

RESOLUTION NO. R-26-17

**A RESOLUTION ADOPTING THE
SUBSTANCE ABUSE TESTING PROGRAM POLICY
FOR FORT SMITH TRANSIT**

WHEREAS, the Board of Directors of the City of Fort Smith, Arkansas is committed to maintaining a safe workplace for its employees, passengers, and users of the public streets and highways that is free from illegal drug use and the misuse of alcohol; and

WHEREAS, the Board of Directors of the City of Fort Smith intends to comply with the requirements for drug and alcohol testing as mandated by the U.S. Department of Transportation and other Federal and State laws and regulations.

NOW, THEREFORE, BE IT RESOLVED by the City of Fort Smith, Arkansas, that:

SECTION 1: The substance policy for all Fort Smith Transit safety sensitive employees, approved by resolution (R-162-09) on July 21, 2009, is hereby repealed. The revised Fort Smith Transit Substance Abuse Testing Program Policy attached hereto is hereby adopted. All employees of the Fort Smith Transit occupying safety-sensitive positions in order to carry out the duties of their position will now be subject to the rules of this policy.

SECTION 2: The Fort Smith Transit Substance Abuse Testing Program Policy shall be in full force and effect from and after the date of this approval.

PASSED AND APPROVED this 7th day of March, 2017.

ATTEST:
Shemi Ford
City Clerk

APPROVED:
Sandy Sanders
Mayor

Approved as to form:
Wynne
NPR



**U.S. Department of Transportation
Federal Transit Administration
State of Arkansas**

**SUBSTANCE ABUSE TESTING PROGRAM POLICY
Of
Fort Smith Transit**

**Adopted by the Board of Directors
of the City of Fort Smith**

March 7, 2017

SUBSTANCE ABUSE TESTING PROGRAM POLICY

TABLE OF CONTENTS

1.0 Policy Statement	1
2.0 Purpose of Policy	1
2.1 Voluntary Treatment.....	2
3.0 Covered Employees	2
4.0 Prohibited Substances	3
4.1 Illegal Controlled Substances	3
4.2 Legal Drugs	4
4.3 Alcohol	4
5.0 Prohibited Conduct.....	4
5.1 Manufacture, Distribution, Dispensation, Possession or Use	4
5.2 Positive Tests	5
5.3 Alcohol Usage	5
5.4 Alcohol Tests (0.02 – 0.04).....	5
5.5 Testing Requirements, Compliance, and Behavior Constituting a Refusal	5
5.6 Collections Under Direct Observation	6
5.7 Dilute (Positive and Negative) Specimens	7
5.8 Notifying Agency of Criminal Drug Conviction	7
5.9 Application of the Policy	7
5.10 Confidentiality.....	8
6.0 Procedures for Drug and Alcohol Testing.....	8
6.1 Compensation for Substance Abuse Testing	10
6.2 Split Specimen Testing.....	10
6.3 Pre-Employment Testing	11
6.4 Reasonable Suspicion Testing	11
6.5 Post-Accident Testing	11
6.6 Random Testing.....	13
6.7 Return-to-Duty Testing	13

6.8 Follow-Up Testing	13
7.0 Substance Abuse Professional (SAP) Referral and Evaluation.....	13
8.0 Positive Test Consequences	14
9.0 Designated Contacts for Additional Information	14
10.0 List of Safety-Sensitive Positions	15

FORT SMITH TRANSIT

SUBSTANCE ABUSE TESTING PROGRAM POLICY

1.0 Policy Statement

Fort Smith Transit (FST), the Arkansas State Highway and Transportation Department (AHTD) and the Federal Transit Administration (FTA), are dedicated to providing safe, dependable, and economical transportation services to transit system passengers in the state of Arkansas. Our employees are our most valuable resource. It is our goal to provide a healthy and satisfying work environment, which promotes personal opportunities for growth. In meeting these goals, it is our policy to:

1. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner;
2. Create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
3. Prohibit the unlawful manufacture, distribution, dispensing, possession or use of controlled substances; and
4. Encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

2.0 Purpose of Policy

The purpose of this policy is to assure worker fitness for duty and to protect employees, passengers, and the public from the risks posed by the misuse of alcohol and use of prohibited drugs as well as the misuse of over-the counter drugs. This policy is also intended to comply with all applicable federal regulations governing workplace anti-drug and alcohol programs in the transit industry. The **bolded** text in this policy is governed by the authority of FST.

