



# West Virginia Department of Transportation Policy:

## Substance Abuse

*Issued by the Secretary of Transportation*

Policy No: DOT 3.15

Issue Date: 02/15/2000

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### 1.0 PURPOSE

The WVDOT is committed to a safe and healthy work environment. Substance abuse is a significant health problem. Such abuse can adversely affect an employee's job performance, endanger other employees or public citizens and damage public or private property. Accordingly, the primary goals of the WVDOT policies on this subject are to ensure that the workplace is safe, healthful and productive for employees and citizens.

To deter substance use, WVDOT maintains a Drug and Alcohol Testing Program for all safety-sensitive employees. In addition to testing all employees who hold a Commercial Drivers' License, as required by the Federal Motor Carrier Safety Administration's (FMCSA) regulations, our Program also provides testing requirements for most employees who regularly work alongside of our equipment.

WVDOT understands the seriousness of balancing issues that impact our work environment, such as prescription medicine, everchanging drug laws, substance abuse, and legal use of marijuana, together with the need to provide safe, productive work conditions.

Whereas the majority of the Agency's employees are CDL holders, the Agency remains determined to direct and operate a properly administered drug & alcohol testing program.

In the event any of this Procedure conflicts with Federal guidelines or if any of the Federal guidelines are omitted, Federal rules will prevail.

### 2.0 SCOPE

This policy follows United States Department of Transportation (USDOT) guidelines and applies to all WVDOT employees.

### 3.0 DRUG-FREE WORKPLACE POLICY

It is the policy of the West Virginia Department of Transportation to ensure that its workplaces are free of illegal drugs and controlled substances by prohibiting the use, possession, purchase, distribution, sale or presence in the body system without medical authorization, of illegal or controlled substances. This is applicable while employees are engaged in any work-related activity, which includes performance of Agency business during regularly scheduled work days, meal breaks and/or social occasions having a connection or dispensation of alcohol and/or a controlled substance; the reporting to work under the influence of a controlled substance or alcohol; the presence of a non-medically prescribed controlled substance or alcohol in the body system or possession of drug paraphernalia, are all prohibited in the work place.

3.1 As a condition of employment all employees will:

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- abide by the terms of this policy,
  - notify his or her supervisor of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction, and
  - sign the "Employee Drug Awareness Certification Form".  
<http://personnel.wv.gov/SiteCollectionDocuments/Policies/DrugFree.pdf>.
- 3.2 The Department will continuously work to maintain a drug-free workplace and regardless of work site location, all employees will be covered by the drug-free awareness program.
- 3.3 This policy is consistent with and is to be read in conjunction with the West Virginia Division of Personnel Drug-Free Workplace Policy.
- 3.4 Human Resources Division may be contacted for information concerning substance abuse counseling, rehabilitation, employee assistance programs and the penalties for drug abuse violations in the workplace.
- A. Organization managers are responsible for advising all employees that as a condition of employment, they must abide by the terms of the DOT Drug Free Workplace Policy and that violations may result in disciplinary action up to and including dismissal and/or referral to an approved rehabilitation program. All new employees will be provided a copy of the policy and required to sign the "Employee Drug Awareness Certification Form." The original is sent to Human Resources Division with a copy maintained in the organization's files.
- B. Thereafter, organization managers are responsible for immediately notifying Human Resources Division of any criminal drug statute conviction of an employee for a violation occurring in the workplace upon receiving notification of conviction. Additionally, organization managers are required to take appropriate personnel action against the convicted employee within 30 days of notification of the conviction. Consultation with Human Resources Division **is required** prior to taking personnel action.
- C. Finally, Human Resources Division will maintain the DOT records of the "Employee Drug Awareness Certification Forms," criminal drug statute conviction notifications and resulting personnel action.

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### 4.0 DRUG AND ALCOHOL TESTING PROGRAM

#### 4.1 Participants

Human Resources Division will place each new employee in one of four categories, based upon the job function, within the Personnel System on REMIS. Following, are the categories and their definitions.

- **FR – Federally Required.** Drug/alcohol testing is required by the Federal DOT.
  - **AR – Agency Required.** Drug/alcohol testing is required by the agency.
  - **NR – Not Required.** Drug/alcohol testing is not required.
  - **PR – Pending Requirements.** Drug/alcohol testing is pending for an undetermined period due to attending counseling, on leave of absence, or otherwise temporarily removed from the testing pool.
- A. All employees working in a safety sensitive function (as defined by the DOT Drug and Alcohol Testing Policy) or those employees classified within the Transportation Worker (TW) classification series must adhere to the program and participation is a condition of employment that places these employees in a “covered position” under this program.
- B. A safety sensitive function has been defined by the DOT Drug and Alcohol Testing Policy as “Commercial Motor Vehicle (CMV) operators and mechanics who service and maintain CMV’s but do not possess the Commercial Driver’s License (CDL)”. The Federal Railroad Administration has declared that any employee who is subject to the Hours of Service Act and/or performs duties as a Maintenance-of-Way worker must be tested for illegal drugs and/or alcohol in the workplace.

#### 4.2 Confidentiality

- A. Drug and alcohol testing records will be maintained under rules of confidentiality established in the federal regulations. Disclosure of individual records can be made with a written request from the employee to the Human Resources Division. Test results will be revealed only to the Human Resources Director (or a designee(s)) as individuals authorized by the USDOT/FMCSA rules to receive such information. Results will be shared with supervisory personnel on a need to know basis.
- B. No permanent record will be kept for any applicant who decides not to

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accept employment because of the testing requirement.

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## **5.0 CONSEQUENCES FOR PROHIBITED CONDUCT**

### **5.1 Possession Within the Workplace:**

Penalties for possessing unlawful drugs or alcohol in the workplace range from reprimand to dismissal. Failure to report a conviction for a violation arising in the workplace by employees or supervisors will be grounds for disciplinary action. The severity of discipline depends on the type of offense in accordance with DOH Policy 3.6 Disciplinary Action of Highways Administrative Operating Procedures. Use of a prohibited drug or alcohol in the workplace by a safety-sensitive employee will be reported within three (3) days to the FMCSA Drug and Alcohol Clearinghouse.

### **5.2 Refusal to Participate:**

Conduct constituting a refusal to test, besides blatant unwillingness to submit to testing procedures, is:

- A. tampering with or attempting to adulterate the specimen or collection procedure, or
- B. altering or attempting to discard a Custody Control Form or Alcohol Testing Form, or
- C. failure to appear to the collection site after being directed to do so, or
- D. reporting to a testing site and then leaving the premises before completing the testing process, or
- E. leaving the scene of a vehicle accident as defined by the policy without a valid reason before testing has been conducted, or
- F. arguing proper, established procedures or failure to cooperate with any part of the testing process, including completion of paperwork, or
- G. failure to provide adequate breath/urine samples without a valid medical reason issued by an acceptable physician to WVDOT, or
- H. possession of any device, substance, or container that could be used to adulterate or substitute the specimen during the testing process.

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### 6.0 EMPLOYEE ASSISTANCE

#### 6.1 Training

Information is provided by the West Virginia Division of Personnel and the Agency concerning substance abuse in the workplace and the penalties incurred.

All supervisory employees that direct those employees who possess a Commercial Drivers' License must complete the Agency's on-line training course, *Reasonable Suspicion: Helping Managers Fight Workplace Substance Abuse*. Other supervisory, safety, and investigative employees will be required to complete this course, as their positions are often onsite when drug testing issues arise.

#### 6.2 Voluntary Referral

Employees covered by this policy who, of their own accord and prior to being informed they are to submit to testing, voluntarily seek the aid of a Substance Abuse Professional (SAP), will be allowed a leave status consistent with the WV Division of Personnel's and WVDOT's Administrative Rules up to forty-five days (45) to meet initial rehabilitation demands established by a SAP. No disciplinary action will be initiated as a result of Voluntary Referral. An employee may return to duty at the recommendation of the SAP, completion of a return-to duty drug test with a negative result and an alcohol test result under 0.02.

Employees who perform safety-sensitive duties will be removed from all safety-sensitive duties during the rehabilitation period. These duties are defined in the drug and alcohol testing policies for WVDOH/Parkways Authority and WV State Rail Authority, Sections 3.1 and 3.0 respectively. Once the employee fully completes all recommended counseling and Human Resources Division has received a written report from the SAP, the employee must provide a urine sample with a negative test result and a breath sample with an alcohol level below .02 before returning to safety-sensitive duties. An employee may be subject to follow-up testing at the discretion of the SAP. In order to invoke this benefit, the employee must **not** report to a supervisor during a reasonable suspicion investigation involving said employee or while impaired during a work shift and otherwise in compliance with this policy.

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### 7.0 VIOLATIONS

Violation of this Policy will lead to appropriate personnel actions. Disciplinary action may range from a reprimand to dismissal and employees may be required to participate in a drug rehabilitation or assistance program.

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### 8.0 REFERENCES

- 8.1 Procedures for Transportation Workplace Drug and Alcohol Testing Programs - Fully describes the procedures to administer a USDOT compliant drug and alcohol testing program for safety-sensitive employees.
- 8.2 Drug-Free Workplace Act of 1988 – Mandates that the workplace must be totally free of the illegal use of drugs and alcohol.
- 8.3 Omnibus Transportation Employee Testing Act of 1991 – Requires certain employees in safety-sensitive positions, defined by the USDOT, be tested for the presence of illegal drugs and alcohol in the workplace.
- 8.4 Office of Drug & Alcohol Policy and Compliance (ODAPC) – [www.transportation.gov/odapc](http://www.transportation.gov/odapc).
- 8.5 FMCSA Drug & Alcohol Clearinghouse Homepage - [www.clearinghouse.fmcsa.dot.gov](http://www.clearinghouse.fmcsa.dot.gov).
- 8.6 WV Division of Personnel Rules, Administrative Leave (Substance Abuse), § 143-1-14. *Attendance and Leave*.
- 8.7 WV Division of Personnel, WV Drug & Alcohol-Free Workplace Policy- DOP-P2. <https://personnel.wv.gov/SiteCollectionDocuments/Policies/DrugFree.pdf>.
- 8.8 West Virginia Safer Workplaces Act 2017

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### 9.0 CHANGE LOG

October 1, 2019 –

- Changed format per Policy and Procedure work group.
- Revised policy to include Human Resources Division's mandated use of the FMCSA Drug and Alcohol Clearinghouse.

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### 10.0 OFFICIAL MEMORANDUMS AFFECTING CHANGES IN WVDOT DRUG AND ALCOHOL TESTING POLICY

Any official memorandums that take effect after October 1, 2019 and affect this policy will be inserted here.

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### **Division of Highways Parkways Authority**

## **Drug and Alcohol Testing Policy**

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### **1.0 PURPOSE**

West Virginia Department of Transportation, West Virginia Division of Highways, and West Virginia Parkways Authority (hereinafter Agency) understands the immeasurable contribution to safety that a driven drug and alcohol testing program can make. Maintaining a focused and consistent program is a meaningful step towards safer worksites and roadways.

Whereas the majority of the Agency's employees are Commercial Driver License (CDL) holders, the Agency remains determined to direct and operate a properly administered drug & alcohol testing program.

Federal regulations require drug and alcohol testing of employees whose positions require them to possess a CDL and who operate or repair Commercial Motor Vehicles (CMVs). This Agency's drug and alcohol testing program is regulated and reports to the Federal Motor Carrier Safety Administration (FMCSA) and the Federal Rail Authority (FRA). Those same regulations provide for drug/alcohol testing of such employees in the following situations: pre-employment, random, reasonable suspicion, post-accident, and return-to-duty/follow-ups. Current Federal regulations can be found in Title 49, Code of Federal Regulations, part 40, and part 382.

