

Attachment C:

LRGVDC

Transit Services Department

Drug & Alcohol

Free Workplace Policy



LRGVDC Board of Directors

**Purpose approve date:
August 28, 2019**

Lower Rio Grande Valley Development Council

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LRGVDC TRANSIT SERVICES DEPARTMENT DRUG/ALCOHOL-FREE WORKPLACE POLICY

1.0 POLICY STATEMENT

The Lower Rio Grande Valley Development Council (LRGVDC) Transit Services Department – Valley Metro is committed to promoting the safety and well-being of its employees, passengers, motorists and pedestrians. To ensure that transit service is delivered safely, efficiently and effectively, each employee has the responsibility to perform his/her duties in a safe, conscientious, and courteous manner.

A drug/alcohol-free workplace is essential to creating a safe environment for employees and the public while providing transit services. LRGVDC's Transit Services Department – Valley Metro is committed to providing a drug/alcohol-free workplace through the enforcement of the regulations issued by the Federal Transit Administration (FTA). In February 1994, the Federal Transit Administration (FTA) published two regulations prohibiting drug use and alcohol misuse by transit employees and required that transit agencies test for prohibited drug use and alcohol misuse. In August 2001, these regulations were updated and consolidated into one regulation. The new regulation is 49 CFR Part 655, *as amended, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"*. In addition, the U.S. Department of Transportation (DOT) issued 49 CFR Part 40, *as amended, Procedures for Transportation Workplace Drug and Alcohol Testing Programs* which describes the testing procedures to be followed. A complete copy of regulation Part 49 CFR Part 40, *as amended* will be made available to employee upon request.

2.0 PURPOSE:

In order to meet its public safety responsibilities and to comply with the requirements of the above laws and regulations, including the requirements of the FTA and State regulations regarding the prevention of prohibited drug use and misuse of alcohol in transit operations, LRGVDC's Transit Services Department – Valley Metro has adopted the following Drug/Alcohol-Free Workplace Policy *and a copy of this policy will be distributed to each covered employee.*

Any provisions set forth in this policy that are included under the sole authority of LRGVDC and are not provided under the authority of the above-named Federal regulations are underlined. Tests conducted under the sole authority of LRGVDC will be performed on non-USDOT forms and will be separate from USDOT testing in all respects

3.0 DRUG AND ALCOHOL DESIGNATED EMPLOYER REPRESENTATIVE (DER)

Any questions regarding this policy or any aspect of LRGVDC's Transit Services Department – Valley Metro Substance Abuse Program should be addressed to the following transit system representatives:

<p><u>Drug & Alcohol Program Manager (DAPM):</u> <u>Maribel Contreras</u> <u>Assistant Director</u> <u>510 S. PLEASANTVIEW DR.</u> <u>WESLACO, TEXAS 78596</u> <u>1-800-574-8322</u> <u>Fax (956) 969-8176</u></p>
<p><u>Designated Employer Representative (DER):</u> Dora Cruz Program Specialist I- Risk 510 S. PLEASANTVIEW DR. WESLACO, TEXAS 78596 1-800-574-8322 Fax (956) 969-8176</p>

4.0 SAFETY- SENSITIVE FUNCTIONS

The Federal Transit Administration (FTA) has determined that safety-sensitive functions are performed by those who:

1. Operate revenue service vehicles, whether or not the vehicle is in revenue service.
2. Operate non-revenue service vehicles that require drivers to hold a Commercial Driver License (CDL).
3. Control dispatch or movement of a revenue service vehicle.
4. Maintain revenue service vehicles or equipment used in revenue service.
Maintenance Functions include repair overhaul and rebuild of engines, vehicles and/or equipment used to revenue service.
5. Carry a firearm for security purposes.

5.0 SAFETY SENSITIVE POSITIONS

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

1. Director II
2. Assistant Director
3. Program Specialist I - Risk
4. Supervisor II – Maintenance
5. Customer Service Rep. I
6. Motor Vehicle Tech. III
7. Motor Vehicle Tech. II
8. Motor Vehicle Tech. I

9. Supervisor II – Operations
10. Case Manager III – ADA Coordinator
11. Program Supervisor I – Urban Area
12. Program Supervisor I – Small Urban & Rural
13. Customer Service Rep. I – Mobility
14. Customer Service Rep. I – Dispatcher
15. Vehicle Driver III
16. Vehicle Driver II
17. Vehicle Driver I
18. Vehicle Driver – Non CDL
19. Program Supervisor II – Planning & Mobility
20. Program Specialist III – Large Urban
21. Planner II

6.0 PARTICIPATION AS A REQUIREMENT OF EMPLOYMENT

Every employee of the LRGVDC's Transit Services Department – Valley Metro working in a job classified as a safety-sensitive position must participate in the employer's prohibited drug and alcohol testing program. *All covered employees are required to submit to drug and alcohol tests conducted in compliance with 49 CFR Parts 40 & 655, as amended.* Participation in this program is a condition of employment with LRGVDC's Transit Services Department Valley Metro

7.0 PERIOD OF COVERAGE AND PROHIBITED BEHAVIOR

An employee must not consume alcohol while performing a safety-sensitive function (655.32). Consumption of Alcohol is prohibited:

1. Four hours prior to performing a safety-sensitive function (655.33).
2. Eight hours following an accident unless the employee has already undergone a post-accident test (655.34).
3. Employees are also prohibited from consuming alcohol during the hours the employee is On-call (655.33(b)).