The Federal Transit Administration (FTA) 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. The U. S. Department of Transportation (DOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens. In addition, the Federal Government published 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.

This policy incorporates all requirements for safety-sensitive employees.

2.1 Voluntary Treatment

Employees are encouraged to seek treatment voluntarily. Any employee who comes forth and notifies FST of an alcohol or chemical abuse problem shall be provided assistance. This assistance will include a mandatory referral to the Substance Abuse Professional (SAP). Employees shall be encouraged but not mandated to follow the SAP's recommended treatment plan.

Voluntary requests for treatment must be made prior to any pending drug/alcohol test or disciplinary action. Employees shall not be disciplined for requesting treatment, but will be expected to observe job performance standards and work rules as they apply to every employee. Confidentiality of information will be maintained at all times.

3.0 Covered Employees

This policy applies to all safety-sensitive transit system employees, including paid part-time employees, volunteers, contract employees and contractors when they are performing transit-related, safety-sensitive functions, regardless of where these functions take place. Including off-site lunch periods or breaks when an employee is scheduled to return to work.

In addition to being subject to all other elements of this policy, employees who perform safety-sensitive functions as that term is defined in current Federal Transit Administration regulations (49 CFR Part 655), are subject to drug and alcohol testing and other special requirements. Generally, a safety-sensitive function occurs when an employee is performing, ready to perform, or immediately available to perform any duty related to the safe operation of mass transit services. The following are safety-sensitive functions:

1. Operation of a revenue service vehicle, whether or not such vehicle is in revenue service.
2. Controlling dispatch or movement of a revenue service vehicle.
3. Maintaining revenue service vehicles or equipment used in revenue service.
4. Operating a non-revenue service vehicle when required to be operated by a holder of a CDL.
5. Carrying a firearm for security purposes.

A list of Fort Smith Transit's safety-sensitive positions is included in Section 10.0 of this policy. Covered employees will receive a copy of Agency's Substance Abuse Testing Program Policy and will be requested to sign a confirmation of receipt.

4.0 Prohibited Substances

Prohibited substances addressed by this policy shall include the following:

4.1 Illegal Controlled Substances

Any illegal drug or any substance identified in Schedules 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. These include, but are not limited to:

Substance Type

Marijuana Metabolite (1)

Cocaine Metabolite (2)

Amphetamines

Amphetamine

Methamphetamine (3)

Opiates Metabolites

Morphine

Codeine

6-acetylmorphine (6-AM) (4)

Phencyclidine (PCP)

Delta 9-tetrahydrocannabinol-9 carboxylic acid; (2) Benzoyllecgonine; (3) Specimen must also include amphetamine at a concentration greater than or equal to 200 ng/mL; (4) This test is conducted only when specimen contains morphine at a concentration equal to or greater than 2000 ng/mL.

Cut off concentrations for drug tests are outlined in 49CFR Part 40 Section 40.87.

Illegally used controlled substances include 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.

Regardless of any state law, including Arkansas, authorizing the use of legalized medical marijuana, the Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs, including marijuana, for any reason. Therefore, Medical Review Officers (MROs) will not verify a drug test as negative based upon information that a physician prescribes marijuana for medical purposes. It is important to note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana.

4.2 Legal Drugs

While the appropriate use of legally prescribed drugs and non-prescription over-the-counter medications is not prohibited, the misuse or abuse of legal drugs while performing safety-sensitive functions is prohibited and will be subjected to disciplinary measures.

The use of any substance which carries a warning label that indicates that mental functions, motor skills, or judgment may be adversely affected must be discussed by employees with their appropriate health care professional before performing work-related duties. Educational information regarding prescription and over-the-counter medications should be obtained from either a health care professional or pharmacist. Employees are urged strongly to seek and obtain medical advice prior to using prescription or over-the-counter drugs that may adversely affect their ability to safely operate or maintain vehicles. **Reference should be made to the posted FTA drug and alcohol updates for information regarding the effects of prescription and over-the-counter medication use.**

A legally prescribed drug means that the individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. If the employee tests positive for drugs, he/she must provide within 24 hours a valid prescription. A valid prescription includes the patient's name, the name of the substance, quantity/amount to be taken, and the time period of the authorization.