This Policy also includes a testing pool for select employees who do not possess a CDL. Any employee whose position is within the job classification series of Transportation Workers (TWs) is covered by this Policy. All Transportation Workers (TWs) use a variety of tools and power equipment, and usually are performing duties in close proximity to maintenance equipment, traffic, and varying surroundings.

All TW duties are Covered Duties, but only those duties of directly operating or repairing a CMV are defined as Safety Sensitive. This is, in part, to not confuse or alter the Federal term "safety sensitive" which refers to regulated Transportation, Transit, Aviation, Railroad, and Coast Guard employees. "Covered employee" may also be used when indicating an employee who is covered by the provisions within this Policy.

Human Resources Division (or district designee) is tasked with maintaining the highest level of integrity with testing information and striving to approach each testing situation with alertness and seriousness. The nature of most drug testing programs is it's element of surprise. That surprise, particularly with random testing, is sometimes a program's strongest deterrent.

This Policy demands Human Resources be informed of all current Federal rules, State statutes, or Court decisions that may affect the content and procedures. Regarding Parkways Authority, any reference to a Division Director or District Engineer or Human Resources Division in this

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Policy shall imply the Director of Operations and Training or his or her designee.

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## 2.0 DEFINITIONS

- 2.1 **Alcohol** – The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
- 2.2 **Alcohol Concentration** – The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test using Evidential Breath Testing (EBT) devices.
- 2.3 **Alcohol Use** – The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- 2.4 **Breath Alcohol Technician (BAT)** – An individual who instructs and assists individuals in the alcohol testing process and is certified to operate an EBT device.
- 2.5 **Chain of Custody** – Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.
- 2.6 **Collection Site** – A place designated by the Agency where people present themselves for the purpose of providing a breath and/or urine sample for analysis.
- 2.7 **Collection Site Supervisor** – A Human Resources designee who, upon their arrival to a testing site, notifies the location supervisor of testing, shares the selected employees' names, and directs the testing process.
- 2.8 **Commercial Driver's License (CDL)** – A driver's license required to operate large, heavy, or placarded hazardous material vehicles in commerce.
- 2.9 **Commercial Motor Vehicle (CMV)** – Any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating, or gross combination weight of 4,536 kg (10, 000 pounds) or more, whichever is greater.
- 2.10 **Confirmation Test – Drug Test:** A second analytical procedure to identify the specific drug(s) that is independent of the initial screening test and that uses a different technique and chemical principle from that of the screening. The Confirmation Test uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry is the only authorized confirmation method

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for cocaine, marijuana, opioids, amphetamines, and phencyclidine.

**Alcohol Test:** A required second test, following an initial screening test with a result of 0.02 or greater, that provides quantitative data of breath alcohol concentration.

- 2.11 **Covered Employee** – Covered duty means the employee is identified as being classified within the TW's classification series or the employee's position performs safety-sensitive functions including those functions on an intermittent basis.
- 2.12 **Evidential Breath Testing Device (EBT)** – A breath alcohol testing device that is approved by the USDOT's Office of Drug and Alcohol Testing Policies and Compliance for the evidential testing of breath and placed on USDOT's "Conforming Products List" at this website:  
<https://www.transportation.gov/odapc/approved-alcohol-screening-devices>.
- 2.13 **Federal Motor Carrier Safety Administration (FMCSA)** – An agency in the USDOT that regulates the trucking industry in the United States. The primary mission of the FMCSA is to reduce crashes, injuries and fatalities involving large trucks and buses.
- 2.14 **FMCSA Drug and Alcohol Clearinghouse** – Secure on-line database that the Agency is regulated to share and collect testing violation data and related information.
- 2.15 **Medical Review Officer (MRO)** – A licensed physician responsible for receiving laboratory results generated by the Agency's 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.
- 2.16 **Performing a Safety-Sensitive Function** – The employee is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform covered duty.
- 2.17 **Screening Test (or Initial Test)** – In drug testing, an immunoassay screen to eliminate negative urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
- 2.18 **Shipping Container** – A container capable of being secured with a tamper-evident seal that is used for the transfer of one or more urine specimen bottle(s) and associated documentation from the collection site to the laboratory.

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- 2.19 **Specimen Bottle** – The bottle that, after being labeled and sealed in accordance with Title 49, code of Federal Regulations, Part 40 (Procedures for *Transportation Workplace Drug and Alcohol Testing Programs*), is used to transmit a urine sample to the laboratory.
- 2.20 **Substance Abuse Professional (SAP)** – A licensed physician, or a licensed or certified psychologist, social worker, employer assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (CRC), or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) with knowledge of, and clinical experience in, the diagnosis and treatment of alcohol and controlled substances-related disorders.

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## 3.0 COVERED EMPLOYEES

In addition to including all employees involved in job duties defined as safety-sensitive by the USDOT and FMCSA, any employee whose job classification is within the TW classification series will be covered by this Policy as well. Again, all TWs, even those who do not possess a CDL or maintain/repair CMVs, are covered employees.

- 3.1 For regulated employees, covered duties include those duties (safety-sensitive) that relate to the operation and/or repair of a cmv as defined in 49 CFR part 382.107 and the employee is required to possess a CDL as a condition of employment. These employees are being tested under the authority of the FMCSA as established in 19 CFR Part 40 and Part 382. A CMV, as defined by 49 CFR part 382.107, means a motor vehicle or combination of motor vehicles if the motor vehicle:
- has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle rating of more than 10,000 pounds; or,
  - has a gross vehicle weight rating of 26,001 or more pounds; or,
  - is designed to transport sixteen (16) or more passengers, including the driver; or
  - is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F.).
- 3.2 “Covered Duties” also applies to all other TWs whose duties do not include being

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dispatched to operate CMV equipment, but work either to service the vehicles, frequently work in cooperation with the vehicle operators, or perform within crews. All TW employees whether they possess a CDL or not are drug and alcohol tested under the Authority of the Agency and the 2017 West Virginia Safer Workplaces Act.

Covered Employees under this policy are those who:

- are required to possess a CDL to operate a CMV as described above (Equipment Operators); and
- are subject, at any given time, to be dispatched to operate a CMV as described above and all employees who are classified in the Transportation Worker series and other employees who perform safety-sensitive duties intermittently.

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## **4.0 PARTICIPATION**

Participation by all covered employees is a condition of employment. Refusal to participate in the testing programs is considered as refusing to test and will result in discipline, up to dismissal. Employees are to comply with all instructions received from the BAT/urine sample collector. Failure to cooperate with the BAT/urine sample collector will result in discipline as well. See previous entry of WVDOT Substance Abuse Policy, Section 5.2, Refusal to Participate. A supervisory presence, with the authority to remove the employee from duty, will be maintained at the collection site in case an employee engages in prohibited behavior associated with the drug and alcohol testing rules.

- 4.1 Upon being identified as a Covered Employee, either at hiring or upon transferring/promoting to a TW position, the employee will be required to complete forms explaining details of the policy and to document their acknowledgement. Those forms are listed below:
  - A. PE-1 Pre-employment Drug Testing Checklist
  - B. PE-2 Drug/Alcohol Testing Notification & Consent
  - C. PE-3 Previous Employer Authorization Consent
  - D. PE-6 Drug & Alcohol Testing Policy Receipt
- 4.2 These two forms are used when an employee's participation with the testing pool is interrupted or ceases:
  - A. PE-4 Non-Participation in Drug & Alcohol Testing Programs

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#### B. PE-5 Entering/Returning from Leave Checklist

All the above forms will be sent to Human Resources to be processed and/or filed by the Program Coordinator and can be found at

<https://westvirginiaot.sharepoint.com/sites/dot/highways/hr/Pages/DrugAndAlcohol.aspx>.

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## 5.0 REQUIRED HOURS OF COMPLIANCE/PROHIBITED BEHAVIOR

Employees meeting the definition established in 3.0 COVERED EMPLOYEES, are required to follow the prohibited alcohol regulations during any time while at work. Alcohol use is prohibited:

- while performing their duties as defined in COVERED EMPLOYEES
- within four (4) hours prior to performing duties as defined in COVERED EMPLOYEES;
- up to eight (8) hours following an accident, or until post-accident testing has occurred; and
- no employee may report for duty, or remain on duty, performing duties defined in COVERED EMPLOYEES, under the influence of or impaired by alcohol, or having a breath alcohol concentration of 0.02 or greater.

Use and ingestion of prohibited drugs is not allowed at any time, whether at work or not.

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## 6.0 REQUIRED TESTS – DRUGS AND ALCOHOL

Regulations require the Agency to drug screen COVERED EMPLOYEES for the presence of:

- Marijuana or Tetrahydrocannabinol (THC)
- Cocaine
- Amphetamines
- Opioids
- Phencyclidine (PCP)

The five different situations that require mandatory participation for drug/alcohol testing by all COVERED EMPLOYEES are as follows.

6.1 **Pre-Employment:** All candidates approved for employment and identified as Covered Employees are required to produce a negative drug screen prior to performing safety-sensitive duties. There is no exception to this rule.

- A. Should the Human Resources Division's inquiries with an applicant's past employer or the FMCSA Clearinghouse produce information showing violations of USDOT regulations, specific documents may be requested

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for review from the the applicant, his/her past employers, and his/her SAP. An applicant's failure to produce requested documentation will disqualify the applicant for employment.

- B. Once a candidate has been approved for employment, the Human Resources Division will contact the potential employee providing details of the drug testing procedure. The candidate will be informed to report for duty once a negative drug test result has been provided. Any non-negative result will disqualify the applicant for employment.
- C. When an employee transfers into a Covered Duty position from a job classification that is not covered by this Policy, a pre-employment drug test is required. Transferring/Promoting employees will be allowed to report for their new duties upon issuance of a negative drug test. Non-negative test results require disciplinary action as defined by this policy.
- D. On occasion an employee is directed to start employment prior to his/her drug test result being reported. In these cases, an employee may be assigned to core duties of the position, but must, consistently, be prohibited from performing safety-sensitive duties until a negative test result is received. If such an employee's test result is non-negative, he/she will face disciplinary action as defined by this policy. No permanent record is to be kept for any applicant who decides to withdraw his/her application because of the testing requirement. Upon an employee's return to service after a leave of absence over thirty (30) calendar days, or if any other situation might separate the employee from the testing pool for that period, the employee will be required to report for a "new" pre-employment or return to service drug test.

- 6.2 **Random:** Random testing provisions require covered employees be subject to drug testing at any time while at work and alcohol testing at any time an employee is performing or subject to perform duties as defined in 3.0 COVERED EMPLOYEES.

Names will be selected for random testing using computer technology and methodology established by the USDOT/FMCSA in 49 CFR part 40 and part 382. The method of selection requires each employee have an equal chance at being selected for any given testing period. Testing in one testing period does not preclude the employee from being selected again in another testing period. USDOT Rules require the Agency to maintain FMCSA regulated employees in a separate pool from other Modes of USDOT or non-regulated employees. Therefore, the Agency or its designee will maintain two testing pools.

- A. The regulated employees are contained in a testing pool with a minimum testing rate that is set by the FMCSA's Administrator. Currently, those

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rates require the Agency to test at least 25% of the total number in the testing pool for the presence of illegal drugs and 10% for prohibited alcohol concentration in a calendar year. Additionally, the FMCSA's Administrator announces the annual minimum rate of testing for transportation industry employers near the beginning of each calendar year. Nothing in this policy is to imply that the Agency cannot test Covered Employees at a rate higher than the minimum rate established by the USDOT.

