

# CITY OF HIGH POINT

## AGENDA ITEM



**Title: Update to the Transit System Drug and Alcohol Policy**

**From:** Mark McDonald, P.E., Transportation Director    **Meeting Date:** November 16, 2020

**Public Hearing:** N/A

**Advertising Date /**

**Advertised By:** N/A

**Attachments:** 1. Transit System Drug and Alcohol Policy

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**PURPOSE:**

Staff has updated the Transit System Drug and Alcohol Policy. The attached policy meets current federal requirements that all grantees maintain a drug-free workplace and have a drug and alcohol testing policy for safety-sensitive employees. This policy will replace the Transit System Drug and Alcohol Policy adopted by the City Council on February 5, 2016.

The policy has been revised to comply with revisions to 49 CFR Part 40 to change the term “opiate” to “opioid.” It also updates terms and definitions and updates the individual named as the transit system Drug and Alcohol Program Manager.

**BACKGROUND:**

Federal Transit Administration (FTA) regulations require all recipients to implement an anti-drug and alcohol misuse policy, which must be adopted by the recipient's local governing board (49 C.F.R. § 655.15). Federal grant recipients are required to maintain a drug-free workplace for all employees and to have an ongoing drugfree awareness program (Drug Free Workplace Act of 1988). Grant recipients are also required to have a drug and alcohol testing program in place for all safety sensitive employees (Omnibus Transportation Employee Testing Act of 1991). In general, safety sensitive employees are those employees that drive, dispatch or maintain a bus, or are required to hold a Commercial Driver’s License or carry a firearm for security purposes.

**BUDGET IMPACT:**

There are no budgetary impacts related to these policy updates.

**RECOMMENDATION / ACTION REQUESTED:**

Staff recommends that City Council adopts a resolution approving the revised Transit Drug and Alcohol Policy.

**RESOLUTION APPROVING A REVISED TRANSIT SYSTEM DRUG AND ALCOHOL POLICY**

**WHEREAS**, the Federal Transit Administration (FT A) mandates all fund recipients to adopt and implement an anti-drug and alcohol misuse policy (Policy); and

**WHEREAS**, the City of High Point adopted an initial Policy in February 1996; and

**WHEREAS**, the Policy was last updated by the City Council in February 2016; and

**WHEREAS**, the City Council desires to adopt a revised Policy as set forth in the attachment.

**THEREFORE, BE IT RESOLVED** that the High Point City Council hereby adopts the Transit System Drug and Alcohol Policy as set forth in the attachment.

Adopted this the 16<sup>th</sup> day of November 2020.

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Lisa B. Vierling  
High Point City Clerk

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Jay Wagner, Mayor

## Section III. Transit System Employees

### 11. POLICY

#### 11.0 Purpose

- 1) The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with 49 CFR Part 29, "The Drug-Free Workplace Act of 1988" which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. The City of High Point Transit System provides public transit and paratransit services for the residents of the City of High Point. 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, the City of High Point Transit System declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees. As a condition of employment, all employees must adhere to a strict policy regarding the use and possession of drugs and alcohol. All employees are required to notify the City of High Point Transit System management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction.
- 2) Additionally, this policy also establishes guidelines in compliance with 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 test refusal. 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 City of High Point Transit System and are not provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of City of High Point Transit System will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

#### 11.1 Applicability

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) 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 person controlling the movement of revenue service vehicles and any other transit employee who operates a transit 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. A list of safety-sensitive positions that perform one or more of the above-mentioned duties is provided in Attachment B. Supervisors are only safety-sensitive if they perform one of the above functions.

## 11.2 Definitions

*Accident:* An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

- a. An individual dies;
- 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.

*Adulterated specimen:* A specimen that has been altered, as evidence 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.

*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.

*Alcohol Concentration:* Expressed in terms of grams of alcohol per 210 liters of breath as measured by a breath test under 49 CFR Part 40.

*Aliquot:* A fractional part of a specimen used for testing, it is taken as a sample representing the whole specimen.

*Canceled Test:* A drug or alcohol test that has has a problem identified that cannot be or has not been corrected, or which is cancelled . A canceled test is neither positive nor negative.

*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.

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

*Covered Employee:* 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 B for a list of covered employees.)

*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.

*Department of Transportation (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.

*Dilute specimen:* A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

*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.

*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. Approved devices are listed on the Office of Drug & Alcohol Policy & Compliance website.

*Initial Drug Test:* An immunoassay test to eliminate “negative” urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

*Invalid Result:* The result reported by a laboratory for a urine specimen that contains an

unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

*Limit of Detection (LOD):* The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

*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 biomedical information.

*Negative Dilute:* A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative test 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.

*Non-negative test result:* A urine specimen that is reported as adulterated, substitute, invalid, or positive for drug/drug metabolites.

*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.

*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.

*Positive test 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. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

*Prohibited drug:* Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

*Revenue Service Vehicles:* All transit vehicles that are used for passenger transportation service.

