

# DRUG AND ALCOHOL POLICY

## **DRUG AND ALCOHOL POLICY**

### **Purpose**

To establish guidelines that ensures a safe, healthy and productive drug-free work environment for the employees of the agency.

### **Scope**

This policy affects and applies to all Rowan Transit System employees.

### **Policy**

Being under the influence of a drug or alcohol while on the job poses serious safety and health risks to the user and to co-workers. Therefore, the County has established the following policy to ensure a drug-free work environment:

**The following Drug and Alcohol Policy was adopted by the Rowan County Board of Commissioners at their regularly scheduled meeting on 11/4/2019.**

### **Rowan County Transit Policy Statement**

This policy statement is provided to you in accordance with DOT-covered employee regulations (49 CFR § 655.15).

1. For questions about Rowan County's anti-drug use and alcohol misuse programs for DOT-covered employees, please contact Kelly Natoli Assistant County Manager/HR Director at (704) 216-8105 or [Kelly.natoli@rowancountync.gov](mailto:Kelly.natoli@rowancountync.gov)
2. The Rowan Transit employees who are subject to DOT-regulations and related anti-drug use and alcohol misuse programs include Drivers, Dispatchers, Training and Safety Officer, and Operations Manager.
3. Rowan County Policy 9.21 Drug and Alcohol Testing Program is included with this notification. It includes all of the following:
  - a. Specific information concerning the behavior and conduct prohibited by Rowan County.
  - b. The specific circumstances under which you will be tested for prohibited drugs or alcohol misuse.
  - c. The procedures that will be used to test you for the presence of illegal drugs or alcohol misuse, protect you and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correctly to you.
  - d. The requirement that you submit to drug and alcohol testing administered in accordance with County policy.
  - e. A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of Rowan County policy.

f. The consequences for you if you have a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or if you refuse to submit to a test, including the mandatory requirements that you be removed immediately from your position and be evaluated by a substance abuse professional.

g. The consequences if you are found to have an alcohol concentration of 0.02 or greater but less than 0.04.

The County will inform you in writing if it implements elements of an anti-drug use or alcohol misuse program that are not included in County Policy.

#### Policy 9.21 Drug and Alcohol Testing Policy for DOT Regulated Employees

##### A. Applicability

This policy applies to all employees of Rowan County Transit who are covered under the Department of Transportation Regulations.

B. The purpose of this policy is to establish guidelines that ensure a safe, healthy and productive drug-free work environment for the employees of the Rowan Transit.

C. Being under the influence of a drug or alcohol while on the job poses serious safety and health risks to the user and to co-workers. Therefore, Rowan Transit has established the following policy to ensure a drug-free work environment:

1. Rowan Transit System has zero tolerance for the use of alcohol, illegal substances, or the misuse of prescription medications during work hours or the presence of these substances in the body during work hours regardless of when consumed.
2. Drug and alcohol tests may be administered pre-employment, re-entry, post-accident, for causes or random.
3. A positive test result is any amount of alcohol or illegal substance as revealed by the test. The medical Review Officer will make the final decision as to a positive or negative test result. A positive test result will result in immediate termination.
4. Alternate types of tests may be conducted when two or more tests within twelve months are found to be inclusive or a situation warrants such tests.
5. Failure to submit to a drug/alcohol test when requested or leaving the test site without completing the test is grounds for immediate termination. Other behaviors will be considered a refusal; tampering with the specimen or not reporting for a drug test without a valid reason immediately following an accident.
6. An ongoing drug free awareness program to inform employees has been established and begins with their initial orientation then continues on an annual basis.
7. All employees will receive 1 hour of substance abuse awareness education as presented by a Substance Abuse Professional. All supervisory personnel will receive 1 hour of substance abuse awareness education and 1 hour of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse as presented by a Substance Abuse Professional.