4.3 Alcohol

The consumption of beverages containing alcohol or substances (including any medication, mouthwash, food, candy or any other substance) such that alcohol is present in the body while performing safety-sensitive duties is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liter of breath as measured by a breath-testing device.

5.0 Prohibited Conduct

An employee who is called to duty must 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. In such case, the employee shall be excused from duty without pay.

5.1 Manufacture, Distribution, Dispensation, Possession, or Use

All FST employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession or use of prohibited substances on transit authority premises, in transit vehicles, in uniform, or while on transit authority business, in accordance with The Drug-Free Workplace Act. Employees who violate this provision will be terminated under FST's authority. Law enforcement shall be notified, as appropriate, when criminal activity is suspected.

5.2 Positive Tests

A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

Any safety-sensitive employee who has a confirmed positive drug or alcohol test will be removed from his or her position, informed of available educational and rehabilitation programs, and referred to a Substance Abuse Professional (SAP) for assessment. **It is FST's policy that scheduling arrangements and costs for rehabilitation, assessment, or treatment will be the employee's responsibility. Safety-sensitive employees who test positive will be terminated in accordance with FST's zero tolerance policy.**

5.3 Alcohol Usage

No safety-sensitive employee should report for duty or remain on duty when his/her ability to perform assigned duties is adversely affected by alcohol or when his/her breath alcohol concentration is 0.04 or greater. No safety-sensitive employee shall use alcohol within **eight (8) hours** of reporting for duty, or during the hours that they are on call. Violation of these provisions is prohibited and **is cause for termination of employment. Non-safety-sensitive employees are exempt under FTA regulations, but are governed under the authority of the City of Fort Smith Substance Abuse Policy.**

5.4 Alcohol Test - (0.02 - 0.04)

If an employee tests at or above 0.02 but less than 0.04 on an alcohol test, the employee will be immediately removed from service for eight (8) hours unless a retest result measures a concentration of less than 0.02. If the retest does not measure less than 0.02, the employee will remain off duty until the start of the next scheduled duty period, but not less than eight hours **and will be subject to disciplinary measures as outlined in the City's Policy Handbook.**

5.5 Testing Requirements, Compliance and Behavior Constituting a Refusal

Under FTA guidelines, all safety-sensitive employees will be subject to urine drug testing and breath alcohol testing. Any safety-sensitive employee who refuses to comply with a request for testing shall be immediately removed from duty and referred to a Substance Abuse Professional, as the action is a refusal to test and violation of FTA regulations. Refusal to test also constitutes a violation of Agency policy **and will be considered as having a positive test.** Any safety-sensitive employee who is suspected of providing false information in connection with a test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. **Verification of these actions will result in a refusal (see Section 5.2).**

A refusal for drug and alcohol testing includes the following circumstances: (Ref. 40.191, 40.261)

1. Failure to provide breath or urine specimen
2. Failure to provide sufficient volume of urine or breath sample without valid medical explanation.
3. Tampering, contaminating, adulterating or substituting specimen
4. Leaving the scene of an accident without just cause prior to submitting to a test
5. Failure to appear for any test within a reasonable time, after being directed to do so by FST, except a pre-employment test
6. Failure to remain at the testing site until the testing process is complete
7. Failure to cooperate with any part of the testing process
8. Refusal to sign the certification at Step 2 of the alcohol testing form
9. Failure to undergo a medical examination or evaluation as required by a MRO or DER
10. Failure to permit monitoring or observed testing
11. Failure to take a second test when required
12. Verification of a test that was adulterated or substituted.
13. Failure to follow the observer's instructions during an observed collection
14. Possessing or wearing a prosthetic or other device intended for, or that could be used to interfere with an accurate collection
15. Admission to the collector or MRO of adulteration or substitution of a specimen.

5.6 Collections Under Direct Observation

Given the increased availability of cheating products, the USDOT has adjusted the balance between safety and privacy by making direct observation collections mandatory in certain circumstances, and adding additional procedures in the observation and collection process.

Observed urine collections are authorized and required in the following circumstances:

1. The temperature of the original specimen is outside the accepted temperature range of 90F – 100F
2. The original specimen shows signs of tampering, such as an unusual odor, color or characteristic
3. A collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen
4. The MRO orders an observed collection following the report of certain atypical laboratory results of the original specimen without legitimate medical reason
5. The MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed.