A blood alcohol concentration of 0.04 or greater while on duty, is considered a positive test result (655.31).

Employees with an alcohol concentration of 0.02 or greater, but less than 0.04 will not be allowed to perform or continue to perform safety-sensitive functions until a subsequent test measures less than 0.02, or **until the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.**

Use and ingestion of illegal drugs is prohibited at all times and can be tested for drugs anytime while on duty.

8.0 ON- CALL EMPLOYEES

(1) On call employees who are called for duty will be given the opportunity to acknowledge any use of alcohol or the inability to perform his/her safety sensitive function when called to report to duty.

9.0 VIOLATION OF A CRIMINAL DRUG STATUTE

If an employee pleads guilty or no contest to a violation of a criminal drug statute, the employee must notify his/her supervisor no later than five (5) days after the conviction. LRGVDC's Transit Services Department – Valley Metro is then required to notify the federal government and the Texas Department of Transportation (TXDOT) within ten (10) days of said notification by the employee or other actual notice of this conviction. An employee convicted of a violation of a criminal drug statute will be terminated.

In addition, the distribution, dispensation, possession, concealment, use, sale, or unlawful manufacture of alcohol or drugs while on duty or on LRGVDC's Transit Services Department – Valley Metro premises or conviction of a criminal drug statute for a violation occurring in the workplace is strictly prohibited and will be grounds for termination. All LRGVDC's Transit Services Department – Valley Metro employees must comply with this policy and report within 5 days any conviction for a violation of a drug of a statute that occurred in the workplace.

10.0 PREVIOUS DOT EMPLOYER RECORD CHECK

Section 40.25, *as amended*, of the Revised DOT Drug and Alcohol Testing rule states that all DOT covered employers must make a good faith effort to obtain testing records for the previous (2) two years, for all applicants seeking safety-sensitive positions. Every applicant will be required to complete a written consent that allows their previous employer (s) to release drug and alcohol testing information to the LRGVDC's Transit Services Department – Valley Metro. Should applicant refuse to provide this consent he/she will not be permitted to perform safety-sensitive functions.

LRGVDC's Transit Services Department – Valley Metro will submit the applicant/transferees written consent along with a request for information to each of the DOT - regulated employers who have employed the applicant/transferee for any period during the 2 years before the date of individual's application or transfer: The following information will be obtained:

1. Alcohol test results of 0.04 alcohol concentration or greater;
2. Verified positive drug tests;
3. Refusals to test;
4. Other Violations of FTA/DOT rules; and
5. as appropriate, documentation of the successful completion of DOT return-to-duty requirements including follow up tests.

If the previous employer does not have this information, this documentation will be obtained from the employee. LRGVDC's Transit Services Department – Valley Metro expects that any report turned in is not a false report from any previous DOT employer.

If possible LRGVDC's Transit Services Department – Valley Metro will obtain and review this information before the applicant employee performs safety sensitive functions. If LRGVDC's Transit Services Department – Valley Metro does not receive information within (30) days, LRGVDC's Transit Services Department – Valley Metro will document a good faith effort. If LRGVDC's Transit Services Department – Valley Metro has not made a good faith effort LRGVDC's Transit Service Department – Valley Metro will not allow the employee to perform safety sensitive functions after 30 days from the date on which the employee first performed safety sensitive job duties.

LRGVDC's Transit Services Department -Valley Metro must also ask all applicants/transferees whether he/she has tested positive or refused to test within the past two years on any DOT pre-employment drug or alcohol test administered by a DOT covered employer for which they did not get the job.

If information obtained from a previous employer indicates a non-negative test result in violation of a DOT/FTA regulation LRGVDCs Transit Services Department – Valley Metro will not allow the employee to perform safety-sensitive duties unless documentation is obtained stating that the employee has complied with the return-to-duty requirements including the Substance Abuse Professional (SAP) assessment, successful treatment, negative return-to-duty test and follow-up tests.

Any employee who previously violated a DOT drug and alcohol regulation or who had a positive test result and who cannot confirm completion of any treatment program will be terminated under LRGVDC and LRGVDC's Transit Services Department – Valley Metro authority.

LRGVDC's Transit Services Department – Valley Metro will keep the following confidential documentation received and/or good faith efforts for a minimum of 3 years:

1. Alcohol test results of 0.04 alcohol concentration or greater;
2. Verified positive drug tests;
3. Refusals to test;
4. Other violations of FTA/DOT rules; and as appropriate, documentation of the successful completion of DOT return-to-duty requirements including follow up tests.

If the previous employer does not have this information, documentation must be obtained from the employee.

11.0 CIRCUMSTANCES FOR TESTING

Under LRGVDC's Transit Services Department – Valley Metro authority if an employee comes forward with a Drug and Alcohol problem, the employee will not be allowed to continue to perform safety-sensitive functions and will be terminated.