*Safety-sensitive functions:* Employee duties identified as:

- (1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.

- (2) 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).
- (3) Maintaining a revenue service vehicle or equipment used in revenue service.
- (4) Controlling the movement of a revenue service vehicle and
- (5) Carrying a firearm for security purposes.

*Substance Abuse Professional (SAP):* A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, marriage/family therapist, social worker, employee assistance professional, or drug and alcohol counselor (certified by an organization listed at [www.transportation.gov/odapc/sap](http://www.transportation.gov/odapc/sap)) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

*Substituted specimen:* A urine specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

*Test Refusal:* The following are considered a refusal to test if the employee:

- (1) Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
- (2) Fails to remain at the testing site until the testing process is complete. . An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations. 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.
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
- (5) Fails to provide a sufficient amount of urine or breath without a valid medical explanation
- (6) Fails or declines to take a second test the employer or collector has directed you to take
- (7) Fails to undergo a medical examination or evaluation, as directed by the MRO or as directed by the DER
- (8) Fails to cooperate with any part of the testing process
- (9) If the MRO reports that there is a verified adulterated or substituted test result
- (10) Refusal to sign Step 2 of the alcohol testing form
- (11) Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing

and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.

- (12) Possess or wear a prosthetic or other device that could be used to interfere with the collection process
- (13) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (14) Fail to remain readily available for testing following an accident

*Verified negative test:* A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

*Verified positive test:* A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

*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.

## **12.0 EDUCATION AND TRAINING**

### **12.1 Transit System Responsibility**

- 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.
- 3) Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment C of this policy.



## 12.2 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 1300.11 through 1300.15 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. Also, the medical use of marijuana, or the use of hemp-related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy  
  
Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees 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.
  - b. 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 a City of High Point Transit System supervisor and the City Nurse and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.
  - c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. A reasonable suspicion or random alcohol test can only be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions.

## 12.3 Prohibited Conduct

- 1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.

- 2) 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.
- 3) The Transit Department 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) Consistent with the Drug-free Workplace Act of 1988, all the City of High Point Transit System employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including Transit Department premises and transit vehicles.

## TESTING

### 13.0 Requirements

- 1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40 as amended. All covered employees shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, random, and return to duty/follow-up.
- 2) All covered employees who have tested positive for drugs or alcohol, or refused to test, will be tested prior to returning to duty after completion of the Substance

Abuse Professional's recommended treatment program and subsequent release. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

- 3) A drug test can be performed any time a covered employee is on duty. A random or reasonable suspicion alcohol test can only be performed just before, during, or after the performance of a safety-sensitive job function.
- 4) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the City of High Point Transit System. 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 this policy.

### 13.1 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 an 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) 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 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 the City of High Point Transit System. 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. The City of High Point Transit System will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample.
- 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 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

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:

- a. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the City of High Point Transit System/City of High Point Safety and Health Division that there was not an adequate medical explanation for the result;
- b. 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)).

- c. The MRO reports to the City of High Point Transit System/City of High Point Safety and Health Division that the original positive, adulterated, or substituted test result had to be canceled because the test of the split specimen could not be performed;
- d. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- e. The temperature on the original specimen was out of range;
- f. All return-to-duty tests;
- g. All follow-up-tests; or
- h. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.

### 13.2 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 which is also approved by NHSTA. 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 an 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 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 until the next regularly scheduled duty period, but not less than eight hours, and will be subject to the consequences described in this

policy. An alcohol concentration of less than 0.02 will be considered a negative test.

- 3) The Transit Department 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 canceled 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.

### 13.3 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 shall not be placed into a safety-sensitive position unless the applicant takes a drug test with verified negative results.
  - b. A non-covered employee shall not be placed, transferred or promoted into an FTA covered position 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 (SAPs). 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 submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with this policy.
  - e. If a pre-employment/pre-transfer test is canceled, the City of High Point Transit System will require the applicant to take and pass another pre-employment drug test.
  - f. In instances where a covered employee is does not perform a safety-sensitive function for a period of 90 days or more regardless of reason and is not in the random testing pool during that time, the employee will be

required to take a 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 not ultimately hired) to provide City of High Point 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 (2) years. Failure to do so will result in the employment offer being rescinded. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the applicant must provide the City of High Point Transit System proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

#### 13.4 Reasonable Suspicion Testing

- 1) All City of High Point Transit System 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 written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. A reasonable suspicion drug test can be performed any time the covered employee is on duty.
- 2) An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section 14.1(4) of this policy.

#### 13.5 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 revenue service vehicle regardless of whether or not the vehicle is in revenue service 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 transportation to a medical treatment facility away from the scene, and the covered employee may have contributed to the accident; or
  - b. One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, and the covered employee may have contributed to the accident.

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.

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.

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 within 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.

Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of 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.

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.



In the rare event that the City of High Point Transit System is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the City of High Point Transit System 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.

