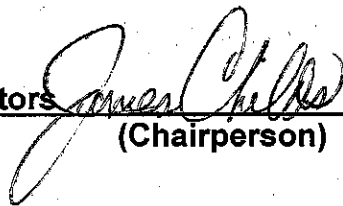


Twin Cities Area Transportation Authority

Drug & Alcohol Testing Policy

Safety Sensitive Employees

Approved by the Board of Directors


(Chairperson)

Date

3/24/2021

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SECTION I: PURPOSE

The Twin Cities Area Transportation Authority (hereafter referred to as "TCATA") provides public transit and paratransit services for the residents of Benton Harbor, Benton Township, Saint Joseph and parts of Saint Joseph Township. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, TCATA declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees. The testing policy rules for drug and alcohol testing are a condition of employment for each safety-sensitive employee.

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. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

Any provisions set forth in this policy that are included under the sole authority of TCATA and are not provided under the authority of the above named Federal regulations are *in italics*.

SECTION II: APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties. A safety-sensitive function is operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or person controlling the movement of revenue service vehicles and any other transit employee who is required to hold a Commercial Drivers License. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions.

SECTION III: DEFINITIONS

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

- 1) An individual dies;
- 2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- 3) One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

In addition, the following criteria for testing, which exceeds the DOT 49 CFR, Part 655 Language of an accident, will apply:

Any occurrence involving a collision when a TCATA Vehicle, including lease vehicles and personal vehicles if being used to conduct TCATA business, strikes a non-authority vehicle that is not parked, which results in damage or injury, or any occurrence involving the movement of a TCATA vehicle when an individual is injured (i.e., employee, passenger, general public) will result in the testing of any employees who may have contributed in anyway to the accident, based on the best information available at the time.

Adulterated specimen: A specimen is considered adulterated if it contains a substance that is not a normal constituent or contains an endogenous substance at a concentration that is not a normal physiological concentration.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol's contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device (EBT).

Canceled Test: A drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither positive nor negative.

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

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

Department of Transportation (DOT): Department of the federal government which includes the, Federal Transit Administration, Federal Railroad Administration, Federal Highway Administration, Federal Motor Carriers' Safety Administration, Research and Special Programs, and the Office of the Secretary of Transportation.

Dilute specimen: Diluted specimens have creatinine and specific gravity values that are lower than expected for human urine. The HHS has determined that specimens with creatinine levels greater than or equal to 2.0 mg/dL but less than 20.0 mg/dL and have a specific gravity greater than 1.0010 but less than 1.0030 are dilute. Individuals with creatinine levels greater than or equal to 2.0 mg/dL but less than 5.0 mg/dL are required to be retested under direct observation.

Disabling damage: Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT): A Device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

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

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 a specific gravity value lower than expected for human urine.

Negative test result: The verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended. An alcohol concentration of less than 0.02 BAC is a negative test result.

Non-negative test result: A test result found to be adulterated, substitute, invalid, or positive for drug/drug metabolites.

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

Positive test result: A verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration as reflected in Section XVI(3)(4).

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

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service or that require a CDL to operate. Include all ancillary vehicles used in support of the transit system.

Safety-sensitive functions: Employee duties identified as:

- 1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.
- 2) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
- 3) Maintaining a revenue service vehicle or equipment used in revenue service.
- 4) Controlling the movement of a revenue service vehicle and
- 5) Carrying a firearm for security purposes.

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee 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) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Substituted specimen: Substituted specimens have creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine. The HHS has determined that specimens with creatinine levels of less than 2.0 mg/dL are substituted.

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

1. Failure to appear for any test (except for pre-employment) within a reasonable time, as determined by the employer (*Note, TCATA requires a supervisor to escort employee to test site*);
2. Failure to remain at the testing site until the testing process is complete;
3. Failure to provide a urine specimen for any required drug test;
4. Failure to permit the observation or monitoring of the specimen collection when required to do so;
5. Failure to provide a sufficient amount of urine when directed and there is no adequate medical explanation for the failure;
6. Failure to take a second test when directed to do so by the employer or collector;
7. Failure to undergo a medical examination when directed to do so by the MRO or employer;
8. Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
9. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process; and
11. Admit to the collector or MRO that you adulterated or substituted the specimen.

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

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

Validity testing: The evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

SECTION IV: EDUCATION AND TRAINING

- 1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

- 2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
- 3) Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment B of this policy.

SECTION V: PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following.

