

LRGVDC Transit Service Department Drug and Alcohol-Free Workplace Policy



LRGVDC Board of Directors

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Lower Rio Grande Valley Development Council

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1. Purpose of Policy

This policy complies with 49 CFR Part 655, as amended and 49 CFR Part 40, as amended. Copies of Parts 655 and 40 are available in the drug and alcohol program manager's office and can be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website

<http://transit-safety.fta.dot.gov/DrugAndAlcohol/>.

All covered employees are required to submit drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655.

Portions of this policy are not FTA-mandated but reflect LRGVDC - Valley Metro's policy. These additional provisions are identified by **bold text**.

In addition, DOT has published 49 CFR Part 32, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

All LRGVDC - Valley Metro employees are subject to the provisions of the Drug-Free Workplace Act of 1988.

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

Employees must abide by the terms of this policy as a condition of employment.

2. 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, section 655.4.

You are a covered employee 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 Attachment A for a list of positions covered by job title.

3. Prohibited Behavior

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

- marijuana
- cocaine
- phencyclidine (PCP)
- Opioids
- amphetamines

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration 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 acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test with a result of less than 0.02 prior to performance.

All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

All covered employees required to take a post-accident test are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

4. Consequences for Violations

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and provided with contact information for Substance Abuse Professionals (SAPs).

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties until the start of their next regularly scheduled duty period (but for not less than eight hours) unless a retest results in the employee's alcohol concentration being less than 0.02.

Zero Tolerance

Per LRGVDC - Valley Metro policy, any employee who tests positive for drugs or alcohol (BAC at or above 0.04) or refuses to test will be terminated from employment.

5. Circumstances for Testing

Pre-Employment Testing

A negative 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 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 drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

Reasonable Suspicion Testing

All covered employees shall be subject to a drug and/or alcohol test when LRGVDC - Valley Metro 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.

Covered employees may be subject to reasonable suspicion drug testing 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 just after the employee has ceased performing such functions.

Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by LRGVDC - Valley Metro using the best information available at the time of the decision, will be tested.

Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident

In addition, any other covered employee whose performance could have contributed to the accident, as determined by LRGVDC - Valley Metro using the best information available at the time of the decision, will be tested.

A covered employee subject to post-accident testing must remain readily available, 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 to obtain necessary emergency medical care.

As soon as it is practicable following an accident as defined in this policy the transit supervisor's investigation the accident will notify the transit employee operating the transit vehicle and all the 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.

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 are documented.

Random Testing

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

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

6. Testing Procedures

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

Dilute Urine Specimen

If there is a negative dilute test result, LRGVDC - Valley Metro will accept the test result and there will be no retest, unless the creatinine concentration of a negative dilute specimen was greater than or equal to 2 mg/dL, but less than or equal to 5 mg/dL.

Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

7. Split Specimen Test

In accordance with Federal Transit Administration (FTA) requirements and 49 CFR Part 40, an employee who receives a verified positive, adulterated, or substituted drug test result has the right to request that the split specimen be tested at a second HHS-certified laboratory.

The employee must make this request to the Medical Review Officer (MRO) within 72 hours of being notified of the verified test result, as outlined in 49 CFR §40.171. Upon receipt of a timely request, LRGVDC – Valley Metro will ensure that the split specimen

is forwarded to a second certified laboratory for analysis without delay, in accordance with 49 CFR §40.175.

The employee is responsible for the cost of the split specimen test. However, LRGVDC – Valley Metro will not delay or deny the testing of the split specimen based on the employee’s ability or agreement to pay for the test, in compliance with 49 CFR Part 40 requirements.

The results of the split specimen analysis will be reported to the MRO and will be used in determining the final test result. If the split specimen test fails to reconfirm the original result, the test will be canceled, consistent with 49 CFR §40.187.

8. Test Refusals

As a covered employee, you have refused to test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by LRGVDC - Valley Metro.
- (2) Fail to remain at the testing 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 provide a specimen for a drug or alcohol test. 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 drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient specimen for a drug or alcohol test without a valid medical explanation.
- (6) Fail or decline to take a second drug test as directed by the collector or LRGVDC - Valley Metro.
- (7) Fail to undergo a medical evaluation as required by the MRO or LRGVDC - Valley Metro’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 drug test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit 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.

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.

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions and provided with contact information for SAPs. **Under LRGVDC – Valley Metro if you refuse to take a non- DOT test or sign a non DOT form you will be terminated.**

9. Prescription Drug Use

The appropriate use of prescription medications and over-the-counter (OTC) drugs is not prohibited under Federal Transit Administration (FTA) regulations; however, all use must be consistent with U.S. Department of Transportation (USDOT) requirements under 49 CFR Part 40.

Only valid prescriptions issued to the employee by a licensed medical practitioner, acting within the scope of their professional practice and consistent with the Controlled Substances Act (CSA), are recognized under DOT regulations. Illegally obtained or invalid prescriptions—including medications not prescribed to the employee, obtained fraudulently, or otherwise inconsistent with federal law—are not considered valid.