8. Each employee will sign a statement of understanding that, as a condition of employment under grants providing funding for his/her position, the employee will abide by the terms of the drug free workplace statement and notify Rowan Transit System in writing of his/her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction.

9. An employee may voluntarily come forward and ask for rehabilitation counseling. He/she would be suspended without pay until a Substance Abuse Professional could certify that the employee is fit to return to duty. Any employee with a substance abuse problem is encouraged to seek help through the Employee Assistance Program.

D. DOT Federal Transit Administration covered employees and functions. Employees who perform safety-sensitive function(s) as defined by the Federal Transit Administration (FTA) are subject to regulation by the United States Government (DOT regulated employees). An FTA safety-sensitive function is any of the following duties when performed by employees for departments that receive federal funding under 49 USC 5307, 5309, 5311, or 23 USC 103(e)(4):

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. 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;
5. Carrying a firearm for security purposes.

E. DOT Federal Motor Carrier Safety Administration covered employees and functions. Employees who drive or operate a commercial motor vehicle (CMV). The Federal Motor Carrier Safety Administration (FMCSA) has interpreted driving a CMV on a road, street or way which is open to public travel, even though privately owned or subject to military control, as prima facie evidence of operation in commerce. Employees who drive or operate a CMV must hold a valid appropriate commercial driver's license. FMCSA safety-sensitive function(s) are defined as and include all time from the time an employee begins to work, or is required to be in readiness to work, until the time the employee is relieved from work and all responsibility performing work. Safety-sensitive functions shall include:

1. All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer. This includes employees who are "eligible" at work to drive a CMV at any time, e.g., salespersons, clerks, secretaries, supervisors;
2. All time inspecting equipment as required by 49 C.F.R 392.7, "Equipment, Inspection, and Use," and 49 C.F.R 392.8, "Emergency Equipment and Use," or otherwise inspecting, servicing, or conditioning any CMV at any time;
3. All driving time, which is any time spent at the driving controls of a CMV in operation;
4. All time, other than driving time, in or upon any CMV except time spent resting in a sleeper berth;

5. All time loading or unloading a vehicle, supervising or assisting in loading or unloading, attending a vehicle being loaded or unloaded, remaining ready to operate the vehicle, or giving or receiving receipts for shipments loaded or unloaded;

6. All time repairing, obtaining assistance for, or remaining with a disabled vehicle.

F. Applicants and all current employees who apply for assignment, transfer, or promotion to a DOT regulated position must sign an Authorization for Release of Personal Information Form for the release of alcohol and drug testing data compiled by previous employers covered by 49 CFR Part 40 and provide the County information about drug and alcohol violations.

Departments that have DOT regulated positions will contact Human Resources for guidance in obtaining this information.

G. All drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended. Additionally, all FTA employees will be drug and alcohol tested in accordance with Part 655 and FMCSA employees will be tested in accordance with Part 382. A drug test can be performed any time a DOT regulated employee is on duty. A DOT alcohol test can be performed just before, during, or after the performance of a DOT safety -sensitive function. Amphetamines (ecstasy, methamphetamine), marijuana (hemp), cocaine (crack), opiates (heroin), phencyclidine (PCP) can be tested for at any time while on duty.

H. DOT regulated employees are prohibited from the use or possession of alcohol while on duty or in uniform, while on-call to perform safety sensitive duties, and four hours prior to duty. Alcohol use is also prohibited by any covered employee required to submit to post -accident alcohol testing for four hours following the accident or until the alcohol test is performed.

I. DOT regulated employees must complete a DOT pre-employment drug test when hired for, or transferred to, a DOT covered position. The candidate must produce a negative drug test result prior to first performing a safety -sensitive duty. If the test is canceled, the employee must retake and pass the test before being hired. Failure of a County pre-employment screen will disqualify the application from employment for one year. Any covered employee or applicant who has previously failed or refused a pre-employment drug test administered under this part, must provide proof of having successfully completing a referral, evaluation, and treatment plan by a substance abuse professional as described in 49 CFR Part 655.62. A covered employee who has not performed a safety sensitive duty for 90 consecutive days or more and has not been in the employer's random selection pool shall take a pre-employment drug test with a verified negative result before returning to safety -sensitive duties.