- a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), cocaine, ecstasy (MDMA), and heroin, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.
- b. Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in Section VIII of 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.

- c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions.

SECTION VI: PROHIBITED CONDUCT

- 1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 CFR PART 40, as amended.
- 2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If the employee is required to report, the employee must be given the opportunity to acknowledge that he/she has used alcohol and is unable to perform his/her safety-sensitive function. If the employee acknowledges the use of alcohol but claims ability to perform his or her safety-sensitive function, the employee must take an alcohol test when reporting for duty.
- 3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
- 4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.
- 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) *BTMA under its own authority also prohibits the consumption of alcohol all times employee is on duty, or anytime the employee is in uniform.*

- 8) Consistent with the Drug-free Workplace Act of 1988, all TCATA employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including TCATA Transit premises and vehicles.

SECTION VII: DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1988, all employees are required to notify the TCATA 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 Section XVI of this policy.

SECTION VIII: TESTING REQUIREMENTS

- 1) Analytical urine drug testing and breathe testing for alcohol will be conducted as required by 49CFR part 40 as amended. All covered employees shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section XI, XII, XIII, and XIV of this policy, and return to duty/follow-up.
- 2) All covered employees who have tested positive for drugs or alcohol will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.
- 3) A drug test can be performed any time a covered employee is on duty. An alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function.
- 4) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with TCATA. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section XVI of this policy. Any covered employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employee's removal from duty and disciplined as defined in Section XVI of this policy. Refer to Section XVI for behavior that constitutes a refusal to test.

SECTION IX: PROCEDURES

- 1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.
- 2) The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.
- 3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the TCATA Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM and no further action will be taken.
- 4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation.
- 5) Any covered employee who questions the results of a required drug test under Sections XII through XV of this policy may request that the split sample be tested. Employees do not have access to a test of their split specimen following an invalid result. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. 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. TCATA will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, *however TCATA will seek reimbursement for the split sample test from the employee only if the results are positive on the split sample.*

- 6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled. If the split specimen is not able to be analyzed the MRO will advise TCATA to retest the employee under direct observation.
- 7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

8) Observed collections

Consistent with 49 CFR part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

- a) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to TCATA that there was not an adequate medical explanation for the result; or
 - b) The MRO reports to TCATA that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed.
 - c) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen or
 - d) The temperature on the original specimen was out of range.
- 9) In addition, TCATA must require a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

SECTION X: ALCOHOL TESTING PROCEDURES

- 1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.
- 2) An employee who has 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 Section XVI(4) of 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 Section XVI(4)(b) of this policy. An alcohol concentration of less than 0.02 will be considered a negative test and subject to the provision in Section XVI(4)(a).
- 3) TCATA 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 *under any testing authority*.

SECTION XI: PRE-EMPLOYMENT TESTING

All applicants for covered transit positions shall undergo urine drug testing *and breath alcohol 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 *and alcohol test*. An applicant shall not be placed into a safety-sensitive position unless the applicant takes a drug test with verified negative results, *and an alcohol concentration below 0.02*.

- b) A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results *and an alcohol concentration below 0.02.*
- c) If an applicant fails a pre-employment drug or alcohol test, the conditional offer of employment shall be rescinded. *Failure of a pre-employment drug and/or alcohol test will disqualify an applicant for employment for a period of at least one year.* The applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
- d) When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, *and/or an alcohol concentration above 0.04* the employee shall be subject to disciplinary action in accordance with Section XVI herein.
- e) If a pre-employment/pre-transfer test is canceled, TCATA will require the applicant to take and pass another pre-employment drug test.
- f) In instances where a covered employee is on extended leave for a period of 90 days or more regardless of reason, and is not in the random testing pool the employee will be required to take a drug *and alcohol* test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
- g) *An applicant with a dilute negative test result will be required to immediately submit to an unobserved retest.*
- h) Applicants are required to report previous DOT covered employer drug and alcohol test results—Failure to do so will result in the employment offer being rescinded. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer. The applicant must provide TCATA proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

SECTION XII: REASONABLE SUSPICION TESTING

- 1) All TCATA 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. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

- 2) *TCATA 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 Section XVI of 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 Section XVI of 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 TCATA Human Resource Department and shall be attached to the forms reporting the test results.*
- 4) *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 to the SAP for an assessment. TCATA shall place the employee on administrative leave in accordance with the provisions set forth under Section XVI of this policy. Testing in this circumstance would be performed under the direct authority of the TCATA. Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections XII through XIV of this policy or the associated consequences as specified in Section XVI.*

SECTION XIII: POST-ACCIDENT TESTING

- 1) All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a transit revenue service vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident. If based on the best available information at the time of the determination that the employee's performance could not have contributed to the accident and no testing is accomplished, this decision must be documented in detail, including the decision-making process used to reach the decision not to test.
- 2) In addition, a post-accident test will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident. Disabling damage is defined as "damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repair, or damage to any vehicle that could have been operated but which would have further damaged the vehicle if so operated."
 - a) As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.
 - b) The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and within 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
 - c) 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.
 - d) 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.
 - e) 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.

