

DRUG AND ALCOHOL TESTING PROGRAM PROCEDURES  
for FTA-Covered Safety-sensitive Employees of the  
UNIVERSITY OF MINNESOTA

January 2022

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**THESE PROCEDURES ARE NOT AN EMPLOYMENT CONTRACT OR AN OFFER OF AN EMPLOYMENT CONTRACT.**

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## **I. PURPOSE**

The following procedures have been established to implement the requirements of the Federal Transit Administration (FTA) and the U.S. Department of Transportation (DOT) related to alcohol and controlled substances for employees of the University of Minnesota (U of M) who are drivers, dispatchers, mechanics and/or supervisors performing safety-sensitive functions for the University's paratransit system. The overall goals of this testing program are to ensure a safe and drug-free transportation environment, to reduce the potential for accidents and casualties related to accidents involving University-owned /-leased vehicles, and to cooperate with the U.S. Department of Transportation and the transportation industry in efforts to eliminate the misuse of alcohol and the illegal use of controlled substances by University employees who are subject to FTA drug and alcohol testing laws.

With these objectives in mind, the following policy and procedures have been established for FTA-covered employees. Full compliance with the Drug Free University Policy and this DOT Drug and Alcohol Testing Program is a condition of employment with the University of Minnesota.

## **II. SCOPE**

This Drug and Alcohol Testing Program Procedures for FTA-covered safety-sensitive employees applies to all full-time and part-time employees who are "covered employees" as defined in Section VI [A]. In addition, these procedures cover all applicants for positions as described in Section VI [A].

## **III. VIOLATIONS**

A covered employee who violates the FTA prohibitions of these procedures (Section VI [B]), must be immediately removed from all FTA safety-sensitive functions (as defined in Section VI [C] of these Procedures). Under the University's independent authority, violation of these procedures may also be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

The University also reserves the right to take action against a covered employee, where appropriate, for violation of other general University policies, procedures and/or rules, defined in rules that are separate from this policy.

## **IV. RULES OF CONDUCT**

- A. A covered employee may not engage in any of the conduct(s) prohibited in Section VI [B].
- B. A covered employee who refuses to submit to required testing (see definition of *refusal* under section XII), under the University's independent authority, will be considered to have voluntarily resigned.
- C. Under independent authority as established by the Drug Free University Policy, the University prohibits the possession of alcohol, or the sale, purchase, manufacture, possession or transfer of an illegal drug, or being under the influence of alcohol or of an illegal drug, during all work time, including meals and breaks; any time while on University property; at a job site, shipper/receiver site, truck stop, rest area on University business; or in a University-owned /-leased vehicle.
- D. Under independent authority, the University prohibits the use of any over-the-counter medication by a covered employee during working time if such use may detrimentally affect or endanger the safety of coworkers, customers or members of the public; the employee's job performance; or the safe or efficient operation of the University or its property.
- E. An employee who uses prescribed medication(s) for a controlled substance will not be permitted or required to perform covered service until and unless the primary Designated Employer Representative (DER) is provided with appropriate authorization from the prescribing licensed medical professional. [See explanation in Section V, Authorized Use of Controlled Substances.]

- F. Cases of suspected trafficking, possession or use of illegal substances or drug paraphernalia on University property in or on University vehicles will, under independent authority, be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.
- G. The University encourages employees who wish to voluntarily seek assistance for questions or problems related to drugs and alcohol to contact the University's Employee Assistance Program (EAP). FTA-covered safety-sensitive employees who seek assistance will be removed from safety-sensitive functions during the time of assessment and rehabilitation, but their admission of use will not be considered a FTA Drug and Alcohol Testing Program procedures violation.
- H. If a covered employee is concerned about drug and alcohol use, drug trafficking, or of safety or job performance by a coworker at work, including that of managers and supervisors, such concern may be reported confidentially to the Designated Employer Representative (DER).

## **V. PRESCRIPTION DRUGS CONTAINING CONTROLLED SUBSTANCES**

If a covered employee undergoes prescribed medical treatment with a controlled substance, he/she is required to report this treatment to the DER, who will take steps to investigate whether the covered employee's job assignment can be temporarily changed during the period of treatment or whether other accommodations may be appropriate.

The University requires a covered employee to provide written documentation from the prescribing licensed medical practitioner that the covered employee no longer takes the medication(s) before being allowed to resume driving a paratransit vehicle or performing other safety sensitive functions. The University reserves the right to obtain an independent medical opinion regarding the potential effects of a prescription or over-the-counter drug on a covered employee's ability to perform safety-sensitive functions or other aspects of his/her job. Further, the University reserves the right to place any covered employee taking medication(s) on non-safety-sensitive duty, pending a decision as to whether the covered employee may continue to perform his/her regular job duties while taking the medication(s).

The University may, as it determines necessary, temporarily reassign the covered employee to non-safety-sensitive functions for the duration of his/her use of such drug(s). However, due to the safety-sensitive nature of most of the jobs that involve safety-sensitive work, the University can make no guarantee that these accommodations can always be made.

If a covered employee engages in illegal use of prescription medications for controlled substances, such as exceeding the recommended dosage, the illegal use by the covered employee may result in disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

## **VI. TESTING FOR CONTROLLED SUBSTANCES AND ALCOHOL**

University Health and Safety—Biosafety and Occupational Health Department (UHS-BOHD) will conduct controlled substance and alcohol testing of all FTA-covered safety-sensitive employees and applicants in compliance with regulations established by the U.S. Department of Transportation (DOT), 49 CFR Part 40 and the Federal Transit Administration (FTA), 49 CFR Part 655.