J. Together with other accident testing which may be required by the County, DOT regulated employees must complete DOT drug and alcohol tests as soon as possible after they are involved in an accident while operating a County owned or leased vehicle, if the accident involves:

1. FMCSA accident requiring testing: An accident in which a fatality is involved; one or more motor vehicles are towed from the scene or someone is treated medically away from the scene, and a citation is issued to the CMV driver within 8 hours of the occurrence under state or local law for a moving violation arising from the accident and either of the aforementioned situations occur.

2. FTA accident requiring testing: An accident in which a fatality is involved, one or more motor vehicle receives disabling damage, or someone requires immediate medical attention away from the scene, unless the driver can be completely discounted as a contributing factor. All surviving employees operating the mass transit vehicle at the time of the accident

and all other covered employees whose performance could have contributed to the accident must also be tested after an accident involving a fatality. Alcohol testing must be done as soon as possible following an accident, but not more than eight hours after the accident. Drug testing must be done as soon as possible after the accident, but not more than 32 hours after the accident. If a post -accident alcohol test is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons for the delay. All DOT covered employees must remain readily available for testing after an accident including notifying the employer representative of the employee's whereabouts. Failure to do so will be considered a test refusal. Testing is stayed while the employee assists in the resolution of the accident or receives medical attention.

K. DOT regulated employees must complete random DOT drug and alcohol tests from a selection pool that includes only DOT regulated employees. Alcohol testing must occur just before, during, or just after the performance of their covered duties. Random selections will be made at a minimum of a quarterly basis by a scientifically valid computer program. The random tests will be spread reasonably throughout the year during all hours and days in which safety -sensitive functions are performed. All covered employees will have an equal chance of being selected each time selections are made. Testing will be unannounced, and the employee must proceed immediately after being notified of the testing requirement.

L. DOT regulated employees may also be subject to drug and alcohol testing upon reasonable suspicion of probable drug or alcohol use using non -DOT testing forms. Reasonable suspicion determinations will be made by one or more trained supervisors that can articulate and substantiate physical, behavioral, and performance indicators of probable drug use or alcohol misuse by observing the appearance, behavior, speech, and/or body odors of the covered employee. Reasonable suspicion testing can be conducted just before a DOT regulated employee performs safety -sensitive duties, during that performance, and just after an employee has performed covered duties.

M. A result of 0.04% or higher on the DOT alcohol test is a positive test result. DOT regulated employees with a DOT alcohol test result between 0.02% and 0.039% are prohibited from performing their safety-sensitive related duties for a period of 24 hours or one shift, whichever is longer. Employee must submit to and be cleared prior to resuming work.

N. DOT regulated employees who receive a positive DOT drug or alcohol test result will be terminated, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. The DOT regulated employee is responsible for any incurred costs associated with educational and rehabilitation programs or SAP assessments.

O. Specimen validity testing will be conducted on all urine specimens for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted or if the specimen was substituted.

P. If a covered employee provides a negative dilute test result, they will be required to undergo a second test. If the second test is negative dilute it will be considered negative and no further testing is required.

Q. Any covered employee who questions the results for a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS -certified laboratory. The test must be conducted on the split sample that was provided by the employee at

the same time as the primary sample. The method of collecting, storing and testing the split sample will be consistent with the procedures set forth in 49 CPR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer (MRO) within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The employee will pay for the cost of split sample testing, but the County may pay the vendor and seek reimbursement to avoid a delay in sample processing.