- f) In the rare event that TCATA is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), TCATA 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.
- 3) *In addition to above FTA requirements, any occurrence involving a collision when a TCATA Vehicle, including lease vehicles and personal vehicles if being used to conduct TCATA business, strikes a non-authority vehicle that is not parked, which results in damage or injury, or any occurrence involving the movement of a TCATA vehicle when an individual is injured (i.e., employee, passenger, general public) will result in the testing of any employees who may have contributed in anyway to the accident, based on the best information available at the time.*

SECTION XIV: RANDOM TESTING.

- 1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.
- 2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.
- 3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by FTA equals fifty percent (50%) of the number of covered employees in the pool and the random testing rate for alcohol established by FTA equals ten percent (10%) of the number of covered employees in the pool.
- 4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.
- 5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from any other testing pool of employees that are included solely under TCATA authority.
- 6) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. Testing can occur during the beginning, middle, or end of an employee's shift.

Employees are required to proceed *immediately* to the collection site upon notification of their random selection. *All TCATA employees will be taken to the collection site by a TCATA supervisor.*

SECTION XV: RETURN-TO-DUTY TESTING

Bay Metro Transit has a zero tolerance policy for drug use, but in the event that an employee is returned to duty who previously tested positive on a drug or alcohol test (0.04 or above, or 2nd positive of 0.02 – 0.039) or refused a test, *and was terminated from employment in accordance with Section XVI*, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undo concerns for public safety.

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

SECTION XVI: RESULT OF DRUG/ALCOHOL TEST

- 1) A drug test with the result of negative dilute *will* be retested immediately.
- 2) A positive drug and/or alcohol test will result in disciplinary action as specified herein.
 - a. As soon as TCATA receives notice of a verified positive drug test result under all testing situations, or a test refusal, the TCATA drug and Alcohol Program Manager will immediately have the employee cease performing any safety-sensitive function. *The employee will be suspended without pay, with subsequent termination from employment.* The employee will be referred to a Substance Abuse Professional.
 - b. *Refusal to submit to a drug-alcohol test shall be considered a positive test result and a direct act of insubordination and shall result in termination.* A test refusal includes the following circumstances.
 - (1) A covered employee who consumes alcohol within eight (8) hours following involvement in an accident without first having submitted to post-accident drug/alcohol tests.

- (2) A covered employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests.
 - (3) A covered employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation. The medical evaluation shall take place within 5 days of the initial test attempt.
 - (4) A verbal or written declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test within the specified time frame.
 - (5) A covered employee whose urine sample has been verified by the MRO as substitute or adulterated.
 - (6) A covered employee fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer
 - (7) A covered employee fails to remain at the testing site until the testing process is complete;
 - (8) A covered employee fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations;
 - (9) A covered employee fails to permit the observation or monitoring of a specimen collection
 - (10) A covered employee fails or declines to take a second test the employer or collector has directed you to take;
 - (11) A covered employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" or "shy lung" procedures
 - (12) A covered employee fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).
 - (13) Failure to sign Step 2 of the Alcohol Testing form
 - (14) Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
 - (15) Possess or wear a prosthetic or other device that could be used to interfere with the collection process; and;
 - (16) Admit to the collector or MRO that you adulterated or substituted the specimen.
3. *If a new hire tests positive for alcohol (that is have a 0.02 alcohol concentration or higher) they will no longer be considered for hire unless a medical review officer confirms that the alcohol concentration may be a natural bodily occurrence.*
 4. *If a transferee, or other safety-sensitive employee otherwise violates the provision of this policy and test positive for alcohol, the following will apply:*

5. *In the instance of a self-referral, disciplinary action against the employee shall include:*

- a) *Mandatory referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;*
- b) *A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.*
- c) *Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from TCATA employment. 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; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section XV of this policy.*
- d) *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.*
- e) *A self-referral to the SAP 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 Section XVI of this policy.*
- f) *Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section XVI of this policy.*

6. *Failure of an employee to report within five days a criminal drug statue conviction for a violation occurring in the workplace shall result in termination.*

SECTION XVII: 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. The MRO is the only person permitted to change a verified test result. An arbitrator is not permitted to overturn the medical judgment of the MRO that the employee failed to present a legitimate medial explanation for a positive, adulterated, or substituted test result of his or her specimen.

