then notifies employer's DAPM/DER as to who has been selected for a random alcohol and/or controlled substances test. Employer's DAPM/DER then has discretion as to when the testing should be conducted based on employee schedules. When appropriate, the DER notifies the covered employee to proceed immediately to the designated collection site.

Random selections are to be spread reasonably throughout the calendar year. The probability of an individual being randomly selected in the future is not changed by prior random selections. A characteristic of the DOT required random selection process is that a covered employee may be selected for random testing multiple times, or not at all, during any given year.

See Section XI. EDUCATIONAL MATERIALS for more information.

## D. REASONABLE-SUSPICION TESTING

An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

Alcohol testing is authorized under this section only if the required observations were made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

### TIME PARAMETERS

If an alcohol test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

## E. RETURN-TO-DUTY TESTING

An employee who violates a DOT drug and alcohol prohibition cannot perform safety-sensitive functions for any employer until complying with the required elements of the return-to-duty process. Once the SAP has determined, during the follow-up evaluation, that the employee has successfully complied with prescribed education and/or treatment, the SAP shall inform employer's DAPM/DER that the covered employee may now have the return-to-duty test. All return-to-duty test urine specimen collections must be directly observed. See Section VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT.

An employer is not required to return an employee to safety-sensitive duties because the employee has met these conditions. The return-to-duty test will only be performed for current employer if covered employee is not otherwise terminated. However, a covered employee is unable to perform safety-sensitive functions until the return-to-duty testing has been completed.

DOT regulation requires that a covered employee must submit to and receive a negative return-to-duty test before he/she can resume safety-sensitive functions. This means that if being tested for alcohol, the alcohol test result must be less than 0.02 AC; for controlled substances, the result must be a verified negative drug test result.

### SUBJECT SUMMARY

*A reasonable-suspicion alcohol and/or drug test is required to be conducted when a trained supervisor determines that an individual appears to be impaired.*

### SUBJECT SUMMARY

*Return-to-duty testing needs to be completed when the SAP has informed the DAPM/DER that a covered employee has complied with the SAP's recommended treatment and/or education. This testing must be prior to returning to safety-sensitive functions. No covered employee shall be returned to safety-sensitive functions without having the required negative return-to-duty test result(s).*

The SAP may determine that both alcohol and controlled substances testing is necessary for a particular covered employee. If such is the case, and employer wishes to return the individual to safety-sensitive functions, the employer shall direct the covered employee to submit to both return-to-duty tests.

See Section IX. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES FOR VIOLATIONS OF THIS POLICY.

## F. FOLLOW-UP TESTING

### SUBJECT SUMMARY

*There are to be a minimum of six tests conducted within 12 months of returning to duty. These tests are to be conducted for current /subsequent employer if covered employee returns to safety-sensitive functions.*

After a violation of the drug and alcohol testing prohibitions and following successful return-to-duty testing, a covered employee is subject to a minimum of six (6) follow-up tests within twelve (12) months of returning to safety-sensitive functions. The SAP establishes a follow-up testing plan that defines the number and frequency of the follow-up tests to be conducted. All follow-up test urine specimen collections must be directly observed.

The employer will schedule the test dates and ensure that the appropriate tests are conducted within the twelve-month period after the employee returns to duty, as well as any subsequent testing requirements for up to a five-year period.

Tests may be for both controlled substances and/or alcohol regardless of whether the prohibition violation concerned either specific substance. There is no limit to the number and frequency of the follow-up tests. A covered employee is to be removed from the follow-up testing program after completing 60 months, if the SAP did not release him/her sooner. The SAP may modify his/her own follow-up plan.

## G. RETESTING

If an employer chooses to permit a covered employee to perform a safety-sensitive function within eight hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer shall retest the covered employee to ensure compliance with the provisions of §655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02AC.

## H. NEGATIVE-DILUTE

There are three levels to a dilute specimen, as explained below.

**Negative-Dilute** - The highest level of dilution is when the creatinine concentration is greater than 5mg/dL but less than 20mg/dL, and the specific gravity is greater than 1.0010 but less than 1.0030. In this case, you need to refer to SECTION VIII. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES AND REQUIREMENTS to determine what requirements, if any employer has for a negative-dilute result.

**Negative-Dilute, Recollection required under Direct Observation** - The next level of dilution, with the creatinine concentration greater than or equal to 2mg/dL but less than or equal to 5mg/dL, and the specific gravity is greater than 1.0010 but less than 1.0030. The MRO will require a recollection under direct observation.

**Substituted** - When a specimen is so dilute to not be consistent with human urine it is considered to be substituted when the creatinine concentration

is less than 2mg/dL and the specific gravity is less than or equal to 1.0010 or greater than or equal to 1.0200. A test result of *substituted* is a violation of the prohibitions and the attendant consequences apply.

## IV. PROCEDURES USED TO ENSURE THE INTEGRITY OF THE TESTING PROCESS

### A. CONTROLLED SUBSTANCES

#### SUBJECT SUMMARY

*The DOT has many safeguards to ensure the integrity of the collection/testing process.*

*They include:*

- *Chain of custody documentation*
- *Split specimen collection*
- *MRO review of results*
- *Collector training*
- *Blind specimen testing*

Employer, and service agents utilized in connection with controlled substances testing, will comply with all DOT regulations intended to ensure the privacy, as well as the fair and respectful treatment, of the individuals being tested, the security of the specimens, and the accuracy and confidentiality of test results.

All individuals submitting to required testing must be identified via picture identification or by an authorized employer representative to ensure that the individual being tested is the correct person. A donor's social security number or employee identification number is used to track the specimen through the testing process.

DOT approved procedures, including the "chain of custody" and split-specimen method of collection, have been established to safeguard the integrity of the collection and testing process. Individuals are in direct visual contact with their urine specimen container/bottles until the collection process is complete. Tamperproof seals on the specimen bottles, initialed by the donor, along with the appropriate chain of custody paperwork provide additional security in the collection/testing procedure.

The actual controlled substances test analysis will be conducted only at laboratories that are certified by the Department of Health and Human Services (HHS).

Foley's MRO Services, as required by regulation, has a "Blind Specimen" testing program in which known positive, negative and adulterated and/or substituted drug specimens are periodically sent to the laboratories to check the integrity of their testing process.

### B. ALCOHOL

#### SUBJECT SUMMARY

*Trained technicians perform alcohol testing using approved equipment. If the initial test result is higher than 0.02AC, a confirmation test is performed. The confirmation test is conducted on an EBT that goes through calibration checks to test its accuracy and actually prints out the test result. Refer to: **EDUCATIONAL MATERIALS** for more information.*

Only trained individuals, using equipment that is listed on NHTSA's conforming products list, conduct alcohol testing. An initial alcohol screening test, conducted on an approved screening device, measures the AC of the covered employee. This result may be handwritten by the technician, printed directly on the alcohol testing form (ATF) by the testing equipment, or affixed to the ATF with tamper-evident tape. Any test result that is less than 0.02AC becomes the actual test result and no further testing is required.

If an initial alcohol screening test is 0.02AC or greater, a second (confirmation) test is performed on an evidential breath testing device (EBT) and the confirmation test result becomes the result of record (not the initial screening test result). Before this confirmation test is conducted, a 15- to 30-minute waiting period is required to reduce the impact of mouth alcohol. The confirmation testing process may only be performed on an EBT utilizing air blanks to ensure that surrounding air conditions are not negatively affecting the testing process. The confirmation test result is either printed directly on the ATF by the testing device or is affixed to the form with tamper evident tape. The covered employee is given a copy of the ATF.

## C. MAINTENANCE AND RELEASE OF CONFIDENTIAL INFORMATION

### SUBJECT SUMMARY

*The MRO is required to release, without the covered employee's permission, any confidential information affecting a covered employee's safety-sensitive functions.*

All controlled substances and alcohol test results, as well as related medical records and information will be maintained in a confidential manner and released only as permitted by 49 CFR Parts 655 and 40. Their disclosure shall be strictly limited to those with a need to know.

