

## **Revised 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). 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.~~

~~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), phenylcyclidine (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 bourn 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 of 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 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.~~
- ~~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>.~~

#### **A. APPLICABILITY**

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full-time or part-time) at Rowan Transit who are regulated by the Department of Transportation when performing safety sensitive duties. A safety-sensitive function is operation of public transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or persons controlling the movement of revenue service vehicles and any transit employee who operates a non-revenue service vehicle that requires a Commercial Driver’s License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

#### **B. PURPOSE**

1. The Rowan Transit System (RTS) serves all of Rowan County outside of the City of Salisbury’s Urban Transit System. RTS is a non-emergency public and paratransit services for the residents of Rowan County. Part of

our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, RTS declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.

2. Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result, or a refusal to test. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.
3. Any provisions set forth in this policy that are included under the sole authority of RTS and **are not** provided under the authority of the above-named Federal regulations are underlined. Tests conducted under the sole authority of RTS will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.
4. It is the policy of the County to maintain an alcohol and drug free workplace to help ensure a safe, healthy, and productive drug-free work environment for County employees and others on County property, to protect County property, and to ensure efficient operations. The County has zero tolerance for the use of alcohol, illegal substances, prescription medications not prescribed to the employee, or the misuse of legally prescribed medications during work hours or the presence of these substances in the body during work hours regardless of when consumed.

#### C. DEFINITIONS

1. *Accident*: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:
  - a) An individual is killed or dies due to injuries sustained
  - b) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
  - c) One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been

further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

2. *Adulterated specimen*: A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.
3. *Alcohol*: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.
4. *Alcohol Concentration*: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.
5. *Aliquot*: A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.
6. *Canceled Test*: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.
7. *Confirmatory Drug Test*: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.
8. *Confirmatory Validity Test*: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.
9. *Covered Employee Under FTA Authority*: An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).
10. *Designated Employer Representative (DER)*: An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.
11. *DOT, The Department, DOT Agency*: These terms encompass all DOT agencies, including, but not limited to, 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 Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.
12. *Dilute specimen*: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

13. *Disabling damage*: Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.
14. *Evidentiary Breath Testing Device (EBT)*: A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.
15. *Initial Drug Test: (Screening Drug Test)* The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
16. *Initial Specimen Validity Test*: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid
17. *Invalid Result*: The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.
18. *Laboratory*: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.
19. *Limit of Detection (LOD)*: The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.
20. *Limit of Quantitation*: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.
21. *Medical Review Officer (MRO)*: A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.
22. *Negative Dilute*: A drug test result which is negative for the five drug/drug metabolites but has creatinine and specific gravity values that are lower than expected for human urine.
23. *Negative result*: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid

specimen. An alcohol concentration of less than 0.02 BAC is a negative test result.

24. *Non-negative test result:* A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.
25. *Oxidizing Adulterant:* 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 metabolites, or affects the reagents in either the initial or confirmatory drug test.
26. *Performing (a safety-sensitive function):* A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.
27. *Positive result:* The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.
28. *Prohibited drug:* Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine as specified in 49 CFR Part 40, as amended.
29. *Reconfirmed:* The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.
30. *Rejected for Testing:* The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.
31. *Revenue Service Vehicles:* All transit vehicles that are used for passenger transportation service.
32. *Safety-sensitive functions:* Employee duties identified as:
  - a) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.
  - b) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
  - c) Maintaining a revenue service vehicle or equipment used in revenue service.
  - d) Controlling the movement of a revenue service vehicle and
  - e) Carrying a firearm for security purposes.
33. *Split Specimen Collection:* A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).
34. *Substance Abuse Professional (SAP):* 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.

35. *Substituted specimen:* A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.
36. *Test Refusal:* The following are considered a refusal to test if the employee:
- a) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
  - b) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
  - c) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
  - d) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
  - e) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
  - f) Fail or decline to take a second test as directed by the collector or the employer for drug testing.
  - g) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
  - h) Fail to cooperate with any part of the testing process.
  - i) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
  - j) Possess or wear a prosthetic or other device used to tamper with the collection process.
  - k) Admit to the adulteration or substitution of a specimen to the collector or MRO.
  - l) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
  - m) Fail to remain readily available following an accident.
  - n) As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.
37. *Vehicle:* A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit vehicle is a vehicle used for public transportation or for ancillary services.
38. *Verified negative test:* A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use at or above the minimum cutoff levels established by the Department of Health and Human Services (HHS).
39. *Verified positive test:* A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use at or above the minimum cutoff levels specified in 49 CFR Part 40 as revised.
40. *Validity testing:* The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. 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.

#### D. EDUCATION AND TRAINING

1. Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.
2. All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

#### E. PROHIBITED SUBSTANCES

1. Prohibited substances addressed by this policy include the following.
  - a) Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1308.11 through 1308.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. It is important to note that the use of marijuana in any circumstances remains completely prohibited for any safety-sensitive employee subject to drug testing under USDOT regulations. The use of marijuana in any circumstance (including under state recreational and/or medical marijuana laws) by a safety-sensitive employee is a violation of this policy and a violation of the USDOT regulation 49 CFR Part 40, as amended.
  - b) Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty. It is the policy of Rowan County to maintain an alcohol and drug free workplace to help ensure a safe, healthy, and productive drug-free work environment for County



employees and others on County property, to protect County property, and to ensure efficient operations. The County has zero tolerance for the use of alcohol, illegal substances, prescription medications not prescribed to the employee, or the misuse of legally prescribed medications during work hours or the presence of these substances in the body during work hours regardless of when consumed.

2. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to the Risk Manager.

3. Prescription or Over-The-Counter Drug Requirements for Safety-Sensitive Employees

- a) In the interest of protecting employees and others, safety-sensitive employees must make sure that any prescribed drug or any combination of drugs being taken will not adversely impact their ability to perform assigned duties. The prescribing physician must approve the medications to ensure that the employee's job duties can be performed safely. This approval must be reported to the Risk Manager. Employees can obtain a Medication Approval Form from Risk Management. This form must be returned to Risk Management within seven (7) days from the date of return to work or from the start of taking the medication(s), whichever is earlier. If an employee or supervisor has any questions, the employee should contact the Risk Manager.

4. Employees will be provided a copy of their job description for their treating physician and must additionally explain their job duties in depth to their doctor and ensure that use of prescribed medications will not pose a safety risk to themselves, other employees, or the general public.
5. If the employee's use of prescription or non-prescription drugs has endangered the employee, other employees or the public, or has contributed to an accident, the employee may be subject to discipline, up to and including dismissal in accordance with 10.4 Employee Discipline.
6. Side Effects Employees who experience side effects or do not feel fit for duty, regardless of medications or previous approvals, must consult their personal physician and immediately refrain from performing hazardous activities, including driving and working with machinery.
7. Confidentiality of Records and Verification. Medication approval forms will be kept in the employee's confidential medical file located in Human Resources. Compliance with HIPPA regulations will be adhered to at all times.
8. Alcohol: The use of beverages containing alcohol (including mouthwash, medication, food, candy) or any other substances containing alcohol in a manner which violates the conduct listed in this policy is prohibited.

#### F. PROHIBITED CONDUCT

1. Illegal use of the drugs listed in this policy and as defined in 49 CFR Part 40, as amended is prohibited at all times. All covered employees are prohibited



from reporting for duty or remaining on duty if they have used a prohibited drug as defined in 49 CFR Part 40, as amended.

2. Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.
3. RTS shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
4. Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.
  - a. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee hasn't consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, if a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT-FTA regulations require the employee to be removed from the performance of safety-sensitive duties until:
    - i. The employee's alcohol concentration measures less than 0.02; or
    - ii. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.
5. No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
6. No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
7. Rowan County, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.
8. Consistent with the Drug-free Workplace Act of 1988, all RTS employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

#### G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the RTS management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

#### H. TESTING REQUIREMENTS

1. Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.
2. A drug test can be performed any time a covered employee is on duty. A reasonable suspicion, random, or follow-up alcohol test can only be performed just before, during, or after the performance of a safety-sensitive job function. Under Rowan County authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.
3. All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with RTS. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

#### **I. DRUG TESTING PROCEDURES**

1. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.
2. The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) or Liquid Chromatography/Mass Spectrometry (LC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS or LC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.
3. The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of

the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to RTS. If a legitimate explanation is found, the MRO will report the test result as negative.

4. If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.
5. Any covered employee who questions the results of 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 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. RTS will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample, however Rowan County will seek reimbursement for the split sample test from the employee.
6. If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.
7. The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.
8. Observed collections
  - a) Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:
    - i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to RTS that there was not an adequate medical explanation for the result;

- ii. The MRO reports to RTS that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
- iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).
- iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- v. The temperature on the original specimen was out of range;
- vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
- vii. All follow-up-tests; or
- viii. All return-to-duty tests

#### J. ALCOHOL TESTING PROCEDURES

1. Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBTs can be found on ODAPC's Web page for "Approved Evidential Breath Measurement Devices". Alcohol screening tests may be performed using a non-evidential testing device (alcohol screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.
2. A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q. of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for

at least eight hours and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

3. RTS affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.
4. The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

#### K. PRE-EMPLOYMENT TESTING

1. All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.
  - a) All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.
  - b) An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.
  - c) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
  - d) When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA authority or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.
  - e) If a pre-employment test is canceled, will require the applicant to take and pass another pre-employment drug test.
  - f) In instances where a FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.