SECTION XVIII: PROPER APPLICATION OF THE POLICY

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

SECTION XIX: INFORMATION DISCLOSURE

Drug/alcohol testing records shall be maintained by the TCATA Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

- 1) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP referrals and follow-up testing plans.
- 2) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, Department Supervisor on a need to know basis.
- 3) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- 4) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision-maker in the proceeding. The information will only be released with binding stipulation from the decision maker will make it available only to parties in the proceeding. Records will be released to the National Transportation Safety Board during an accident investigation.

- 5) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision-maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
- 6) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- 7) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over TCATA or the employee.
- 8) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended necessary legal steps to contest the issuance of the order will be taken.
- 10) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

SECTION XX: SYSTEM CONTACTS.

Contact Person(s): Executive Director **Paul Gillespie** (Telephone (269)927-2268) and Assistant Director, **TJ Taylor** (Telephone (269)927-2268) have been designated as the Contact Persons for Twin Cities Area Transportation Authority, 275 East Wall St., Benton Harbor, Michigan 49022. Positive alcohol results will be released only to the above named contact persons.

Drug and Alcohol Program Manager

Name: TJ Taylor

Title: Assistant Director

Address: 275 East Wall St., Benton Harbor, Michigan

Telephone Number: 269-927-2268

ATTACHMENT A

A covered employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions as described in the regulations and listed below:

1. Operating a revenue service vehicle, whether or not the vehicle is actually in revenue service.
2. Operating a non-revenue service vehicle when required to be operated by a holder of a CDL (i.e., employee whose job description requires a CDL).
3. Controlling the dispatch or movement of a revenue service vehicle.
4. Maintaining a revenue service vehicle or equipment used in revenue service.
(Contractors are exempt due to the population of our service area is under 200,000.)

Specific job titles covered under the above include the following:

Vehicle Operators
Mechanics
Service Workers (including Building & Grounds)
Supervisors
Dispatchers
Maintenance
Technician

ATTACHMENT B ALCOHOL FACT SHEET

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

Signs and Symptoms of Use

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

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

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

Decreased sexual functioning

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

Social Issues

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- Forty percent of family court cases are alcohol problem related

- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

The Annual Toll

- 24,000 people will die on the highway due to the legally impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accidents.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

Workplace Issues

- It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgement can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person is.

ATTACHMENT C DRUG TESTING PANEL

The DOT testing at HHS-certified laboratories will continue to be a 5-panel drug test regimen.

This 5-panel regimen will remain:

- (1) Marijuana (THC)
- (2) Cocaine
- (3) Amphetamines
- (4) Opioids
- (5) Phencyclidine (PCP)

Broken out, here is what drug testing will look like effective October 1, 2010, with the new confirmatory testing being in **bold**. Please note that laboratories have always conducted confirmatory testing for 6-AM when appropriate.

- Marijuana(THC)
- Cocaine
- Amphetamines
 1. Amphetamine
 2. Methamphetamine
 3. MDMA
 4. MDA
 5. MDEA
- Opioids
 1. Codeine
 2. Morphine
 3. 6- AM (heroin)
 4. Hydrocodone
 5. Hydromorphone
 6. Oxycodone
 7. Oxymorphone
- Phencyclidine (PCP)

ATTACHMENT D COLLECTION PROCEDURES

All urine drug testing will be performed in accordance with DOT regulations, consistent with 49 CFR Part 40, as amended, and Department of Health and Human Service Administration DHHSA certified laboratory. The controlled substances testing will include the following five drugs: marijuana, cocaine, opiates, amphetamines and phencyclidine.

All urine samples will be collected in a location designated by the Authority and each sample will be separated into two (2) separate specimens, the primary and the split samples.