### **A. COVERED EMPLOYEES**

In accordance with U.S. Department of Transportation FTA Regulations, employees subject to drug and alcohol testing are those employees who:

- Drive a paratransit vehicle
- Dispatch or control movement of a paratransit vehicle
- Maintain a paratransit vehicle
- Security personnel who carry firearms

## B. DOT PROHIBITED CONDUCT:

A covered employee shall not:

- Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. (49 CFR Part 655.31)
- Use alcohol, including medications containing alcohol, while performing safety-sensitive functions. (49 CFR Part 655.32)
- Perform safety-sensitive functions within four (4) hours after using alcohol, including the use of medications that contain alcohol. (49 CFR Part 655.33)
- Use alcohol for eight (8) hours following an accident, or until the covered employee has undergone a post-accident test, whichever occurs first. (49 CFR Part 655.34)
- Use alcohol for the specified on-call hours of each covered employee who is on-call. (49 CFR Part 655.33)
- Use controlled substances at any time unless legally prescribed (See V. Authorized Use of Controlled Substances (Prescription Drugs). Controlled substances include: marijuana (THC), cocaine, opioids, phencyclidine (PCP), amphetamines and methamphetamines (including MDMA [Ecstasy] and MDEA), and any of their metabolites. Opioids include codeine, heroin, morphine, and semi-synthetic opioids: hydrocodone, oxycodone, hydromorphone, and oxymorphone. Common names for these semi-synthetic opioids include OxyContin, Percodan, Percocet, Vicodin, Lortab, Norco, Dilaudid, and Exalgo, among others. (49 CFR Part 655.21[c])
- Refuse to submit to a pre-employment, post-accident, random, reasonable suspicion, or follow-up alcohol or drug test. (49 CFR Part 655.49)
- Report for duty or remain on duty requiring the performance of safety-sensitive functions when he/she uses any illegal controlled substances.

If a covered employee engages in any of the conduct(s) prohibited in (B) above, the covered employee will not be allowed to continue to perform safety-sensitive functions. He/she shall be immediately removed from all safety-sensitive work (See definition: *safety-sensitive* in section XII) and will be referred to a Substance Abuse Professional (SAP) for evaluation. The covered employee may also be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines

A covered employee who is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, may not perform safety-sensitive functions (See definition: *safety-sensitive*) until the employee's alcohol concentration measures less than 0.02 on a subsequent test, or until the start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following administration of the test.

The University will require a covered employee whose alcohol test result is greater than 0.02 but below 0.04 on a third incident to submit to an evaluation by the University's contracted service provider, to release the results of that assessment to the University, and to follow completely the recommendations made by that contracted service provider. A covered employee who fails to follow these requirements may be subject to disciplinary action, as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines

An on-call employee may acknowledge the use of alcohol at the time he or she is called to report to duty, and the inability to perform his or her safety-sensitive function, without consequence. If he or she claims ability to perform his or her safety-sensitive function, the employee may voluntarily submit to an alcohol test. If the test result is below 0.02, the employee may perform safety-sensitive function. If the test result is 0.02 or above, the employee may not perform safety-sensitive function, and in this case, there will be no violation, since he/she voluntarily acknowledged use of alcohol during the 4 hours prior to on-call.

## C. REQUIRED TESTING

As provided in FTA rules and regulations, a covered employee or applicant shall be subject to pre-employment/pre-placement testing for controlled substances, and random, reasonable suspicion, post-accident, return-to-duty, and follow-up testing for alcohol and controlled substances.

1. **Pre-employment / Pre-placement Testing**

Every applicant for a safety-sensitive position who receives a job offer from the University must submit to a urine drug test. The offer is contingent on the applicant providing a negative test result.

Each applicant will be asked whether he/she has tested positive, or refused to be tested, on a DOT pre-employment drug or alcohol test for any DOT employer during the previous two (2) years. An applicant who has previously tested positive, or refused to be tested, will not be considered for employment until or unless he/she successfully completes DOT's return to duty process. (See Section VIII, Consequences of Prohibited Conduct).

If the applicant is a new hire, the testing must be completed, and a negative test result must be received, before the covered employee will be permitted to perform safety-sensitive functions. If the pre-employment test result is positive, the job offer will be immediately withdrawn, and the applicant will be provided with names, addresses and phone numbers of qualified Substance Abuse Professionals. Costs related to Substance Abuse Professional services and treatment recommendations will be the responsibility of the applicant. The applicant cannot be reconsidered unless and until he/she completes a Substance Abuse Professional's assessment and recommended assistance (Section VIII, Consequences of Prohibited Conduct).

An applicant who has previously refused to be tested or who provided a positive test result on a DOT pre-employment drug test for any other employer will be expected to report those test results at the time of application. Under the University's independent authority, failure to do so will constitute falsification of application information, and when discovered, will result in removal from consideration for employment. If the individual is already working when this is discovered, the employee will be immediately removed from safety-sensitive functions, and will be considered for return to safety-sensitive functions only after successfully completing a Substance Abuse Professional's assessment, complying with the Substance Abuse Professional's recommendations, and providing a negative return-to-duty test.

If an applicant has recently successfully complied with a Substance Abuse Professional's recommendations as the result of a violation while working for a previous employer, the applicant's pre-employment test, if conducted as an observed collection, will be considered to also be a return-to-duty test.

When significant time has lapsed since the Substance Abuse Professional's report of compliance, the University reserves the right to require the prospective employee to meet with a SAP designated by the University, to ascertain that the applicant is currently free of drug use, prior to being hired.

An applicant is required to sign a form authorizing the DER to obtain from all previous employers (in the previous two [2] years) a report of all DOT violations, including positive test results and refusals to be tested. The DER will also request copies of Substance Abuse Professional (SAP) reports related to any of these violations. An applicant with a violation cannot be hired until the DER has received a Substance Abuse Professional's report of successful compliance, including a follow-up testing plan requirement.

If the applicant is a current employee who is promoted or transferred to a position or assignment, a negative pre-employment drug test result must be received before the employee assumes the new position or assignment. If the test result is positive, the offer of promotion or transfer will be immediately withdrawn, and the employee will return to his/her previous position. If the employee intends to re-apply for a DOT-covered position,

he/she must complete a Substance Abuse Professional's return-to-duty process, with a Substance Abuse Professional's report of compliance with the Substance Abuse Professional's recommendation for treatment and education.

If a covered employee or applicant has not performed a safety-sensitive function for ninety (90) consecutive calendar days regardless of the reason, and the employee has not been in the University's random selection pool, a negative pre-employment drug test result must be received before the employee returns to performing safety-sensitive functions.

## 2. **Post-accident Testing**

A post-accident drug and alcohol test must be conducted as soon as possible when the following conditions occur:

1. **If an individual dies (Fatal Accident):** As soon as possible following an accident, (See Section XII, Definitions), the surviving FTA-covered safety-sensitive employee(s) involved in the accident and other covered employees who could have contributed to the accident must be tested for alcohol and controlled substances.
2. **If an individual suffers bodily injury and immediately receives medical attention away from the scene of the accident; or if one or more vehicles incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle (Non-Fatal Accident):**

As soon as possible following an accident, (See Section XII, Definitions), the surviving FTA-covered safety-sensitive employee(s) involved in the accident and other covered employees who could have contributed to the accident must be tested for alcohol and controlled substances unless the covered employee's performance can be completely discounted as a contributing factor to the accident.