- B. Non-Regulated employees (TWs without a CDL) are selected for random testing from a separate testing pool. The employees in this pool will be managed using the same software, collection processes, random testing rates, and disciplinary actions.
- C. Specimens from both testing pools are subject to split-specimen testing, and final reporting through a MRO.

**6.3 Reasonable Suspicion:** Federal Regulations require the Agency train supervisors to recognize the signs and symptoms of alcohol misuse and drug abuse in order to require employees to undergo reasonable suspicion testing when it can be reasonably suspected the Covered Employee has violated the alcohol or controlled substance prohibitions. Appropriate supervisory training is provided on the Agency's intranet, through an online curriculum titled, "Reasonable Suspicion: Helping Managers Fight Workplace Substance Abuse." As it applies to this section, "Supervisor" may include, but not limited to: any supervisor of covered employees, selected staff of Legal Division/Investigations, and District Safety Officers. Supervisory Training will be made available through the Human Resources Division and may also be presented in group training sessions in some cases. Tests can only be ordered based upon contemporaneous (current), articulable (easily explainable) observations concerning the appearance, behavior, speech, or body odors of a Covered Employee while at work.

- A. No Covered Employee under this policy shall report for duty under the influence of, or impaired by, alcohol, as shown in the behavioral, speech, and performance indicators of alcohol misuse. Nor shall the Agency allow a Covered Employee to perform or continue to perform their covered duties until an alcohol test is administered and the employee's alcohol concentration measures less than 0.02. Illegal use of drugs is always prohibited under this policy.
- B. Supervisors are required to have a concurring opinion from another trained supervisor documenting the employee's conduct and behavior in all cases when practical. If a second, confirming supervisor is available,

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one supervisor can request testing if necessary. Reasonable suspicion testing under this rule is authorized only if the required observations are made during, just preceding, or just after a period of the workday. For example, if an employee was impaired after work hours yesterday, the Agency cannot drug test him/her the next day unless that person is impaired at work. Immediate supervisors are to contact their Division Director/District Engineer (or a designee) in order to discuss the circumstances as they relate to the employee's on-duty behavior. The District Engineer/Division Director or a designee will make the determination to initiate testing and will inform the Human Resources Division as soon as practical.

- C. A written record, Form AH-505, Reasonable Suspicion Documentation, is to be maintained and forwarded to the Human Resources Division in all drug and/or alcohol reasonable suspicion testing situations. The form shall be an accurate account of those observations of those observations leading to a controlled substance test and signed by the supervisor who made the observations. Attachments should be included if space is not sufficient and the completed form is to be submitted to the Human Resources Division within twenty-four (24) hours of the observed behavior. If approval to test an employee is not granted, no record of the drug/alcohol reasonable suspicion indicators is to be kept for any reason. Positive test results require Disciplinary Action as defined by this policy.
- D. Reasonable suspicion drug tests require the employee be removed from covered duties until drug testing is completed and results certified. Once an employee is informed that reasonable suspicion drug testing has been authorized, the employee must provide a urine and breath sample as directed by the presiding supervisor. within twenty-four (24) hours of notification. It is the employee's responsibility to be available to provide a urine sample once he/she has been informed of the testing requirement, and failure to meet the testing requirement shall have the test result issued as positive, refusal to test.
- E. If an alcohol test is not performed within (2) hours following the Division Director/District Engineer's or a designee's approval to test, the supervisor is to prepare and forward a record, Form AH-505, Reasonable Suspicion Documentation, with attachments if space is not sufficient stating the reasons the alcohol test was not administered promptly. This is to be accomplished every two (2) hours for up to eight (8) hours. If an alcohol test is not administered within eight (8) hours following the Division Director/District Engineer's or a designee's approval, the supervisor shall cease attempts to administer the test and state in the record the reasons for not administering the test.

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6.4 **Post-Accident:** For all Covered Employees, as soon as practical following a vehicle accident the Agency shall conduct drug and alcohol testing when the situation meets any one of the following criteria.

- The accident involves a fatality.
  - The employee receives a citation under state or local law for a moving traffic violation arising from the accident **and**
    - one or more of the vehicles involved in the accident cannot be moved or has to be towed from the scene **or**
    - someone receives medical treatment away from the scene of the accident.
- A. Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit an employee from first seeking assistance in responding to the accident, or to obtain necessary medical treatment. A Covered Employee who is subject to post accident testing must remain available for testing or the Agency will consider the employee has refused to participate in the testing process and Disciplinary Action, as defined by this policy, will be taken. The employee subject to post accident testing cannot consume alcohol for eight (8) hours following the accident, or until he/she submits to an alcohol test, whichever comes first.
- B. When the required controlled substance and/or alcohol test has not been administered in a reasonable time following the accident, the following actions shall be taken.
- If the employee has not submitted to an alcohol test within two (2) hours, the Division/District Representative shall prepare and forward to the Human Resources Division a written record stating the reason the test was not properly administered.
  - If the employee has not been tested for prohibited alcohol concentration within eight (8) hours, attempts to administer the alcohol test shall cease, and the Division/District representative is to prepare and forward the written record to the Human Resources Division.
  - If the employee has not submitted to a controlled substance test within thirty-two (32) hours, the Agency shall cease attempts to administer the test, and the Division/District Representative is to prepare and forward the previously mentioned record.

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- C. Employees may be required to provide two different samples as a result of an accident. Federal regulation requires the Agency to screen for drug and alcohol for specific accidents. A Law Enforcement Agency may request testing under its authority as well. If the Agency cannot perform the required tests as a result of the accident, a drug/alcohol test administered by Federal, State, and Local authorities will meet the requirements of the federal post-accident testing regulations under the following conditions.
- The official must have independent authority to conduct the test.
  - Test must conform to Federal, State, and Local requirements.
  - Alcohol tests require a blood or breath sample and controlled substance testing requires urine samples to be collected.
- D. A detailed record will be kept by Human Resources Division utilizing the forms, (ACC-1) *Supervisor's Post Accident Testing Checklist* and (ACC-2) *Post Accident Drug and Alcohol Certification*. If a decision should be made to request medical/testing records from a Hospital or a Law Enforcement Agency the respective forms for use are (ACC-3) *Authorization for Release of Post-Accident Hospital Records* or (ACC-4) *Authorization For Release of Test Results Performed By Law Enforcement Agency*.

In addition to any Disciplinary Action resulting from the accident itself, the Agency will initiate Disciplinary Action, as defined by this policy, for any positive test result provided by any Covered Employee under post-accident requirements.

- 6.5 **Return to Duty/Follow-Up:** The Agency shall ensure that before a Covered Employee returns to covered duty after engaging in conduct that is prohibited under this policy, the employee is to undergo a return to duty alcohol test indicating an alcohol concentration of 0.02 or less and/or must provide a certified negative, drug test result. This type of testing is required for employees who have been evaluated by a SAP and participated in a substance abuse assistance program, or those who may have voluntarily sought assistance for a substance use disorder.

Following the Agency's receipt of an SAP's confirmation that the employee has complied with his/her recommendations and is eligible to return to safety-sensitive duties, the Agency shall ensure the employee is subject to unannounced follow-up alcohol/drug testing as directed by the SAP. Federal regulations require the employee be subject to a minimum of six (6) follow up tests during the first twelve (12) months. All return-to-duty and follow-up testing must be observed collections using direct observation procedures (49 CFR 40.67). Follow-up testing, under the

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direction of the employee's SAP, can be conducted for up to sixty (60) months.

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## **7.0 SUBSTANCE ABUSE PROFESSIONALS**

The Agency, through its Human Resources Division, will advise employees of local SAPs who meet the USDOT minimum requirements. Employees may choose their own SAP provided the selected individual's level of training meets the minimum requirements established in 49 CFR part 40.281.

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## **8.0 REFUSAL TO TEST**

- 8.1 Covered Employees are required to participate in the testing programs as a condition of employment. Certain behaviors constitute a refusal to test, which automatically initiates a positive result and Disciplinary Action as defined within this policy will be initiated.
- 8.2 Employees are required to follow all instructions provided by the BAT/urine sample collector and/or the collection site's supervisor. Cooperation in the drug/alcohol testing process is a mandatory condition of employment.
- 8.3 Other conduct constituting a refusal to test are listed in the WVDOT Policy Overview, Page 4, Section 5.2, Refusal to Participate.
- 8.4 Employees are to provide an adequate amount of breath upon the instruction of the Breath Alcohol Technician. The BAT will ask an employee who is unable to provide an adequate amount of breath to complete the test. If the employee is unable to provide an adequate breath sample, the collection site supervisor is to be notified that a Refusal to Test result is declared as a result of the employee's inability to provide an adequate sample. After notifying the Human Resources Division, the supervisor shall refer the employee to a licensed physician acceptable to the Agency. The physician is to make a determination as to whether the employee has a medical condition, or could have a medical condition, that precluded him/her from providing an adequate breath sample. If the physician cannot make such a determination, the employee's test result will be considered as refusal to test and appropriate disciplinary action will be initiated. The physician is to provide the basis for his/her conclusions in writing to the Human Resources Division.
- 8.5 Drug tests require at least 45 milliliters of urine. If the employee cannot provide this minimum amount, the collector will advise the employee to drink not more than forty (40) ounces of fluid. After a period not to exceed three (3) hours, the collector will advise the employee to provide an adequate amount of urine. The original sample is to be discarded. If, after three (3) hours, the employee still cannot provide an adequate sample, the specimen is to be discarded and testing

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discontinued. The collector will inform the site supervisor that the employee cannot provide an adequate sample. The site supervisor will inform the Human Resources Division. The Human Resources Division will inform the drug testing program's MRO who will contact the employee and refer him/her to a licensed physician acceptable to the Agency. The physician will determine if there could be a medical reason for the employee's failure to provide an adequate urine sample. If the Physician cannot make such a determination, the test result is to be issued as Refusal to Test and appropriate disciplinary action will be initiated.

- 8.6 In the event an employee is not able to provide an adequate breath/urine sample, he/she is to be removed from covered duty immediately and be temporarily reassigned non-safety-sensitive duties. The employee is to be advised he/she must provide medical documentation within seven (7) calendar days of the date of referral to a licensed Physician. Failure to do so will be considered as refusing to test and disciplinary action initiated.

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## **9.0 TESTING PROCEDURES**

For random testing, a site supervisor with authority to relieve an employee from duty for prohibited conduct, will represent supervisory authority at all collection locations. The BAT/urine sample collector will report to the designated Human Resources representative at a testing location before any collections are to take place. Employees will be verbally informed by a supervisor that they are to report to a specific location for drug/alcohol testing.

Once informed, the employee is to report for testing immediately.

Often, employees are not available to test at a random testing site due to being on leave, assigned to duties outside of that area, attending training, etc. The Program Coordinator may choose to test such employees on a second, later date. Such testing will be scheduled and completed before the start of the next period's random selections are made.

Employees are to identify themselves through picture identification. In the event no picture identification is readily available, the collection site supervisor can verify the employee's identity. Employees who refuse to cooperate with the Breath Alcohol Technician/urine sample collector/site supervisor will have their test results issued as positive, refusal to test.

For random testing, usually a local Agency facility is declared as the official collection site. Collections can take place at any Agency facility that meets the minimum requirements for collection and security established by the federal regulations. Employees may receive instructions that a collection will occur at a Clinic. Each District has designated clinics that are regularly used to meet the Agency's needs for testing.