The observer does not have to be a certified collector, but must be the same gender as the employee. The observer need only follow the directions of the certified collector. The observer shall request the employee to raise his or her upper garments, above the waist, just above the navel; lower clothing and underpants to mid-thigh and show the observer, by turning around that the employee does not have a prosthetic or other device designed to carry “clean” urine or urine substitute.

If the employee has such a device, the observer immediately notifies the collector, if the observer is not the collector; the collector stops the collection, and thoroughly documents the circumstances surrounding the event in the remarks section of the CCF. The collector notifies the DER. This is a refusal to test.

If the employee does not have such a device, the employee is permitted to return clothing to its proper position for the observed collection. The observer must watch the urine pass from the employee’s body into the collection container. If the observer is not the collector, the observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.

Failure of the employee to permit any part of the direct observation procedure is a refusal to test and violation of this policy.

5.7 Dilute (Positive and Negative) Specimens

Positive - If a drug test is reported by the MRO as a dilute positive, the test result will be treated as a verified positive test result.

Negative - If a drug test is reported as a dilute negative, FST, **under its own authority**, will retest the applicant, transferee, or current employee with no advance notice and without direct observation of the specimen collection, unless there is another basis for direct observation. If the MRO directs the DER to conduct a recollection under direct observation (creatinine concentration is equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL) the collection will take place immediately. The result of the second test becomes the test of record, even if the second test result is also dilute negative.

5.8 Notifying FST of Criminal Drug Conviction

Under the Drug Free Workplace Act, all employees are required to notify FST of any criminal drug statute conviction within five working days after such conviction. **Also, all employees are required to notify FST, within five days of any arrest or criminal conviction for Driving While intoxicated or driving under the influence.** Failure to comply with this notification requirement shall result in termination. FST will notify FTA of any employee criminal drug statute conviction within ten days of having been notified of the conviction.

5.9 Application of the Policy

FST is dedicated to assure fair and equitable application of its substance abuse policy.

Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action up to and including termination from employment.

5.10 Confidentiality

FST affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. Laboratory reports or test results shall not appear in an employee's general personnel file. Information of this nature will be contained in a separate confidential folder that will be kept under the control of the Transit Superintendent. The reports or test results may only be disclosed without an employee's consent when:

1. The information is compelled by law or by judicial or administrative process;
2. The information has been placed at issue in a formal dispute between the employee and employer.

The employee must sign a separate new release each time substance-testing information is released to subsequent employers or to any third party designated by the employee.

6.0 Procedures for Drug and Alcohol Testing

Urine drug testing and breath testing for alcohol shall be conducted as required by federal regulations. All applicants for safety-sensitive positions shall be subject to drug testing prior to employment or transfer into a safety-sensitive position. Safety sensitive employees shall be subject to drug and alcohol testing for reasonable suspicion, random selection, and following an accident as defined in this policy.

All testing shall be conducted in a manner to assure a high degree of accuracy and reliability using techniques, equipment, and laboratory facilities that have been approved by the U. S. Department of Human Services (DHS). All testing shall be conducted consistent with the procedures described in 49 CFR Part 40, as amended.

Drug Testing:

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. An initial drug screen will be conducted on each urine specimen. For 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 present are above the minimum thresholds established in 49 CFR Part 40, as amended. **In instances where there is reason to believe an employee is abusing a substance other than the five drugs listed above, apart from FTA regulations, FST reserves the right to test for additional drugs under their own authority using standard laboratory testing protocols.**

All drug testing laboratory results will be released to and reviewed only by a qualified Medical Review Officer (MRO) to verify and validate test results. The MRO will release findings only to the Designated Employer Representative (DER). The MRO shall be a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result. (Ref. 40.121) Before verifying that an employee has a positive test result, the MRO is responsible for contacting the employee, directly and confidentially, to determine whether the employee wishes to discuss the test or present a legitimate explanation for the positive result. An MRO staff person may make the initial contact with the employee. If, after reasonable efforts, the MRO is unable to reach the employee directly within 24 hours, the MRO may contact FST's DER for assistance in contacting the employee. The DER will take maximum precautions to preserve the employee's confidentiality.