Each covered employee has the right to have a copy of his/her controlled substances and/or alcohol test result(s), as well as any associated reports, upon written request.

Employers, as well as local, state, or federal authorities may obtain information on possession and consumption. It is important that a covered employee understand that when employer obtains drug and/or alcohol test results that were conducted by local, state or federal authorities, for any purpose, the employer can use these results to support actions taken by employer.

Confidential information may be released in certain situations. Indicated below are situations when the employer or MRO may release this information.

### EMPLOYER

Employer may release information pertaining to a covered employee's drug and alcohol test results without the covered employee's consent in certain legal proceedings, per 49 CFR Part 40.323.

These proceedings refer to cases brought by, or on behalf of the covered employee and result from a positive DOT drug or alcohol test result or refusal-to-test (including, but not limited to, adulterated or substituted test results), such as:

- A lawsuit (e.g., wrongful discharge action),
- A grievance (e.g., arbitration concerning disciplinary action taken by the employer), or
- An administrative proceeding (e.g., unemployment compensation hearing)

These proceedings also include a criminal or civil action resulting from a covered employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case. The court would issue an order directing the employer to produce the information. The employer would release the information, with the stipulation that the decision maker to whom it is released would make it available only to parties involved in the proceeding. The covered employee would be notified in writing of any information that is released under this section.

### SUBJECT SUMMARY

*All results and associated records dealing with this program are maintained in a confidential manner. Only individuals with a "need to know" have access to this information. A covered employee may receive copies of his/her records upon written request. In certain administrative or legal proceedings, a covered employee's confidential information may be released without his/her permission.*

### MEDICAL REVIEW OFFICER (MRO)

When a covered employee speaks with the MRO as part of the verification

process, it is important to understand the following:

- The MRO will first advise the covered employee that the MRO must provide drug test result information and medical information provided by the covered employee in the verification process that would affect the performance of safety-sensitive duties, to third parties without the covered employee's consent.
- The covered employee is required to cooperate with the MRO during the confidential interview.
- The covered employee is to provide any information that would be helpful to the MRO in the verification process when he/she discusses a confirmed positive, adulterated, substituted or invalid test.
- The MRO is required to release any confidential drug test information as well as medical information affecting the covered employee's performance of safety-sensitive functions to third parties, including employer when in the MRO's judgment:
  - The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
  - The information indicates that continued performance by the employee of his/her safety-sensitive function is likely to pose a significant safety risk.
- The MRO is authorized to release this information without the employee's consent to the following entities: employer, a physician or other healthcare provider responsible for determining employee's DOT medical qualifications, a SAP conducting the evaluations under the return-to-duty process, a DOT agency, or another Federal safety agency such as the NTSB, or any other state safety agency as required by state law.

## V. PROHIBITED DRUG / ALCOHOL CONDUCT

### SUBJECT SUMMARY

*A covered employee is prohibited from:*

- *Reporting for duty or remaining on duty while having an AC of 0.04 or more.*
- *Using alcohol while on duty*
- *Reporting for duty within 4 hours after using alcohol*
- *Reporting for or remaining on duty while using any drug (except if prescribed by doctor who advised covered employee it would not adversely affect his/her ability to drive)*
- *Reporting for duty if he/she has a positive test result or has adulterated or substituted a test specimen for drugs,*
- *Using alcohol if required to take a post-accident alcohol test, and has not yet done so.*
- *Refusing to submit to required testing which includes providing an adulterated or substituted specimen*

Listed below is conduct that is prohibited by 49 CFR Parts 655 and 40. Specific to each prohibition, no employer having actual knowledge that a covered employee has violated a prohibition shall permit the covered employee to perform or continue to perform safety-sensitive functions. The consequences of these violations are defined in Section VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT.

### DRUG PROHIBITIONS

Employer's program provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return-to-duty/follow-up.

When administering a drug test, an employer shall ensure that the following drugs are tested for:

- Marijuana;
- Cocaine;
- Opiates;
- Amphetamines; and
- Phencyclidine.

**Consumption of these products is prohibited at all times.**

### ALCOHOL PROHIBITIONS

#### Alcohol Testing

Employer's program provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return-to-duty/follow-up. Employer may also conduct pre-employment alcohol testing.

A covered employee is prohibited from performing or continuing to perform a safety-sensitive function while having an alcohol concentration of 0.04 or greater.

#### On-duty use.

A covered employee is prohibited from using alcohol while performing safety-sensitive functions. Employer shall not use a covered employee to perform or continue to perform safety-sensitive functions when employer has actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions.

#### Pre-duty use.

**General.** A covered employee is prohibited from using alcohol within four hours prior to performing safety-sensitive functions. Employer shall not use a covered employee to perform or continue to perform safety-sensitive functions when employer has actual knowledge that the covered employee used alcohol within four hours of performing a safety-sensitive function.

**On-call employees.** Covered employees are prohibited from the consumption

of alcohol for the specified on-call hours for which he/she is on-call.

The covered employee is to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

If the covered employee acknowledges the use of alcohol, but claims ability to perform his/her safety-sensitive function, he/she shall be required to take an alcohol test.

**Use following an accident.**

If required to take a post-accident alcohol test under §655.44, the covered employee is prohibited from using alcohol for eight hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.

**Other alcohol-related conduct.**

A covered employee, tested under the provisions of Part 655, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 is prohibited from performing or continuing to perform safety-sensitive functions, 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 eight hours following administration of the test.

## VI. REFUSAL-TO-SUBMIT

It is important that a covered employee knows and understands what constitutes a refusal-to-submit since he/she could inadvertently put himself/herself in a position to be deemed a refusal-to-submit.

An individual with a “refusal-to-submit” is subject to the same consequences as an individual who tests positive for drugs. The individual cannot perform safety-sensitive functions for employer or any other employer until the requirements of the return-to-duty process have been met.

The definition of a Refusal (or Refuse) to Submit means a specific action taken by a covered employee to interfere with the controlled substances and/or alcohol testing process required under Parts 655 and 40. The following criteria constitute a refusal-to-submit under these regulations.

### *Controlled Substances Testing*

When the covered employee:

- Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT 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 C/TPA.
- Fails to remain at the testing site until the testing process is complete. Exception: An applicant who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
- Fails to provide a urine specimen for any drug test required by Part 655 or DOT agency regulations. Exception: An applicant who does not provide a urine specimen because he/she left the testing site before the testing process began for a pre-employment test is not deemed to have refused to test.
- In the case of a directly observed or monitored collection for a drug test, fails to permit the observation or monitoring of the covered employee’s provision of a specimen.
- Fails to provide sufficient quantity of urine within the time limit under then-current regulations and it has been determined, through a required medical evaluation that there was no adequate medical explanation for the failure.
- Fails or declines to take a second test the employer, MRO, or collector has directed the covered employee to take.
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DAPM/DER as part of the “shy bladder” procedures. Note: 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.
- Fails to cooperate with any part of the testing process (e.g. refuses to empty pockets when so directed by the collector, behaves in a

### SUBJECT SUMMARY

*A refusal-to-submit has the same consequences as a positive drug test result.*

*It is imperative that you understand all of the situations that are considered a refusal-to-submit so that you do not inadvertently get yourself into a situation that violates the Prohibitions.*

*Since this issue so important, this Return-to-duty section has been included in this policy.*

confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector, etc.)

- Fails to remain readily available for post-accident testing or fails to report, without a valid reason, that he/she was in a post-accident situation that required testing.
- If the MRO reports to the covered employee that he/she has a verified adulterated or substituted test result.
- For an observed collection, fails to follow the observer's instructions to raise the employee's clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the driver has any type of prosthetic or other device that could be used to interfere with the collection process.
- Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- Admits to the collector or MRO that the employee has adulterated or substituted the specimen.