R. Refusal to submit to a drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall be subject to disciplinary action up to and including dismissal and referral to SAP. A test refusal includes the following circumstances:

- 1.A covered employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests.
- 2.A covered employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation. The medical evaluation shall take place within 5 days of the initial test attempt.
- 3.A covered employee whose urine sample has been verified by the MRO as substitute or adulterated.
- 4.A covered employee fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- 5.A covered employee fails to remain at the testing site until the testing process is complete.
- 6.A covered employee fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations.
- 7.A covered employee fails to permit the observation or monitoring of a specimen collection.
- 8.A covered employee fails or declines to take a second test the employer or collector has directed you to take.
- 9.A covered employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the "shy bladder" or "shy lung" procedures.
- 10.A covered employee fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector; behave in a confrontational way that disrupts the collection process).
- 11.Failure to sign Step 2 of the Alcohol Testing form.
- 12.Failure to follow the observer's interactions during an observed collection including interactions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
13. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
- 14.Admit to the collector or MRO that you adulterated or substituted the specimen.

S. If a DOT regulated employee is directed to submit to a collection under direct observation in accordance with 49 CFR Part 40.67, the policy administrator or supervisor must explain to the employee the reason for a directly observed collection. Circumstances requiring direct observation include:

- 1.All return to duty tests.
- 2.All follow-up tests.
- 3.Anytime the employee is directed to provide another specimen because the temperature on the original specimen was out of the acceptable temperature range.
- 4.Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
- 5.Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen.
- 6.Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid, and the MRO determined that there was not an adequate medical explanation for the results.
- 7.Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated, or substituted, but had to be cancelled because the test of the split specimen could not be performed.

T. Rowan County will notify North Carolina Division of Motor Vehicles within five business days of the date that a DOT regulated employee tests positive or refuses to participate in a drug or alcohol test required under 49 CFR Part 382 and 655, in accordance with NCGS 20-37.19.

U. Drug and Alcohol Policy Addendum Effective: January 1, 2018

1.The United States Department of Transportation (USDOT) – Office of Drug and Alcohol Policy and Compliance (ODAPC) has issued an update to USDOT’s drug and alcohol testing regulation (49 CFR Part 40). The new regulation has been revised and the changes (summarized below) will become effective on January 1, 2018. Therefore, the Rowan County Transit drug and alcohol testing policy is amended as follows:

## 2.CHANGES TO THE DRUG TESTING PANEL

a. Four new opioids added to the drug testing panel –

- i.The USDOT drug test remains a “5-panel” drug test; however, the list of opioids for which are tested will expand from three to seven opioids.
- ii.The “opioid” category will continue to test for codeine, morphine, and heroin; however, the “opioid” testing panel will now be expanded to include four (4) new semi-synthetic opioids:
- iii. (1) Hydrocodone, (2) Hydromorphone, (3) Oxycodone, and (4) Oxymorphone.
- iv. Common brand names for these semi-synthetic opioids include, but may not be limited to: OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.

b. MDA’ will be tested as an initial test analyte

c. 'MDEA' will no longer be tested for under the "amphetamines" category. BLIND SPECIMEN TESTING

d. The USDOT no longer requires blind specimens to be submitted to laboratories.

### 3. ADDITIONS TO THE LIST OF "FATAL FLAWS"

a. The following three circumstances have been added to the list of "fatal flaws":

i. No CCF received by the laboratory with the urine specimen.

ii. In cases where a specimen has been collected, there was no specimen submitted with the CCF to the laboratory.

iii. Two separate collections are performed using one CCF.

### 4. MRO VERIFICATION OF PRESCRIPTIONS

a. When a tested employee is taking a prescribed medication, after verifying the prescription and immediately notifying the employer of a verified negative result, the MRO must then (after notifying the employee) wait five (5) business days to be contacted by the employee's prescribing physician before notifying the employer of a medical qualification issue or significant safety risk.

i. Specifically, in cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO. The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327.