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

- a. A post-accident alcohol test, when required, must be administered as soon as possible, but must be within eight (8) hours following the accident.  
  
If testing is required but is not conducted within two (2) hours, the reasons the test was not conducted within two hours must be documented. After eight (8) hours, there will be no more attempts to conduct an alcohol test. If the test is not conducted, the reasons the test was not conducted must be documented.
- b. A post-accident drug test, when required, must be administered as soon as possible, but must be within thirty-two (32) hours following the accident.  
  
If testing is required but is not conducted within two (2) hours, the reasons the test was not conducted within two hours must be documented. After thirty-two (32) hours, there will be no more attempts to conduct a drug test. If testing is required but is not able to be conducted within thirty-two (32) hours, the reasons the test was not conducted must be documented.

A covered employee who is subject to post-accident testing shall remain readily available for such testing. If the covered employee is not available for any reason, except for leaving the accident scene for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care, the University will consider the covered employee to have refused to submit to testing.



After a covered employee has submitted to a post-accident test, he/she will not be permitted to drive any University vehicles until negative results for alcohol and controlled substances tests have been confirmed.

Even if highway enforcement or other officials conduct a drug or alcohol test following an accident, covered employees are still subject to DOT testing under these employer rules. In the event that Federal, state, or local officials conduct breath or blood tests for the use of alcohol and/or urine tests for the use of controlled substances following an accident, and a DOT test is required but is not able to be conducted, the tests conducted by law enforcement may meet the requirement of this section, provided those tests conform to applicable Federal, state, or local requirements. The University will request test results and other pertinent documentation from such agencies or law enforcement authorities and will require the covered employee to sign a release allowing the DER to obtain such information. Under the University's independent authority, a covered employee who refuses to sign such a release will be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

In the event that a covered employee is so seriously injured that the covered employee cannot provide a sample of urine or breath at the time of the accident, the University requires that the covered employee provide necessary authorization for the DER to obtain hospital records or other documents that would indicate whether controlled substances or alcohol were present (and the resulting levels) in the covered employee's body at the time of the accident. Under the University's independent authority, a covered employee who refuses to sign such a release will be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

3. **Random Testing**

A percentage of covered employees will be subject to random alcohol and drug testing each year. The percentage of covered employees to be tested will be as determined annually by FTA and published in the Federal Register every January. Selections of covered employees to be tested shall be done by a scientifically valid method that provides that each covered employee will have an equal chance of being selected each time that selections are made. Thus, a covered employee might be selected more than once during a year.

- a. Random tests will be unannounced; the dates for random selections will be spread throughout the year. The random tests will also be spread throughout all hours of operations.
- b. A covered employee who is selected for random testing will be required to report to the collection site immediately upon notification. If the covered employee engages in conduct that does not lead to a collection as soon as possible after notification, such conduct may be considered as a refusal to submit to a test. The covered employee will be in a duty status (paid) from the time he/she leaves to go to the collection site until the time he/she returns from the collection site.
- c. A random test for alcohol shall be scheduled to occur only just prior to, during, or just after performing a safety-sensitive function.
- d. A random test for controlled substances can be scheduled at any time the covered employee is on duty and is not related to when the covered employee is performing a safety-sensitive function.
- e. A covered employee who has been selected for random testing must be tested in that testing period.
- f. The University will maintain participation in a qualified consortium for its random selection process.

4. **Reasonable Suspicion Testing**

The University shall require a covered employee to submit to drug and/or alcohol testing for reasonable suspicion when a supervisor has reason to believe that a covered employee has engaged in prohibited conduct (See Section VI[B], Prohibited Conduct), based on specific, contemporaneous, articulable observation of the covered employee's appearance, behavior, speech, and/or body odor. Such covered employee conduct must be witnessed and documented by a supervisor or other University official who has been trained in compliance with FTA rules and regulations. Should a supervisor determine that a covered employee may have violated a prohibition of these regulations, the covered employee must be removed from safety-sensitive duties and the covered employee must promptly submit to testing.

A covered employee who is represented by a bargaining unit and who is requested by a supervisor to submit to reasonable suspicion testing may request to have a union representative present, provided the covered employee signs a consent letter for the supervisor to notify the union representative of the request for testing. When the suspicion involves drugs only, the University will allow a maximum of one-half hour for the union representative to arrive and accompany the employee through the collection process. When the suspicion involves alcohol only, or alcohol and drugs, the union representative may be notified, but because FTA requires alcohol testing to occur in a timely manner, the half-hour time allowance will not apply. If the union representative is not immediately available, he/she may have to arrange independent transportation to the collection site, as regulations do not allow for delay of the collection process.

Observation and testing for reasonable suspicion for controlled substances use can occur at any time the employee is on duty and is not related to when he/she performs safety-sensitive functions. A trained supervisor's determination will be based on a covered employee's appearance, behavior, speech and/or body odor, and on chronic and withdrawal effects of drug use when combined with other factors listed. A covered employee who is suspected of controlled substances use must be immediately withdrawn from safety-sensitive functions and is required to undergo drug testing.

Observation and testing for reasonable suspicion for alcohol use can occur only just prior to, during, or just after the employee's performance of safety-sensitive function. A trained supervisor's determination of suspected alcohol use will be based on a covered employee's appearance, behavior, speech and/or body odor. A covered employee who is suspected of alcohol misuse must be immediately withdrawn from safety-sensitive functions and cannot return unless an alcohol test has been conducted with an alcohol concentration that measures less than 0.02.

An alcohol test for reasonable suspicion should be administered within the first two (2) hours. If alcohol testing is not conducted within two (2) hours, the reasons the test was not conducted must be documented. If alcohol testing then is not conducted within the next six (6) hours, the reasons the test was not conducted must again be documented. After eight (8) hours, there will be no more attempts to conduct an alcohol test.

If no alcohol test is conducted at all, the covered employee cannot perform safety-sensitive functions until eight (8) hours have elapsed following the original determination of reasonable suspicion of alcohol use. If this covered employee must return to safety-sensitive functions before 8 hours have passed, he/she may do so only after taking an alcohol test and receiving a test result below 0.02.

5. **Return-to-Duty Testing**

Under FTA regulations, before a covered employee can be considered for reinstatement a refusal to submit to a test, a verified positive drug test result and/or a positive alcohol test, the covered employee must provide a negative return-to-duty drug and/or alcohol test, depending on the substance(s) involved in the prohibited conduct. A Substance Abuse Professional may, however, order testing for both alcohol and controlled substances.