### ***Breath Alcohol Testing***

When the covered employee:

- Fails to appear for any test (except a pre-employment test) within a reasonable amount of time, as determined by the employer, 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 C/TPA.
- Fails to remain at the testing site until the testing process is complete. Exception: An individual who is there for a pre-employment test and leaves before the testing process begins is not deemed to have refused to test.
- Fails to provide a saliva or breath specimen, as applicable, for any DOT required test. Exception: An individual who does not provide a saliva or breath specimen because he/she left the testing site before the testing process began for a pre-employment test is not deemed to have refused to test.
- Fails to provide a sufficient breath specimen and a physician has determined through a required medical evaluation that there was no adequate medical explanation for the failure.
- Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures.
- Fails to sign the certification at Step 2 of the alcohol testing form (ATF).
- Fails to cooperate with any part of the testing process.

## VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT

There are specific consequences for violating the prohibitions of 49 CFR Part 655 or the alcohol or controlled substances rules of another DOT agency. The following listing includes the required components of the return-to-duty process as required under 49 CFR Part 40, Subpart O.

Once an individual has violated a drug and alcohol testing prohibition the covered employee will be:

- Removed from safety-sensitive duties and not permitted to perform such functions.
- Referred to a SAP for an initial face-to-face evaluation at which time the SAP will determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use.
- Required to meet or complete prescribed education and/or treatment recommended by the SAP.
- Required to meet with the SAP for a follow-up face-to-face evaluation to determine whether the covered employee has successfully carried out the SAP's education and/or treatment recommendations.
- Required to have a negative controlled substances return-to-duty test result and/or an alcohol return-to-duty test with a result of less than 0.02AC before resuming safety-sensitive functions.
- Placed in a follow-up testing program and will need to meet the requirements of this follow-up testing program prescribed by the SAP and administered by employer.
- The SAP may require additional education and/or treatment or aftercare be completed.

*Note: All urine specimen collections for return-to-duty and follow-up controlled substances tests must be directly observed.*

A request for a split specimen test after a verified positive controlled substances test result or a refusal-to-submit due to adulteration or substitution will not delay any consequences. If a split specimen test is requested, and is not conducted or it fails to re-confirm the initial test result, the initial test result is cancelled and all consequences against the covered employee will cease.

## VIII. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES AND REQUIREMENTS

**The consequences defined herein are not part of an employee agreement.** *As Independently Authorized*, employer may take disciplinary actions, *up to and including termination*, for any violation of the *DOT and FTA Prohibitions*, the *Other DOT Requirements or Prohibitions*, or *Other Employer's Authorized Requirements* as defined in this policy.

### A. FIRST VIOLATION OF A PROHIBITION

#### SUBJECT SUMMARY

*First Violation – Covered employee is terminated.*

Should a covered employee violate the Prohibitions of this policy his/her employment shall be terminated. There are a variety of regulatory requirements that must be met by the covered employee if he/she is to resume safety-sensitive functions for any employer. The covered employee will be provided with a listing of SAPs' names, addresses and telephone numbers so that he/she may meet these return-to-duty requirements after leaving this employer, should the employee desire to resume safety-sensitive functions.

See Section VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT explains in detail the return-to-duty requirements that include having an initial evaluation by a SAP, completing education and/or treatment, a follow-up evaluation with the SAP and a negative return-to-duty test result.

### B. OTHER EMPLOYER AUTHORIZED REQUIREMENTS

The following items are required ***As Independently Authorized*** by Employer:

#### NEGATIVE-DILUTE DRUG TEST RESULT

A covered employee who provides a specimen for a Pre-employment, Random, Return-to-duty or Follow-up test with a creatinine concentration that is greater than or equal to 5mg/dL but less than 20mg/dL, and the specific gravity is greater than 1.0010 but less than 1.0030 will need to submit to a second specimen collection. This collection will not be conducted under direct observation.

#### AFTER REASONABLE-SUSPICION TESTING

A covered employee brought for a reasonable-suspicion controlled substances test or a reasonable-suspicion alcohol test with a test result of 0.02AC or greater, will be required to accept employer-arranged transportation, or arrange for independent transportation home, whichever is acceptable to employer. *Refusal to accept independent transportation may result in disciplinary actions, up to and including, immediate termination.*

#### COOPERATION

A covered employee is required to fully co-operate with the SAP or the MRO including, but not limited to, meeting any required education and/or treatment, whether in-patient or out-patient. *Failure to cooperate fully may result in disciplinary action up to and including termination.*

## **CONVICTION OF A FELONY**

An employee who has been convicted of a felony involving the possession of, or a transaction in, illegal controlled substances (regardless of where the unlawful activities took place) *is subject to disciplinary action, up to and including, dismissal.*

## **ADMINISTRATIVE ACTION FOR ALCOHOL TEST RESULT $\geq 0.02$ BUT $< 0.04$**

In a case where a covered employee is removed from safety-sensitive duties because of an alcohol test result of 0.02AC or greater, but less than 0.04AC, *if employer determines that no appropriate non-safety-sensitive work is available, the covered employee will be placed on an unpaid leave of absence and may be required to discuss the situation with a SAP.*

## **RETESTING**

If employer chooses to permit a covered employee to perform a safety-sensitive function within eight hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, employer shall retest the covered employee to ensure compliance with the provisions of §655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02AC.

## IX. EMPLOYER'S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES

This section identifies situations that affect the covered employee financially. Listed are services that if availed by the covered employee, he/she would be responsible for the associated fees incurred. The covered employee would also be financially affected if he/she was on an unpaid leave of absence.

### COST OF MEDICAL EVALUATION FOR SHY BLADDER OR SHY LUNG

**Covered employee responsible for cost** - If a covered employee is required to have a medical evaluation for a shy bladder or shy lung situation, this is at his/her expense. The covered employee is to pay the licensed medical practitioner directly, if it is not otherwise covered by employee's health care coverage.

### UNPAID LEAVE OF ABSENCE

After a first violation of the prohibitions, if the covered employee is not otherwise terminated, the employer has the option to have the covered employee perform non-safety-sensitive duties or place him/her on an unpaid leave of absence until the covered employee has met all return-to-duty requirements.

### COST OF SPLIT SPECIMEN TEST

**Covered employee responsible for cost** - If a covered employee, reported to have a verified positive controlled substances test result, or a refusal-to-test due to adulteration or substitution of a specimen, requests the split specimen to be conducted, it will be at his/her expense. Covered employee agrees to reimburse employer for this test fee.

If the split specimen test does not reconfirm the original positive test result, or the adulterant was not found within the criteria, or the specimen was not consistent with the substitution criteria, the covered employee will not be charged for this test fee. If requested, the test will be conducted.

### IF THE SPLIT SPECIMEN TEST RESULT DOES NOT RECONFIRM THE ORIGINAL RESULT

**Employer responsible for back pay** - If the split specimen test does not reconfirm the original positive test result, or the adulterant was not found within the criteria, or the specimen was not consistent with the substitution criteria, the covered employee will be reimbursed back pay if he/she was on an unpaid leave of absence.

*End of Policy*

#### SUBJECT SUMMARY

*As a covered employee, there are certain expenses, that if incurred, Employer requires that you pay for if the expense is not covered by insurance, if any. They are:*

- *Cost of a medical evaluation for a shy bladder or shy lung situation.*
- *Split specimen test if the result reconfirms the original result*

*Covered employee is to reimburse Employer, if he/she incurred these expenses, regardless of whether covered employee is or is not a current employee.*

## X. EDUCATIONAL MATERIALS

The following information is provided to covered employees to help clarify the DOT mandated drug and alcohol testing program requirements. In this section we answer some of the questions most commonly asked by covered employees subject to these regulations. The questions have been grouped within different sections.