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#### **9.1 Drug Testing Procedures**

The collector will inform the employee of the procedures necessary to fulfill his/her obligation under the drug testing rules. The employee's privacy will be maintained and allow for individual privacy unless there is a reason to believe that an individual may alter or substitute the specimen to be provided.

- A. For purposes of this policy, the following circumstances are the exclusive grounds constituting a reason to believe that an individual may alter or substitute the specimen, mandating a witnessed collection.
- The employee has presented a urine specimen that falls outside the normal temperature range (32-38 Centigrade or 90-100 degree Fahrenheit).
  - The last urine specimen provided by the employee on a previous occasion was determined by the laboratory to have a specific gravity of less than 1.003 and a creatine concentration below .2g/L.
  - The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.).
  - The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under this policy provision for follow-up testing upon or after return to service.
- B. Only the urine sample collector has authority to witness an employee providing a urine sample, and he/she must be of the same gender as the person providing the sample. The Human Resources Division Director (or his/her designee) is to be contacted for approval by the collection site supervisor/urine sample collector prior to any witnessed collection requirements directed by this policy.
- C. Collectors will be trained in the procedures established by the federal regulations and will conduct all testing in accordance with those standards. Witnessed collections will be conducted using the direct observation procedures described in 49 CFR 40.67. Additionally, in some cases, the MRO may cancel a specimen and order the Agency to re-collect another specimen using direct observation procedures.
- D. At the collection site, employees will be asked to provide a urine sample

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analysis. The split sample method of collection will be utilized, meaning the larger sample will be divided into two (2) smaller ones. Both bottles will be sealed and shipped in a single container to the laboratory for analysis. Chain of Custody forms and procedures established in 49 CFR part 40 and part 382 apply to all urine collections and will easily identify test results so they are attributed to the correct employee. Laboratories must be certified to perform the analysis by the U.S. Department of Health and Human Services, under the National Laboratory Certification Program (NLCP). A MRO, a licensed Physician, certifies the results of the drug tests to the Human Resources Division.

- E. If the test result of the primary sample is positive, the employee may request the secondary sample be analyzed at a different certified laboratory for the presence of the drug(s) initially certified as positive by the MRO. The employee will be required to pay for the second sample to be shipped and tested, currently two-hundred dollars (\$200.00) but subject to change as per the Agency's drug testing vendor contract. Every reasonable attempt will be made to contact the employee to discuss whether a medical or other condition may have triggered the positive result. The employee will be allowed 72 hours from the time of positive test notification to request the second analysis be conducted.

Any employee providing a certified positive urine sample is to be removed immediately from covered safety-sensitive duty until the end of the current shift, referred to a SAP and disciplined under the authority of this Policy.

#### **9.2 Alcohol Testing Procedures**

BATs are to be trained to proficiency in the use of the EBT device to be used in alcohol testing procedures. The EBT must be one approved for use by the USDOT/FMCSA.

- A. Alcohol testing is to be conducted in a location that affords visual and aural privacy to the individual being tested, sufficiently to prevent unauthorized persons from seeing or hearing test results. No unauthorized person(s) shall be permitted access to the testing location at any time while testing is being conducted. In unusual circumstances, a test may be administered within active work areas that will challenge the collector to provide for the privacy of the employee. Measures to provide privacy to the fullest extent possible will be taken in all circumstances. Standard forms have been created by the USDOT for use in the alcohol testing process, ensuring results are attributed to the correct employee.
- B. Once the employee has identified himself/herself, an individually sealed mouthpiece is to be removed and attached to the EBT in the employee's

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presence. The employee is to forcibly blow into the mouthpiece for at least six (6) seconds or until the EBT indicated a sufficient amount of breath has been accomplished. The employee is to be shown his/her test result, and the test result test number, testing device, serial number of the testing device, time and quantified result are to be recorded by the BAT.

- C. When results of less than 0.02 are generated, the actual testing procedure is over, and the BAT will inform the employee of the signature requirements of the reporting form. If the alcohol concentration is 0.02 or greater, a confirmation test shall be performed. The BAT will instruct the employee in the steps necessary to complete the confirmation test. The confirmation test is to be conducted within thirty (30) minutes, but not less than fifteen (15) minutes, of the initial test.
- D. The BAT shall note and terminate the testing process immediately upon refusal by an employee to complete and sign the breath alcohol testing form or to provide adequate amounts of breath, or otherwise cooperate with the testing process preventing the completion of the test.
- E. In addition to the requirement of disciplinary action under this policy, any covered employee with an alcohol concentration of 0.02, but less than 0.04, is required to be removed from covered duty for a period of not less than 24 hours. Any employee with an alcohol concentration of 0.04 or greater is to be removed immediately from safety-sensitive duties, referred to a SAP and disciplined under the authority of this Policy.
- F. The collection site supervisor is to be notified by the BAT that an employee possesses an alcohol concentration at levels of 0.02 and greater. The supervisor is to relieve the employee from covered duty and contact the Director (or designee) of the Human Resources Division.
- G. A breath alcohol test is to be considered invalid under the following circumstances.
  - 1. The next scheduled calibration check on the EBT produces a result that differs by more than the tolerance stated in the Quality Assurance Plan of the manufacturer from the known value of the test standard. In this event, every result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid.
  - 2. The BAT does not observe the minimum fifteen (15) minute waiting period prior to a confirmation test.
  - 3. The BAT does not perform an air blank or the EBT before a

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confirmation test, or an air blank does not result in a reading of 0.00 prior to the administration of the test.

4. The BAT does not sign the form as required.
5. The BAT has failed to note in the remarks section of the form with the affixed test result that the employee has failed or refused to sign the form.
6. An EBT fails to print a confirmation test result.
7. On a confirmation test, or where applicable on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

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## 10.0 RECORDS

All drug and alcohol testing records will be maintained under rules of confidentiality established in the federal regulations. The Human Resources Division will provide employees with their testing records upon receipt of a written request for such records. Records will be disclosed only to those individuals authorized by the USDOT/FMCSA rules to receive such information.

In 2020, the Agency begins reporting and collecting drug and alcohol violation data through the FMCSA Drug and Alcohol Clearinghouse. Information will be collected for all CDL holders during their pre-employment processing and, again annually, as per 49 CFR 382, Subpart G. Any of the following will be reported to the Clearinghouse for employees performing safety-sensitive duties.

- An alcohol confirmation test result measuring 0.04 or greater.
- A negative return-to-duty test following a violation and completion of SAP's requirements.
- A refusal to take an alcohol test (including an inadequate breath sample without a valid medical reason from a physician).
- A refusal to cooperate with the testing process. See Section 8.0, Refusal to Test.
- An employee's completion of their assigned follow-up tests.
- When the Agency becomes aware (actual knowledge) of an employee's on-duty alcohol use or pre-duty (less than 2 hours) alcohol use.
- When the Agency becomes aware (actual knowledge) of an employee reporting for duty

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or remaining on duty under the influence of a non-prescribed, prohibited substance.

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## 11.0 CONSEQUENCES OF PROHIBITED CONDUCT

The Agency's MRO will certify positive drug test results to the Human Resources Division. Alcohol test results are available on-site, and supervisors are to proceed based upon the criteria established under this policy. The Human Resources Division will inform the Division Director/District Engineer (or a designee) of the positive drug test results and the Director of Human Resources (or his/her designee) is to be informed by the site supervisor of the positive alcohol test (0.02 or greater) and the actions taken as mandated by this policy. The employee is to be removed from safety-sensitive duties immediately upon notification of positive drug test results and/or an alcohol concentration of 0.02 or greater in the workplace. The employee is to be referred to a SAP for positive drug test results and/or alcohol concentration of 0.04 or greater in the workplace.

In any instance in which a covered employee has been removed from safety-sensitive duties as they relate to this policy, any assignment of alternate duty is to be accomplished on a temporary basis. Conditions set forth in the Disciplinary Actions offered below must be met and the employee is fully expected to return to safety-sensitive duties. There will be no exceptions to this rule.

If, for any reason, errors are made in reporting employee test results which cause the employee monetary loss and/or Disciplinary Action, the affected employee will have his/her status restored as if the error in test result reporting never occurred. All documentation relating to a situation such as this will be purged from the Agency's Drug and Alcohol Testing Records.

The Agency holds authority to administer discipline to employees found to be in violation of prohibited workplace activity. The following disciplinary schedule applies to all Covered Employees.

- 11.1 **First Offense:** A Refusal to test, a positive test result is received for a drug test or an alcohol concentration of 0.04 or greater result in the workplace.
  - A. Probationary employees shall be dismissed from employment and referred to a SAP also if they possess a CDL.
  - B. If this violation is due to a Refusal to test, a *POS-1 Form, Refusal to Test/Cooperate with Testing Process*, will be completed by the collection site supervisor, the BAT or sample collector, and the employee (if cooperating). The *POS-1* will be the written record that generates this disciplinary action and will be sent to Human Resources Division, together with any additional, pertinent statements.
  - C. If this violation is due to an alcohol concentration at, or above 0.02, a *POS-2 Form, Alcohol Verbal Results* will be completed by the BAT,

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collection site supervisor, and employee. Until the Human Resources Division receives the original testing forms and EBT printed results, the POS-2 Form will be the written record that generates this disciplinary action and will be sent to Human Resources Division, together with any additional, pertinent statements.

- D. The employee shall be relieved from safety-sensitive duties, incurs a five (5) day unpaid suspension at the close of the day upon notification of test results, and shall be referred to a SAP. Safety-sensitive employees will sign a *POS-3, Removal From Safety-Sensitive Duty Form*. All supervisors that work directly with the employee should be made aware of his/her restriction from CMV equipment.
- E. Human Resources Division must receive information from the employee's SAP. If necessary, after the completion of the five (5) day suspension, the employee will be allowed a Leave Status upon receipt by the Division/District of the date and time of the initial visit with the SAP. At this meeting the employee will be assessed, and a treatment program established.
- F. Human Resources will provide a *POS-5 Form, Authorization for the Release of SAP Documentation*, to be completed and signed by the employee and given to the SAP upon their first meeting. The employee must report to a SAP within seven (7) calendar days of positive test result notification, and failure to report will result in employee dismissal. If the SAP's rehabilitation plan includes out-patient treatment, the employee shall be temporarily returned to duty in another capacity. If the prescribed treatment involves in-patient admission, the employee will be granted the use of leave consistent with the West Virginia Division of Personnel's Administrative Rules/Parkways Authority Policy and Procedures. The employee may not return to the workplace until the Human Resources Division receives the SAP's report on him/her.
- G. All conditions set forth by the SAP must be met in order to return to safety-sensitive duties. A Return-to-Duty test, showing less than an alcohol concentration of 0.02 and/or a negative drug test, is required of the employee. Using the SAP's report, the Agency holds the final authority to make fitness for duty determinations for Covered Employees. Follow-up testing, at a rate directed by the SAP, will be conducted on an unannounced basis and shall be at a frequency of not less than six (6) during the first twelve (12) months following the employee's return to work. Follow-up testing cannot exceed a period of 60 months from the employee's return to duty. Only the SAP may modify the follow-up testing requirement at any time after the completion of the first twelve (12) months of assigned tests. Any employee who does not follow the entire

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plan set forth by the SAP will be terminated upon written verification of such.

- 11.2 **Second Offense:** A Refusal to test, a positive test result is received for a drug test or an alcohol concentration of 0.02 or greater result in the workplace **within** five (5) years from the testing date of the prior offense.