The University reserves the right to withhold a final decision regarding reinstatement of a covered employee until after a negative result of a return-to-duty test has been received.

A positive return-to-duty test result is another DOT violation and a covered employee may be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines. A covered employee with a positive return-to-duty test will be required to complete an entirely new Substance Abuse Professional process. A covered employee will not be returned to safety-sensitive functions until a negative result is obtained.

In accordance with DOT rules, a return-to-duty test must be an observed collection.

Under independent authority, the employee's department will pay for the return-to-duty test.

6. **Follow-up Testing**

A covered employee, who returns to duty after complying with the recommendation of a Substance Abuse Professional, and after providing a negative result on a return-to-duty test, is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the Substance Abuse Professional. Follow-up testing may be scheduled for a period of up to sixty (60) months and must include no fewer than six (6) tests to be conducted in the first twelve (12) months after the employee's return-to-duty date. Follow-up alcohol testing shall be conducted only just prior to, during, or just after the covered employee's performance of safety-sensitive functions. Follow-up drug tests may occur any time a covered employee is on duty.

Under independent authority, the employee's department will pay for the cost of all follow-up tests and may retroactively collect the cost of tests from the covered employee.

When the employee's department, under independent authority, has terminated a covered employee from employment, the responsibility for any remaining follow-up tests recommended by a Substance Abuse Professional must be assumed by the covered employee's gaining employer, provided the covered employee is offered employment as a DOT-covered employee with a new employer.

If a newly hired covered employee is subject to follow-up testing from a previous violation while working for a previous employer, the covered employee's department will pay the costs of any remaining follow-up tests as required by a Substance Abuse Professional and may retroactively collect the cost of follow-up tests from the covered employee.

D. GENERAL TESTING INFORMATION (STANDARDS AND INTEGRITY OF THE TESTING PROCESS)

1. All tests shall be conducted as specified in U. S. Department of Transportation's 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
2. An applicant or covered employee has the right to request and receive a copy of the test result report on any drug test for which he/she provided a urine sample. The request can be either verbal or in writing, addressed to the DER.
3. Collection and testing procedures will be such as to protect the covered employee and the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct covered employee.
4. When a covered employee is required to obtain a medical examination by a medical specialist (related to inability to provide a sufficient breath or urine specimen), the University will not be responsible for any costs associated with that examination.
5. Results of additional tests arranged by an employee, or requested by a medical practitioner, will not be considered. This includes testing of blood samples, hair samples, DNA, or any other testing methods or protocols.

E. ALCOHOL TESTING AND THE REPORTING OF ALCOHOL TEST RESULTS

1. Alcohol tests (screening and confirmatory) will be performed on a device that appears on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) and that meets the DOT's testing requirements.
2. When a specific time for a covered employee's test has been scheduled, and the employee does not appear at the collection site at the scheduled time, the Breath Alcohol Technician (BAT) will contact our DER, who may determine that the employee has refused to be tested.
3. For alcohol testing (screening and confirmatory), a breath sample will be collected and analyzed by a BAT using an Evidential Breath Testing device (EBT).
4. If the result of the screening test indicates an alcohol concentration of 0.02 or greater, a BAT will perform a confirmatory test, no less than fifteen (15) and no more than thirty (30) minutes after the completion of the screening test.
5. If the confirmatory test is positive (0.04 and above), the BAT shall immediately notify the DER. The employee will be removed from duty and FTA regulations will apply.
6. Random, reasonable suspicion and follow-up alcohol testing must be done just before, during, or just after a covered employee performs safety-sensitive functions.
7. A required return-to-duty alcohol test must be completed, with a negative test result, prior to a covered employee returning to performing any safety sensitive-function.
8. An employee with an alcohol test result of 0.02 or greater but less than 0.04 may be returned to safety-sensitive functions before 8 hours have passed as soon as a subsequent alcohol test result is less than 0.02.

F. CONTROLLED SUBSTANCES TESTING, THE MRO PROCESS AND THE REPORTING OF DRUG TEST RESULTS

1. All controlled substances testing specimens shall be analyzed by a laboratory that is approved by the U. S. Department of Health and Human Services (DHHS), and that observes applicable chain-of-custody procedures.
2. When a specific time for a covered employee's test has been scheduled, and the covered employee does not appear at the collection site at the scheduled time, the collection site personnel will contact our DER, who may determine that the covered employee has refused to be tested.
3. At the collection site, the covered employee will be required to empty his/her pockets and display the items in them. A refusal to empty all pockets as directed by the collector will be a refusal to be tested.
4. If a urine specimen temperature is outside the acceptable range (90 – 100 degrees F.), the collector must immediately require a new collection, under direct observation.
5. A covered employee who refuses to provide a second specimen, or who refuses to permit a direct observation collection, will be determined to have refused to be tested.
6. When a specimen for a drug test is collected under observed conditions, the observer must request the employee to raise his/her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer that the employee does not have a prosthetic device. The employee may then return clothing to its proper position for observed urination.
7. If the employee is unable to urinate or provides an insufficient quantity of urine (less than 45 mL), the employee will be provided fluids to drink (up to 40 oz.) and up to three hours to provide an adequate specimen. If the employee is unable to provide an adequate specimen after three hours, the collection process will cease. (An employee's decision to not drink the water that was provided is not considered to be a refusal). The collector will inform the University, and the employee will be directed to be evaluated by a licensed physician acceptable to the MRO within five (5) days. If the MRO determines, after review of the physician's findings of the examination of the employee, that there is no medical explanation

for the employee's failure to provide an adequate specimen, the employee will be considered to have refused to test.