### 5. DEFINITIONS

a. The term "DOT, the Department, DOT Agency"

i. Modified to encompass all DOT agencies, including, but not limited to, FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency.

ii. For the purposes of testing under 49 CFR Part 40, the USCG (in the Department of Homeland Security) is considered to be a DOT agency for drug testing purposes.

b. The term "Opiate" is replaced with the term "Opioid" in all points of reference.

c. The definition of "Alcohol Screening Device (ASD)" is modified to include reference to the list of approved devices as listed on ODAPC's website.

d. The definition of "Evidential Breath Testing Device (EBT)" is modified to include reference to the list of approved devices as listed on ODAPC's website.

- e. The definition of “Substance Abuse Professional (SAP)” will be modified to include reference to ODAPC’s website. The fully revised definition includes:
  - i. A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

NOTE: The revisions listed in this addendum include only those revisions to 49 CFR Part 40 which may be referenced in our drug & alcohol testing policy. A list of all the revisions made to 49 CFR Part 40 can be found at <https://www.transportation.gov/odapc>

### **Rowan County Drug-Free Workplace Program**

Rowan County is committed to maintaining a safe and productive working environment. The Rowan County Drug-Free Workplace Program endorses the federal government’s efforts in implementing the Drug-Free Workplace Act of 1988.

Employees may visit the Drug-Free Workplace Program Website (<https://intranet.rowancountync.gov/306/Drug-Free-Workplace-Program>) to find information about the health risks of drug and alcohol abuse, available resources, and the County’s Drug-Free policy. This website is not intended as a substitute for counseling and treatment, but it can be a helpful starting point for employees and their families who are dealing with substance abuse issues.

Those who are interested in speaking with a professional about their questions and concerns are encouraged to click on the applicable resource on this page for more information and to contact counseling services.

**Statement of Understanding**

I acknowledge that I have read this policy statement and I understand that I am required to abide by all terms as a condition of my continued employment with Rowan County, I also agree to notify Rowan Transit System in writing of any conviction I receive for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction.

Employee Name (printed): \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

---

For Office Use Only

\_\_\_\_\_ Signed copy provided to employee on \_\_\_\_\_ by \_\_\_\_\_

\_\_\_\_\_ Copy scanned to Kelly.natoli@rowancountync.gov

## **Administration**

The Operations Manager will administer this policy.

### **Drug and Alcohol Program**

“*Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations*,” as implemented by [49 CFR Part 655](#) (August 2001), as amended, and to be read in conjunction with [49 CFR Part 40](#), requires all subrecipients receiving Federal Transit Administration funds under Capital Grant, Urbanized Area Formula Grant, or Non-Urbanized Area Formula Grant Programs to have a drug and alcohol testing program in place for all safety sensitive employees.

In addition, the U.S. Department of Transportation has issued [49 CFR Part 40](#), “*Procedures for Transportation Workplace Drug and Alcohol Testing Programs*,” which prescribes testing methods to be followed.

Certification must be signed by the subrecipient's governing board or other authorized individual or body in compliance with the above. Failure to certify compliance with the drug and alcohol rules will result in jeopardizing federal funding from FTA. In addition, an FTA grant recipient is subject to criminal sanctions and fines for false statements or misrepresentation under Section 1001 of Title 18 of the U.S. Code.

### **Drug and Alcohol Regulations**

NCDOT subrecipients of specific Federal Transit Administration (FTA) funding must establish and maintain a Drug and Alcohol Testing Program in accordance with [49 CFR §655](#), and in consonance with [49 CFR Part 40](#).