### A. REGULATORY REQUIREMENTS

***Why do I have to give my new (prospective) employer permission to contact my past employers for whom I conducted safety-sensitive functions?***

All prospective employers must conduct a specific inquiry for all applicants /transfers. All previous employers for whom you have worked within the prior two years will be surveyed.

This inquiry is performed to determine if you had any positive drug test results, alcohol tests with a result of 0.04AC or greater, if you ever refused to submit to testing, or violated any of the other prohibitions. If any of these situations apply to you, your prospective employer would need to know if you need to complete any part of the return-to-duty process before you can begin safety-sensitive functions.

### B. POLICY ISSUES

***What's in the policy? Why should I read it?***

The DOT Controlled Substances and Alcohol Policy for Covered Employees defines many important details in the program including:

- Drug and alcohol testing situations
- Consequences for violations of the DOT and FTA prohibitions such as testing positive, refusing to be tested, etc.

You should read the policy because it is **your** responsibility to understand its elements.

***What happens if I have questions about any part of this policy or the procedures?***

Your employer has identified an individual as the Designated Employer Representative (DAPM/DER). He/she is the person you will contact with any questions you may have. The name of this individual is printed on the cover of your policy.

### C. CONFIDENTIAL INFORMATION

***What should I do if I suspect someone has a problem with drugs or alcohol?***

You may contact the DAPM/DER or your immediate supervisor in strict confidence if you suspect a co-worker (covered employee) is impaired by drugs or alcohol while on the job. A trained supervisor will then assess the situation.

***Who has the opportunity to see my drug or alcohol test results?***

Your employer will keep all drug and alcohol test results in a secure and confidential file. Only those individuals who have a "need to know" will have access to those records. This includes the Secretary of Transportation, any DOT agency or any State or local officials with regulatory authority over the employer or any of its covered employees.

As stated in the policy:

Your test results may also be released to officials in an arbitration or court proceeding.

The MRO is required to release information to your employer when he/she feels that the employer needs to be aware of certain information because you perform safety-sensitive functions.

## **D. COLLECTION FACILITIES**

### ***Where will I go to be tested?***

Your employer has one or more designated medical facilities (collection sites) that you will be sent to for alcohol and/or drug testing. Employer will also have an assigned after-hours collection site and procedure for conducting emergency testing after hours. Your DAPM/DER will advise you of the collection site that you are to go to for testing.

## **E. GOING FOR A DRUG AND/OR ALCOHOL TEST**

### ***If I have to go for testing, what do I need to bring?***

You will need to have the following items before going to the site:

- A custody and control form (CCF) which is the large laboratory form provided by your DAPM/DER
- Federal Test Notification and Authorization - provided by your DAPM/DER
- A picture ID, such as a covered employee's license or photo ID issued by the employer
- Directions to the collection site -provided by your DAPM/DER

### ***What do I need to do when told to go for an alcohol and/or drug test?***

When notified to go for an alcohol and/or drug test, please follow this guidance:

- Proceed immediately to the collection site upon notification, with the appropriate CCF. Employer may compare the time of notification with the collection time to verify that you proceeded as directed.
- Have available and provide photo identification.
- Cooperate with the collector/technician and carefully follow his/her instructions.
- Complete and sign all forms when requested.
- Remain at the collection facility until the collection/testing process is completed and the collector/ technician has told you that you may leave.
- Do not interfere with the collection/testing procedure, or cause damage to the collection equipment.
- Immediately object to the collector/technician if you feel the collection/test did not meet DOT requirements and also inform your DAPM/DER. Do not terminate the collection/testing procedure – that would place you in a refusal-to-submit situation.

## **F. COLLECTION PROCEDURE FOR A DRUG TEST**

### ***What is the specific procedure for a drug test collection?***

As the donor, you will be directed by the collector to do the following:

- Show your photo ID.
- Remove any unnecessary outer garments such as a jacket or hat.
- Leave your personal belongings (purse, briefcase, etc.) with your outer garments (you may request a receipt). You may keep your wallet.
- Empty your pockets and display the items in them for the collector. Once the collector has inspected the items, you may return them to your pockets unless there is anything that could be used as an adulterant, such as eye drops. The collector may retain that item with your other belongings until the collection is completed. If you have anything that appears to have been brought for the purpose of tampering with the specimen, a directly observed collection will be conducted.
- Not to attempt to adulterate or substitute a specimen.

- Wash and dry your hands immediately prior to providing a specimen, when requested by the collector.
- After washing your hands, you are to remain in the presence of the collector and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent, etc.
- Either you or the collector will select a collection kit.
- Either you or the collector will unwrap the collection container for you to provide your specimen.
- You will be allowed privacy while providing your specimen (unless you are subject to a directly observed collection).
- Provide your urine specimen as directed.
- Provide at least 45mL of urine into the collection container.
- Do not flush the toilet until requested to do so by the collector.
- The collector will check the volume of the specimen, the temperature of the specimen, and check for other signs of tampering, such as foreign objects, unusual odor or color.
- Observe the collector pour the urine into two specimen bottles. A minimum of 30mL will be poured into the primary specimen bottle and a minimum of 15mL into the second bottle (to be used as the split specimen). The bottles will then be sealed.
- Excess urine can be used to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. No other additional testing can be performed on the excess urine and it cannot be turned over to the donor.
- When so directed by the collector, initial the bottle seals and sign the custody and control form (CCF).
- If an adequate amount of urine is not initially provided (less than 45mL), the collector will discard that original specimen and offer you fluids (not to exceed 40oz) that are reasonably distributed over a period of time not to exceed three hours. If, after three hours, you are still unable to provide an adequate specimen, the collector will contact your DAPM/DER, and you will need to have a medical evaluation by a physician to determine if there is a medical explanation for the failure. (See SHY BLADDER)
- In certain situations such as a multi-stall bathroom, a collection may be conducted as a monitored collection, where a medical professional or same-gender individual stands outside the stall while you provide your specimen.
- In specific situations, as required or permitted by DOT regulation, you may be required to submit to an observed urine collection by a same-gender individual. (See Directly Observed Collection)

***What happens if I don't show up for a test or leave once I get there?***

Regulation requires that you proceed without delay to the collection site once you have been notified that you need to have a federal drug test conducted. Once at the site you are not to leave until the collection process has been completed. Not going directly to the collection site, or leaving before the testing has been completed would be a refusal-to-submit and you would have violated the drug and alcohol testing prohibitions. You would then be removed from safety-sensitive functions and you would need to comply with the requirements of the return-to-duty process.

**Exceptions:** There is an exception for pre-employment testing. The DOT realizes that there can be legitimate reasons an applicant does not go for a pre-employment test or leaves before the testing process has begun. The following are examples of an individual not being tested, yet not violating the prohibitions.

- **Pre-employment - No-show** - An individual does not go for a pre-employment test because he/she decided not to take the job, etc.

- **Pre-employment - Leaves Site** - An individual leaves the collection site before the testing began because there was a long wait and he/she had another obligation, etc.

Remember – the consequences do not attach in pre-employment testing situations ONLY. If you, as an employee, leave or don't show in a timely fashion for a collection, you would have violated the prohibitions, all consequences attach and you could lose your job.

***At what point does the collection process begin?***

For a pre-employment test, the collection “begins” when the covered employee or collector selects a specimen kit. Up until that time an applicant may leave a collection site without any being considered a refusal-to-tesst.

For a covered employee being sent for a random, return-to-duty, reasonable-suspicion, post-accident, or follow-up test the collection process begins as soon as the covered employee arrives at the collection site. He/she is not allowed to leave the site until the collection process has been completed. Leaving before that point creates a refusal-to-submit situation for the covered employee and he/she would be removed from safety-sensitive functions and subject to all of the elements of the return-to-duty process.

**G. SPLIT SPECIMEN**

***What does a “split specimen” mean?***

It literally means that the specimen you provide is “split” into two specimen bottles. The primary specimen must contain at least 30mL and the bottle containing the 15mL is called the “split specimen.” Both bottles are sealed, labeled appropriately, secured in the same mailing container along with the proper chain-of-custody documentation and sent to the lab.