8. The DHHS-approved testing laboratory shall forward the results of every drug test to a University-designated Medical Review Officer (MRO) for review.
9. The MRO must verify a confirmed positive test result for marijuana, cocaine, amphetamines, semi-synthetic opioids (i.e., hydrocodone, hydromorphone, oxycodone, and oxymorphone), opiates (i.e., 6-acetylmorphine, codeine and morphine results), and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in his or her system. In determining whether an employee's legally valid prescription consistent with the Controlled Substances Act for a substance in these categories constitutes a legitimate medical explanation, the MRO is not permitted to question whether the prescribing physician should have prescribed the substance. If the test result is negative, the result will be reported by the MRO to the DER.
10. If the test result is confirmed positive, adulterated, substituted or invalid, the covered employee will be given an opportunity to discuss the test result with the MRO.
11. If the test result is verified as positive, or as a refusal to test because of adulteration or substitution, the MRO shall inform the covered employee of his/her right to request a retest of the same specimen at a different DHHS-approved laboratory, and of the process for doing so. Such request must be made by the covered employee, verbally or in writing to the MRO, within seventy-two (72) hours of the covered employee having been informed of a verified positive test result.
12. The covered employee's department, under independent authority, will pay for the cost of a retest and may retroactively collect the cost of tests from the covered employee.
13. If, after making 3 attempts in a 24-hour period, the MRO is not able to contact the covered employee, the MRO shall report to the DER that all reasonable efforts have been made to contact the covered employee, without success. The DER shall then, as soon as practicable, ask the covered employee to contact the MRO within the next seventy-two (72) hours, and shall apprise the MRO that the covered employee has been so notified.
14. The MRO may verify a test as positive without communicating with the covered employee if:
  - a. The covered employee expressly declines the opportunity to discuss the test result; or
  - b. The DER has successfully made and documented a contact with the covered employee and instructed the covered employee to contact the MRO and more than 72 hours have passed since the time the employee was successfully contacted by the DER; or
  - c. Neither the MRO nor the DER, after making all reasonable efforts, has been able to contact the employee within 10 days of the date on which the MRO receives the confirmed positive test result from the laboratory.
15. If a test is verified positive under the circumstances specified in #14 (b c) above, the covered employee may, within 60 days, present to the MRO information documenting that serious illness, injury or other circumstances unavoidably prevented the covered employee from being contacted by the MRO or the DER, or from contacting the MRO, as applicable, within the times provided. The MRO, based on such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO will declare the test to be negative.
16. When a required drug test (pre-employment, return-to-duty, or follow-up) is canceled, the covered employee will be required to immediately take another test, with minimum advance notice.
17. A positive dilute drug test will be considered to be a positive test.

18. When the MRO reports a negative dilute test result with creatinine level greater than or equal to 2 mg/dL but equal to or less than 5 mg/dL, DOT regulations require the employee to submit to an immediate recollection under direct observation, with minimum advance notice. (A refusal to provide this second specimen will be a refusal to be tested.)
19. If an employee produces a negative dilute drug test with a creatinine level above 5 mg/dL, but no more than 20 mg/dL, the employee will be required to immediately take another test, with minimum advance notice. Except for a return-to-duty or follow-up test, this will not be an observed collection. Its result will be the final result; there will be no additional testing. (A refusal to provide this second specimen will be a refusal to be tested.)
20. When a test result is reported to be an invalid specimen, and the employee is unable to provide an explanation for the invalid test, the employee will be required to immediately take another test under direct observation. A refusal to provide this second specimen will be a refusal to be tested.
21. If, in the MRO's opinion, the covered employee provides information that medically disqualifies the employee from performing safety-sensitive functions, or that causes the MRO to have concern about the employee's ability to safely perform his/her safety-sensitive duties, the MRO is required to give that information to the DER.
22. After verifying the test results, the MRO shall report the test results in a confidential manner to the DER. The MRO's report will include:
  - a. The covered employee's name and Social Security # or employee ID #;
  - b. The date of the collection;
  - c. The reason for the test (e.g., random, post-accident, etc.);
  - d. The test results will be reported as either positive (with the identity of the specific controlled substance), negative, dilute, refusal to test, or canceled, and the date the result was verified by the MRO.
23. A required return-to-duty drug test must be completed, with a negative test result, prior to a covered employee returning to performing any safety-sensitive function.

## **VII. TEST RECORDS**

Records pertaining to the alcohol and controlled substances testing program shall be maintained in secured and locked confidential files within University Health and Safety's offices. Access to these records shall be limited to the DER.

Records and report data shall be maintained as specified in FTA's rules and regulations.

Except as required by law or expressly authorized or required by FTA's rules and regulations, covered employee testing information maintained under the alcohol and controlled substances testing program will be released only to the covered employee (on written request), or to an identified person as directed by the specific, written consent of the covered employee authorizing the release of the information.

The University may disclose information required to be maintained under this policy in connection with a lawsuit, grievance, or other proceeding as initiated by or on behalf of the individual, and arising from the results of an alcohol and/or drug test administered under this policy, or from the University's determination that the employee engaged in conduct prohibited by this policy (including without limitation in a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee), where authorized by DOT rules and regulations and other applicable law.

## **VIII. CONSEQUENCES OF PROHIBITED CONDUCT**

If an applicant who has tested positive, or who refused to be tested, intends to reapply to the University, or to another transportation industry employer, he/she must first successfully complete a Substance Abuse Professional assessment and recommended treatment or education.

When the DER receives notice of a covered employee's verified positive drug or alcohol test result, or of a verified refusal to be tested, the covered employee will be immediately removed from all FTA safety-sensitive functions (see definition: *safety-sensitive function*), and will not be permitted or required to return to performing safety-sensitive functions until or unless the covered employee successfully completes the return-to-duty process that is required by FTA under this regulation.

The covered employee will receive, from the DER, the phone number of the University's contracted service provider. Under independent authority, the DER will accept an evaluation conducted only by Substance Abuse Professional's recommended/approved by the University's contracted service provider. Additionally, DOT regulations do not permit a covered employee to obtain a second Substance Abuse Professional's evaluation. If a covered employee does obtain a second Substance Abuse Professional's opinion, DOT regulations do not permit UHS-BOHD to accept or acknowledge that second opinion.

If the covered employee wants his/her position to be held open, the University requires the covered employee (within three [3] working days) to notify the DER of a scheduled Substance Abuse Professional appointment for assessment and evaluation. If no such notification is made, the University will assume the covered employee has voluntarily resigned.

If a covered employee refuses to submit to testing, under the University's independent authority, the covered employee will be immediately removed from safety-sensitive duty, referred to a Substance Abuse Professional and may also result in disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

DOT rules and regulations do not permit the University to consider a covered employee for return to safety-sensitive functions until the covered employee has been evaluated by a qualified Substance Abuse Professional and has successfully complied with the Substance Abuse Professional's recommendation(s) for rehabilitation and/or education.

If possible, the University will reassign a covered employee to non-safety-sensitive functions while he/she is following the Substance Abuse Professional's recommended program of assistance and/or education. However, due to the safety-sensitive nature of most of the jobs that involve the University's paratransit system, the University can make no guarantee that these accommodations can or will be made.