To ensure compliance with FTA Drug and Alcohol Testing Program requirements public transportation providers must:

- Establish an anti-drug use and alcohol misuse program as outlined in [49 CFR § 655.11-12](#);
- Establish an education and training program for all covered employees as outlined in [49 CFR § 655.14](#);
- Establish and provide written notice to every covered employee, of the employer’s anti-drug and alcohol misuse program policy, in accordance with [49 CFR § 655.15 -17](#);
- Establish a program that provides testing for prohibited drugs as outlined in [49 CFR § 655.21](#);
- Establish a program that provides testing for alcohol as outlined in [49 CFR § 655.31-35](#), and in conjunction with [49 CFR Part 40](#);
- Comply with the testing requirements as detailed in [49 CFR § 655.41-62](#);
- Maintain in a secure location, with controlled access, all records of its anti-drug and alcohol misuse program as detailed in [49 CFR § 655.71](#), and in accordance with records disclosure instructions provided in [49 CFR § 655.73](#); and

- Annually prepare, maintain, and electronically complete and submit a Drug and Alcohol Management Information System (DAMIS) Report reflecting the results of its anti-drug and alcohol misuse testing programs performed for the previous calendar year. Transit agencies complete this report electronically. The NCDOT/PTD will provide DAMIS Report preparation instructions, along with a transit agency user ID# and Password to all FTA Section 5311 *subrecipients*, upon receipt from FTA.

To ensure NCDOT subrecipient compliance with FTA mandated Drug and Alcohol Testing Program and the Drug-Free Workplace requirements, the NCDOT:

- Periodically reviews each transit agency's Drug and Alcohol Program Policy for compliance;
- Conduct on-site visits to review all aspects of each transit agency's Drug and Alcohol Program that cannot be accomplished via desktop audit, such as compliance with program management requirements, records maintenance and storage review, ensuring that all applicable Drug and Alcohol Program regulations are readily available, reviewing documentation of employee training, collector compliance with regulations, and reviewing any other program compliance requirements;
- Provide technical assistance in all matters pertaining to transit agency Drug and Alcohol Program management as requested, or deemed to be appropriate;
- Provide employee/supervisor training, such as "Reasonable Suspicion Referral for Supervisors" and other program related training as available/required;
- Monitor transit agency Drug and Alcohol program management activities via accessing and reviewing the 3<sup>rd</sup> Party Administrator (TPA) Website;
- Monitor collection sites for compliance with FTA Drug and Alcohol Testing Program requirements;
- Coordinate efforts that would eventually allow individual transit agencies to review their Drug and Alcohol Testing Program activities via accessing the current TPA website;
- Collect, compile, and review all data necessary to validate each transit agency's Drug and Alcohol Management Information System (DAMIS) Report. Each transit agency prepares this report electronically. The NCDOT reviews each report and then electronically forwards the data to FTA prior to March 15 of each year.

### **Drug-Free Workplace Act**

The Drug-Free Workplace Act of 1988, as well as Section 44-107-30, S.C. Code of Laws (1976), as amended, requires all grantees receiving grants from any state agency to certify they will maintain a drug-free workplace.

## **Appendix**

### **Employees Covered by Department of Transportation (DOT) Regulations**

Together with the other Drug Free Workplace Policy requirements, employees covered by DOT Regulations must comply with this appendix.

- A. DOT Federal Transit Administration covered employees and functions. Employees who perform safety -sensitive function(s) as defined by the Federal Transit Administration (FTA) are subject to regulation by the United States Government (DOT regulated employees). A FTA safety –sensitive function is any of the following duties when performed by employees for departments that receive federal funding under 49 USC 5307, 5309, 5311, or 23 USC 103(e)(4):
1. Operating a revenue service vehicle, including when not in revenue service;
  2. Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
  3. Controlling dispatch or movement of a revenue service vehicle;
  4. 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;
  5. Carrying a firearm for security purposes.
- B. DOT Federal Motor Carrier Safety Administration covered employees and functions. Employees who drive or operate a commercial motor vehicle (CMV). The Federal Motor Carrier Safety Administration (FMCSA) has interpreted driving a CMV on a road, street or way which is open to public travel, even though privately -owned or subject to military control, as prima facie evidence of operation in commerce. Employees who drive or operate a CMV must hold a valid appropriate commercial driver's license. FMCSA safety -sensitive function(s) are defined as and include all time from the time an employee begins to work, or is required to be in readiness to work, until the time the employee is relieved from work and all responsibility performing work. Safety -sensitive functions shall include:
1. All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer. This includes employees who are "eligible" at work to drive a CMV at anytime, e.g., salespersons, clerks, secretaries, supervisors;
  2. All time inspecting equipment as required by 49 C.F.R 392.7, "Equipment, Inspection, and Use," and 49 C.F.R 392.8, "Emergency Equipment and Use," or otherwise inspecting, servicing, or conditioning any CMV at any time;
  3. All driving time, which is any time spent at the driving controls of a CMV in operation;
  4. All time, other than driving time, in or upon any CMV except time spent resting in a sleeper berth;
  5. All time loading or unloading a vehicle, supervising or assisting in loading or unloading, attending a vehicle being loaded or unloaded, remaining ready to operate the vehicle, or giving or receiving receipts for shipments loaded or unloaded;
  6. All time repairing, obtaining assistance for, or remaining with a disabled vehicle.