***When would the split specimen be tested?***

All DOT urine specimens will be collected utilizing the split sample method. This is a protective option should the laboratory report your specimen as positive, adulterated or substituted and you believe that the laboratory has made an error. You would then have the opportunity to have the split specimen of the original collection tested at a different HHS laboratory.

The MRO would notify you directly if there was a confirmed positive test result, or the lab reported the specimen as adulterated or substituted. Should the MRO verify the test as positive or verify that it is a refusal-to-tesst due to adulteration or substitution, he/she would provide you with a 72-hour window in which to request a test of the split specimen.

***To ensure that there is no misunderstanding, if you have verbally requested to have the split specimen tested, the MRO requests that you provide him/her or the DAPM/DER with the request in writing.***

It is important to consider that there are thresholds for the presence of the drug(s)/drug metabolite(s) in the initial and confirmation tests of the primary specimen. However, for the test of the split specimen, any detectable presence will confirm the positive result. If the laboratory is unable to detect the drug(s)/drug metabolite(s) in the split specimen, they are authorized to conduct validity testing to determine whether the specimen has been adulterated or substituted. If that test fails to reconfirm the original positive result for drug(s)/drug metabolite(s), the second laboratory may then transmit the specimen or aliquot portion to another laboratory to conduct yet another reconfirmation test.

In the case of an adulterated specimen, the second laboratory would test for the adulterant that was detected in the primary specimen. For a substituted specimen, the second laboratory would use the same criteria that would have been used on the primary specimen to determine substitution.

Should a laboratory be unable to reconfirm the original test result, the original test result would be changed from positive (or refusal-to-tesst, in the case of an adulterated or substituted specimen), to test cancelled.

If the split specimen was not available for testing, your DAPM/DER would direct you to have a directly observed collection.

**H. SHY BLADDER**

***What happens if I cannot provide an adequate amount of urine at the time of the collection?***

40.193, 40.195

During a drug test collection, if you fail to provide an adequate amount of urine (45mL) during the first attempt, the collector shall discard the inadequate portion, document the time and inform you that your three-hour period has begun and when it will end. During this time you will be offered up to forty (40) ounces of fluids following the initial unsuccessful attempt. If, during subsequent attempt(s), you are still unable to provide an adequate specimen and the three-hour period has expired, the collector will note that fact in the Remarks section of the CCF and notify your DAPM/DER.

***If unable to provide an adequate quantity of specimen, you will have three hours within which to provide one. If you fail to provide the required amount, you will need to undergo a medical evaluation.***

The MRO and your DAPM/DER will then be sent the appropriate pages of the CCF documenting your inability to provide a sufficient quantity.

Your DAPM/DER will consult with the MRO and shall then direct you to obtain, within five days, an evaluation from a licensed physician who is acceptable to the MRO and has expertise in the medical issues raised by your failure to provide an adequate specimen. The physician will determine in his/her reasonable medical judgment whether a medical condition has, or with a high degree of probability could have, precluded you from providing an adequate amount of urine. The physician shall provide a written statement of his/her conclusions to the MRO, who will then make his/her final determination and provide a written report to your DAPM/DER.

If the MRO determines that there was not a medical condition that could have precluded you from providing an adequate specimen, you would now have a violation of a prohibitions (Refusal-to-Submit).

As a covered employee, it is important to note that there are very few medical conditions that are acceptable reasons for an individual to have failed to provide an adequate specimen. "Situational Anxiety," which could hamper an individual from voiding on demand, is not an acceptable medical condition. Since the consequences for a refusal-to-submit are the same as a positive test result, it is not a wise decision for an individual to try to "beat the system" by not providing a sample and feigning an inability to produce an adequate specimen.

***What if a negative drug test is needed and the individual cannot provide an adequate specimen?***

A pre-employment, follow-up or return-to-duty drug test requires a negative result for the individual to begin or resume safety-sensitive functions. If an individual has a permanent or long-term medical condition that precludes him/her from providing a sufficient quantity of urine, the MRO must either conduct a medical evaluation, or have a licensed physician conduct the evaluation.

The regulations allow the physician conducting the evaluation to conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use. If the evaluation reveals evidence of drug use, the test is cancelled. The employer would not be allowed to have the individual begin or resume safety-sensitive functions since a cancelled test result is not acceptable for a pre-employment, follow-up or return-to-duty test.

## **I. DIRECTLY OBSERVED COLLECTION**

***Who conducts the directly observed collection?***

A direct observation collection is always conducted by an individual who is the same gender as the donor. Even a medical professional, such as a doctor, of the opposite gender is not allowed to perform the direct observation collection. When a trained urine specimen collector is not the same gender as the donor, the collector will find another individual who is the same gender as the donor to observe the collection. If an observer of the same gender is not immediately available at the collection site, the collector may call the donor's DER/DAPM and ask the employer to send someone of the same gender as the donor to act as the observer.

An observer should never handle the specimen unless the observer is also the collector of record for the collection. The donor should always hand his/her urine specimen to the collector.

***In what situations could I have to undergo a directly observed collection?***

**Situation #1:** If the laboratory reported to the MRO that your drug test result was invalid and the MRO reported to your employer that there was not an adequate medical explanation for the result, you will be directed to have an observed collection. The collector will explain to you the reason, if known, for the direct observation.

**Situation #2:** If the collector notices any irregularities in a donor's conduct, or the actual specimen, at the time of the collection that gives him/her reason to believe that it could have been tampered with, such as:

- Donor brought materials into the collection site that clearly indicate an attempt to tamper with the specimen
- The specimen has bluing in it
- The temperature is not within range
- There is visible sediment in the specimen

The collector will explain to you why he/she needs to immediately perform a second collection under direct observation. If the collector is not the same gender as the donor, the collector will have someone else perform the observation part of the collection.

**Situation #3:** If the collector learns that a direct observation collection should have been performed and was not, the collector will inform your employer to have you come for an immediate recollection under direct observation. The collector will explain to you the reason, if known, for the direct observation.

**Situation #4:** If you had an original positive, adulterated, or substituted test result and the result had to be cancelled because the split-specimen was unavailable for testing, your employer will direct you to have an observed collection. The collector will explain to you the reason, if known, for the direct observation.

**Situation #5:** If you are to have a return-to-duty or follow-up drug test conducted, the urine specimen will be collected under direct observation. The collector will explain to you the reason, if known, for the direct observation.

***How is a direct observation collection conducted?***

A directly observed collection virtually eliminates any attempt to adulterate a specimen. You will be required to lower your pants and underpants to mid-thigh, and raise your shirt/blouse/skirt to the navel, as appropriate, and turn completely around so that the collector can ensure that you do not have a prosthetic device that could be used to cheat on the drug test. You will then be permitted to return your clothing to the proper position and proceed with the observed urination. Per regulation, the observer needs to specifically watch the urine go from your body into the collection container. The individual who conducts the observation is always the same gender as the donor.

**J. ALCOHOL TESTING PROCEDURE**

***What am I to do for an alcohol test?***

The requirements for a breath alcohol test are very simple.

- Provide an adequate amount of breath
- Continue to attempt to provide breath specimens until the technician tells you to stop
- Sign the ATF when asked to
- Do not tamper with the alcohol testing equipment
- Do not leave the testing site until testing is completed

***What is the procedure for a breath alcohol test?***

**The Initial Test** - A trained technician, using a DOT-authorized alcohol testing device, will conduct the

first test (the initial screening) to measure your alcohol concentration. For breath alcohol testing, you will be asked to blow into a mouthpiece until the BAT tells you to stop. There is an alcohol test form (ATF) that you will be asked to sign. Any test result less than 0.02AC is considered a negative test result; no further testing is conducted and you would be provided with a copy of the test result. If the initial test is 0.02AC or greater, a second (confirmation) test is performed.