If, after making all diligent and reasonable efforts, neither the MRO nor the DER is able to contact the employee within ten (10) days of the date the MRO received the confirmed positive test result from the laboratory, the MRO may verify the test result as positive. The MRO may also verify the test result as positive if the employee does not contact the MRO within seventy-two (72) hours of being contacted by the DER, or the employee expressly declines the opportunity to discuss the test result. The MRO may reopen the verification of a positive test if the employee presents documentation of serious injury or illness or other circumstances that unavoidably prevented the employee from being contacted within the designated time period, and if the employee then presents a legitimate (in the MRO's opinion) explanation for the positive test, the MRO shall declare the test to be negative.

The MRO will review and interpret an individual's medical history (including any medical records and biomedical information provided), afford the individual an opportunity to discuss the test result, and then decide whether there is a legitimate medical explanation for the result, including legally prescribed medication.

The MRO can declare a test invalid or canceled based on the regulations specified in 49 CFR Part 40. A canceled/invalid test is considered neither a positive nor a negative test. An example of a canceled test is a urine sample being rejected by the laboratory. The MRO shall cancel the test and report the cancellation and the reasons for it to the employer and employee. Cancellations due to failure to reconfirm a split specimen will also be reported to the USDOT Office of Drug and Alcohol Policy and Compliance.

When the Medical Review Officer (MRO) reports a drug test result with a safety risk or concern due to medication(s) or medical conditions disclosed by the employee to the MRO, the employee will be removed from safety-sensitive duty until the employee undergoes a fitness-for-duty examination by a physician designated by the Agency and is cleared by that physician to resume performance of safety-sensitive duties while continuing the use of prescribed medications. The examining physician must provide a written report of his/her findings to the Agency.

Specimen validity testing will be conducted on all urine specimens provided for testing under USDOT authority. Specimen validity testing is the evaluation of a specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to establish whether

certain adulterants or foreign substances were added to the urine. If the urine was intentionally diluted or if the specimen was substituted.

Alcohol Testing:

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). All breath alcohol test results will be reported only by a BAT to the Designated Employer Representative (DER). 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.

A safety-sensitive employee who has a confirmed alcohol concentration of .02 or greater but less than 0.04 will be removed from his/her position for eight hours unless a retest results in a concentration measure of less than 0.02. The inability to perform a safety-sensitive duty due to an alcohol test result equal to or greater than 0.02 but less than 0.04, shall be considered an unexcused absence **and subject to FST's disciplinary procedures.**

An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy and in violation of the requirements set forth in 49 CFR Part 655 for safety-sensitive employees.

6.1 Compensation for Substance Abuse Testing

Current FST employees will be considered on-duty for the purpose of compensation while taking a drug or alcohol test.

Drug test costs will be paid by FST for employees and applicants, except for split specimen testing as described in Section 6.2.

6.2 Split Specimen Testing

All safety-sensitive employees who question the results of a required drug test under this policy may request that an additional test be conducted. This test must be conducted at a different DHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the original sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer (MRO) within 72 hours of notice of the original sample's verified test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee. Employees receiving an invalid test result do not have access to a split specimen test.

The employee pays all costs for such testing unless the result of the split sample testing fails to reconfirm the result of the original test. **Under FST authority, not the FTA's, the expense for**

the split specimen testing shall be borne by the employee and will be collected via a one-time payroll deduction after the employer receives the invoice for the split specimen result.

6.3 Pre-Employment Testing

All safety-sensitive position applicants shall undergo urine drug testing following the offer of employment or transfer into a safety-sensitive position. Receipt by the FST of a negative drug test result is required prior to allowing the employee to perform safety sensitive duties. Pre-employment drug tests will be administered after the applicant has signed both the Request for Pre-Employment Positive Tests or Refusals to Test form and the Release of Information from Past Employers form. All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655, as amended. Under FST's "zero tolerance" policy, failure of a pre-employment drug test will disqualify the applicant from further employment opportunities with FST.

Any applicant for a safety-sensitive position who has failed or refused a pre-employment test for another agency under DOT authority must show evidence of treatment. Should a safety-sensitive new hire be unavailable to perform job duties for a period of ninety (90) days or more following date of hire, the employee will be required to submit to a pre-employment drug screen prior to returning to beginning safety-sensitive duties. Employees who do not perform safety-sensitive duties for ninety (90) days, and who have been removed from the testing pool, must pass a pre-employment drug test prior to resuming their safety-sensitive duties. Employees transferring into a safety-sensitive position will be required to pass a pre-employment drug test prior to performing the duties.

