303 – Drug and Alcohol Testing for Employees Performing FTA Defined Safety Sensitive Duties

Section 303.01 Purpose

The purpose of this policy is to comply with 49CFR Part 40, as amended, and 49CFR Part 655, as amended, which implement the Drug and Alcohol Testing regulations of the Department of Transportation (DOT) and the Federal Transit Authority (FTA), respectively. Copies of these regulations can be obtained from the Human Resources Department, or on the internet at www.transportation.gov/ODAPC (Office of Drug and Alcohol Policy and Compliance).

All covered employees as defined in Section 303.02 of this policy are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655. All covered employees as defined in Section 303.02 are also subject to the provisions of 49 CFR Part 32, which implements the Drug-Free Workplace Act of 1988, requiring the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify the Director of Human Resources no later than five days after such conviction.

In addition to this policy, all covered employees are subject to the non-DOT provisions of Policy 301: Drug and Alcohol Detection and Deterrence for All Employees.

Section 303.02 Covered Employees

This policy applies to every person, including an applicant or transferee who performs or will perform a "safety-sensitive" function as defined in Part 655.4. You are a covered employee for purposes of this policy if you perform any of the following:

- Operating a revenue service vehicle, in or out of revenue service
- Operating a non-revenue vehicle requiring a commercial driver's license
- Controlling movement or dispatch of a revenue service vehicle
- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

See Appendix 302A for a current list of covered positions by job title.

Section 303.03 Prohibited Behavior

Use of illegal drugs is prohibited at all times. 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 Part 40. Prohibited drugs include:

- Marijuana
- Cocaine
- Phencyclidine (PCP)

- Opiods
- Amphetamines

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having a blood alcohol concentration (BAC) of 0.04 or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must notify a supervisor they have used alcohol at the time that they are called to report for duty, and will be prohibited from performing safety-sensitive duties with an alcohol concentration of .02 or greater

All covered employees are prohibited from consuming alcohol within four hours prior to the performance of safety-sensitive job functions.

All covered employees are prohibited from consuming alcohol for eight hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

Section 303.04
Refusal To Test

A refusal to submit to a duly authorized DOT drug or alcohol test shall bear the same consequences as a positive result. A covered employee refuses to test if he or she:

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by Fort Bend County.

2. Fails to remain at the testing site until the testing process is complete. (An employee who leave the testing site before the testing process commences for a pre-employment test has not refused to test.)

3. Fails to attempt to provide a specimen for drug testing or an adequate amount of saliva or breath for alcohol testing. (An employee who does not provide an adequate amount of breath or saliva or 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 drug collection, fails to permit direct observation or monitoring of the provision of the specimen.

5. Fails to provide a sufficient quantity of breath or saliva or specimen without a valid medical explanation. This refusal is contingent on a medical evaluation determining no adequate medical explanation exists.

6. Fails or declines to take a second drug test as directed by the collector or Fort Bend County.

7. Fails to undergo a medical evaluation as required by the Medical Review Officer (MRO) or Fort Bend County.

8. Fails to cooperate with any part of the testing process.

9. Fails to cooperate with any part of the collector's instructions to raise and lower clothing and turn around during a direct observation collection.
10. Possesses or wears a prosthetic or other device used to tamper with the collection process.
11. Admits to the collector or MRO that the specimen is adulterated or substituted.
12. Refuses to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
13. Fails to remain readily available after an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Section 303.05 Consequences for Violation

A covered employee is in violation of this policy if they refuse to take a required drug or alcohol test, test positive for the presence of drugs, or have a confirmed alcohol test showing a BAC of .04 or greater. A covered employee who violates this policy will be immediately removed from safety-sensitive duties and referred to a Substance Abuse Professional. **Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, employees who test positive on a drug or alcohol test shall be immediately suspended without pay and are subject to immediate termination of employment.**

Following an alcohol confirmation test showing a BAC greater than or equal to .02 but less than .04, the employee must be immediately removed from performing safety-sensitive duties for at least 8 hours. **As specified in the non-DOT provisions of Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, an employee will be suspended without pay for at least 3 days, and may be subject to termination of employment for a confirmed alcohol test greater than or equal to .02 but less than .04.**

In limited circumstances, at the discretion of an Elected Official or Department Head and in consultation with Human Resources, an employee may be permitted the opportunity to maintain employment after a positive result if the employee strictly complies with the requirements of a second chance program. Refer to Section 303.10, as well as Policy 301 for more information.

Section 303.06 Pre-employment Tests

A negative DOT pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a DOT pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug or alcohol test must provide proof of successful

completion of a DOT compliant substance abuse evaluation and treatment plan.

Section 303.07 Reasonable Suspicion Tests

All covered employees shall be subject to a drug and/or alcohol test when Fort Bend County has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. It is recommended that the trained supervisor use Form 301A to document the reason for referral for reasonable suspicion training.

Covered employees may be subject to a DOT reasonable suspicion drug test any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or immediately after the employee has ceased performing such functions.

In addition to the reasonable suspicion drug and alcohol testing required under this section, a covered employee who is reasonably suspected to be impaired shall submit to being evaluated by a Drug Recognition Expert (DRE) as soon as reasonably possible after the occurrence that causes the suspicion. This element of the Fort Bend County anti-drug use or alcohol misuse program are not required by Section 655.15(j). Fort Bend County may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, employees may be subject to a non-DOT reasonable suspicion drug and/or alcohol test while performing any function as an employee of the County.