- C. Applicants and all current employees who apply for assignment, transfer, or promotion to a DOT regulated position must sign an Authorization for Release of Personal Information Form for the release of alcohol and drug testing data compiled by previous employers covered by 49 CFR Part 40 and provide the County information about drug and alcohol violations. Departments that have DOT regulated positions will contact Human Resources for guidance in obtaining this information.
- D. All drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended. Additionally all FTA employees will be drug and alcohol tested in accordance with Part 655 and FMCSA employees will be tested in accordance with Part 382. A drug test can be performed any time a DOT regulated employee is on duty. A DOT alcohol test can be performed just before, during, or after the performance of a DOT safety -sensitive function. Amphetamines (ecstasy, methamphetamine), marijuana (hemp), cocaine (crack), opiates (heroin), phencyclidine (PCP) can be tested for at any time while on duty.
- E. DOT regulated employees are prohibited from the use or possession of alcohol while on duty or in uniform, while on-call to perform safety sensitive duties, and four hours prior to duty. Alcohol use is also prohibited by any covered employee required to submit to post -accident alcohol testing for four hours following the accident or until the alcohol test is performed.
- F. DOT regulated employees must complete a DOT pre-employment drug test when hired for, or transferred to, a DOT covered position. The candidate must produce a negative drug test result prior to first performing a safety -sensitive duty. If the test is canceled, the employee must retake and pass the test before being hired. Failure of a County pre-employment screen will disqualify the application from employment for one year. Any covered employee or applicant who has previously failed or refused a pre-employment drug test administered under this part, must provide proof of having successfully completing a referral, evaluation, and treatment plan by a substance abuse professional as described in 49 CFR Part 655.62. A covered employee who has not performed a safety sensitive duty for 90 consecutive days or more and has not been in the employer's random selection pool shall take a pre-employment drug test with a verified negative result before returning to safety -sensitive duties.
- G. Together with other accident testing which may be required by the County, DOT regulated employees must complete DOT drug and alcohol tests as soon as possible after they are involved in an accident while operating a County owned or leased vehicle, if the accident involves:
1. FMCSA accident requiring testing: An accident in which a fatality is involved; one or more motor vehicles are towed from the scene or someone is treated medically away from the scene, and a citation is issued to the CMV driver within 8 hours of the occurrence under state or local law for a moving violation arising from the accident and either of the aforementioned situations occur.
  2. FTA accident requiring testing: An accident in which a fatality is involved, one or more motor vehicle receives disabling damage or someone requires immediate medical attention away from the scene, unless the driver can be completely discounted as a contributing factor. All surviving employees operating the mass transit vehicle at the

time of the accident and all other covered employees whose performance could have contributed to the accident must also be tested after an accident involving a fatality.

Alcohol testing must be done as soon as possible following an accident, but not more than eight hours after the accident. Drug testing must be done as soon as possible after the accident, but not more than 32 hours after the accident. If a post -accident alcohol test is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons for the delay. All DOT covered employees must remain readily available for testing after an accident including notifying the employer representative of the employee's whereabouts. Failure to do so will be considered a test refusal. Testing is stayed while the employee assists in the resolution of the accident or receives medical attention.