6.4 Reasonable Suspicion Testing

A drug and/or alcohol test will be conducted when FST has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing shall be made on the basis of specific, contemporaneous, and articulable observations concerning appearance, behavior, speech, or body odors of the employee consistent with the short-term effects of prohibited drug abuse or alcohol misuse.

Reasonable suspicion alcohol testing can be conducted just before, during, or just after an employee performs safety-sensitive functions.

Reasonable suspicion referrals must be made by at least one supervisor or other authorized official who is trained on the facts, circumstances, physical evidence, physical signs and symptoms or patterns of performance and/or behaviors associated with drug use and/or alcohol misuse. FST's "Reasonable Suspicion" form shall be completed by the official making the determination and a copy given to the employee.

6.5 Post-Accident Testing

All safety-sensitive employees shall be required to undergo a breath alcohol test and a urine drug

test if they are involved in an accident, as defined by FTA regulations, associated with the operation of a revenue service vehicle (regardless of whether or not the vehicle is in revenue service) which results in one or more of the following:

1. A human fatality, which always requires a test
2. Injuries requiring immediate transportation to a medical treatment facility, unless employee can be completely discounted as a contributing factor to the accident
3. One or more vehicles incur disabling damage that requires towing from the site, unless employee can be completely discounted as a contributing factor to the accident

Safety-sensitive employees that are on duty in the vehicle and any safety-sensitive employee whose performance could have contributed to the accident will be tested. Accident does not necessarily mean collision. If an individual falls on a vehicle and needs to be transported to a hospital, then an accident has occurred and a post-accident test is required unless the safety-sensitive employee can be completely discounted as a contributing factor to the accident. This definition only applies to non-fatal accidents. Accidents with fatalities will always result in safety-sensitive employees being tested as outlined below.

Following an FTA accident, the safety-sensitive employee will be required to submit to an alcohol and drug test. (Post-Accident testing is stayed while an employee assists in resolution of the accident or receives medical attention following the accident.) However, employees must remain readily available during the time periods stated below. Post-accident testing will be done as soon as practicable, but no later than eight (8) hours after the accident for alcohol testing and (32) thirty-two hours after the accident for drug testing. Any alcohol test conducted after two (2) hours following an accident must be documented by a supervisor or other designated FST official. An employee involved in an accident must not use alcohol until after the employee undergoes alcohol testing or eight (8) hours have elapsed, whichever occurs first. Attempts to conduct a post-accident alcohol test after eight (8) hours or a drug test after thirty two (32) hours must cease and documentation must be updated explaining the reason.

Nothing in FST's policy 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. However, any employee who, under the above circumstance, fails to remain available for alcohol and drug testing (including notifying FST of his/her location), or who otherwise leaves the scene of the accident without appropriate authorization prior to alcohol and drug testing, will be considered to have refused the test.

49 CFR Part 40 allows transportation agencies to acquire post-accident test results obtained by Federal, State, or local law enforcement personnel in instances where FST is unable to conduct FTA-regulated post-accident testing. The results of a blood, urine or breath test for the use of prohibited drugs and alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test shall be considered to meet the FTA requirements provided such tests conform to the applicable Federal, State, or local testing requirements and that the test results are obtained by FST.

6.6 Random Testing

Employees in safety-sensitive positions will be subjected to random, unannounced testing. The selection of safety-sensitive employees for random drug and alcohol testing shall be made using a scientifically-valid method ensuring each covered employee will have an equal chance of being selected each time selections are made. The random tests will be unannounced and spread throughout the year. The FTA determines the testing percentages annually.

A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

All safety-sensitive employees shall be placed in a common selection random pool. Each employee in this pool will be matched with a unique random selection number. Through the use of a computer-based random number generation program, the required number of persons will be selected for each testing cycle throughout the year. All employees in the pool will remain in the random selection pool at all times throughout the year regardless of whether or not they have been previously selected. Employees who are not available for testing during the testing period will be removed from the random pool prior to the random selection drawing. FST's Drug and Alcohol Program Manager or Designated Employer Representative (DER) will access the names selected from the random pool.

Notification will be made to those who must submit a specimen or complete an alcohol breath test. The employee shall be immediately escorted or directed to the collection site for the test. As soon as the urine specimen is collected or breath test is completed, the employee will be required to return to work as scheduled, unless the breath test is 0.02 or greater.