### 13.6 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 day.
- 3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations.
- 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) 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. Testing can occur during the beginning, middle, or end of an employee's shift.
- 6) Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or childcare commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift.  
Verifiable documentation of previously scheduled medical or childcare commitments, for the period immediately following an employee's shift, must be provided at least eight hours before the end of the employee's shift.
- 7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

### **13.7 Return To Duty Testing**

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 the performance of safety-sensitive functions. For an initial positive drug test, a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undo concerns for public safety.

### **13.8 Follow Up Testing**

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

## **14.0 RESULT OF DRUG/ALCOHOL TEST**

### **14.1 Positive Test**

- 1) Any covered employee that has a verified positive drug or alcohol test, or refusal to test, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer.
- 2) A negative dilute drug test, with a creatinine concentration equal to or greater than 2mg/dL, but less than or equal to 5mg/dL, as reported by the Medical Review Officer to the City of High Point will be cause for an immediate urine specimen retest under direct observation. Refusal of the employee to submit to another test will be treated equivalent to a positive drug test.
- 3) A negative dilute drug test, with a creatinine concentration between 5mg/dL and 20mg/dL, as reported by the Medical Review Officer to the City of High Point will be cause for a non-observed urine specimen retest. Should the retest specimen also report as a negative dilute drug test, no further collection will take place.

Refusal of the employee to submit to another test will be treated as a positive drug test.

- 4) A positive drug and/or alcohol test, or refusal to test will also result in disciplinary action as specified herein.
  - a. As soon as practicable after receiving notice of a verified positive drug test result, a confirmed alcohol test result at or above 0.04, or a test refusal, the City of High Point Transit System Drug and Alcohol Program Manager will contact the employee's supervisor to have the employee cease performing any safety-sensitive function.
  - b. The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.
  
- 5) Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result. A test refusal includes 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.

Commented [S01]: This is not a refusal to test.

- 6) 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.

#### **14.2 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.

### **15.0 INFORMATION DISCLOSURE**

#### **15.1 Drug/Alcohol Test Records**

- 1) Drug/alcohol testing records shall be maintained by the City of High Point Safety and Health Division 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, Department Supervisor and Personnel Manager 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. The information will only be released with binding stipulation from the decision-maker will make it available only to parties 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 the City of High Point Transit System 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.

## Attachment A

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

### The City of High Point Drug and Alcohol Program Manager

Name: Angela Wynes

Title: Transit Manager

Address: 716 West Martin Luther King Drive,  
High Point, NC 27262

Telephone Number: (336) 883 3062

### Medical Review Officer

Name: Dr. Charlton Owensby

Address: 681 Cabarrus Avenue  
West Concord, NC 28027

Telephone Number: (800) 451-3743

Fax: (704) 743-2016

### Substance Abuse Professional

Name: Dr. Robert Asemota

Address: 201 Kelley Pl, Suite 101  
High Point, NC 27261

Telephone Number: (336) 882-6859

### HHS Certified Laboratory Primary Specimen

Name: Clinical Reference Laboratory, Inc.

Address: 11711 West 83<sup>RD</sup> Terrace  
Lenexa, KS 66150

Telephone Number: (913) 492-3652

### HHS Certified Laboratory Split Specimen

Name: Lab Corporation of America Holdings

Address: 1904 Alexander Drive  
RTP, NC 27709

Telephone Number: (800) 833-3984

**Commented [S02]:** Please make sure all of this information is accurate

## **Attachment B**

**Paratransit Operator I**  
**Paratransit Operator II**  
**Transit Operator I**  
**Transit Operator II**  
**Transit Equipment Service Attendant, Lead**  
**Transit Equipment Service Attendant**  
**Transit Maintenance Technician I**  
**Transit Maintenance Technician II**  
**Transit Maintenance Technician III**  
**Transit Maintenance Supervisor Transit Manager**  
**Transit Manager**  
**Transit Manager, Assistant**  
**Transit Supervisor**  
**Transit Supervisor, Assistant**  
**Transit Customer Service Specialist**

## Attachment C

### Alcohol Fact Sheet

**Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.**

Signs and Symptoms of Use

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on the breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

Health Effects

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6-ounce glass]) over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed “alcoholic”)
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol-related).



- Social Issues
  - Two-thirds of all homicides are committed by people who drink prior to the crime.
  - Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
  - Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
  - The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
  - Forty percent of family court cases are alcohol problem-related.
  - Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
  - More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol-related.
- The Annual Toll
  - 24,000 people will die on the highway due to the legally impaired driver. 12,000 more will die on the highway due to the alcohol-affected driver. 15,800 will die in non-highway accidents.
  - 30,000 will die due to alcohol-caused liver disease.
  - 10,000 will die due to alcohol-induced brain disease or suicide.
    - Up to another 125,000 will die due to alcohol-related conditions or accidents.
- Workplace Issues
  - It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
  - Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
  - A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.