Under independent authority, the employee's department will temporarily hold a covered employee's position open when that covered employee has been removed from safety-sensitive functions as a consequence of engaging in prohibited conduct. The University will require the Substance Abuse Professional to report weekly by phone to the DER regarding the covered employee's continued participation in the Substance Abuse Professional's recommended program. If it is reported by the SAP that the covered employee is not fully cooperating with the recommendation, or that the covered employee has dropped out of the recommended program, the University may at that time consider the covered employee to have voluntarily resigned, and may take steps to fill the position with another covered employee or applicant.

A covered employee who is following a Substance Abuse Professional's recommendation of treatment may access benefits under Family and Medical Leave Act (FMLA), provided he/she is eligible for such benefits. The University will permit a covered employee who has been removed from safety-sensitive functions under these regulations to request leave during the assessment and/or treatment phase.

Upon receiving a Substance Abuse Professional's report of compliance with recommendations, the DER will arrange for the covered employee to take a return-to-duty test. In order for the employee to return to safety-sensitive functions, this return-to-duty test must have a negative test result.

The University, under independent authority, requires that any costs incurred in regard to services provided by a Substance Abuse Professional, or of treatment and/or education recommended by the Substance Abuse Professional, which are not covered by a covered employee's insurance plan, will be the responsibility of the covered employee.

When a Substance Abuse Professional requires a covered employee to participate in a program of aftercare, the covered employee's compliance with that requirement will be monitored by the contracted service provider or the Substance Abuse Professional. Under independent authority, any costs related to this monitoring will be the responsibility of the covered employee. The aftercare requirement will be included in a return-to-duty Agreement, which must be signed by the covered employee. Failure to sign such agreement, or failure to adhere to the terms of a signed agreement, will result in termination of employment.

## **IX. EDUCATION AND TRAINING**

Any covered employee who has questions or concerns regarding these procedures may seek clarification and further details from the DER.

A copy of this policy will be provided to each covered employee. Educational materials concerning the effects of alcohol and controlled substances use on an individual's health, work and personal life, signs and symptoms of an alcohol or controlled substances problem (the covered employee's or a coworker's) and available methods for intervening when an alcohol or controlled substances problem is suspected, will be provided to each covered employee. Answers to questions about these materials may be addressed to the DER.

The most current version of these procedures is an appendix to: <http://policy.umn.edu/finance/vehicles>.

Attendance at training programs will be mandatory for covered employees, supervisors and other employees involved in administering the controlled substances/alcohol testing program. Only supervisors who have completed this training are permitted to order a reasonable suspicion for a DOT-covered employee.

Covered employees will receive at least 60 minutes of training on the effects and consequences of prohibited drug use on health, safety and the work environment and on the signs and symptoms that may indicate prohibited drug use.

Supervisors who are designated to determine whether reasonable suspicion exists and who then order a FTA covered employee to undergo testing under FTA rules and regulations, will receive at least 60 minutes of training on recognizing alcohol misuse, and at least 60 minutes of training on recognizing controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

All covered employees and supervisors who participate in training will be given a certificate of completion of such training. The original certificate will be kept in the Office of the DER. A copy will be provided to each covered employee and supervisor for his/her own records, when requested.

## **X. SELF-IDENTIFICATION**

The University encourages covered employees who recognize that they may have a problem with drugs and/or alcohol to seek assistance for resolving that problem before they have a FTA violation due to a positive test result or because they engaged in other FTA prohibited conduct.

A covered employee who admits to a drug and/or alcohol problem will not be assumed to have a FTA violation. He/she will be given an opportunity to obtain a chemical use assessment from the University's contracted service provider.

The University will adhere to the following terms;

- The University will take no adverse action against a covered employee who admits to drug and/or alcohol use under the terms above, provided he/she cooperates with the assessment and recommendations for treatment.
- A covered employee who self-identifies under this program will be given reasonable time to obtain the required assessment and assistance.
- A covered employee who complies with all requirements, and who complies satisfactorily with the contracted service provider's recommendations for assistance, will be permitted to return to safety-sensitive functions.



- A covered employee who cooperates and successfully complies with this program will not be considered to have had a FTA violation.

## **XI. OTHER CONSEQUENCES**

The following consequences (any other consequences described in these procedures that differ from the minimum requirements of FTA rules and regulations) are imposed by the University under independent authority as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines, and are not required by FTA regulations.

### A. Termination of Employment

1. The University will not guarantee reinstatement of a covered employee who has been removed from safety-sensitive functions after engaging in prohibited conduct, even when that employee is involved and cooperating in DOT's return-to-duty process. The University reserves the right to withhold a final decision regarding reinstatement until after results of a return-to-duty test have been received.
2. A covered employee who engages in prohibited conduct (Section VI[B]) a second time will be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.
3. A covered employee who tests positive for controlled substance or whose test indicates alcohol concentration of 0.04 or greater following a fatal accident will, under FTA rules, be immediately removed from service and under the University's independent authority, will be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.
4. A covered employee who is convicted of driving under the influence of controlled substances and/or alcohol while on duty will be subject to disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.
5. A covered employee who refuses to submit to required testing for alcohol and/or controlled substances will be subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.
6. A covered employee who provides three alcohol test results that are greater than 0.02 but below 0.04, and whose employment is not terminated as provided herein, will be terminated from employment if he/she refuses to be assessed by a University-approved assessor, or refuses to sign a release of information for the University to receive assessment results, or refuses to participate in or complete a program of rehabilitation or treatment recommended by the assessor.
7. When a covered employee has not reported a scheduled Substance Abuse Professional appointment within three (3) working days after receiving the Substance Abuse Professional's name and phone number, the University will no longer continue to hold the covered employee's position open, and will consider the covered employee to have voluntarily resigned and no longer eligible for rehire by the University's paratransit system.
8. If a Substance Abuse Professional reports that a covered employee is not cooperating, or has dropped out of the program, the covered employee subject to disciplinary action as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines and will take steps to replace the covered employee.
9. When it is discovered that a covered employee provided false information regarding previous test results on pre-employment tests, or when other information on the application has been falsified, the employee will be immediately removed from safety-sensitive functions, and required to complete a Substance Abuse Professional's assessment and a negative return-to-duty test before being considered for return to safety-sensitive functions.