These requirements are consistent with 49 CFR §§40.135, 40.137, and 40.141, and apply to all determinations made by the Medical Review Officer (MRO) when verifying drug test results.

Employees must adhere to the following:

1. Employees using any prescription medication must consult with their physician regarding the medication's effects on their ability to safely perform safety-sensitive duties, including operating motor vehicles or machinery.
2. Employees must read and follow all medication labels and warnings.
3. Employees are prohibited from using OTC medications while performing safety-sensitive functions if the manufacturer warns against use while operating vehicles or machinery, unless cleared by a licensed physician.
4. Employees must notify their supervisor of any medication use that may impair their ability to safely perform their duties and must provide written physician approval upon request.
5. Employees undergoing a drug and/or alcohol test must provide the MRO with all current prescription and OTC medications they are taking.
6. Any employee who reports for duty while using a medication that may impair safe performance, without providing required physician documentation, will be removed from safety-sensitive duties until appropriate clearance is provided. Time away beyond the remainder of that day may be charged in accordance with agency attendance policies.

10. Education and Training Programs

LRGVDC's Transit services Department - Valley Metro shall establish an employee education and training program for all covered employees, including:

- a. **Education.** The education component shall include display and distribution to every covered employee of informational material and a community service hotline telephone number for employee assistance, if available.
- b. **Training- Covered employees.** LRGVDC's Transit Services Department - Valley Metro covered employees will receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment and on the signs and symptoms that may indicate prohibited drug use upon hire (within about the first 30 days of hire).
- c. **Supervisors.** Supervisors and/or other company officers authorized by the LRGVDC's Training Services Department – Valley Metro to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

11. Texas Alcohol and Drug Abuse Licensed Side Facilities for the LRGVDC Area

If a covered employee has a verified positive drug test result or has a confirmed alcohol test of 0.04 or greater or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resource available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

A current list of Substance Abuse Professionals is kept by the LRGVDC's Transit Services Department - Valley Metro - and is available to staff.

- a. **Heath Smith IV, LPC, LCDC, NCC, ADC III, MAC**
801 W Nolana Ave. Suite 101
McAllen, TX 78504
PHONE #: (956) 994.1428
- b. **Heather D Alcala, MS, LPC, LCDC, ICADC, SAP**
701 Santa Isabel Blvd. Suite 4
Laguna Vista, TX 78578
PHONE #: (956) 299.4258

12. Drug and Alcohol Designated Employer Representative (DER)

Any questions regarding this policy or any aspect of LRGVDC Transit Services and transit system representatives:

- Dora Cruz
Program Specialist II – Risk Management
Drug and Alcohol Program Manager
510 S. Pleasantview Dr. Weslaco, TX 78596
1.800.574.8322 ext. 309

Attachment A: Covered Positions

A safety-sensitive position is any duty position or job category that requires the performance of one or more safety-sensitive functions as defined by applicable federal regulations.

Safety sensitive position-a duty position or job category which requires the performance of a safety-sensitive function(s) such as those titles listed below:

1. Vehicle Driver I, II, III, & IV
2. Vehicle Driver NON CDL
3. Program Specialist I - Dispatcher
4. Motor Vehicle Technician I, II, III, and IV
5. Motor Vehicle Technician -Intern
6. Fleet Detailer
7. Electronic Technician I & II
8. Shop Forman
9. Program Supervisor I, II, III, & IV Operations & Maintenance

Attachment B: Acknowledgment of Prohibited Drug Awareness Training Form

Acknowledgement for Prohibited Drug Awareness Training for Safety Sensitive Employees

In accordance with Federal Transit Administration (FTA) Rule 49 CFR Part 655.14 (b), I acknowledge that I have received at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

Print Name

Signature

Date

**Attachment C: Pre – Employment Drug Testing
Acknowledgment Form**

**Pre employment Drug Testing
Acknowledgment**

I, hereby acknowledge and understand that , as part of my application for employment for a position which involved the performance of safety sensitive function as define by 49 CFR Part 655, as amended, I must submit to a drug test under the authority of the U.S. Department of Transportation, Federal Transit Administration. I acknowledge and understand that my employment is contingent on the passing of the aforementioned drug test, and I will not be assigned to perform a safety sensitive function unless my drug test has a verified negative result.

Signature of Applicant

Date

Print Name

Date

Attachment D: Acknowledgement of Employer's Drug and Alcohol Policy

I, _____, the undersigned, hereby acknowledge that I have received a copy of the anti- drug misuse program policy mandated by the U. S. Department of Transportation, FTA for all covered employees who perform a safety sensitive function. I understand this policy is required by 49 CFR Part 655, as amended, and has been duly adopted by the governing board of employers. Any provisions contained herein which are not required by 49 CFR Par 655, as amended, that have been imposed solely on the authority of the employer are designated as such in the policy document.

