

**DRUG AND ALCOHOL TESTING POLICY**  
**South Central Regional Transit District**  
**Adopted as of January 24, 2024**

**A. PURPOSE**

- 1) The South Central Regional Transit District provides public transit and paratransit services for the residents of Dona Ana County. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol to promote the health and safety of employees and the public. In keeping with this mission, South Central Regional Transit District declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.
- 2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. Covered employees shall abide by the terms of this policy statement as a condition of employment. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates drug and alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result, or a refusal to test. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of specimens for drug and alcohol testing.
- 3) Any provisions set forth in this policy that are included under the sole authority of South Central Regional Transit District and are not provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of South Central Regional Transit District will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

**B. APPLICABILITY**

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties. See Attachment A for a list of employees and the authority under which they are included.

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

*Alternate specimen:* An authorized specimen, other than the type of specimen previously collected or attempted to be collected.

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

*Collection Site:* A place selected by the employer where employees present themselves for the purpose of providing a specimen for a drug test.

*Confirmatory Drug Test:* A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify a specific drug or drug metabolite.

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

*Covered Employee Under FTA Authority:* An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

*Cutoff:* The analytical value (e.g., drug or drug metabolite concentration) used as the decision point to determine a result (e.g., negative, positive, adulterated, invalid, or substituted) or the need for further testing.

*Designated Employer Representative (DER):* An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

*DOT, The Department, DOT Agency:* These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.

*Limit of Quantification (LOQ):* For quantitative assays, the lowest concentration at which the identity and concentration of the analyte (e.g., drug or drug metabolite) can be accurately established.

*Medical Review Officer (MRO):* A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

*Negative Dilute:* A drug test result which is negative for the five drug/drug metabolites but has creatinine and specific gravity values that are lower than expected for human urine.

*Negative result:* The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen. An alcohol concentration of less than 0.02 BAC is a negative test result.

*Non-negative specimen:* A specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), or invalid.

*Oral Fluid Specimen:* A specimen that is collected from an employee's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands. An oral fluid specimen is considered to be a direct observation collection for all purposes of 49 CFR Part 40, as amended.

*Oxidizing Adulterant:* A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites or affects the reagents in either the initial or confirmatory drug test.

*Performing (a safety-sensitive function):* A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

*Positive result:* The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

*Split specimen collection:* A collection in which the single specimen collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

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

*Substituted specimen:* An employee's specimen not consistent with a normal human specimen, as determined by HHS (e.g., a urine specimen, with creatinine and specific gravity values that are so diminished, or so divergent that they are not consistent with normal human urine).

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

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
- (2) Fail to remain at the collection site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a specimen. An employee who does not provide a specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly observed or monitored urine collection in a drug test, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of specimen without a valid medical explanation.
- (6) Fail or decline to take an additional test as directed by the collector or the employer for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed urine collection.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.

suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

## **E. PROHIBITED SUBSTANCES**

- 1) Prohibited substances addressed by this policy include the following.
  - a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1308.11 through 1308.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to; marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. It is important to note that the use of marijuana in any circumstances remains completely prohibited for any safety-sensitive employee subject to drug testing under USDOT regulations. The use of marijuana in any circumstance (including under state recreational and/or medical marijuana laws) by a safety-sensitive employee is a violation of this policy and a violation of the USDOT regulation 49 CFR Part 40, as amended.  
  
Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.
  - b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a South Central Regional Transit District supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

- 5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- 6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- 7) South Central Regional Transit District, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.
- 8) Consistent with the Drug-free Workplace Act of 1988, all South Central Regional Transit District, employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

#### **G. DRUG STATUTE CONVICTION**

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

#### **H. TESTING REQUIREMENTS**

- 1) Drug testing and alcohol testing will be conducted as required by 49 CFR Part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in this policy, and return to duty/follow-up.
- 2) A drug test can be performed any time a covered employee is on duty. A reasonable suspicion, random, or follow-up alcohol test can only be performed just before, during, or after the performance of a safety-sensitive job function. Under authority, a non-DOT alcohol South Central Regional Transit district test can be performed any time a covered employee is on duty.

for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to South Central Regional Transit District. If a legitimate explanation is found, the MRO will report the test result as negative.