11.1 PRE-EMPLOYMENT TESTING (655.41 & 655.42)

Prior to conducting a pre-employment test, LRGVDC's Transit Services Department – Valley Metro will inform the applicant or employee in writing of the testing requirement. (655.17) as *amended*

LRGVDC's Transit Services Department – Valley Metro will require that all applicants for

employment in safety-sensitive positions or individuals being transferred into safety-sensitive positions from non-safety sensitive positions be given a pre-employment drug and alcohol test. Applicants will not be assigned safety-sensitive functions unless the individual has a verified negative test drug test result and alcohol test results below 0.02.

When an existing covered employee has not performed a safety-sensitive function for 90 consecutive calendar days and the employee has not been in the employer's random testing pool during that time the employee will be required to take a pre-employment drug test and obtain a negative test result prior to the reassignment of safety-sensitive duties.

LRGVDC's Transit Services Department – Valley Metro has chosen to conduct under FTA authority pre-employment drug and alcohol testing only after making a contingent offer of employment (or transfer).

LRGVDC's Transit Services Department – Valley Metro will follow the procedures set forth in Part 655.42 and Part 40 (Subparts J through N) *as amended*. The applicants must have a negative alcohol test (<0.02 BAC) before he or he is assigned any safety-sensitive duties.

When an employee or applicant has previously failed or refused a pre-employment drug and alcohol test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment *program*. If a pre-employment test is cancelled, LRGVDC's Transit Services Department – Valley Metro shall require all applicants/transferee to submit to and pass another test.

11.2 REASONABLE SUSPICION TESTING (655.43)

The FTA regulations (Sec. 655.43) *as amended*, require that a safety-sensitive employee submit to a test when LRGVDC' Transit Services Department -Valley Metro has reasonable suspicion that the employee has used a prohibited drug or has misused alcohol. The decision to undergo a reasonable suspicion test will be based on a specific, contemporaneous, articulable observation concerning the appearance, behavior, speech, or body odor of the safety-sensitive employee and determinations will only be made by trained supervisors or staff trained in detecting the signs and symptoms of drug use and alcohol misuse.

LRGVDC's Transit Services Department – Valley Metro supervisor(s) may direct a covered employee to undergo reasonable suspicion testing for alcohol only 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.

Likewise, an LRGVDC's Transit Services Department – Valley Metro supervisor may direct a covered employee to undergo reasonable suspicion testing for drugs anytime the employee is on duty.

11.3 POST ACCIDENT TESTING (655.44)

Fatal Accident Testing-

LRGVDC's Transit Services Department - Valley Metro will perform a drug and alcohol test as soon as possible following an accident involving the loss of human life. LRGVDC's

Transit Services Department - Valley Metro will test each surviving covered employee that operated the **public** transit vehicle at the time of the accident. LRGVDC's Transit Services Department - Valley Metro will also test any other covered employee whose performance could have contributed to the accident, as determined by the employer, using the best information available at the time of the accident.

Non-Fatal Accident Testing-

LRGVDC's Transit Services Department - Valley Metro will perform a Drug & Alcohol test as soon as possible following the accident not involving the loss of human life, **when at least one of the following conditions is met:**

- The accident results in injuries requiring immediate medical treatment away from the scene, and the covered employee may have contributed to the accident.
- One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, and the covered employee may have contributed to the accident

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

As soon as practicable following an accident as defined in this policy the transit supervisor 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.

LRGVDC's Transit Services Department -Valley Metro employees shall remain readily available for testing at the scene of the accident. A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including not notifying the employer or the employer representative of his or her location or if he or she leaves the scene of the accident prior to submission to such test, will be deemed by the employer to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit 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.

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

LRGVDC's Transit Services Department - Valley Metro, will not test employees whose performance can be completely discounted as a contributing factor.

LRGVDC's Transit Services Department - Valley Metro, prohibits employee(s) from consuming alcohol for 8 hours following an accident or until a post –accident test has taken place, whichever comes first.

11.4 LRGVDC's Transit Services Department – Valley Metro POST-ACCIDENT NON-DOT TESTING

LRGVDC's Transit Services Department – Valley Metro holds the right under its own authority to test any operator involved in an accident, if the operator is operating any LRGVDC's Transit Services Department – Valley Metro vehicle at the time of the accident. Test administered will be a Non- DOT test.

11.5 RANDOM TESTING (655.45)

The FTA regulations (655.45), *as amended*, require random testing of drugs and alcohol for all employees performing safety-sensitive functions.

LRGVDC's Transit Services Department -Valley Metro will use a valid scientifically computer-based method to select safety-sensitive employees for random testing. The random number computer generator is matched with the employees' identification number (i.e., social security number or other identification number).

The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA administrator. The current year testing rates can be viewed online at <https://www.transportation.gov/odapc/random-testing-rates>

A covered employee shall 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. Tests will be unannounced as well as unpredictable and testing will be spread reasonably throughout all periods of the calendar year. Once the employee has been notified that he/she has been selected for testing, he/she should then report immediately to the collection site.