Section 303.08 Post-Accident Tests

Covered employees shall be subject to post accident drug and alcohol testing when involved in an accident that involves a fatality. A DOT post-accident drug and alcohol test shall be required of the covered employee(s) operating the public transportation vehicle, and may be required of any other covered employee whose performance could have in any way contributed to the accident. A County official shall determine the employee(s) subject to testing using the best information available at the time, and testing shall be conducted as soon as practicable.

The circumstances listed below shall also require drug and alcohol testing of the covered employee(s) operating the public transportation vehicle, unless an operator's performance can be completely discounted as a contributing factor to the accident. In addition, any other covered employee whose performance could have in any way contributed to an accident shall be subject to DOT drug and alcohol testing. A County official shall determine the employee(s) subject to testing using the best information available at the time, and testing shall be conducted as soon as practicable.

1. A non-fatality accident that results in injuries to one or more persons that require immediate medical treatment away from the scene.

1. A non-fatality accident that results in disabling damage to one or more vehicles that must be towed away from the scene.

2. A non-fatality accident that involves a rail car, trolley car or bus, or vessel, that must be removed from operation.

An alcohol test shall be administered within 2 hours of the accident. However, if the test cannot be conducted within 2 hours, it must be conducted within 8 hours of the accident. After 8 hours, a DOT alcohol test will not be conducted. An employee must remain readily available for an alcohol test, cooperate with the testing process, and refrain from consuming alcohol, for 8 hours or until the test is conducted, whichever comes first. Failure to do so may be considered a refusal to test.

A DOT drug test shall be administered as soon as possible, but not more than 32 hours following the accident. An employee must remain readily available to take a drug test until the test is conducted, and cooperate with the testing process. Failure to do so may be considered a refusal to test.

A covered employee subject to post-accident testing must remain readily available to test, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or obtain emergency medical care.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, employees may be subject to non-DOT post accident drug and/or alcohol tests for any work-related incident involving property damage or physical injury.

Section 303.09 Random Tests

DOT random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at: www.transportation.gov/odapc/random-testing-rates.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, or just before or just after the employee performs safety-sensitive functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty. An employee who is notified of selection for random testing must immediately proceed with testing.

Random testing may be performed toward the end of an employee's shift, therefore, employees must provide advance, verifiable notice of scheduled medical care or child care commitments that immediately follow the shift. Such employees must provide notice no less than 8 hours before the end of the shift so that a required random test can commence no less than three hours

(drug) or 30 minutes (alcohol) before the end of the shift.

Section 303.10 Return to Duty and Follow-up Tests

Any Fort Bend County employee who refuses a DOT drug or alcohol test, or tests positive on a DOT drug or alcohol test shall bear the consequences as detailed in Section 303.04. If the employee is granted the opportunity to maintain employment, an evaluation by a Substance Abuse Professional (SAP) is required, and the employee must provide a negative DOT Return to Duty drug and/or alcohol result, conducted in accordance with 49 CFR Part 40 Subpart O, before performing safety sensitive duties. The employee must pay the cost of the Return to Duty drug and alcohol test.

After returning to safety sensitive duties, the employee will be subject to a series of unannounced Follow Up drug and/or alcohol tests conducted in accordance with 49 CFR Part 40 Subpart O. The type, number, frequency and duration of the testing shall be directed by the SAP. The employee must pay for all Follow Up drug and alcohol tests.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, any employee who subsequently tests positive on a drug or alcohol test shall be subject to immediate termination of employment. Individuals who have previously refused a DOT drug or alcohol test, or tested positive on a DOT drug or alcohol test, will not be considered for employment in a safety sensitive position unless they provide proof of completion of a DOT compliant substance abuse program and the requisite testing.

Section 303.11 Testing Procedures

All FTA drug and alcohol testing will be conducted in accordance with 49CFR Part 40, as amended.

Fort Bend County may accept a negative dilute drug test result and no retest will be required. However, if the negative dilute result shows a creatinine concentration of greater than or equal to 2 mg/dL, but less than or equal to 5 mg/Dl, an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67) will be required.

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The split specimen testing will be conducted in a timely manner, but the employee requesting the test will be required to pay the cost of the test.

Section 303.12 Contacts

The Fort Bend County Drug and Alcohol testing program is administered by the Human Resources Department.

For questions regarding policy and procedure:

Drug and Alcohol Program Manager:
Director of Human Resources or Designee
301 Jackson Street, Suite 243
Richmond TX 77469
281-341-8631

To schedule tests:

Designated Employee Representative (except Post Accident)
Human Resources Administrative Coordinator

301 Jackson Street, Suite 243
Richmond TX 77469
281-341-8616

Designated Employee Representative (Post Accident Only)
Director of Risk Management or Designee
301 Jackson Street, Suite 224
Richmond TX 77469
281-341-8630

To schedule After Hours Reasonable Suspicion Tests:
Houston Medical Testing Services, A DISA Company
713-665-4687
For assistance with drug or alcohol abuse or misuse:
Deer Oaks Employee Assistance Program
Helpline: 866-327-2400
Website: www.deeroakseap.com (Login & Password: fortbend)
Email: eap@deeroaks.com

Policy Approved and Adopted by
Fort Bend County Commissioners Court
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