B. Suspended Status

1. When a covered employee's alcohol test result is above 0.02 but less than 0.04, FTA regulations require that the covered employee be removed from safety-sensitive functions (See definition: *safety-sensitive*) for eight (8) hours. Under independent authority, the covered employee's department may consider this to be unpaid leave.
2. When a covered employee is using a prescription medication for a controlled substance and provides no written notice or authorization from a licensed medical practitioner advising that the covered employee may continue to perform safety-sensitive functions while using the medication, the covered employee's department reserves the right to place the covered employee on unpaid leave until such information is received by the DER or until the medication is no longer required.
3. A covered employee who is charged by any governmental authority with driving under the influence of controlled substances and/or alcohol while on duty will be placed on unpaid leave, pending resolution of the charge.

**XII. DEFINITIONS**

- **Accident** means an occurrence involving a vehicle in which:
  - a. There is the loss of human life, or;
  - b. anyone receives bodily injury and immediately receives medical treatment away from the accident scene, or;
  - c. Any involved vehicle sustains disabling damage as defined in these procedures as the result of this occurrence and a vehicle is transported away from the scene by a tow truck or other vehicle.
- **Actual knowledge** means actual knowledge by a supervisor or manager that a covered employee has used alcohol on duty based on the supervisor's or manager's direct observation of the covered employee or, a covered employee's admission of alcohol use.
- **Adulterated specimen** means 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 a concentration of an endogenous substance.
- **Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- **Alcohol concentration (or content)** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test (BrAC).
- **Alcohol screening device (ASD)** means a breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.
- **Alcohol use** means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.
- **Aliquot** mean a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.
- **Breath Alcohol Technician (BAT)** is person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- **Canceled test** means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is otherwise required, by 49 CFR Part 40, to be canceled. A canceled test is neither a positive nor a negative test. The University will not take adverse job action based on a canceled test.
- **Collection site** means a place designated by University Health and Safety—Biosafety and Occupational Health Department where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of controlled substances, or for purposes of providing a breath sample to be analyzed for alcohol concentration.

- **Confirmatory test**
  - a. For alcohol testing, a confirmatory test is a second test following a screening test with a result of 0.02 or greater, conducted 15-30 minutes later, that provides quantitative data of alcohol concentration. This test is performed on an Evidential Breath Testing device (EBT) and is conducted by a Breath Alcohol Technician (BAT).
  - b. For controlled substances testing, a confirmatory test is a second analytical procedure performed on a different aliquot of the original specimen to identify the presence of a specific drug or metabolite.
- **Confirmatory validity test** means a second test performed on a different aliquot of the original urine specimen to further support a validity test result.
- **Consortium** means a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to University Health and Safety—Biosafety and Occupational Health Department.
- **Covered employee** means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to 49 CFR Part 655. Any person who operates a revenue service vehicle. This includes, but is not limited to: full time, regularly employed employees; casual, intermittent or occasional employees who are employed by the University, or who operate a revenue service vehicle at the direction of or with the consent of the University.
 

A volunteer is a covered employee if:

  1. The volunteer is required to hold a commercial driver’s license to operate the vehicle; or
  2. The volunteer performs a safety-sensitive function for an entity subject to CFR Part 655 and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.
- **DER (Designated Employer Representative)** means an employee(s) authorized by the University to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results, schedule tests, communicate test results and maintain test records, SAP reports and other communications on behalf of the University, consistent with the requirements of 49 CFR Part 40 and is the primary resource for questions related to these Procedures, works in conjunction with the Human Resources Representative (HRR) when there is a violation under these Procedures. (The University’s DER is an appointed employee in University Health and Safety—Biosafety and Occupational Health Department.)
- **DHHS-approved laboratory** means any U.S. laboratory that is certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs. Drug tests for the University’s FTA-covered employees will be performed by a DHHS-certified laboratory.
- **Dilute specimen** means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.
- **Disabling damage** means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.
 

Inclusions.

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

Exclusions.

  - i. Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
  - ii. Tire disablement without other damage even if no spare tire is available.
  - iii. Headlight or taillight damage.
  - iv. Damage to turn signals, horn, or windshield wipers that make them inoperative.
- **DOT rules and regulations** include rules and regulations established by U.S. Department of Transportation (DOT) and Federal Transit Administration (FTA).

- **Drugs**. The drugs for which tests are required are marijuana, cocaine, amphetamines and methamphetamines (including MDMA [Ecstasy] and MDEA), phencyclidine (PCP), and opioids. Opioids include codeine, heroin, morphine, and semi-synthetic opioids: hydrocodone, oxycodone, hydromorphone, and oxymorphone. Common names for these semi-synthetic opioids include OxyContin, Percodan, Percocet, Vicodin, Lortab, Norco, Dilaudid, and Exalgo, among others.
- **Employer** means a recipient or other entity that provides public transportation service or which performs a safety-sensitive function for such recipient or other entity. In these procedures, Employer means the University, including its agents, officers, and representatives.
- **Evidential Breath Testing Device (EBT)**. A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .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.
- **FTA** means Federal Transit Administration, an Operating Administration of the U.S. Department of Transportation (DOT).
- **Human Resources Representative (HHR)** means a Human Resources employee from an FTA-covered employee's administrative unit, department, or campus who will be involved in deciding what disciplinary action to take against the FTA-covered employee when there is a violation under these procedures.
- **Illegal drugs** include any so-called "synthetic" marijuana products, any so-called "bath salt" type products, or any product not prescribed by a doctor or similar licensed health care professional which causes intoxication or impairment of safety-sensitive functions.
- **Initial drug test (screening drug test)** means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
- **Initial specimen validity test** means the first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.
- **Invalid drug test** means the result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.
- **Job applicant** means a person, independent contractor, or person working for an independent contractor, who applies to become an employee of the University, and includes a person who has received a job offer made contingent on the person passing a drug test.
- **Limit of Detection (LOD)** means the lowest concentration at which an analyte can be reliably shown to be present under defined conditions.
- **Medical Review Officer** means a licensed physician responsible for receiving laboratory results generated by University Health and Safety's drug testing program who has knowledge of substance abuse disorders and who 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 biomedical information. An MRO must have completed an MRO Qualification Training specific to Part 40, and an examination administered by a nationally recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests.
- **Negative result (drugs)** means 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.
- **Non-negative specimen** means a urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s), and/or invalid.
- **Oxidizing adulterant** means a substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites or affects the reagents in either the initial or confirmatory drug test.
- **Performing (a safety-sensitive function)** means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.
- **Positive rate for random drug testing** means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part,

divided by the total number of random drug tests results (i.e., positive, negative, and refusals) under this part.