- Dismissal and safety-sensitive employees will be referred to a SAP as well.

**Second First Offense:** A Refusal to test, a positive test result is received for a drug test or an alcohol concentration of 0.02 or greater result in the workplace **beyond** the five (5) year period from the collection date of the prior offense.

- This will be equal to a second, first-offense. See the previous entry in Section 11.0, Consequences of Prohibited Conduct. The employee must repeat discipline again for this policy violation.

- 11.3 **First Offense: Offenses involving Alcohol Concentration At or Above 0.02, But Less than 0.04.**

- A. The employee is to be relieved from safety-sensitive duties as required by this policy for no less than 24 hours from the time of being informed of the results. In addition, the employee is to receive progressive discipline in the form of Written Reprimand.
- B. **Second Offense:** The employee is to be relieved from safety-sensitive duties, suspended for five days without pay at the close of the day upon notification of test results and will be referred to a SAP. He or She will be allowed a Leave Status upon completion of the five-day suspension and upon receipt by the Division/District of the date and time of initial visit from the SAP in order to initiate a treatment program. Employees must report to the SAP within seven (7) calendar days from notification. Failure to report to the SAP shall result in employee dismissal. If the SAP's rehabilitation plan includes out-patient treatment, the employee shall be temporarily returned to duty in another capacity. If the prescribed treatment involves in-patient admission, the employee will be granted the use of leave consistent with the West Virginia Division of Personnel's Administrative Rules/Parkways Authority Policy and Procedures. All conditions set forth by the SAP must be met in order to return to work performing duties as defined in *Covered Employees*. A Return to Duty alcohol test showing a breath alcohol concentration of less than 0.02 is required of the employee. Follow-up testing, at a rate directed by the SAP, will be conducted on an unannounced basis and shall be at a frequency of not less than six (6) during the first twelve (12) months following the employee's return to work. Follow-up testing cannot exceed

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a period of sixty (60) months from the employee's return to duty. Only the SAP may modify the follow-up testing requirement at any time after the completion of the first twelve (12) months of the assigned tests. Federal Rules require that return-to-duty and follow-up testing must be completed under direct observation for safety-sensitive employees. Any employee who does not follow the entire plan set forth by the SAP will be terminated upon written verification of such.

- C. **Third Offense:** Dismissal and safety-sensitive employees will be referred to a SAP as well.

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## 12.0 CONTACT PERSON

The Human Resources Division will maintain a Program Coordinator to answer questions about this policy and administer the program and be reached via telephone at 304-558-3111.

Questions about drug abuse, alcohol misuse, and SAPs can be directed to the Human Resources Division at 304-414-6800 or addressed to the following:

Human Resources Division  
1900 Kanawha Boulevard, East  
Building Five, Room 317  
Charleston, West Virginia 25305-0430

Employees of the Parkways Economic Development and Tourism Authority can refer questions about drug abuse, alcohol misuse, SAPs, and policy and procedures to:

Office of the Director of Training and Operations  
3310 Piedmont Road  
Charleston, West Virginia 25305  
304-926-1900

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## 13.0 EFFECTS OF DRUGS AND ALCOHOL

Supervisory training on the effects of substance misuse or abuse is provided through the WVDOH intranet. The curriculum, *Reasonable Suspicion: Helping Managers Fight Workplace Substance Abuse*, explains the varying effects from one category of substances compared to another, and is a tool that aids the Agency's supervisors when confronting a possibly impaired individual.

To learn more about the effects of substances visit the following sites:

- *Drugs and Human Performance Fact Sheet*, [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov).

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- *Drunk Driving*, [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov).
- *Drug-Impaired Driving*, [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov).
- General substance abuse information, [www.workplace.samhsa.gov](http://www.workplace.samhsa.gov).
- Drug Facts, [www.justice.gov/dea/druginfo/factsheets.shtml](http://www.justice.gov/dea/druginfo/factsheets.shtml).

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## 14.0 FORMS

Pertinent Policy Forms are listed below and can be found on the following link:

<https://westvirginiaot.sharepoint.com/sites/dot/highways/hr/Pages/DrugAndAlcohol.aspx>

|       |        |                                                                                                                |
|-------|--------|----------------------------------------------------------------------------------------------------------------|
| 14.1  | PE-1   | Pre-employment Drug & Alcohol Testing Checklist                                                                |
| 14.2  | PE-2   | Drug & Alcohol Testing Notification and Consent                                                                |
| 14.3  | PE-3   | Previous Employer Authorization/Consent                                                                        |
| 14.4  | PE-4   | Non-Participation in Drug & Alcohol Testing Programs Verification                                              |
| 14.5  | PE-5   | Return from Leave Checklist                                                                                    |
| 14.6  | PE-6   | Drug & Alcohol Testing Policy Receipt                                                                          |
| 14.7  | PE-7   | Pre-employment Clearinghouse Inquiry Checklist (for use by Human Resources Drug & Alcohol Program Coordinator) |
| 14.8  | AH-505 | Reasonable Suspicion Documentation                                                                             |
| 14.8  | POS-1  | Refusal to Test/Cooperate with Testing Process                                                                 |
| 14.10 | POS-2  | Alcohol Verbal Results                                                                                         |
| 14.11 | POS-3  | Removal from Safety-Sensitive Duty                                                                             |

Detailed records are kept by Human Resources Division utilizing the following forms involving Post-Accident and Release of information as described in Section 6.4 D of this policy.

|       |       |                                                             |
|-------|-------|-------------------------------------------------------------|
| 14.12 | ACC-1 | Supervisor's Post-Accident Testing Checklist                |
| 14.13 | ACC-2 | Post -Accident Drug & Alcohol Certification                 |
| 14.14 | ACC-3 | Authorization for Release of Post-Accident Hospital Records |

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14.15 ACC-4

Authorization for Release of Test Results Performed by Law  
Enforcement Agency

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## 15.0 CHANGE LOG

October 1, 2019 -

- Changed format per Policy and Procedure work group.
- Revised policy to include any employee whose job classification is within the TW classification series. TWs who do **not** possess a CDL or maintain/repair CMVs are now covered employees under this policy and will follow the same guidelines as those employees in the Transportation Worker series who have a CDL.

# Policy: **Substance Abuse**

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### State Rail Authority

### Drug and Alcohol Testing Policy

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## 1.0 INTRODUCTION

All breath alcohol and/or drug testing administered under this Policy will be conducted using protocols found in Title 49 Code of Federal Regulations Part 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs), as amended, to the extent not inconsistent with 49 CFR Part 219. An asterisk (\*) indicates deviation from Title 49 Code of Federal Regulations Part 40.

The West Virginia State Rail Authority (SRA) recognizes the importance of an effective drug and alcohol testing policy. Authority to establish and administer this policy is granted by Title 49 Code of Federal Regulations Part 40 and Part 219, and by *Twigg v. Hercules Corporation* (406 S.E. 2d 52 (WV 1990)).

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## 2.0 DEFINITIONS

- 2.1 **Alcohol** – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol.
- 2.2 **Alcohol Concentration** – The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test using Evidential Breath Testing (EBT) devices.
- 2.3 **Alcohol Use** – The consumption of any beverage, mixture or preparation, including any medication containing alcohol.
- 2.4 **Breath Alcohol Technician (BAT)** – An individual who instructs and assists people in the alcohol testing process and is certified to operate an Evidential Breath testing (EBT) device.
- 2.5 **Chain of Custody** – Procedures to account for the integrity of each urine specimen by tracking its' handling and storage from the point of specimen collection to the final disposition of the specimen.
- 2.6 **Collection Site** – A place designated by the Agency where individuals present themselves for the purpose of providing a breath and/or urine sample for analysis.
- 2.7 **Collection Site Supervisor** – An individual designated by the Director of the SRA or his or her designee who maintains oversight of collection site procedures

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to ensure Agency compliance with Federal Regulations and this Policy and to protect employee rights during the collection process.

- 2.8 **Confirmation or Confirmatory Test – Drug Test**: A second analytical procedure to identify the specific drug(s) that is independent of the initial screening. The Confirmation Test uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry is the only authorized confirmation method for cocaine, marijuana, opioids, amphetamines, and phencyclidine.  
**Alcohol Test**: A required second test, following an initial screening test with a result of 0.02 or greater, that provides quantitative data of breath alcohol concentration.
- 2.9 **Contractual Employee** – Employees of a contractor or subcontractor that are performing job functions for a railroad.
- 2.10 **Direct Employee** – An employee of the SRA who is subject to all applicable policies of the Agency and his or her wages are paid by the Agency.
- 2.11 **Evidential Breath Testing Device (EBT)** – A breath alcohol testing device approved by the USDOT’s Office of Drug and Alcohol Testing Policies and Compliance for the evidential testing of breath and placed on the USDOT’s “Conforming Products List” at this website:  
<https://www.transportation.gov/odapc/approved-alcohol-screening-devices>.
- 2.12 **Medical Review Officer (MRO)** – A licensed physician responsible for receiving laboratory results generated by the Agency’s 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.
- 2.13 **Regulated Employee** – A covered employee or maintenance-of-way employee who performs regulated service for a railroad subject of 49 CFR Parts 40 and 219.
- 2.14 **Regulated Service** – Covered service or maintenance-of-way activities, the performance of which makes an employee subject to the requirements of CFR Parts 40 and 219.
- 2.15 **Safety-Sensitive Position** – Employees who have been assigned to perform Maintenance-of- Way (MOW) duties covered by the definition of “Roadway Worker” in 49 CFR Part 214.7 and/or service subject to the Hours of Service Act (45 U.S.C. 61-64b) during a duty tour, whether or not the person has performed or is currently performing such service.

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- 2.16 **Screening Test or Initial Test – Drug Test:** An immunoassay screen to eliminate negative urine specimens from further analysis.  
**Alcohol Test:** An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
- 2.17 **Shipping Container** – A container capable of being secured with a tamper-evident seal that is used for transfer of one or more urine specimen bottle(s) and associated documentation from the collection site to the laboratory.
- 2.18 **Specimen Bottle** – The bottle that, after being labeled and sealed in accordance with Title 49 CFR, code of Federal Regulations, Appendix A to Part 40, is used to transport a urine sample to the laboratory.
- 2.19 **Substance Abuse Professional (SAP)** - A licensed physician, or a licensed or certified psychologist, social worker, employer assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (CRC), or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) with knowledge of, and clinical experience in, the diagnosis and treatment of alcohol and controlled substances-related disorders.

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## 3.0 SAFETY-SENSITIVE EMPLOYEE JOB FUNCTIONS

Employees who have been assigned to perform MOW duties and/or service subject to the Hours of Service Act (45 U.S.C. 61-64b) during a duty tour, whether or not the person has performed or is currently performing such service. Employees who perform such service are required to participate in the pre-employment, random, post-accident, for reasonable cause/reasonable suspicion, and return-to-duty/follow-up testing programs. For the purposes of pre-employment testing, the term covered employee includes a person applying to perform such service.

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## 4.0 PARTICIPATION

Employees identified as being a SAFETY-SENSITIVE EMPLOYEE are required to participate in the testing programs as a condition of employment. Refusal to participate in the testing programs will be considered as a REFUSAL TO TEST and disciplinary action will be administered.