**The Confirmation Test** - When the initial screening test is 0.02AC or greater a confirmation test is required. The confirmation testing process may only be performed on an EBT by a BAT. Before beginning this test, there would be a 15 to 30-minute wait period to reduce the impact of mouth alcohol. The BAT will instruct you not to eat, drink, put any object or substance into your mouth, and to the extent possible, not belch during the waiting period. These requirements are for your benefit, to prevent any accumulation of mouth alcohol leading to an artificially high reading. If you disregard these instructions the BAT shall note it on the ATF.

In your presence, the BAT will conduct an air blank test on the EBT before beginning the confirmation test. This test is performed to ensure that the surrounding air conditions are not negatively affecting the testing process. The reading must be 0.00 and you will be shown the reading of this air blank test. If it is not 0.00, another air blank test may be run and if that result is 0.00, the confirmation test may be conducted. If the reading is not 0.00, the EBT is removed from service until an external calibration check is performed. Your confirmation test would then be conducted using another EBT, if available.

All confirmatory test results are either printed directly on the ATF by the testing device or are affixed to the form with tamper evident tape. You will be given a copy of the test result.

#### ***How do I know that the equipment (EBT) is working properly?***

An external calibration check is conducted following a defined procedure, in which samples containing known alcohol concentrations are blown into the EBT. The result must read within allowed parameters set by the manufacturer. If the calibration test is outside of the allowable range, the unit may be recalibrated and put back into service.

## **K. SHY LUNG**

#### ***What happens if I cannot provide an adequate amount of breath for an alcohol test?***

If you fail to provide a sufficient amount of breath, the BAT will instruct you to attempt it again. If after three attempts you still fail to provide an adequate amount of breath for an alcohol test, the BAT will note that fact in the Remarks section and notify your DAPM/DER. Upon notification, your DAPM/DER shall direct you to obtain an evaluation from a physician who is acceptable to the employer and has expertise in the medical issues raised by your failure to provide an adequate specimen.

The physician shall make a determination, in his/her reasonable medical judgment, whether a medical condition has, or with a high degree of probability could have, precluded you from providing an adequate amount of breath. The physician shall provide your employer with a written statement of his/her conclusion.

Employer shall make the final determination as to whether the physician's conclusion supports the evidence that there is a medical condition that exists or existed, and therefore your failure to provide an adequate amount of breath shall not be deemed a refusal-to-submit to testing. If there is no evidence of a medical condition, you will now have a violation of a prohibition (Refusal to Submit).

## **L. REFUSAL-TO-SUBMIT (REFUSAL-TO-TEST)**

#### ***What is a Refusal-to-Submit?***

The circumstances constituting a refusal-to-submit are outlined in Section VI. REFUSAL-TO-SUBMIT of the policy. Basically, a refusal-to-submit may be any action that interferes with the collection and/or testing process. It is important that you are very familiar with these items so that you cannot inadvertently be deemed to have refused to test.

## **M. MEDICAL REVIEW OFFICER (MRO)**

***What qualifies the MRO to make a determination that I had a positive test result?***

The FTA requires that this program utilize a Medical Review Officer (MRO). The MRO is to be a licensed physician (medical doctor or doctor of osteopathy) who has appropriate knowledge of and clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed test results.

The MRO receives the confirmed drug test result from the laboratory. He/she then interprets and evaluates the confirmed positive, adulterated or substituted test result, together with the covered employee's medical history and any other relevant biomedical information to determine the verified test result. (Refer to 49 CFR Part 40.121)

New requirements, effective August 1, 2001, require MROs to meet qualification-training requirements within a schedule of implementation dates. The MRO will need to have completed an exam administered by a nationally recognized certification board or subspecialty board for medical practitioners in the field of medical review of DOT mandated tests. He/she will also be required to meet a schedule of continuing education every three years after certification.

***What does the MRO do if the laboratory said I tested positive or that I adulterated or substituted a specimen?***

(49 CFR Part 40.135) Upon receiving a laboratory confirmed test result that is positive, adulterated, substituted or invalid the MRO:

- Reviews the laboratory's "chain of custody" documentation (copies 1 and 2) to ensure that it properly tracked the handling and storage of the urine specimen and that the certifying scientist signed the form.
- Contacts you to conduct a medical interview about the test result.
- Informs you that he/she is required to provide to third parties, without your consent, drug test result information and medical information affecting the performance of safety-sensitive duties that you provide him/her during your interview.
- Could direct you to undergo further medical evaluation either with him/her or another physician.
- Could require you to take a second drug test (possibly under direct observation).
- Reviews and takes all reasonable steps to verify the authenticity of all medical records that you provide to establish if there is a legitimate medical explanation for the confirmed test result.

***What happens if the MRO leaves me a message to call him/her and I don't return the call?***

If, after making reasonable efforts, the MRO is unable to reach you directly, he/she shall contact your DAPM/DER. The DAPM/DER shall direct you to contact the MRO as soon as possible. If it becomes necessary to reach you through the DAPM/DER, he/she shall employ procedures that ensure, to the maximum extent practicable, that your need to contact the MRO is held in confidence. The MRO shall not discuss with your DAPM/DER the reason that he/she (the MRO) needs to contact you.

If after making all reasonable efforts, the DAPM/DER is unable to contact you, you may be placed on temporary medically unqualified status or medical leave from your employer.

The MRO may verify a controlled substances test result as positive or a refusal-to-test, as applicable, without having communicated directly with you about the test, in these three circumstances:

- You expressly decline the opportunity to discuss the test with the MRO;
- Neither the MRO nor the DAPM/DER, after making all reasonable efforts, has been able to contact you within ten days of the date on which the MRO receives the confirmed test result from the laboratory; OR
- More than 72 hours have passed since the DAPM/DER contacted you and instructed you to immediately contact the MRO, and no contact has been made.

If a drug test is verified as a positive or refusal-to-test and the result was reported to your DAPM/DER without your input as in the situations described above, you may contact the MRO to reopen your verification. The MRO will allow you to present to him/her, within 60 days of the verification, information documenting that serious illness, injury, or other circumstances unavoidably precluded you from making contact with the MRO and/or DAPM/DER in the times provided. The MRO, on the basis of such

information, may reopen the verification, allowing you to present information concerning a legitimate medical explanation for the confirmed test result.

## **N. SUBSTANCE ABUSE PROFESSIONAL (SAP)**

### ***What are the qualifications of a SAP?***

The DOT rules define the SAP to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional, or a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Counselors Reciprocity Consortium (ICRC). This definition covers present organizations and any that shall be accepted in the future. All SAPs must be knowledgeable about and have clinical experience in, the diagnosis and treatment of alcohol and controlled substances-related disorders, as well as the DOT agency regulations that are applicable to the employer for whom the SAP is performing SAP functions.

### ***When would I have to be evaluated by a SAP?***

Regulation requires that a covered employee, who has violated a DOT prohibition relating to drugs or alcohol (positive test result, refusal-to-test, prohibited use of alcohol/drugs), have a comprehensive face-to-face evaluation by a SAP as part of the return-to-duty requirements. This is only completed through your present employer if you will be returned to safety-sensitive functions for this employer. If you are terminated, yet want to return to safety-sensitive functions, you need to have the evaluations completed on your own as part of your return-to-duty requirements. See Section VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT.

There will be a minimum of two evaluations conducted by the SAP. During the initial evaluation, the SAP will determine the recommended course of education and/or treatment that you would need in resolving problems associated with drug use and/or alcohol misuse.

You would then need to comply with the education and/or treatment requirements recommended by the SAP. During the follow-up evaluation, the SAP would determine if you complied with those recommendations.

If you are terminated from your present employer, you must still complete the regulatory components indicated under the return-to-duty section prior to resuming safety-sensitive functions. If you are allowed a second chance, there may be fees that you will be responsible for. See Section X. EMPLOYER'S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES.