All safety-sensitive employees will have an equal chance of being selected for testing and shall remain in the pool, even after being tested. It is possible for some employees to be tested several times in one year, and other employees not to be tested for several years. Every effort shall be made to provide the maximum privacy possible. Employees shall be individually and discretely notified to report to the collection site, and employees selected will be assured that testing is a routine random test. Any employee required submitting to a drug and/or alcohol test must cooperate fully with the collection process and complete all required forms and documents. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

LRGVDC's Transit Services Department – Valley Metro requires each covered employee who is notified of selection for random drug or random testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately. A covered employee shall only be randomly tested for alcohol misuse before the employee is performing safety-sensitive functions, during, or after the employee is performing safety sensitive duties. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

If an employee is off-duty or unavailable at the time LRGVDC's Transit Services Department –Valley Metro desires to conduct a test, the test may be postponed until the employee is on duty only if the test can be performed during the same testing period.

LRGVDCs Transit Services Department – Valley Metro does not allow any discretion by management personnel as to who is selected or notified for random testing.

LRGVDC's Transit Services Department – Valley Metro will give no advance warning, testing will be unannounced and immediate. LRGVDC's Transit Services Department – Valley Metro will exercise care in scheduling substitute employees for those employees who are unavailable at the time LRGVDC's Transit Services Department – Valley Metro desires to conduct a test.

12.0 PROHIBITED SUBSTANCES, 49 CFR Part 40, as amended

Under the FTA drug testing regulation for safety-sensitive employees, LRGVDC's Transit Services Department - Valley Metro is required to conduct laboratory testing of urine specimens for the following five (5) types of drugs. (655.21):

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

Alcohol is also a prohibited substance.

13.0 TEST STANDARDS, 49 CFR Part 40, as amended (ammended 7-27-2016)

All specimens indicated positive on the initial test shall be confirmed using GC/MS techniques. The drug testing panel has been modified to harmonize with the revised Mandatory Guidelines by U.S. department of Health and Human Services (DHHS) §§40.85; 40.87 (a); 40.137; 40.139

For:

Marijuana

Cocaine

~~Opiates~~ Opioids

- Hydrocodone

Revised: August 2019

- Common brand names: Norco, Vicodin, Lortab, Hysingla ER
- Hydromorphone
 - Common brand names: Dilaudid, Exalgo
- Oxycodone
 - Common brand names: Oxycotin, Roxicodone, Percocet
- Oxymorphone
 - Common brand names: Opana

Phencyclidine

Amphetamines

LRGVDC's, Transit Services Department – Valley Metro reserves the right under its own authority to test for other drugs in a separate NON-DOT Test.

14.0 BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST

As an employee, if you refuse to take a test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

- Failure to appear for any test (except a pre-employment) at the collection site in the time allotted.
- Failure to remain at the test site until the testing process is completed for drug & alcohol, except in pre-employment situations where leaving before the testing process begins is not deemed to be a test refusal.
- Failure to provide a urine, breath, or saliva specimen as required by DOT Part 40. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commence for a pre-employment test has not refused to test.
- Failure to permit the observation or monitoring of specimen collection when it is required.
- Failure to provide a sufficient amount of urine or breath specimen collection when it is required with no medical explanation.
- Failure or refusal to take a second test when required.
- Failure to undergo a medical evaluation when required by an MRO (see definition of MRO or employer).
- Failure to cooperate with the testing process.
 - (Examples: refusal to empty pockets or wash hands after being directed to so by the collector, or behaving in a confrontational manner that disrupts the collection process)
- For an observed collection, failure to follow the observer's instructions to raise clothing above the waist, lower clothing and under pants, and to turn around to permit the observer to determine if individual is wearing any type of prosthetic device that could be used to interfere with the collection process.
- Possession or wearing of a prosthetic or other device that could be used to interfere with process.
- Admitting adulteration or substitution of the specimen to the collector or the MRO.
- If the MRO reports a verified adulterated or substituted test result.
- In alcohol testing, refusal to sign Step 2 of the Alcohol Testing Form (ATF).
- Leaving the scene of the accident without just cause prior to submitting to post – accident tests.

MRO or a Medical Review Officer is defined in the regulation, 49 CFR Part 40 Section 40.121-169, as a licensed physician responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

As an employee, when you refuse to take a Non-DOT test or to sign a Non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a Non-DOT test. However, under LRGVDC's Transit Services Department – Valley Metro authority if you refuse to take a Non-DOT test or sign a Non-DOT form you will be terminated.

15.0 FTA DRUG AND ALCOHOL REQUIRED TESTING PROCEDURES §§40.210; 40.83; 40.199; 40.193

Drug and alcohol testing of safety-sensitive employees and safety-sensitive job candidates will be conducted in a manner designed to protect employees and the integrity of the testing process, safeguard the validity of test results, and ensure that those results are attributable to the correct employee.

Urine samples for drug testing will be collected in private at the collection site designated by the LRGVDC's Transit Services Department - Valley Metro using the split sample collection method. If the collection site personnel and the LRGVDC's Transit Services Department - Valley Metro representative have a reason to believe that an adulterated or substituted sample has been provided, or that the employee altered or substituted the sample, the employee will be required to submit a second, sample under direct observation of collection site personnel of the same gender as the employee. The determination to submit a second sample or to provide the original sample under observed collection shall be made in accordance with Section 49 CFR Part 40.

Direct Observation Procedure: Prior to specimen collection, observer must request employee to raise his/her shirt, blouse, or dress/skirt as appropriate above the waist, lower clothing and underpants and to turn around to show that he/she is not wearing any type of device that could be used to interfere with the collection process.