I further understand that receipt of this policy constitutes a legal notification of the contents, and that it is my responsibility to become familiar with and adhere to all provisions contained therein. I will seek and get clarification for any questions concerning the provision contained in the policy. I also understand that compliance with all provisions contained in the policy is a condition of employment.

I further understand that the information contained in the approved policy dated _____, is subject to change and that any such changes or addendum, shall be disseminated in a manner consistent with provision of 49 CFR Par655, as amended

Employee Name (print): _____

Employee Signature: _____ Date: _____

Attachment E: Post Accident Testing Decision Report

POST ACCIDENT TESTING DECISION REPORT

A separate sheet must be filled out for each covered employee that contributed to the accident

System Name: _____ Date of Accident: _____

Time of Accident: _____ Time Employer was notified: _____

Location of Accident: _____

Safety-Sensitive Employee: _____ Position: _____
i.e. Driver, Dispatcher, etc.

1. Did the accident involve a public transit vehicle? Yes No
2. Did the accident involve the operation of the vehicle? Yes No
3. Was there loss of life as a result of the accident? * Yes No
4. Did an individual suffer a bodily injury and immediately receive medical treatment away from the scene? * Yes No
5. Was there disabling damage to any of the involved vehicles? * Yes No

6. a) Did you perform a drug and/or alcohol test?
(Use Decision Tree on back of this form) Yes DOT-FTA Authority Yes (NON-DOT) Company Authority No

b) If no, why not? _____

c) For a non-fatal accident, can the covered employee(s) performance be completely discounted as a contributing factor to the accident? Yes No

7. a) Was an alcohol test performed within 2 hours? N/A Yes No

b) If no, why: _____

8. If no alcohol test occurred, and more than 8 hours elapsed from the time of the accident, please explain: _____

9. a) Was a drug test performed within 32 hours? N/A Yes No

b) If no, why: _____

10. a) Did the employee leave the scene of the accident without a reasonable explanation? Yes No

b) If Yes, please explain: _____

Test Determination: _____

Name of supervisor making determination: _____

Time employee was informed of determination: _____

Signature & Title _____

Date _____

Attachment F: Reasonable Suspicion Incident Checklist

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4/2021

REASONABLE SUSPICION INCIDENT CHECKLIST

Employee's Full Name

Date / Time of Observation

Supervisor's Full Name & Telephone

Date of Supervisor's Reasonable Suspicion Decision Training

This checklist is to be completed when a supervisor – trained in accordance with USDOT Agency regulations for reasonable suspicion/cause determination requirements – determines that an incident has occurred which provides reasonable suspicion that an employee is exhibiting behaviors consistent with the symptoms of drug use and / or alcohol misuse. Mark each applicable item on this form and add any additional facts or circumstances which you have observed.

A. Nature of Incident / Cause for Suspicion

- 1. Observed/reported possession or use of a prohibited substance (including passenger complaint).
- 2. Apparent drug or alcohol intoxication.
- 3. Observed drug or alcohol intoxication.
- 4. Arrest for drug-related offense
- 5. Other, Please specify:

B. Behavioral Indicators

- 1. Verbal abusiveness
- 2. Physical abusiveness
- 3. Extreme aggressiveness or agitation
- 4. Withdrawal, depression, tearfulness, or responsiveness
- 5. Inappropriate verbal responses to questioning or instruction
- 6. Other erratic or inappropriate behavior (e.g. hallucinations, disoriented, confused) Please specify:

CONFIDENTIAL

C. Physical Signs and Symptoms

- 1. Possession, dispensing, or using prohibited substance
 - 2. Slurred or incoherent speech
 - 3. Unsteady gait or other loss of physical control, poor conditioning
 - 4. Dilated or constricted pupils or unusual eye movement
 - 5. Bloodshot or watery eyes
 - 6. Extreme aggressiveness or agitation
 - 7. Excessive sweating or clamminess of skin
 - 8. Flushed or very pale face
 - 9. Highly excited or nervous
 - 10. Nausea or vomiting
 - 11. Disheveled appearance or out of uniform
 - 12. Odor of alcohol
 - 13. Odor of Marijuana
 - 14. Dry mouth (frequent swallowing/lip wetting)
 - 15. Shaking hands or body tremors/twitching
 - 16. Dizziness or fainting
 - 17. Breathing irregularity or difficulty breathing
 - 18. Runny nose or sores around nostrils
 - 19. Inappropriate wearing of sunglasses
 - 20. Puncture marks or "tracks"
 - 21. Other (Specify) _____
-
-
-

D. Written Summary

Please summarize the facts and circumstances surrounding the incident. The observations must be specific, contemporaneous, and articulable regarding the appearance, behavior, speech, or body odors of the safety-sensitive employee. Attach additional sheets as needed.

The above document of physical, behavioral, and performance indicators of the named employee were observed by:

Supervisor's Full Name Signature Date

Forward this document to the drug and alcohol Program Manager