## **O. PRESCRIPTION/OVER-THE-COUNTER MEDICATIONS**

***IMPORTANT – Read this section! You could innocently and inadvertently violate the “Drug Use” Prohibition and you would then be subject to the requirements of the return-to-duty process.***

### ***I take medications, could I end up with a violation of the prohibitions?***

**Possibly** - If you are taking a medication that causes a laboratory confirmed positive drug test result, the MRO will call you to speak about a possible medical explanation for the positive test result. At that time, you would disclose information about your medication. If the MRO verifies that you have a valid prescription, and are using the medication appropriately, for a substance that caused the positive result, he/she would more than likely verify your test result as negative.

But... One of the prohibitions is “Drug Use.” If you are driving while taking medication that should not be used while performing safety-sensitive duties, you are violating the drug use prohibition.

Whenever a physician prescribes medication for you, he/she needs to be aware of your occupation. This is valuable information that he/she shall use to determine which medications can be prescribed in order for you to be able to continue to work while using medication, or if you cannot work while on a prescribed medication.

Failure to provide the physician with information about your occupation, or not following the doctor's orders regarding using the medication while driving, can result in a violation of the prohibition “Drug Use.”

Remember that any prohibition violation requires the return-to-duty process to be completed and, depending upon your employer's policy, you could lose your job.

If the MRO deems it appropriate, he/she shall inform your DAPM/DER that you are not to perform safety-sensitive functions while using a prescribed medication. The MRO may suggest a different medication that may be used that would not adversely affect your ability to perform safety-sensitive functions.

***I sometimes use my spouse's back pain prescription medication, any problem with that?***

Yes. It is very important that you never use another individual's prescription medication. If the prescription is not in your name, the MRO will have to verify the result as a positive since you do not have a valid prescription. You would now have a violation of the prohibitions and, depending upon your employer's policy, you could lose your job.

***So, as long as the prescription is in my name, I'm all set, right?***

Not exactly. Use of a substance (medication) can only be used to substantiate legitimate medical use if it is used consistently with its proper and intended medical purpose. An MRO could verify a drug test as positive if the individual was using a prescription that was prescribed for a former and unrelated use. (This does not refer to the use of medication that has been prescribed to be used "as necessary" for a chronic condition.)

Example: Driver has a sore back and self-medicates himself with a pain reliever in October that was prescribed for him the past February for a sprained ankle. This would not be using a medication consistently with its proper and intended medical purpose.

## **P. MARIJUANA**

***I have a prescription for marijuana to ease my pain. That's accepted, right?***

No. There is no approved use of marijuana for covered employees. A valid prescription for medicinal marijuana will not change a confirmed positive drug test result to a verified negative test result. The MRO will verify the test as positive and you would now have a violation of a prohibition.

***I use lots of herbal products; some include hemp. Will I test positive for marijuana?***

You could. If the reportable threshold of any controlled substance is reached, the laboratory reports the result as a confirmed positive. Since there is no approved use of marijuana, the MRO would verify the test as positive and you would now have a violation of a prohibition.

***What about "passive inhalation"?***

When you speak with an MRO about any confirmed positive drug test, he/she is not allowed to accept any reasons for a confirmed positive except a "legitimate medical explanation." This means that if you had a positive marijuana test result and you explained to the MRO that you traveled in a closed car with several individuals smoking a joint, your test would be still be verified as positive since that is not a legitimate medical explanation.

## **Q. DILUTE, SUBSTITUTED, ADULTERATED SPECIMENS**

***What does a "dilute" specimen mean?***

A dilute specimen is one that has a creatinine concentration and specific gravity level that is lower than expected for normal human urine, yet not so low as to meet the criteria for a substituted specimen. Refer to the policy for the exact levels.

Dilute specimens may be due to self-hydration or diuretics. When a specimen is so dilute that the MRO requires a second collection, the employer will receive a drug test result from the MRO that is "**verified negative-dilute, recollection required under direct observation**" and must have the individual tested as soon as possible. The direct observation will be by an individual who is the same gender as

the donor.

When an employer receives a “**verified negative–dilute**,” without the requirement for a recollection, the employer determines, through company policy, whether or not to have another collection conducted. **This collection would not be conducted under direct observation.**

When an MRO informs an employer of a “verified positive – dilute” drug test result, the employer merely treats the result as a verified positive drug test result.

***What does a “substituted specimen” mean?***

When a laboratory receives a specimen that does not exhibit the clinical signs or characteristics associated with normal human urine, it is reported to the MRO as a substituted specimen. These results are defensible since they have conclusive data from the laboratory reporting that the creatinine concentration was less than 2mg/dL, or “creatinine not detected” and the specific gravity was less than or equal to 1.001 or greater than or equal to 1.020. If the MRO verifies that the specimen was “substituted,” it is reported to the DAPM/DER as a refusal-to-test due to substitution and the donor would have a violation of the prohibitions with the same consequences as a positive test result.

***What is validity testing?***

Validity testing is the evaluation of a specimen to determine whether it is consistent with normal human urine. Testing laboratories are authorized to conduct validity testing which determines whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

***What is meant by an adulterated specimen?***

An adulterated specimen is one in which a donor, in order to mask or destroy a drug or drug metabolite that may be present in the specimen (and would therefore produce a positive drug test result), adds anything, such as a chemical, to the urine specimen at the time of collection. March 9, 1998, DOT Guidance established technical thresholds (cut-off values), for pH and nitrites for this testing process. Adulterant testing identifies adulterants to the point that substances that worked in the past to mask a positive test result no longer sneak through the testing process undetected.

The testing laboratory’s current thresholds identify a specimen as adulterated if the pH is < 3 or > 11 or if the nitrite concentration is  $\geq 500$  mcg/mL. The test result is reported to the MRO, who in turn reports it to the employer as a refusal-to-submit due to adulteration. The donor then has a prohibition with the same consequences as if the individual had tested positive.

## **R. RANDOM TESTING**

***How am I selected for Random Testing?***

Random selections are performed by Foley Carrier Services, LLC through a computer-generated program and are therefore without bias or input from employer. Individuals selected for random testing, as well as testing dates, are unannounced and are with unpredictable frequency throughout the year.

***How come some guys are selected several times and others haven’t been selected at all?***

DOT Regulation requires that at each draw, every individual in the selection pool has an equal chance of being selected for testing, independent of prior selections. Once randomly selected an individual’s name is returned to the pool for possible future selection and the chance of being selected in the future will not be changed.

As a practical matter relating to random selections, certain individuals will be selected multiple times and others very infrequently, if at all over a period of years. This does not indicate a bias for a specific individual. This is a statistical characteristic of randomness. If an individual is selected as many as four times in a year, it should be understood that he/she is not identified in any way to have a higher probability of actual selection.

## **S. REASONABLE SUSPICION TESTING**

***What does it mean when it says I can be tested for Reasonable Suspicion?***

You may be tested for drugs and/or alcohol when employer has reasonable suspicion that you have

violated the prohibitions of 49 CFR Part 655. See Section V. DOT AND FTA PROHIBITIONS. This determination would be made through the independent observation of a supervisor or company official who has been trained to recognize the signs of controlled substances or alcohol use. The observations may include indications of the chronic and withdrawal effects of controlled substances.

If an alcohol test is required, you would be removed from safety-sensitive functions until either an alcohol test is administered (and the result is under 0.02 AC), or 24 hours have elapsed.

If a drug test is required, your employer will inform you as to when you may return you to safety-sensitive functions.

Your employer has certain requirements that must be met after a reasonable-suspicion test. These have been put into place to insure your safety and the safety of the public. See Section IX. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES FOR VIOLATIONS OF THIS POLICY.

Management will act on their best judgment if they feel emergency medical service is required.