The following are the minimum requirements for the collection site:

- 1) Privacy enclosure for urination
- 2) Toilet or void receptacle
- 3) Clean writing surface
- 4) Water source for hand washing, outside privacy enclosure (to be done prior to collection)
- 5) Visually inspected prior to collection
- 6) Restricted access during collection
- 7) Bluing agent in receptacle water
- 8) Other water sources in privacy enclosure turned off or secured
- 9) Instructions for donors explaining their responsibilities in specimen collection
- 10) Secure storage location for specimens and specimen collection procedures

The following drug testing procedures will be followed:

- 1) The site collector verifies employee identity utilizing a picture ID
- 2) Donor checks outer garments within the collection site.
- 3) Collection site personnel inspects collection room before and after each specimen collection
- 4) Employee washes hands prior to collection
- 5) Employee selects wrapped single specimen collection cup
- 6) Employee is directed to privacy enclosure and asked to provide at least 45 milliliters of urine
- 7) The temperature of the specimen will be checked
- 8) The specimen will be visually examined for signs of tampering or adulteration
- 9) The specimen for DOT testing only will be split into two specimen bottles (30-ml primary sample). NonDOT specimens will not be split.
- 10) Both specimens will be labeled and sealed in full view of the employee
- 11) Employee must initial labels after labels are applied to bottles
- 12) The specimens will be labeled and the USDOT custody and control form completed for FTA tests only
- 13) Both specimens will be shipped in a single shipping container with the drug testing custody and control form

All urine samples will be sealed with tamper resistant tape, in the presence of the donor, to affirm integrity of the samples. A USDOT Chain of Custody and Control Form with a unique identification number will be used for both DOT and Non-DOT testing. These samples will be kept secure until shipped to the testing laboratory.

Observed collections: In order to guard against employee attempts to mask the testing process, the number of situations requiring direct observation has increased to include return-to-duty and follow-up testing with regards to employers that have second chance policies in place. The manner in which the observations will be conducted has also been redefined to ensure that prosthetic devices may not be successfully and easily employed to mask illicit drug use. Observed collections are required in the following circumstances:

1. All return-to-duty tests;
2. All follow-up tests;
3. Anytime the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90-100 degrees F.
4. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
5. Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
6. Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
7. Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed.

An immediate unobserved collection will be required following a negative dilute. 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.

If observed collections are required, they must be made by individual of the same gender as the donor.

If the employee provides insufficient volume on initial specimen the following will be accomplished:

- 1) Original specimen (insufficient volume) will be discarded.
- 2) Individual remains at collection site until an adequate second specimen is given.
- 3) If a specimen is not provided within three (3) hours after consuming up to 40 ounces of water- the employee shall be referred for a medical examination.
- 4) Medical examination will look for ascertainable physiological conditions or documented pre-existing psychological disorders present at the time of the examination.

**ATTACHMENT E
MEDICAL REVIEW OFFICER (MRO)
RESPONSIBILITIES**

- 1) Notify employee of confirmed positive test result
- 2) Provide employee an opportunity to discuss/explain the confirmed test result
- 3) Review employee's medical history/medical records
- 4) Verify laboratory results
- 5) Notify employer of verified test result
- 6) MRO can verify test as positive if employee refuses to participate in verification process
- 7) Inform employee of right to request split specimen test. Split specimen results are reported to TCATA regardless of who pays for the test.
- 8) Process employee's request for a split sample (MRO/TCATA cannot deny the split specimen test if the employee request it-even if they can't pay for it)
- 9) Notify employer of when a retest is required
- 10) Notify employer of use of other performance deteriorating substances by a safety-sensitive employee.
- 11) MRO must report adulterated specimens directly to TCATA and not the employee-adulterated specimens are considered test refusals
- 12) Maintains all necessary records.

The Medical Review Officer may verify a test as positive without having communicated directly with the employee about the test in three circumstances:

- 1) The employee expressly declines the opportunity to discuss the test;
- 2) MRO must make three (3)-documented attempts in 24 hours to contact the employee. If unable to contact, the MRO will notify the DER and instruct them to contact the employee. The DER will instruct the employee, if able to contact, that he/she must contact the MRO immediately, but no later than 72 hours.
- 3) The DER has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than 72 hours has passed since the date the employee was successfully contacted by the designated employer representative; or
- 4) The DER cannot contact the employee within 24 hours of the MRO notification and the employee fails to contact the MRO within 10 days; or
- 5) There is no contact by the MRO or the DER for ten days.

If a test is verified positive under the circumstances specified above, the employee may present the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from being contacted by the MRO or designated employer representative or from contacting the MRO within the times provided. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the

MRO declares the test to be negative. In the event of a positive drug test result, the MRO will notify the donor that he or she has 72 hours to request that the split sample be forwarded to another DHHS certified laboratory for analysis.