- 4.1 Upon being identified as a Safety-Sensitive or Covered Employee the employee will be required to complete forms explaining the details of the policy and to document their acknowledgement. Those forms are listed below:
  - A. PE-1 Pre-employment Drug Testing Checklist

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- |    |        |                                             |
|----|--------|---------------------------------------------|
| B. | PE-2 B | Drug/Alcohol Testing Notification & Consent |
| C. | PE-3   | Previous Employer Authorization Consent     |
| D. | PE-6   | Drug & Alcohol Testing Policy Consent       |
- 4.2 These two forms are used when an employee's participation with the testing pool is interrupted or ceases:
- |    |      |                                                      |
|----|------|------------------------------------------------------|
| A. | PE-4 | Non-Participation in Drug & Alcohol Testing Programs |
| B. | PE-5 | Entering/Returning from Leave Checklist              |

All the above forms will be processed and filed by the SRA Director or his or her designee and can be found at

<https://westvirginiaot.sharepoint.com/sites/dot/highways/hr/Pages/DrugAndAlcohol.aspx>.

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## 5.0 REQUIRED HOURS OF COMPLIANCE AND PROHIBITED BEHAVIOR

- 5.1 All State Rail Authority employees are required to follow the following prohibitions on alcohol use.
- While performing any job duty.
  - Within four (4) hours of reporting to work.
  - Up to eight (8) hours following an accident or until post-accident testing is completed (Safety-Sensitive Employees only).
  - No employee may report for duty, or remain on duty, under the influence of or impaired by alcohol concentration of 0.02 or greater.
- 5.2 Use and/or ingestion of prohibited drugs is not allowed at any time, whether at work or not.

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## 6.0 TESTING CATEGORIES – DRUGS AND ALCOHOL

All employee drug and/or alcohol testing will be conducted utilizing USDOT procedures established in 49 CFR Part 40, entitled "*Procedures for Transportation Workplace Drug and Alcohol Testing Programs*" to the fullest extent as per procedures established in 49 CFR Part 219.

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Drug screening will require an employee's urine sample be analyzed for the following prohibited substances:

- Marijuana or Tetrahydrocannabinol (THC)
- Cocaine
- Amphetamines
- Opioids
- Phencyclidine (PCP)

**In certain Reasonable Suspicion testing scenarios, as defined by Section 6.4(C) of this Policy, employees may be required to provide an additional urine sample that will be analyzed using a Substance Abuse and Mental Health Services Administration (SAMHSA) 10 Panel Drug Screen. An example of a SAMSHA 10 Panel Drug Test follows:**

- The Substance Abuse and Mental Health Services Administration (SAMHSA) 5 Panel Drug Test described above and
- Barbiturates;
- Benzodiazepines;
- Methadone;
- Methaqualone;
- Propoxyphene;

Alcohol screening will be accomplished using an EBT. The EBT must be approved by the Office of Drug and Alcohol Policies and Compliance (ODAPC) for the evidential testing of breath and placed on its Conforming Product's List viewable at this website <http://www.transportation.gov/odapc/approved-alcohol-screening-devices>.

The five different situations that require mandatory participation for drug/alcohol testing by all COVERED EMPLOYEES are as follows.

**6.1 Pre-Employment (All Safety-Sensitive Applicants for Employment and Employees who are Promoting/Transferring into a safety-sensitive position):** All candidates approved for employment who will be performing safety-sensitive functions as defined by this Policy are required to produce a negative drug screen prior to performing safety-sensitive functions. This rule also applies to any employee wishing to transfer/promote to a safety-sensitive position. There is no exception to this rule.

- A. Once a candidate has been approved for employment, a conditional offer of employment will be made to the candidate. The candidate must then provide a negative drug test result. Once a negative drug test result is received in the Human Resources Division and required background checks are complete, the appropriate SRA Manager will be informed that the candidate can report for work. A non-negative drug test will result in

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the Human Resources Division disqualifying the applicant from employment. No permanent record will be maintained for any applicant who decides to withdraw his/her application for employment because of this testing requirement.

- B. Transferring/Promoting employees must meet pre-employment testing requirements before reporting for safety-sensitive duties as described in the SAFETY- SENSITIVE EMPLOYEES JOB FUNCTIONS Section of this Policy. A non-negative drug test result will require Disciplinary Action as defined by this policy.
- C. Employees are to be removed from safety-sensitive testing pools when they are, for any reason, in a non-working status for thirty (30) or more consecutive days. Pre-employment testing requirements must be met before an employee who has been in a non-working status for thirty (30) or more consecutive calendar days can again perform safety-sensitive duties as described in the SAFETY-SENSITIVE EMPLOYEES JOB FUNCTIONS Section of this Policy.

6.2 **Random (Safety-Sensitive Employees):** Random testing provisions require SAFETY-SENSITIVE EMPLOYEES be subject to drug and alcohol testing at any time an employee is performing or subject to perform safety-sensitive duties.

- A. All random selections will use computer technology and methodology established by USDOT in 49 CFR Part 40 and Part 219. The method of selection requires each employee have an equal chance at being selected for any given testing period.
- B. The Agency is required by 49 CFR 219 to conduct a minimum amount of drug/alcohol tests in a calendar year. The minimum rate will be determined by USDOT/Federal Railroad Administration (FRA). Nothing in this policy is to imply that the Agency cannot test SAFETY-SENSITIVE EMPLOYEES at a rate higher than the minimum rates established by USDOT/FRA.

6.3 **For Cause (All Safety-Sensitive Employees):** The SRA may require any covered employee to cooperate in breath or urine testing to determine compliance with the Prohibited Conduct provisions of this Policy. This authority is limited to testing after observations or events that occur during duty hours. The SRA shall not require a SAFETY-SENSITIVE EMPLOYEE to be drug and/or alcohol tested under this authority unless reasonable cause, as defined in this Section of Policy, exists with respect to that employee.

- A. **Accident/Incident** – The employee has been involved in an accident or incident reportable under 49 CFR Part 255 and a supervisory employee

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has a reasonable belief that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

B. **Rule Violation** – The employee has been directly involved in one of the following operating rule violations or errors:

1. Non-compliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves the following.
  - Occupancy of a block or other segment of track to which entry was not authorized.
  - Failure to clear a track to permit opposing or following movement to pass.
  - Moving across a railroad crossing at grade without authorization.
  - Passing an absolute restrictive signal or passing a restrictive signal without stopping.
2. Failure to protect a train as required by a rule consistent with 49 CFR Part 218.37 (including failure to protect a train that is fouling an adjacent track, where required by rules of the State Rail Authority).
3. Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less.
4. Alignment of a switch in violation of a SRA Rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch.
5. Failure to restore and secure a main track switch as required.
6. Failure to apply or stop short of derail as required.
7. Failure to secure a hand brake or failure to secure sufficient hand brakes, as required.
8. Entering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover

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movement is completed.

9. Failure to provide point protection by visually determining that the track is clear and giving signals or instructions necessary to control the movement of on-track equipment when engaged in a shoving or pushing movement.
10. In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of route that fails to provide proper protection for a train.
11. Interference with the normal functioning of any grade crossing signal system or any signal or train control device without first taking measures to provide for the safety of highway traffic or train operations which depend on the normal functioning of such a device. Such interference includes, but is not limited to, failure to provide alternative methods of maintaining safety for highway traffic or train operations while testing or performing work on the devices or on track and other railroad systems or structures which may affect the integrity of the system.
12. Failure to perform stop-and-flag duties necessary as a result of a malfunction of a grade crossing signal system.
13. Failure of a machine operator that results in a collision between a roadway maintenance machine and on-track equipment or a covered employee.
14. Failure of a roadway worker-in-charge to notify all affected employees when releasing working limits.
15. Failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment.
16. Failure to ascertain that provision was made for on-track safety before fouling a track.
17. Improper use of individual train detection in a manual interlocking control point.
18. Failure to apply three-point protection (fully apply the locomotive and train brakes, center the reverser, and place the generator field switch in the off position) that results in a reportable injury to a covered employee.

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- 6.4 **Reasonable Suspicion:** Only Supervisors who have attended a course to recognize the signs and symptoms of alcohol misuse and drug abuse can request testing when it can be reasonably suspected that an employee has violated the alcohol or controlled substances prohibitions. A reasonable suspicion test can only be requested based upon specific contemporaneous (current), articulable (easily explainable) observations concerning the appearance, behavior, speech, or body odors of an employee while at work.
- A. Supervisors are required by this Policy to have a concurring opinion from another trained supervisor documenting the employee's conduct and behavior in all cases when practical. If a second, confirming supervisor is not available, one supervisor can request testing if necessary. Reasonable suspicion drug and/or alcohol testing under this rule is authorized only if the required observations are made during, just preceding, or just after the period of the workday. For example, if an employee was impaired after work hours yesterday, the Agency cannot drug test him/her the next day unless that person is impaired at work. The employee is required to follow these rules. Immediate supervisors are to contact the Director of the SRA (or his/her designee) to discuss the circumstances as they relate to an employee's on-duty behavior. The Director of the SRA (or a designee) will make the determination to initiate reasonable suspicion drug and/or alcohol testing and he/she is to contact the Director of Human Resources (or a designee) as soon as practical.
  - B. A written record, Form AH-505, Reasonable Suspicion Documentation, is to be maintained and forwarded to the Human Resources Division in all drug and/or alcohol reasonable suspicion testing situations. The form shall be an accurate account of those observations leading to a controlled substance test and signed by the supervisor who made the observations. Attachments should be included if space is not sufficient and the completed form is to be submitted to the Human Resources Division within twenty-four (24) hours of the observed behavior. If approval to test an employee is not granted, no record of the drug/alcohol reasonable suspicion indicators is to be kept for any reason. Positive test results require disciplinary action as defined by this policy.
  - C. Reasonable suspicion drug and/or alcohol testing requires that the employee be removed from covered job duties until testing is complete and results certified. Positive test results require disciplinary action as defined by this Policy. If an alcohol test is not conducted within two (2) hours following approval to test, the immediate supervisor is to document the reason(s) on Form AH-505 as to why alcohol testing has not been conducted. This is to be accomplished every two (2) hours for up to eight (8) hours. At the expiration of the eight (8) hour period, the immediate supervisor shall cease attempts to conduct the alcohol test and state in

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his/her report why testing was not accomplished. A drug test can be conducted at any point during a twenty-four (24) hour period. The supervisor must state in the record delays in testing and cease all attempts to collect a urine sample at the expiration of the twenty-four (24) hour period.

1. A standard, Substance Abuse and Mental Health Services Administration (SAMHSA) 5 Panel Drug Test (cocaine, marijuana, opioids, phencyclidine (PCP), and amphetamines) is to be conducted in reasonable suspicion drug/alcohol testing scenarios.
2. However, based on the specifics of the situation, SRA employees may be required to provide a second sample within three (3) hours of providing the first sample for a more thorough analysis. This second test is to be a SAMHSA 10 Panel Drug Test (as example, the SAMSHA five (5) panel drugs along with barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene).
3. If doubt exists as to whether to conduct an alcohol test or a drug test, the alcohol test is to be conducted first. If the alcohol test registers at 0.02 or less, the drug test will then be conducted.

6.5 **Post-Accident (All Safety-Sensitive Employees):** Post-accident toxicological drug and alcohol tests shall be conducted after any event that involves one or more circumstances described in this Section of Policy. Tissues are also collected in addition to urine and blood from any fatality involving an on-duty railroad employee whether it be a direct employee or a regulated service/contractual employee.

In Parts A-F, the term “regulated employee” will be used repeatedly. In post-accident scenarios multiple drug tests may be ordered. Some of those employees may be employed by companies hired to perform regulated services for or in joint operations with SRA. Regulated services are those duties defined in Section 3.0, Safety Sensitive Employee Job Functions, of this policy. Also, references to a direct employee means an individual who is fully employed by SRA, whereas a regulated service/contractual employee is not employed by SRA, but could still be required to undergo testing by the provisions of this policy should certain events occur.