- **Positive Test (alcohol)** occurs when a covered employee's confirmatory test result reads 0.04% or higher.
- **Random selection** means a scientifically valid method for selection of covered employees to be tested that results in an equal probability that any covered employee from a group of covered employees subject to the selection mechanism will be selected, and does not give an employer discretion to waive the selection of any employee under the mechanism. Thus, a covered employee might be selected more than once during a year.
- **Reasonable suspicion** means a belief that a covered employee has violated alcohol or controlled substances prohibitions, based on specific, contemporaneous, documentable observations concerning the appearance, behavior, speech, or body odors of that employee. In the case of controlled substances, the observations may include indicators of the chronic and withdrawal effects of controlled substances.
- **Reconfirmed** means the result reported for a split specimen when the second laboratory can corroborate the original result reported for the primary specimen.
- **Refusal to submit to a required alcohol test** includes failure to appear for any alcohol test, or within a reasonable time, failure to provide a breath specimen for a required test, failure to remain at the testing site until the testing process is complete, failure to provide a sufficient breath specimen without a medical explanation, failure to undergo a medical examination following inability to provide a sufficient breath specimen, refusal to sign Step 2 of the Alcohol Testing Form, and failure to cooperate with the testing process.
- **Refusal to submit to a required drug test** includes failure to appear for any drug test, or within a reasonable time, failure to remain at the collection site until the testing process is complete, refusal to provide a urine specimen for a required drug test, failure to permit a directly observed or monitored collection when required by 49 CFR Part 40 procedures, failure to provide a sufficient amount of urine without a medical explanation, failure to take a second test when required by a collector or the University, failure to undergo a medical examination following inability to provide a sufficient urine sample, and failure to cooperate with the collection/testing process (including refusing to empty pockets at the collection site), and refusing to wash hands when instructed), behaving in a confrontational way that disrupts the collection process, possessing or wearing a prosthetic or other device that could be used to interfere with the collection process, or admitting to the collector or MRO that the specimen had been adulterated or substituted.

If an applicant refuses to submit to pre-employment testing, the job offer will be immediately withdrawn, and the applicant will be provided with the name, address and phone number of qualified Substance Abuse Professionals. An applicant who fails to show up for a pre-employment test, or who shows up and leaves the collection site before having selected a collection kit, is not deemed to have refused to submit to a pre-employment drug test. (40.191[a][2]).

- **Rejected for testing** means the result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.
- **Safety-sensitive function** means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors: (1) Operating a revenue service vehicle, including when not in revenue service; (2) Operating a nonrevenue 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; (5) Carrying a firearm for security purposes.. An employee is considered to be performing a safety-sensitive functions during any period in which he/she is actually performing, ready to perform, or immediately available to perform safety-sensitive functions.
- **Screening test.** See "Initial test (for drugs)" definition above.
- **Screening test** (for alcohol) means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in a breath specimen.
- **Split specimen collection** means a collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).
- **Substance Abuse Professional (SAP)** means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, marriage and family therapist (MFT), or addiction counselor (certified by the National Association of

Alcoholism and Drug Abuse Counselors Certification Commission [NAADAC] or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse [ICRC]), or by the National Board of Certified Counselors, Inc. and Affiliates/MAC [NBCC], with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. An SAP evaluates employees who have violated a FTA drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. A SAP must have completed a SAP Qualification Training specific to Part 40 and modal rules, and a SAP Exam.

- **Substituted specimen** means a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.
- **Testing levels** means levels established by the U.S. DHHS, at which a specimen or sample is determined to be either negative or positive, according to 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
- **University property** means all owned and/or -leased property, including but not limited to owned and/or leased buildings and other real estate, parking lots and vehicles located on parking lots, and University-owned and/or -leased vehicles, lockers, and desks.
- **Vehicle** means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transportation vehicle is a vehicle used for public transportation or for ancillary services.

### **XIII. REFERENCES**

Title 49 CFR Part 655, et al., Federal Transit Administration (FTA) Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, as amended.

Title 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.

University of Minnesota's Human Resources Policies and Procedures including, but not limited to, governing bodies such as labor contracts, Civil Service Rules, and P&A Guidelines

Should there be conflicts between Federal regulations and these procedures, attributed in part to revisions to the law or changes in interpretations, and when those changes have not been updated or accurately reflected in these procedures, the Federal law shall prevail.

***THESE DRUG AND ALCOHOL TESTING PROGRAM PROCEDURES ARE NOT AN EMPLOYMENT CONTRACT OR AN OFFER OF AN EMPLOYMENT CONTRACT***

*The University may change, alter, or eliminate any or all portions of these procedures as it deems appropriate, or as mandated or permitted by applicable laws, and may interpret it in response to any circumstance. An up-to-date copy of these procedures is kept in the office of the Drug and Alcohol Program Administrator, University Health and Safety—Biosafety and Occupational Health Department, as well as on the UHS website. Employees may request to see these procedures at any time during normal business hours. The most current version of these procedures is an appendix to: <http://policy.umn.edu/finance/vehicles>*

*These procedures themselves are at: <https://bohd.umn.edu/dot-drug-and-alcohol-program>*

*A link to the federal regulations governing these procedures is: <http://www.transportation.gov/odapc/part40>*

## **Appendix: Contact List**

### **DER (Designated Employer Representative)**

Ellie Block  
University Health and Safety—  
Biosafety and Occupational Health Department  
510 23<sup>rd</sup> Ave. SE  
Minneapolis, MN 55455  
(612) 626-5008

### **DHHS-approved Laboratory**

LabCorp.  
402 West County Road D  
New Brighton, MN 55113  
(651) 636-7466

### **Human Resources Representative (HHR)**

Ann Durushia  
University Services Human Resources  
300 Donhowe Building  
319-15<sup>th</sup> Avenue SE  
Minneapolis, MN 55455  
(612) 626-0291

### **Medical Review Officer**

Neil Dash, Linda Katz, Frantz Michel  
Doctors Review Service (D.R.S.)  
546 Franklin Ave.  
Massapequa, NY 11758  
(800) 526-9341

### **Substance Abuse Professional (SAP)**

<http://saplist.com/>

UNIVERSITY OF MINNESOTA

Notice of Drug and Alcohol Testing  
FTA Employees

Federal Transit Administration Regulations, 49 CFR Part 655, require testing for controlled substances and alcohol for specified FTA-covered safety-sensitive employees of the University of Minnesota. I acknowledge receipt of a copy of the Drug and Alcohol Testing Program Procedures for FTA-covered safety-sensitive employees of the University of Minnesota and the completion of training on associated regulations surrounding these procedures.

\_\_\_\_\_  
Employee Name (type or print)

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Month Day Year