- H. DOT regulated employees must complete random DOT drug and alcohol tests from a selection pool that includes only DOT regulated employees. Alcohol testing must occur just before, during, or just after the performance of their covered duties. Random selections will be made at a minimum of a quarterly basis by a scientifically valid computer program. The random tests will be spread reasonably throughout the year during all hours and days in which safety -sensitive functions are performed. All covered employees will have an equal chance of being selected each time selections are made. Testing will be unannounced and the employee must proceed immediately after being notified of the testing requirement.
- I. DOT regulated employees may also be subject to drug and alcohol testing upon reasonable suspicion of probable drug or alcohol use using non -DOT testing forms. Reasonable suspicion determinations will be made by one or more trained supervisors that can articulate and substantiate physical, behavioral, and performance indicators of probable drug use or alcohol misuse by observing the appearance, behavior, speech, and/or body odors of the covered employee. Reasonable suspicion testing can be conducted just before a DOT regulated employee performs safety -sensitive duties, during that performance, and just after an employee has performed covered duties.
- J. A result of 0.04% or higher on the DOT alcohol test is a positive test result. DOT regulated employees with a DOT alcohol test result between 0.02% and 0.039% are prohibited from performing their safety-sensitive related duties for a period of 24 hours or one shift, whichever is longer. Employee must submit to and be cleared prior to resuming work.
- K. DOT regulated employees who receive a positive DOT drug or alcohol test result will be terminated, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. The DOT regulated employee is responsible for any incurred costs associated with educational and rehabilitation programs or SAP assessments.
- L. Specimen validity testing will be conducted on all urine specimens for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted or if the specimen was substituted.
- M. If a covered employee provides a negative dilute test result they will be required to undergo a second test. If the second test is negative dilute it will be considered negative and no further testing is required.

N. Any covered employee who questions the results for a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS -certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer (MRO) within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The employee will pay for the cost of split sample testing but the County may pay the vendor and seek reimbursement to avoid a delay in sample processing.

O. Refusal to submit to a drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall be subject to disciplinary action up to and including dismissal and referral to SAP. A test refusal includes the following circumstances:

1. A covered employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests.
2. A covered employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation. The medical evaluation shall take place within 5 days of the initial test attempt.
3. A covered employee whose urine sample has been verified by the MRO as substitute or adulterated.
4. A covered employee fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer.
5. A covered employee fails to remain at the testing site until the testing process is complete.
6. A covered employee fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations.
7. A covered employee fails to permit the observation or monitoring of a specimen collection.
8. A covered employee fails or declines to take a second test the employer or collector has directed you to take.
9. A covered employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the "shy bladder" or "shy lung" procedures.
10. A covered employee fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector; behave in a confrontational way that disrupts the collection process).
11. Failure to sign Step 2 of the Alcohol Testing form.
12. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
13. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
14. Admit to the collector or MRO that you adulterated or substituted the specimen.

P. If a DOT regulated employee is directed to submit to a collection under direct observation in accordance with 49 CFR Part 40.67, the policy administrator or supervisor must explain to the employee the reason for a directly observed collection. Circumstances requiring direct observation include:

1. All return to duty tests.
2. A follow-up test.
3. Anytime the employee is directed to provide another specimen because the temperature on the original specimen was out of the acceptable temperature range.
4. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
5. Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen.
6. Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the results.
7. Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated, or substituted, but had to be cancelled because the test of the split specimen could not be performed.

Q. Rowan County will notify North Carolina Division of Motor Vehicles within five business days of the date that a DOT regulated employee tests positive or refuses to participate in a drug or alcohol test required under 49 CFR Part 382 and 655, in accordance with NCGS 20-37.19.