- g) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- h) Applicants are required (even if ultimately not hired) to provide RTS with signed written releases requesting USDOT drug and alcohol records from all previous, USDOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. RTS is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a USDOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a USDOT covered employer, the applicant must provide RTS proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

#### L. REASONABLE SUSPICION TESTING

1. All RTS FTA covered employees will be subject to a reasonable suspicion 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. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under Rowan County authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.
2. Employees Suspected of Being Impaired:
  - a) An employee who suspects that a co-employee may be under the influence of a substance which impairs performance should immediately notify his or her supervisor or some other member of management in order that the employee suspected of being impaired can be observed and evaluated by management and, if possible, medical personnel. For further information regarding Reasonable Cause or Suspicion Testing, refer to 9.15 Drug and Alcohol Policy. For reasonable suspicion the Transit and Human Resources Directors shall both be called immediately and the employee placed on administrative leave pending disciplinary action described in

Section Q of this policy. No employee should place themselves and/or others into a situation which could endanger the physical safety of those present. Rowan County shall be responsible for transporting the employee to the test site. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and will be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

- b) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the individual who made the observation. This written record shall be submitted to the Transit Director.
- c) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section Q of this policy. Rowan County shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the County. **Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority.** However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

#### M. POST-ACCIDENT TESTING

1. FATAL ACCIDENTS – A covered employee will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle, whether or not the vehicle is in revenue service at the time of the accident, that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.
2. NON-FATAL ACCIDENTS – A post-accident test of the employee operating the public transportation vehicle will be conducted if an accident occurs and at least one of the following conditions is met:
  - a) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.
  - b) One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, unless the



covered employee can be completely discounted as a contributing factor to the accident

3. In addition, 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, will be tested.
4. As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.
5. The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
6. Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.
7. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
8. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an 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.
9. In the rare event that RTS is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), RTS may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

#### N. RANDOM TESTING

1. All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.



2. The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the normal work day.
3. The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA administrator. The current year testing rates can be viewed online at <https://www.transportation.gov/odapc/random-testing-rates>.
4. Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.
5. Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under RTS authority.
6. Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can only be performed just before, during, or just after the performance of a safety sensitive duty. However, under Rowan County authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.
7. Employees are required to proceed immediately to the collection site upon notification of their random selection.

**O. RETURN-TO-DUTY TESTING**

Rowan County will terminate the employment of any employee that tests positive or refuses a test as specified in section Q of this policy. However, in the rare event an employee is reinstated with court order or other action beyond the control of the transit system, the employee must complete the return-to-duty process prior to the performance of safety-sensitive functions. All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety. The SAP will determine whether the employee returning to duty will require a return-to-duty drug test, alcohol test, or both.

**P. FOLLOW-UP TESTING**

1. Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six

tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

2. In the instance of a self-referral or a management referral, the employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-USDOT follow-up tests and all paperwork associated with an employee's return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations will be conducted under company authority and will be performed using non-DOT testing forms.

#### Q. RESULT OF DRUG/ALCOHOL TEST

1. Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals (SAP) for assessment, and shall subject that employee to immediate termination of employment in accordance with 10.4 Employee Discipline.
2. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
3. Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result and an act of insubordination. Therefore, refusal to test shall subject that employee to immediate termination in accordance with 10.4 Employee Discipline. Terminate employees shall receive a list of USDOT qualified SAPs. A test refusal is defined as any of the following circumstances:
  - a) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
  - b) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
  - c) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
  - d) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.

- e) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
  - f) Fail or decline to take a second test as directed by the collector or the employer for drug testing.
  - g) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
  - h) Fail to cooperate with any part of the testing process.
  - i) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
  - j) Possess or wear a prosthetic or other device used to tamper with the collection process.
  - k) Admit to the adulteration or substitution of a specimen to the collector or MRO.
  - l) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
  - m) Fail to remain readily available following an accident.
  - n) As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.
4. An alcohol test result of  $\geq 0.02$  to  $\leq 0.039$  BAC shall result in the removal of the employee from duty for eight hours. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to a NONDOT alcohol test with a result of less than 0.02 BAC.
5. In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
- a) Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return-to-work agreement;
  - b) Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from RTS employment.
    - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in Section P of this policy; however, all follow-up testing performed as part of a return-to-work agreement required under section Q of this policy is under the sole authority of Rowan County and will be performed using non-DOT testing forms.
  - c) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. All tests conducted as part of the return-to-

work agreement will be conducted under company authority and will be performed using non-DOT testing forms.

- d) A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.
  - e) Periodic unannounced follow-up drug/alcohol testing conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy.
  - f) A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Rowan County.
  - g) A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
6. An employee must notify Human Resources of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction. Violation of this policy and/or alcohol or controlled substance-impaired behavior on the job shall be deemed unacceptable personal conduct which shall be cause for disciplinary action up to and including immediate termination in accordance with 10.4 Employee Discipline.
7. An employee shall notify the Director and/or Operations Manager if charged off the job for driving while impaired (DWI) or driving under the influence (DUI) or for the use, sale, or possession of a controlled dangerous substance within forty-eight (48) hours. The Human Resources Director and/or Risk Manager, will investigate the incident with the Transit Director and determine disciplinary action up to and including immediate termination in accordance with 10.4 Employee Discipline.

#### R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

#### S. PROPER APPLICATION OF THE POLICY

Rowan County and RTS are dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

#### T. INFORMATION DISCLOSURE

- 1. Drug/alcohol testing records shall be maintained by the RTS Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

2. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.
3. Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need-to-know basis.
4. Records will be released to a subsequent employer only upon receipt of a written request from the employee.
5. Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.
6. Records will be released to the National Transportation Safety Board during an accident investigation.
7. Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
8. Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
9. Records will be released if requested by a Federal, state or local safety agency with regulatory authority over RTS or the employee.
10. If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken
11. In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