A. **Major Train Accident** – Any train accident involving any rail equipment accident with reportable damages in excess of the current calendar year reporting threshold under 49 CFR 225 and one or more of the following.

1. A fatality.

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2. Release of hazardous material lading from railroad equipment accompanied by –
  - an evacuation; or
  - a reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or
  - damage to railroad property in excess of \$1,500,000 or more.
- B. **Impact Accident** – An impact accident involving reportable damage in excess of the current reporting threshold that results in
  - a reportable injury; or
  - damage to railroad property of \$150,000 or more.
- C. **Fatal Train Accident** – Any train incident that involves a fatality to any on-duty railroad employee or regulated contractor employee where damages do not exceed the current reporting threshold.
- D. **Passenger Train Accident** – Reportable injury to any person in a train accident involving damage in excess of the current reporting threshold that involves a passenger train.
- E. **Human-Factor Highway Rail Grade Crossing Accident/Incident** meeting one of the following criteria:
  1. Regulated employee interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for the safety of highway traffic that depends on the normal functioning of such a system, as prohibited by § 234.209, is subject to testing.
  2. Trained crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of a grade crossing system, as provided § 234.105 (c)(3), is subject to testing.
  3. Regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5), but who failed to do so, due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105 (c)(1) and (2) 234.106, or

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234.107 (c)(1)(i), is subject to testing.

4. If there is a fatality of any regulated service employee regardless of fault, the fatally injured, regulated employee must be tested.
5. If regulated employee violates an FRA regulation or railroad operating rules and whose actions may have played a role in the cause or severity of the accident/incident, is subject to testing.

E. **Exceptions** – No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or vandalism or trespassers, as determined on the basis of objective and documented facts by the State Rail Authority representative responding to the scene.

F. Good faith determinations made by State Rail Authority representatives responding to the scene of an accident/incident are addressed in 49 CFR Part 219.201(c).

- 6.6 **Return to Duty/Follow-Up:** The Agency shall ensure that before an employee returns to duty after engaging in prohibited conduct, he/she is to undergo a return-to-duty alcohol test indicating a result of 0.02 or less and/or a certified negative drug test.

Following the determination that an employee is in need of assistance in resolving problems associated with substance abuse and upon his/her successful return to covered duty, the Agency shall ensure the employee is subject to unannounced follow up alcohol/drug testing as recommended by the SAP. Federal regulations require the employee be subject to a minimum of six (6) follow up tests during the first twelve (12) months. All return-to-duty and follow-up testing must be observed collections using direct observation procedures (49CFR40.67). Follow-up testing, under the direction of the employee's SAP, can be conducted for up to sixty (60) months.

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## 7.0 SUBSTANCE ABUSE PROFESSIONAL (SAP)

The Agency will advise employees of local SAPs who meet the USDOT minimum requirements and the definition found in 49 CFR Part 40.3. However, employees are free to utilize the SAP of their own choosing if the SAP meets the minimum requirements established in 49 CFR Part 40.281.

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## 8.0 REFUSAL TO TEST

- 8.1 All Safety-Sensitive Employees are required to participate in the testing programs as a condition of employment. Certain behaviors constitute a refusal to test, refusal to test, which automatically initiates a positive result and disciplinary action as defined within the policy is initiated.
- 8.2 Employees are required to follow all instructions provided by the BAT/urine sample collector and/or the collection site's supervisor. Cooperation in the drug/alcohol testing process is a mandatory condition of employment.
- 8.3 Other conduct constituting a refusal to test are listed in the WVDOT Policy Overview, Page 4, Section 5.2, Refusal to Participate.
- 8.4 Employees are to provide an adequate amount of breath upon the instruction of the BAT. The BAT will ask an employee who is unable to provide sufficient breath to complete the test. If the employee is unable to provide an adequate breath sample to complete the test, the collection site supervisor is to be notified that a Refusal to Test result has been declared as a result of the employee's inability to provide an adequate sample. After notifying the Human Resources Division, the collection site supervisor shall refer the employee to a licensed physician acceptable to the Agency. The physician is to make a determination as to whether or not the employee has a medical condition, or could have a medical condition, that precluded him/her from providing an adequate breath sample. If the physician cannot make such a determination, the employee's test result will be considered as Refusal to Test and appropriate disciplinary action will be initiated. The physician is to provide the basis for his/her conclusions in writing to the Human Resources Division.
- 8.5 Drug tests require at least forty-five (45) milliliters of urine. If the employee cannot provide the minimum amount of urine, the collector will advise the employee to drink not more than forty (40) ounces of fluid. After a period not to exceed three (3) hours, the collector will advise the employee to provide an adequate amount of urine. The original sample is to be discarded. If, after three (3) hours, the employee still cannot provide an adequate sample, the specimen is to be discarded and the testing discontinued. The collector will inform the site supervisor that the employee cannot provide an adequate sample. The site supervisor will inform the Human Resources Division. The Human Resources Division will inform the drug testing program's MRO who will contact the employee and refer him/her to a licensed physician acceptable to the Agency. The physician will determine if there could be a medical reason for the employee's failure to provide an adequate urine sample. If the physician cannot make such a determination, the test result is issued as Refusal to Test. The physician is to provide the Agency with basis of his/her conclusions in writing.

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- 8.6 In the event a SAFETY-SENSITIVE EMPLOYEE is not able to provide a breath/urine sample, he/she is to be removed from safety-sensitive duties immediately and be temporarily reassigned non-safety sensitive duties. The employee will be advised he/she must provide medical documentation within seven (7) calendar days of the date of referral to a licensed physician. Failure to do so will be considered as refusing to test and disciplinary action is initiated.

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## 9.0 TESTING PROCEDURES

Procedures found in 49 CFR Part 40, entitled ***“Procedures for Transportation Workplace Drug and Alcohol Testing Programs”*** will be followed for all sample collections to the fullest extent administered per procedures established in 49 CFR Part 219.

- 9.1 A Collection Site Supervisor, with authority to relieve an employee from duty for prohibited conduct, will represent the Agency’s interest and ensure employee’s rights are protected throughout the collection process. The Breath Alcohol Technician/Urine Sample Collector shall report to the Collection Site Supervisor immediately upon arriving to a testing location. Employees will be verbally informed they are to report to a specific location for drug/alcohol testing. Once an employee has been informed of his/her testing requirement, they are to proceed immediately as directed. Collection sites can be a WVDOT facility, a mobile facility, or a facility designated by the Agency. All designated collection sites must meet established minimum requirements established in 49 CFR Part 40.25.
- 9.2 Employees are to identify themselves by utilizing picture identification. In the event no picture identification is readily available, a supervisor can verify the employee’s identity.
- 9.3 **Drug Testing Procedures:** The Urine Sample Collector will inform the employee of procedures necessary to fulfill his/her obligations under the drug testing procedures. The employee’s privacy will be maintained and allow for individual privacy unless there is reason to believe that an individual may alter or substitute the specimen to be provided. If a witnessed collection is deemed necessary, all witnessed collections will be conducted using the direct-observation procedures described in 49 CFR 40.67.
- A. For purposes of this policy, the following circumstances are the exclusive grounds constituting a reason to believe that an individual may alter or substitute the specimen mandating a witnessed collection:
- The employee has presented a urine specimen that falls outside the normal temperature range (32-28 degrees Centigrade/90-100 degrees Fahrenheit) and
  - The last urine specimen provided by the employee was

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determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L.;

- The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.);
- The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under this policy providing for follow-up testing upon or after return to services.
- In some cases the MRO may cancel a specimen and order the Agency to re-collect another specimen using a direct observation procedure.

B. A designated employer representative (Human Resources Division), in consultation with the Collection Site Supervisor, shall review and concur in advance with any decision to obtain a specimen under the direct observation of a same gender urine sample collector based upon the circumstances described above.

C. At the collection site, employees will be asked to provide a urine sample for analysis. The split sample method of collection will be utilized, meaning the larger sample will be divided into two (2) smaller ones. Both bottles will be sealed and shipped in a single container to the laboratory for analysis. Chain of Custody forms and procedures established in 49 CFR part 40 and part 382 apply to all urine collections and will easily identify test results so they are attributed to the correct employee. Laboratories must be certified to perform the analysis by the U.S. Department of Health and Human Services, under the National Laboratory Certification Program (NLCP). A MRO, a licensed Physician, certifies the results of the drug tests to the Human Resources Division.

9.4 **Alcohol Testing Procedures:** BAT's are trained and certified to operate the EBT device to be used in the alcohol testing procedures. The EBT must be approved for use by the USDOT/FRA.

A. Alcohol testing is to be conducted in a location that affords visual and aural privacy to the individual being tested, sufficiently to prevent unauthorized persons from seeing or hearing test results. No unauthorized person(s) shall be permitted access to the testing location at any time while testing is being conducted. In unusual circumstances, a

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test may be administered within active work areas that will challenge the collector to provide for the privacy of the employee. Measures to provide privacy to the fullest extent possible will be taken in all circumstances. Standard forms have been created by the USDOT for use in the alcohol testing process, ensuring results are attributed to the correct employee.

- B. Once the employee has identified himself/herself, an individually sealed mouthpiece is to be removed and attached to the EBT in the employee's presence. The employee is to forcibly blow into the mouthpiece for at least six (6) seconds or until the EBT indicates a sufficient amount of breath has been accomplished. The employee is to be shown his/her test result, the test result test number, the serial number of the testing device, and time as recorded by the BAT.
- C. When the EBT displays results of 0.019 or less, the actual breath alcohol testing procedure is complete, and the BAT will instruct the employee of the signature requirements of the Breath Alcohol Testing Form. If the breath alcohol concentration (BAC) registers 0.02 or greater, a confirmation test is required. The BAT will instruct the employee in the steps necessary to complete the confirmation testing process. The confirmation test will be conducted within thirty (30) minutes, but not less than fifteen (15) minutes of the initial screening test.
- D. Refusal by an employee to complete and sign the Breath Alcohol Testing Form to provide adequate amounts of breath, or otherwise cooperate with the testing process in a way that prevents the completion of the test shall be noted by the BAT and reported to the Collection Site Supervisor. The testing process is also to be stopped at this time. The test result will be issued as Refusal to Test.
- E. The Collection Site Supervisor is informed of any employee whose BAC registers 0.02 or greater for further action. Any employee possessing an alcohol concentration over 0.19 will be removed from covered duty and disciplined under the authority of this policy.
- F. A breath alcohol test is to be considered invalid under the following circumstances:
  - 1. The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the Quality Assurance Plan from the known value of the test standard. In this event, every test result of 0.02 or greater obtained on the device since the last valid calibration check shall be invalid.
  - 2. The BAT does not observe the minimum fifteen (15) minute

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waiting period prior to the confirmation test.