- 4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.
- 5) Any covered employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. South Central Regional Transit District will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample, however South Central Regional Transit District will seek reimbursement for the split sample test from the employee.
- 6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.
- 7) Observed collections
  - a. Consistent with 49 CFR Part 40, as amended, collection under direct observation with no advance notice will occur if:
    - i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to South Central Regional Transit District that there was not an adequate medical explanation for the result;
    - ii. The MRO reports to South Central Regional Transit District that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;

by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

- 2) A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in this policy. An alcohol concentration of less than 0.02 will be considered a negative test.
- 3) South Central Regional Transit District affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.
- 4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

#### **K. PRE-EMPLOYMENT TESTING**

- 1) All applicants for covered transit positions shall undergo drug testing prior to performance of a safety-sensitive function.
  - a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.
  - b. An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.



successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

#### **L. REASONABLE SUSPICION TESTING**

- 1) All South Central Regional Transit District FTA covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under South Central Regional Transit District' authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.
- 2) South Central Regional Transit District shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in this policy.
- 3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the South Central Regional Transit District When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with this policy. South Central

The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

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

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that South Central Regional Transit District is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), South Central Regional Transit District may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

## **N. RANDOM TESTING**

- 1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees. Individuals who may be covered under company authority will be selected from a pool of non-DOT-covered individuals.
- 2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

undue concerns for public safety. The SAP will determine whether the employee returning to duty will require a return-to-duty drug test, alcohol test, or both.

#### **P. FOLLOW-UP TESTING**

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

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

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

- 1) Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be immediately removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals (SAP) for assessment, and will be terminated.
- 2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- 3) Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result and a direct act of insubordination and shall result in termination and referral to a list of USDOT qualified SAPs. A test refusal is defined as any of the following circumstances:

- b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from South Central Regional Transit District employment.
    - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in this policy; however, all follow-up testing performed as part of a return-to-work agreement required under this policy is under the sole authority of South Central Regional Transit District and will be performed using non-DOT testing forms.
  - c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return-to-work agreement will be conducted under company authority and will be performed using non-DOT testing forms.**
  - d. **A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in this policy.**
  - e. Periodic unannounced follow-up drug/alcohol testing conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in this policy.
  - f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with South Central Regional Transit District.
  - g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- 6) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

## **R. GRIEVANCE AND APPEAL**

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

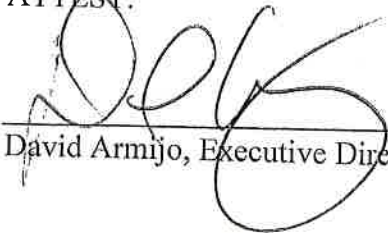
## **S. PROPER APPLICATION OF THE POLICY**

This Policy was adopted by the South Central Regional Transit District *LOCAL GOVERNING BOARD* on *January 24, 2024*.



Javier Perea, SCRTD Board Chair

ATTEST:



David Armijo, Executive Director

### **Attachment A**

<u>Job Title</u>	<u>Job Duties</u>	<u>Testing Authority</u>
Operators	Operate buses or company vehicles	FTA/SCRTD
Dispatcher	Direct drivers from point A to Point B. Will be available to Drive as needed.	FTA/SCRTD
Mechanics	Maintain buses	FTA/SCRTD

### **Attachment B Contacts**

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

#### SOUTH CENTRAL REGIONAL TRANSIT DISTRICT Drug and Alcohol Program Manager

Name: Loretta Gallegos  
Title: Transit Supervisor  
Address: 830 Anthony Dr Anthony, NM 88021  
Telephone Number: 575-323-1620

#### Medical Review Officer

Name: Brian Heinen. Sr., M.D.  
Title: MRO  
Address: Heinen Medical review 151 Leon St. Eunice, LA 70535  
Telephone Number: 919-489-5407

#### Substance Abuse Professional #1

Name: Jared A. Sloan  
Title: SAP  
Address: 1601 North Turner, STE 530 Hobbs, NM 88240  
Telephone Number: 575-605-1080

#### Substance Abuse Professional #2

Name: Kim DuTremain  
Title: SAP  
Address: 653 W. Arrington St. Farmington, NM 87401  
Telephone Number: 505-564-3733