An approved chain of custody procedure will be followed in the administration of all drug tests. Urine samples will be sealed and installed by the employee and a witness. The drug testing custody and control form will be completed in the manner specified in 49 CFR Part 40 **as amended**

Urine samples will be promptly sent to and tested by a laboratory that is certified to perform drug tests by the Department of Health and Human Services (DHHS), in accordance with the procedures set forth in 49 CFR Part 40 **as amended**.

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 specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so, requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

Breathalyzer tests will be conducted in a manner that provides the employee with privacy to the greatest extent possible. All of the procedures regarding such tests set forth in the 49 CFR Part 40, **as amended**, including procedures relating to completion of the breath alcohol testing form will be followed.

Alcohol tests will be conducted using a National Highway Traffic Safety Administration (NHTSA) approved evidentiary Breath testing device (EBT) or Alcohol Screening Device (ASD) operated by a trained breath alcohol technician (BAT). A list of the approved devices will now be listed on the ODAPC website. 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. Initial drug screening will be conducted using an accepted Immunoassay method. All positive tests will be confirmed using the Gas Chromatography/Mass Spectrometry (GC/MS) drug testing method.

Specimen Validity Testing will be conducted on all urine specimens provided for testing under DOT authority, as amended under "49 CFR Part 40 **as amended**". Specimen Validity Testing is 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. Only Urine specimens are authorized for Drug Testing and prohibit the use of DNA Testing on urine specimens collected during testing. §40.331

OBSERVED COLLECTIONS:

- All return-to-duty tests;
- All follow-up tests;
- 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 F -100 F;
- Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
- Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- 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;
- 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.

15.1 LRGVDC's Transit Services Department – Valley Metro DRUG & ALCOHOL TESTING PROCEDURES

Under LRGVDC's Transit Services Department - Valley Metro own authority, and separate from the provision listed above, any safety-sensitive employee, regardless of employment status, may undergo a NON-DOT regulated directly observed urine drug test, if requested, for any reason. Reasons may include: NON-DOT Random Testing, NON-DOT Reasonable Suspicion Testing, and NON-DOT Post Accident Testing. If an employee refuses the drug test and does not allow the direct observation, as defined on Page13, Under Section 15.0, of a urine drug test, it is cause for termination. NON-DOT forms will be used to test employees under LRGVDC's Transit Services Department -Valley Metro own authority.

16.0 CONFIDENTIALITY

Drug/alcohol testing records shall be maintained by the LRGVDC 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.

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 follow-up testing plans.

Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.

Records will be released to a subsequent employer only upon receipt of a written request from the employee.

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.

Records will be released to the National Transportation Safety Board during an accident investigation.

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.

Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

Records will be released if requested by a Federal, state or local safety agency with regulatory authority over LRGVDC or the employee.

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

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.

17.0 VIOLATIONS AND CONSEQUENCES OF THE MISUSE OF DRUGS AND ALCOHOL:

Violations occur when an employee:

- Has a verified positive drug test result;
- Has a confirmed alcohol concentration of 0.04 or greater; or
- Refuses to submit to a test.

Additionally, an employee is prohibited from the following:

- Using drugs and or alcohol while performing a safety-sensitive function(s); just before or just after performing a safety-sensitive function(s). Under the LRGVDC' Transit Services Department – Valley Metro authority any employee who uses alcohol before, while, or just after performing a safety-sensitive function will be terminated.
- Using alcohol during specified on calls hours when they are on-call. Under the LRGVDC's Transit Services Department - Valley Metro authority any employee on call having an alcohol level of 0.04 or greater will be terminated.

Since LRGVDC's Transit Services Department - Valley Metro practices zero-tolerance any LRGVDC's Transit Services Department - Valley Metro employee that has a verified positive test has an alcohol test result of 0.04 or greater or who refuses to test will immediately be removed from safety sensitive duties and under LRGVDC's Transit Service Department Valley Metro authority employee will be terminated. The employee will then be referred to a list of USDOT qualified Substance Abuse Professional (SAP's).

LRGVDC's Transit Services Department - Valley Metro will not permit a covered employee tested under the provisions of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform safety-sensitive functions, until:

1. The employee's alcohol concentration measures less than 0.02; or
2. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

The foregoing regarding the use of alcohol will apply to periods when employees are on breaks, between shifts, or at lunch, if they are scheduled or may be assigned to work

thereafter on the same day. These rules will also apply to non-safety sensitive employees.

18.0 SPLIT SPECIMENS

(a) As an employee, when the MRO has notified you that you have a verified positive drug test and/or refusal to test because of adulteration or substitution, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If you make this request to the MRO within 72 hours, you trigger the requirements of this section for a test of the split specimen. There is no split specimen testing for an invalid result.

(b)(1) If, as an employee, you have not requested a test of the split specimen within 72 hours, you may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented you from making a timely request.

19.0 DISCIPLINARY ACTION: GROUNDS FOR IMMEDIATE DISCHARGE.

Since LRGVDC's Transit Services Department - Valley Metro practices zero-tolerance the following rules will apply to non-safety sensitive employees and Safety-Sensitive employees. And under LRGVDC's Transit Services Department – Valley Metro authority any employee who violates these rules will be terminated.