3. The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to the administration of the test.
4. The BAT does not sign the Breath Alcohol Testing Form.
5. The BAT has failed to note in the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result.
6. An EBT fails to print a confirmation test result.
7. On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

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## 10.0 RECORD RETENTION AND CONFIDENTIALITY

- 10.1 **Record Retention:** In addition to the records retention requirements in 49 CFR 40, the Agency shall maintain drug and alcohol testing records required by 49 CFR 219. The Agency will maintain documentation relating to refusals to test, breath alcohol results of 0.02 or greater and positive drug test results for a period of five (5) years. Negative drug test results and breath alcohol test results of 0.02 or less shall be maintained for a period of not less than one (1) year. Other retention time frames required by 49 CFR Part 219 apply to all other records.
  - A. All records will be maintained in a secure location within the Human Resources Division with controlled access. The Human Resources Division will provide employees with their testing records upon making a request in writing. The Agency will not release any drug and/or alcohol testing records without the employee's written authorization. However, the Agency may disclose information required to be maintained to the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from the results of an alcohol and/or drug test or from the Agency's determination that the employee engaged in prohibited conduct including, but not limited to, worker's compensation, unemployment compensation or other proceeding relating to a benefit sought by the employee.
- 10.2 **Confidentiality:** Positive drug test results shall be reported by the Agency's MRO to designated contacts within the Human Resources Division. Supervisory personnel will be advised on a need-to-know basis.

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Alcohol results are available on-site at the time of the test and results of 0.02 or greater shall be reported to the Collection Site Supervisor. The Collection Site Supervisor will in turn inform the designated contact(s) in the Human Resources Division. Supervisors will be informed on a need-to-know basis.

Human Resources Division, if asked, is obligated to share certain details and information with the Agency's MRO or with an SAP who is providing services to a covered employee. Additionally, if the Agency receives a release form, signed by a current or former employee, from another railroad or employer, certain details of that employee's drug testing results may be shared.

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## **11.0 CONSEQUENCES OF PROHIBITED CONDUCT**

**In addition to discipline administered under this Policy, employees may be disciplined under other Policies and Procedures of the West Virginia Department of Transportation and its' individual Agencies.**

- 11.1 The Agency's MRO shall certify drug test results to the Human Resources Division. Breath alcohol test results are available on-site, and supervisors are to proceed based upon the provisions of this Policy. The Human Resources Division will inform the Director of the SRA (or a designee) of positive drug test results. The Collection Site Supervisor will contact the Director of the SRA (or a designee) and the Director of Human Resources (or a designee) with breath alcohol test results of 0.02 or greater.
  - A. SAFETY-SENSITIVE EMPLOYEES who possess a breath alcohol concentration of 0.02 but less than 0.04 must be removed from the SAFETY SENSITIVE FUNCTION for no less than twenty-four (24) hours. Disciplinary action will also be initiated according to this policy.
  - B. SAFETY-SENSITIVE EMPLOYEES who possess a breath alcohol concentration of 0.04 or greater and/or test positive for controlled substances must be removed from performance of the SAFETY-SENSITIVE FUNCTION and referred to a SAP. In any instance in which a covered employee is removed from SAFETY-SENSITIVE FUNCTIONS they shall be assigned alternate duties on a temporary basis. Conditions set forth in the disciplinary provisions of this Policy must be met and the employees must return to the performance of the SAFETY-SENSITIVE FUNCTION. There are to be no exceptions to this rule.
- 11.2 If, for any reason, errors are made in the reporting of employee test results that cause the employee monetary loss and/or a Disciplinary Action, the affected employee will have his/her status restored as if the error in result reporting never occurred. All documentation relating to a situation such this will be purges from the Agency's records management system.

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- 11.3 Any employee who denies that the test result is valid evidence of alcohol or drug use prohibited by this Policy may demand and shall be provided an opportunity for a prompt post suspension hearing with the Director of Human Resources (or his/her designee) who shall make separate findings as to whether or not prohibited conduct has taken place. This hearing, when requested, shall be conducted within ten (10) calendar days of the disciplinary action.

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## 12.0 DISCIPLINARY ACTION

Employees who have previously been disciplined for a drug and/or alcohol violation are to have that initial disciplinary action applied to the provisions of this Policy upon its' effective date.

- 12.1 **Probationary Employees:** A breath alcohol concentration of 0.02 or greater or a positive drug test will cause the employee to be dismissed from employment.
- 12.2 **First Offense:** A Refusal to Test, or a positive test result is received for a drug test, or an alcohol concentration of 0.04 or greater result.

- A. An employee will be given reasonable opportunity to confer with the WV SRA's MRO before any positive drug test result is reported to the Human Resources Division. SAFETY-SENSITIVE EMPLOYEES will be removed from performing their SAFETY-SENSITIVE FUNCTIONS and assigned alternate duties until the close of business upon notification of positive drug test results or a breath alcohol concentration of 0.04 or greater unless it is determined that the employee is too impaired to safely function in the workplace. Otherwise, suspension will begin at the close of business.

Removal from Safety-sensitive functions will be documented by the employee and the on-duty supervisor completing and signing a *POS-3 Form, Removal From Safety-Sensitive Duty Form*.

1. If this action is based on the employee's Refusal to Test, the *POS-1 Form, Refusal to Test/Cooperate with Testing Process*, will be completed by the Collection Site Supervisor and the BAT/Urine Collector and forwarded to Human Resources Division.
  2. If this action is based on an alcohol test result, the *POS-2 Form, Alcohol Verbal Results*, will be completed by the Collection Site Supervisor and BAT and forwarded to Human Resources Division.
- B. A minimum five (5) day, unpaid suspension, consistent with Section 12.03 of the West Virginia Division of Personnel's Administrative Rule, will be

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imposed. Prior to the conclusion of the suspension, the employee must provide the Agency with documentation verifying that arrangements have been made to be assessed by a SAP. When this documentation is received, the employee will be eligible for Annual Leave status consistent with the West Virginia Division of Personnel's Administrative Rule until the Agency (Human Resources Division) has received written documentation that an assessment has been completed.

Upon the Agency's receipt of the SAP's written assessment, the employee may return to work, but must be assigned alternate duties during his/her treatment period. Upon the Agency's receipt of the SAP's final assessment, showing the employee's completion of treatment, the employee must complete return-to-duty drug and alcohol tests and also be subject to follow-up testing as assigned by the SAP. Details of follow-up testing are described in Section 6.6 of this policy.

- C. Employees testing positive for drugs or having a breath alcohol concentration of 0.04 or greater must follow all treatment recommendations and participate in the follow-up testing program as directed by the SAP or be subject to dismissal from employment.

12.3 **Second Offense:** A Refusal to test, or a positive test result is received for a drug test, or an alcohol test result of 0.02 or greater is received **within** five (5) years from the testing date of the prior offense.

- Dismissal

12.4 **Second First Offense:** A Refusal to Test, or a positive test result is received for a drug test, or an alcohol test result of 0.02 or greater is received, and the collection date is **more** than five (5) years from the collection date of the first offense.

- The employee will face the discipline described in 12.2 above in this Section. Another future positive drug test or a breath alcohol concentration of 0.02 or greater within five (5) years from the date of this offense will result in the employee being dismissed from employment.

12.5 **Alcohol Concentration At or Above 0.02, But Less than 0.04:**

If the employee has previously been disciplined for a drug or alcohol related infraction (BAC 0.04 or greater) of this Policy, he/she will be dismissed from employment for possessing a BAC of 0.02 or greater. Conversely, employees originally disciplined for BAC of 0.02 but less than 0.04 and are again found to possess a BAC of 0.04 or greater will also be dismissed from employment.

- A. **First Offense:** A covered employee found in possession of a BAC at or

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above 0.02 but less than 0.04 must be removed from performing their SAFETY-SENSITIVE FUNCTION for no less than twenty-four (24) hours. In addition, the employee is to receive progressive discipline in the form of a Written Reprimand.

- B. **Second Offense:** A covered employee is to be removed from performing safety-sensitive duties and assigned alternate duties until the close of business upon notification of a breath alcohol concentration of 0.02, but less than 0.04, unless it is determined that the employee is too impaired to safely function in the workplace. Otherwise, suspension will begin at the close of business.

1. A minimum five (5) day suspension without pay, consistent with Section 12.03 of the West Virginia Division of Personnel's Administrative Rule, will be imposed. Prior to the conclusion of the suspension, the employee must provide the Agency with documentation verifying that arrangements have been made to be assessed by a SAP. When this documentation is received, the employee will be eligible for Annual Leave statues consistent with the West Virginia Division of Personnel's Administrative Rule until he or she has been assessed by a SAP.

Upon the completion of the 5-day suspension and the Agency's receipt of the SAP's written assessment, the employee may return to work, but must be assigned alternate duties during his/her treatment period. Upon the Agency's receipt of the SAP's final assessment showing the employee's completion of treatment, the employee must complete return-to-duty drug and alcohol tests and also be subject to follow-up testing as assigned by the SAP. Details of follow-up testing are described in Section 6.6 of this policy.

- C. **Third Offense:** Dismissal and the employee will be referred to a SAP as per 49 CFR 40.287.

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## 13.0 CO-WORKER REPORT POLICY

- 13.1 This Section of Policy establishes standards for co-worker report policies. The alleged violation must come to the attention of the SRA as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this Policy's prohibitions on drug abuse and/or alcohol misuse. No Disciplinary Action will be issued for situations arising from the provision.

- 13.2 If a SRA supervisor determines that the employee is in violation of the Policy or

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other SRA Policies or Procedures, the employee shall be removed from covered service immediately. The employee must elect to waive investigation on the rule charge, and he/she must contact a SAP within five (5) working days. The SAP must schedule necessary interviews with the employee and complete an evaluation within ten (10) calendar days of the date on which the employee contacts the SAP with a request for evaluation, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within twenty (20) days of the date on which the employee contacts the SAP. If the SAP determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures will apply.

- The SRA will grant employees a Leave Status consistent with the West Virginia Division of Personnel's Administrative Rule.
- The SRA will allow the employee to work and perform alternate duties during his/her counseling period, upon approval of such by a SAP.
- The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the SAP.
- The SRA shall promptly return the employee to safety-sensitive duties upon the recommendation of the SAP and upon the employee providing a negative drug test result and an alcohol test result below 0.02.
- Employees may be required to participate in a reasonable program of follow-up treatment for a period not to exceed sixty (60) months from the date the employee was originally removed from service.
- The SRA may conduct return-to-service and/or follow-up testing under the direction of the SAP and the provisions of this Policy.

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## 14.0 CONTACT PERSON

The West Virginia Department of Transportation's Human Resources Division shall maintain a Program Manager to administrate the Drug and Alcohol Testing Program and answer questions about this Policy for all employees within the West Virginia Department of Transportation. The Human Resources Division also has the names and addresses of SAPs throughout the State of West Virginia. The Human Resources Division can be contacted at the following address and/or telephone number:

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Human Resources Division  
1900 Kanawha Boulevard, East  
Building 5, Room 317  
Charleston, West Virginia 25305-0430  
304-414-6800

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## 15.0 EFFECTS OF DRUG ABUSE AND ALCOHOL MISUSE

Supervisory training on the effects of substance misuse or abuse as required by 49 CFR 209(e)(12) is provided through the WVDOT Intranet. The curriculum, *Reasonable Suspicion: Helping Managers Fight Workplace Substance Abuse*, explains the varying effects from one category of substances compared to another, and provides tools to aid supervisors when confronting a possibly impaired individual.

To learn more about the effects of substances visit the following sites:

- Drugs and Human Performance Fact Sheet [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov)
- General substance abuse information, [www.workplace.samhsa.gov](http://www.workplace.samhsa.gov).
- Drug Facts, [www.justice.gov/dea/druginfo/factsheets.shtml](http://www.justice.gov/dea/druginfo/factsheets.shtml).

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## 16.0 CHANGE LOG

October 1, 2019 –

- Changed format per Policy and Procedure work group.
- Revised policy to add SRA employees who perform MOW duties to the drug and alcohol testing pool.