## T. POST-ACCIDENT TESTING

### *What happens if I'm involved in an accident?*

#### Fatal accidents

As soon as practicable following an accident involving the loss of human life, your employer shall have you tested for drug and alcohol if you were operating a mass transit vehicle at the time of the accident.

Post-accident drug and alcohol testing would not be required under this section if you were tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration (FMCSA) rule 49 CFR 389.303(a)(1) or (b)(1).

Your employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

#### Nonfatal accidents

As soon as practicable following an accident not involving the loss of human life in which a mass transit vehicle is involved, you will be tested for drugs and alcohol if you were operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that your performance can be completely discounted as a contributing factor to the accident.

Your employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

There are time limits within which post-accident testing must be completed. These limits are the point at which attempts to have the testing completed are to be discontinued. It is your responsibility to have the testing done as soon as practicable – without any delay. The external time limits are eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing.

In an accident situation, you should follow these steps:

- Call employer to report the accident. Follow your employer's internal procedures for reporting an accident. Be sure to let employer know where you can be reached.
- Record the date and time of the accident.
- Report the accident as required by State or Federal law.
- Call your DAPM/DER to report the accident and establish whether FTA post-accident testing is required. Your DAPM/DER will provide you with the location of the collection site where the collection and testing is to be performed.

Note: Other groups, such as the police and the National Transportation Safety Board (NTSB) can perform drug and alcohol tests after accidents based on their own independent authority to do so.

# **XI. INFORMATION CONCERNING THE EFFECTS OF ALCOHOL AND DRUG USE ON AN INDIVIDUAL'S HEALTH, WORK AND PERSONAL LIFE**

The impact of drug use and alcohol misuse in the workplace is more than just causing harm to the health and safety of the affected individual. Drug use and alcohol misuse decrease an individual's performance and the performance of co-workers who rely on him/her. Impaired judgment, carelessness, and lack of coordination cause more accidents, which put the safety and lives of the affected individual and co-workers at risk. Co-workers may become frustrated trying to help the affected individual by covering up, taking on additional work, or lending him/her money. The result of this frustration can be decreased morale and distrust as co-workers become tired of trying to help and supervisors become suspicious of increased absenteeism, tardiness, lowered job efficiency, etc.

## **A. ALCOHOL (A NON-CONTROLLED SUBSTANCE) AND ITS EFFECTS**

Alcohol is a legal substance that is widely used and, unfortunately, misused. While it is important for your safety, the safety of your co-workers and the general public to continue to be very concerned about the significant dangers of controlled substances, the abuse of alcohol has a major impact on the safety of those individuals as well. The most common substance found in covered employees of commercial vehicles involved in fatal accidents is alcohol (the second most prevalent substance is marijuana).

The significance of alcohol misuse among the American population is borne out by statistics:

- It is estimated that 3-10% of all Americans have an alcohol related problem, depending upon how alcoholism is defined.
- 25% of all hospital admissions in the United States are related to alcohol misuse.
- 2-3% of the driving population is legally drunk at any one time. This rate doubles at night and on weekends.
- 40% of family court cases involve an alcohol problem.
- 2/3 of all homicides are committed by people who drink prior to the crime.
- More than 60% of burns, 40% of falls, 69% of boating accidents, and 76% of private aircraft accidents are alcohol related.

Alcohol abusers are costing companies, health care organizations and the general public tens of thousands of dollars each year in poor quality products, health care costs, workers compensation costs, and unemployment costs. More importantly, these abusers are costing innocent lives.

The National Institute on Alcohol Abuse and Alcoholism has estimated that 50% of the people with job performance problems suffer from alcohol-related problems. The rationale underlying an employer's approach to alcohol abuse in the workplace is that any alcohol abuser, even one in the early stages of abuse, will tend to exhibit a pattern of deteriorating job performance that will eventually effect not only the abuser, but his or her co-workers, and the general public.

Unless detected early on, alcohol use in the workplace can lead to a series of costly and potentially dangerous situations, including:

- Absenteeism - Tardiness and excessive use of sick time.
- Lower Productivity - Studies have shown that an alcohol abuser works at only two-thirds of his/her actual work potential.
- Poor Work Quality - Shoddy work, rework and material waste may be evident. For covered employees it means decreased mental and physical agility and concentration.
- Poor Morale - Chronic alcohol misuse often creates wide mood swings, anxiety, depression and anger. Non-drinking co-workers often see alcohol users as poor team workers and safety hazards.

- Increased Number of Accidents and Near Misses - Impaired individuals are 3-6 times more likely to be involved in on-the-job accidents or near miss incidents. A person who is legally intoxicated is six times more likely to have an accident than a sober person is.
- Equipment Problems Due to Negligence - Alcohol misuse often leads to inadequate maintenance of machinery or equipment because the covered employee has lost interest or is hoping their equipment will not work to avoid working themselves.

## **B. CONTROLLED SUBSTANCES AND THEIR EFFECTS**

Substance abuse is a national problem that negatively impacts every American. It not only affects individual users and their families, but it also presents new and increasing dangers in the workplace. One in six working Americans has a drug related problem. Employees who use controlled substances are 33% less productive, 500% more likely to be involved in an on-the-job accident, 500% more likely to file a worker's compensation claim, 250% more likely to have an absence exceeding eight days, significantly more likely to be involved in employee theft, and 360% more likely to injure themselves or another person in the workplace.

As with alcohol abuse, drug use can lead to a series of costly and potentially dangerous problems in the workplace, including:

- Absenteeism - Tardiness and excessive use of sick leave.
- Staff Turnover - Substance-abusing employees have disorganized lives. Many quit rather than face detection. Others transfer or are fired because of poor or unsafe performance.
- Lower Productivity and Work Quality - As with alcohol abusers, substance-abusing employees perform at about two-thirds of their actual work potential. Shoddy work, rework and material waste may be evident. For covered employees, decreased mental and physical agility and concentration causes increased cargo damage or passenger complaints, missed schedules, incomplete or lost shipments and more traffic accidents.
- Equipment Breakdown - Again, substance-abusing employees often do not maintain their equipment, either because they have lost interest in their job, or look forward to having equipment declared out of service as a means of avoiding work.
- Poor Morale - Chronic substance abusers create the same atmosphere as alcohol abusers in the workplace. Non-drug using employees often view them as poor team workers and a hazard to the safety of others.
- Increased Accidents and Near Misses - Substance abusers are 3.6 times more likely to be involved in an accident. Even small quantities of controlled substances in the system can cause a deterioration of alertness, clear-mindedness and reaction time.

Employee's acknowledgement that he/she has received the policy.

### ACKNOWLEDGMENT OF RECEIPT OF EMPLOYER'S CONTROLLED SUBSTANCES AND ALCOHOL POLICY AND EDUCATIONAL MATERIALS

I acknowledge that I have received a copy of the Employer's DOT Controlled Substances and Alcohol Testing Policy and Educational Materials.

#### I HAVE BEEN MADE AWARE OF THE FOLLOWING COMPONENTS OF EMPLOYER'S POLICY:

- Identity of the Designated Employer Representative (DAPM/DER)
- Categories of covered employees who are subject to 49 CFR Part 655
- Information about safety-sensitive functions and hours of compliance
- Prohibitions
- Circumstances for controlled substances and alcohol testing
- Substances being tested for: Marijuana, Cocaine, Opiates, Amphetamines and Phencyclidine
- Collection procedures and safeguards
- The requirement to submit to testing
- What constitutes a refusal-to-submit and the attendant consequences
- Consequences of violating the prohibitions, including removal from safety-sensitive functions
- Administrative action for an alcohol concentration greater than 0.02 but less than 0.04
- Information on the effects of alcohol and controlled substances use

Employer provided me with an additional General Policy that is issued to all employees.

Receipt of Policy

Employee's Full Name (printed): \_\_\_\_\_

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*\*

DAPM/DER Full Name (printed): \_\_\_\_\_

DAPM/DER Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Retain for 2 years after employee has ceased safety-sensitive functions