1.Failure to report an arrest for drug and alcohol statute within five (5) days of the arrest. An employee who is terminated for failure to comply with this section will be reinstated only if he/she supplies evidence that it was not reasonably possible to comply.

2.Refusal to submit to an authorized drug or alcohol test.

3.Consuming alcoholic beverages or any substances containing alcohol, during working hours, during breaks, between shifts, at lunch, if the employee is scheduled for work or may be assigned to work.

4.Distribution, dispensation, possession, concealment, use, sale or unlawful manufacture of any prohibited substance, while on duty or on LRGVDC's Transit Services Department - Valley Metro premises.

5.Conviction of any criminal drug statute and failure to notify LRGVDC's Transit Services Department – Valley Metro of such conviction within five (5) days.

The policy of LRGVDC's Transit Services Department – Valley Metro is to terminate Safety Sensitive employees after the 1st violation. However, in the event that an employee is returned to Safety Sensitive duties, they will be subject to all Return-To-Duty and Follow-up testing as specified in 49 CFR Part 40 as amended and Part 655.

20.0 DILUTE NEGATIVE (40.197)

(a) If the MRO informs LRGVDC's Transit Services Department - Valley Metro that a positive drug test was dilute, the LRGVDC's Transit Services Department - Valley Metro will simply treat the test as a verified positive test. The LRGVDC's Transit Services Department - Valley Metro will not direct the employee to take another test based on the fact that the specimen was dilute.

(b) If the MRO informs LRGVDC's Transit Services Department - Valley Metro that a negative test was dilute, the LRGVDC's Transit Services Department - Valley Metro will take the following action: **The employee must be retested.** In cases where the level of creatinine is at a low level (2-5 mg/dL) the retest must be conducted under direct observation. This information will be stated on the results received from the MRO.

(i) LRGVDC must treat all employees the same for this purpose. For example, LRGVDC's Transit Services Department – Valley Metro must not retest some employees and not others. LRGVDC's Transit Services Department – Valley Metro may, however, establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). LRGVDC will inform employees in advance of decisions on these matters.

(c) The following provisions apply to all tests LRGVDC's Transit Services Department – Valley Metro directs an employee to take under paragraph (b) of this section:

(1) LRGVDC's Transit Services Department – Valley Metro must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site;

(2) LRGVDC's Transit Services Department – Valley Metro must treat the result of the test LRGVDC's Transit Services Department – Valley Metro directed the employee to take under paragraph (b) of this section—and not a prior test—as the test result of record, on which LRGVDC's Transit Services Department – Valley Metro rely for purposes of this part;

(3) If the result of the test LRGVDC's Transit Services Department – Valley Metro directed the employee to take under paragraph (b) of this section is also negative and dilute, LRGVDC's Transit Services Department – Valley Metro is not permitted to make the employee take an additional test because the result was dilute. In this case the test is considered to be negative.

(4) If the result of the test LRGVDC's Transit Services Department – Valley Metro directed the employee to take under this section is also negative and dilute, LRGVDC is not permitted to make the employee take an additional test because the result was negative dilute. Provided, however, that if the MRO directs LRGVDC's Transit Services Department – Valley Metro to conduct a recollection under direct observation under of this section, LRGVDC must immediately do so.

(5) If the employee declines to take a test LRGVDC's Transit Services Department – Valley Metro directed him or her to take under paragraph (b) of this section, the employee has refused the test for purposes of this part and DOT agency regulations.

21.0 EDUCATION AND TRAINING PROGRAMS AND REQUIREMENTS (655.14)

1. Community Service Hotline Phone Numbers:
National Technical Assistance
 - a. Drug - Free Workplace Help Line 1-800-967-5752
 - b. National Clearinghouse for Alcohol and Drug Information- 1-800-273-8255
 - c. National Institute on Drug Abuse Treatment Hotline (NIDA)- 1-800-662-HELP
 - d. Department of Transportation's Anti-Drug Information Center- 1-800-CAL-DRUG
 - e. Employee Assistance Professionals Association (EAPA)- 1-866-327-2400
 - f. National Association of State Alcohol And Drug Abuse Directors (NASADAD)

2. 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 hot line 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.
 - 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.

22.0 REFERRAL, EVALUATION, AND TREATMENT (SECTION 655.62)

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.

23.0 TEXAS ALCOHOL AND DRUG ABUSE LICENSED SITE FACILITIES FOR THE LRGVDC AREA

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, LCDR, NCC, ADC III, MAC
801 W Nolana Ave. Suite 101
McAllen, TX 78504
PHONE #: (956) 994.1428

24.0 ADDITIONAL PROVISIONS REQUIRED BY STATE LAW

LRGVDC's Transit Services Department – Valley Metro as an employer in the State of Texas must comply with the Texas Workers Compensation Act. Tex.Rev.Civ.Stat.Ann.Art. 6308 s. 7.10 (Vernon Supp.1991) which mandates that the following section be part of an employer's Drug-Free Workplace Policy.

25.0 PRESCRIPTION DRUGS/OVER THE COUNTER DRUGS

The appropriate use of prescription drugs and over the counter medication is not prohibited. Prescriptions are illegally valid prescription consistent with the Control Substance Act (CSA) as oppose to other definitions noted under the patient protection and Affordable Care Act (ACA). §40.135; 40.137; 40.141. However, the following guidelines must be observed.