6.7 Return-To-Duty Testing

There shall be no Return-to-Duty testing as defined by FTA regulations for safety-sensitive employees who has confirmed positive results for drug or alcohol tests. Employees who test positive for drugs or alcohol will be terminated.

6.8 Follow-Up Testing

There shall be no follow-up testing as defined by FTA regulations for safety-sensitive employees who have confirmed positive results for drug or alcohol tests. FST has a "zero-tolerance" policy, and employees who test positive for drugs or alcohol will be terminated.

7.0 Substance Abuse Professional (SAP) Referral and Evaluation

Employees or applicants who test positive for substance abuse or alcohol misuse, as set forth in 49 CFR Part 40, as amended, shall be referred to a Substance Abuse Professional (SAP). A SAP is a licensed or certified physician, psychologist, social worker, employee assistance

professional, state licenses or certified marriage and family therapists, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol or drug-related disorders. The SAP will make an evaluation to determine what assistance is needed to address prohibited drug abuse and/or alcohol misuse problems.

8.0 Positive Test Consequences

FST maintains a zero tolerance policy for the following types of tests: Pre-employment, post-accident, random, and reasonable suspicion. Under FST authority, any employee who tests positive on a drug or alcohol test will be terminated.

9.0 Designated Contacts for Additional Information

A complete copy of 49 CFR Part 40, as amended, and 49 CFR part 655, as amended, shall be available for review in the Drug and Alcohol Program Manager's office. Questions regarding any aspect of the FST's Substance Abuse Testing Program, should be addressed to the following FST representatives:

Drug and Alcohol Program Manager (DAPM) and Designated Employer Representative (DER)

Name: Ken Savage
Title: Transit Director
Address: 6821 Jenny Lind
Fort Smith, AR
Phone Number: 479-784-2320
FAX Number: 479-494-7347

Alternate DAPM and DER

Name: Lori Carr
Title: Transit Superintendent
Address: 6821 Jenny Lind
Fort Smith, AR
Telephone Number: 479-784-2319
FAX Number: 479-494-7347

Medical Review Officers:

Name: Dr. Paul Teynor M.D.
MRO
Address: EDPM 505 20th St. North Suite 1200
Birmingham, AL 35203
Telephone Number: 1-800-461-0388

Substance Abuse Professionals:

Name: Arkansas Employee Assistance Program (AEAP)
Address: 31 E. Center Street
Fayetteville, AR
(and other affiliate locations in Arkansas)
Telephone Number: 800-542-6021

Name: Harbor House
Address: 615 North 9th Street
Fort Smith, AR
Telephone Number: 479-785-4083

Name: Gateway House
Address: 3900 Armour
Fort Smith, AR
Telephone Number: 479-783-8849

DOT Certified Substance Abuse Professionals
(see attached)

Collection Site(s):

Name: Cooper Clinic Occupational Medicine
Address: 4300 Regions Park Rd
Fort Smith, AR
Telephone Number: 479-484-4665
Fax Number: 479-484-4715

On-Site Testers:

A-Test
National Med Test

10.0 Fort Smith Transit's Safety-Sensitive Positions

Driver
Driver Leadperson
Dispatcher
Heavy Equipment Mechanic
Maintenance Person

DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE



Recently, some states passed initiatives to permit use of marijuana for so-called “recreational” purposes.

We have had several inquiries about whether these state initiatives will have an impact upon the Department of Transportation’s longstanding regulation about the use of marijuana by safety-sensitive transportation employees – pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency response personnel, among others.

We want to make it perfectly clear that the state initiatives will have no bearing on the Department of Transportation’s regulated drug testing program. The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs, including marijuana, for any reason.

Therefore, Medical Review Officers (MROs) will not verify a drug test as negative based upon learning that the employee used “recreational marijuana” when states have passed “recreational marijuana” initiatives.

We also firmly reiterate that an MRO will not verify a drug test negative based upon information that a physician recommended that the employee use “medical marijuana” when states have passed “medical marijuana” initiatives.

It is important to note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.

We want to assure the traveling public that our transportation system is the safest it can possibly be.

Jim L. Swart
Director
Office of the Secretary of Transportation
Office of Drug and Alcohol Policy and Compliance
Department of Transportation
December 3, 2012