1. Any employee using a prescription drug should consult with his/her physician regarding the effects of that drug in relation to the operation of motorized vehicles, machinery, or safety-sensitive functions.
2. Employees should read all labels carefully.
3. On-duty employees may not use over the counter medications where the manufacturer advises against their use while operating motorized vehicles, machinery, safety-sensitive functions, or where their use during working hours has not been approved by the employee's physician.
4. In the event of a question regarding the use of any prescription drug or over the counter medication, the employee must notify their supervisor, and must submit written approval for use of the medication from his/her physician, upon request.
5. Any employee reporting for a drug/alcohol test must provide the Medical Review Officer (MRO) with names of prescriptions and over the counter medication that they are currently taking.
6. An employee who reports for duty while using any over the counter or prescription medication where the manufacturer advises against their use while operating motorized vehicles or machinery, who informs LRGVDC's Transit Services Department – Valley Metro of such, and does not provide the written approval from her/his physician, will not be allowed to perform the safety-sensitive duties for failure to provide said written approval shall have any time beyond the remainder of the day of the report charged against her/his attendance records, and any instance thereafter.

Concerning determination of medically unqualified or significant safety risk:

- When a tested employee is taking a prescribed medication, the MRO must verify the prescription and if it is a valid prescription, immediately notify the employer of a verified negative result.
- In cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO.

- The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk.
- If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327

26.0 CHEMICAL SCREENING CONSENT AND RELEASE FORM

I have taken within the past 30 days, or am presently taking, the following medications:

<u>Name of Drug</u>	<u>Condition for which Taken</u>	<u>Prescribing Physician</u>
-----	-----	-----
-----	-----	-----

I hereby consent to allow the LRGVDC's Transit Services Department – Valley Metro or its designated representative to verify and/or confirm the above information with the prescribing physician listed above.

LRGVDC's Transit Services Department – Valley Metro Representative

Signature

Date

Applicant/Employee

Signature

Date

27.0 EMPLOYEE ACKNOWLEDGMENT FORM:

LRGVDC's Transit Services Department
VALLEY METRO
Drug & Alcohol Policy
Verification of Employee Notice

I have received a copy of the LRGVDC's **Transit Services Department Drug & Alcohol Free Workplace Policy** which outlines the rights, duties, and responsibilities of the LRGVDC's Transit Services Department – Valley Metro and all safety-sensitive employees of the LRGVDC's Transit Services Department – Valley Metro in accordance with 49 CFR Part 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 49 CFR Part 655 (Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations). I understand that it is my responsibility to read and abide by the rules contained in this policy.

Employee Signature: _____ Date: _____

Employee Name (print): _____

Social Security No.: _____

LRGVDC's Transit Services Department – Valley Metro Witness Signature:

Date: _____

28.0 REFERRAL NOTICE

You have indicated on your Chemical Screening Consent Release Form that you are not a user of any controlled substances. However, our screening test has revealed the presence of a controlled substance.

As a result, you will not be considered for employment at this time. However, you may elect to receive professional evaluation and/or to enter a rehabilitation program (at your own expense) at a facility approved by the Texas Commission on Alcohol and Drug Abuse. After successful completion, you may reapply for a position with the LRGVDC's Transit Services Department – Valley Metro.

_____	_____
LRGVDC's Valley Metro Department Head	Date

_____	_____
I acknowledge receipt of this notice (Applicant's Signature)	Date

LRGVDC's Transit Services Department – Valley Metro REASONABLE SUSPICION DOCUMENTATION FORM

Employee Name:	Date of Observation Month/Day/Year:
Location:	Time of Observation:

OBSERVED PERSONAL BEHAVIOR (CIRCLE ALL APPROPRIATE ITEMS)
--

Breath: (Odor of Alcoholic beverage) Strong Faint Moderate None	Eyes: Bloodshot Glassy Clear Dilated Pupils Normal Heavy Lids Fixed Pupils	Speech: Confused Accent Stuttered Thick Tongued Mumbled Slurred Cotton mouthed
Attitude: Excited Indifferent Hilarious Insulting Cocky Sleepy Talkative Profane Cooperative Polite	Unusual Action: Hiccoughing Fighting Belching crying vomiting laughing Other	Balance: Falling Needs Support Wobbling Swaying Other
Walking: Falling Staggering Stumbling Swaying Other	Turning: Falling Staggering Stumbling Swaying Hesitant Other	
Any other unusual actions or statements:		
Signs or complaints of illness or injury:		
Supervisor's Opinion		
Effects of Drug/Alcohol Intoxication	<input type="checkbox"/> None <input type="checkbox"/> Slight <input type="checkbox"/> Obvious <input type="checkbox"/> Extreme	
Action Taken	<input type="checkbox"/> Send for Testing <input type="checkbox"/> Send Employee back to Duty	
Employee Test Performed	<input type="checkbox"/> Yes <input type="checkbox"/> No Comments:	
Additional Comments:		
Supervisor Signature:	Date:	Time:
Witness:	Witness:	

“RELEASE OF INFORMATION FORM”

(49 CFR Part 40 Drug and Alcohol Testing)

Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:

Employee Printed or Typed Name: _____

Employee SS or ID Number: _____

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in Section I-B, to the employer listed in Section I-A. The release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in Section II-A by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug test;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation.
6. Documentation, if any, of completion of the return-to-duty Process following a rule violation.

Failure to provide written consent, including former employer information and signature, will result in you being disqualified for a safety sensitive position with The LRGVDC's Transit Services Department – Valley Metro, as per 49CFR Part 40.25(a).

Employee Signature: _____ Date: _____

I-A

New Employer Name: _____

Address: _____

Phone Number: _____ Fax Number _____

Designated Employer Representative: _____

I-B.

Previous Employer Name: _____

Address: _____

Phone Number: _____ Fax Number _____

Designated Employer Representative: _____

Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:

II-A. In the two years prior to the date of the employee=s signature (in Section I), for DOT-regulated testing

- | | | |
|---|-----------|--------------------|
| 1. Did the employee have alcohol tests with a result if 0.04 or higher? | YES _____ | NO _____ |
| 2. Did the employee have verified positive drug tests? | YES _____ | NO _____ |
| 3. Did the employee refuse to be tested? | YES _____ | NO _____ |
| 4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? | YES _____ | NO _____ |
| 5. Did a previous employer report a drug and alcohol rule violation to you? | YES _____ | NO _____ |
| 6. If you answered YES to any of the above items, did the employee complete the return-to-duty process? | N/A _____ | YES _____ NO _____ |

NOTE: If you answered yes to item 5, you must provide the previous employer=s report. If you answered yes to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).

II-B.

Name of person providing information in Section II-A:

Title: _____

Phone Number: _____

Fax Number: _____

Date: _____

31.0

LRGVDC's Transit Services Department - Valley Metro

POST ACCIDENT TESTING DECISION REPORT

Note: Accident does not necessarily mean collision. If an individual falls on a vehicle and needs to be taken to the hospital, an accident has occurred, and a post-accident test is required unless the driver can be discounted as a contributing factor. (Spring 1996, FTA D&A Updates, p.5)

System Name:	
Date of Accident :	Time of Accident:
Driver of Vehicle:	
Location of Accident:	
Traffic Crash Report Attached: <input type="checkbox"/> Yes <input type="checkbox"/> No	
1. Was there loss of life as a result of the accident? <input type="checkbox"/> Yes (Requires testing- No Exceptions) <input type="checkbox"/> No	
2. Did an Individual suffer a bodily injury and immediately receive medical treatment away from the scene of the accident? <input type="checkbox"/> Yes (Requires testing unless covered employee or driver on the vehicle can be completely discounted as a contributing factor to the accident): <input type="checkbox"/> No (Requires no testing under FTA authority.)	
3. Was there disabling damage to any of the vehicles involved? <i>Disabling damage</i> means damage, which precludes departure of <u>any vehicle</u> from leaving the scene of the occurrence in its usual manner in daylight after simple repairs; or damage to any vehicle that could have been operated but which would have further damaged the vehicle if so operated. Disabling damage does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts; tire disablement even if no spare tire is available; or damage to headlights, taillights, turn signals, horn, or wind shield wipers that makes them inoperative. <input type="checkbox"/> Yes (Requires testing unless question 4 applies.) <input type="checkbox"/> No (Requires no testing under FTA Authority.)	
4. Can the driver or any other covered employee on the vehicle be completely discounted as a contributing factor to the accident? <input type="checkbox"/> Yes <input type="checkbox"/> No Even if you answer No, under FTA regulations you must also meet the criteria questions 1, 2, and/ or 3 to require testing. Note: If you discount the driver as a contributing factor, it should be well documented. Documentation:	
5. If drug and alcohol testing is required, can the performance of any other safety sensitive employees (e.g., maintenance personnel, dispatcher, etc.), whose performance may have contributed to the accident (as determined by the transit agency at the time of the accident), be completely discounted as contributing to the accident? <input type="checkbox"/> Yes <input type="checkbox"/> No Even if you answer No, under FTA regulations you must also meet the criteria questions 1, 2, and/ or 3 to require testing.	
6. Did you perform a drug and/or alcohol test? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, complete # 6 and sign and submit a report.	
Name of Supervisor making this determination:	
Time Employee was informed of this determination:	
7. Decision to Test: FTA Authority <input type="checkbox"/> LRGVDC Authority <input type="checkbox"/>	
8. Was an alcohol test performed within 2 hours?	<input type="checkbox"/> Yes Date & Time: <input type="checkbox"/> No Why, Not?
9. If no alcohol test was performed and more than (8) hours elapsed from the time of the accident, please explain:	
10. Was a drug test performed within 32 hours?	<input type="checkbox"/> Yes Date & Time: <input type="checkbox"/> No Why, Not?
11. Did the driver leave the scene of the accident without just cause? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain	
Report Submitted by (Signature & Title):	Date:

Attachments:

1. Order for testing form
2. CCF (Custody Control Form) with test results

DRUG AND ALCOHOL RECORD ACCESS FORM

I _____, verify that I have been granted by LRGVDC's Transit Services Department – Valley Metro to access, review and obtain copies of my own drug and alcohol records as required.

Signature

Date