



West Virginia Department of Transportation Policy: **Drug and Alcohol Testing**

Issued by the Secretary of Transportation

Policy No: DOT 3.14

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1.0 PURPOSE

This policy was previously part of a larger "Substance Abuse Policy" that was separated into two policies, Drug Free Workplace and Drug and Alcohol Testing. West Virginia Department of Transportation (WVDOT), including the West Virginia Parkways Authority, understands the immeasurable contribution to safety that a drug and alcohol testing program can make. Maintaining a focused and consistent program is a meaningful step towards safer worksites and roadways.

Since the majority of the WVDOT's employees are Commercial Driver License (CDL) holders or hold safety sensitive positions, the WVDOT remains committed to direct and operate a properly administered drug and alcohol testing program.

Federal regulations mandate drug and alcohol testing of employees whose positions require them to possess a CDL, those who operate or repair Commercial Motor Vehicles (CMVs), and those who operate and maintain trains and railroad property. WVDOT's drug and alcohol testing program is regulated and reports to the Federal Motor Carrier Safety Administration (FMCSA) and the Federal Railroad Administration (FRA). Those same regulations provide for drug and alcohol testing of employees in the following situations: pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-ups. Current Federal regulations applicable to WVDOT except State Rail employees can be found in [Title 49, Code of Federal Regulations, part 40](#), and [part 382](#). State Rail employees drug and alcohol testing requirements may be found in the West Virginia Railroad Compliance Plan under 49 CFR Part 219 for Control of Alcohol and Drug Use.

This Policy also includes a testing pool of employees who do not possess a CDL. Any employee whose position is within the job classification series of Transportation Workers (TWs) is covered by this Policy. All TWs use a variety of tools and power equipment, and usually are performing duties in close proximity to maintenance equipment, traffic, and varying surroundings.

All TW duties are Covered Duties, but only those duties of directly operating or repairing a CMV are defined as safety sensitive. This is, in part, to not confuse or alter the Federal term "safety sensitive" which refers to regulated Transportation, Transit, Aviation, Railroad, and Coast Guard employees. "Covered employee" may also be used when indicating an employee who is covered by the provisions within this Policy.

The Human Resources (HR) Division or district, division, or organization designee is tasked with maintaining the highest level of integrity with testing information and striving to approach each testing situation with alertness and seriousness. The nature of most drug testing programs is the element of surprise. That surprise, particularly with random testing, is sometimes a program's strongest deterrent.

This Policy requires that HR Division be informed of all current Federal and State statutes, regulations, rules, and court decisions that may affect the content and procedures of this Policy.

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2.0 DEFINITIONS

- 2.1 **Agency**: means any authority, bureau, commission, or Division or similar cabinet subpart of the Department of Transportation.
- 2.2 **Accident, Vehicle Accident or Crash**: An incident in which a collision, failure to maintain control, or occurrence resulting in damage to any property or person occurs involving the operation of any motor vehicle or motorized equipment.
- 2.3 **Alcohol**: The intoxicating agent in beverages; alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
- 2.4 **Alcohol Concentration**: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test using Evidential Breath Testing (EBT) devices.
- 2.5 **Alcohol Use**: The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- 2.6 **Alcohol Test**: A required second test, following an initial screening test with a result of 0.02 or greater, that provides quantitative data of breath alcohol concentration.
- 2.7 **Breath Alcohol Content (BAC)**: A measure of the blood alcohol level or content in your blood after consuming ethyl alcohol or ethanol.
- 2.8 **Breath Alcohol Technician (BAT)**: An individual who instructs and assists individuals in the alcohol testing process and is certified to operate an EBT device.
- 2.9 **Chain of Custody**: Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.
- 2.10 **Collection Site**: A place designated by the Agency where people present themselves for the purpose of providing a breath or urine sample for analysis.
- 2.11 **Collection Site Supervisor**: An HR designee who, upon their arrival to a testing site, notifies the location supervisor of testing, shares the selected employees' names, and directs the testing process.
- 2.12 **Commercial Driver's License (CDL)**: A driver's license required to operate large, heavy, or placarded hazardous material vehicles in commerce.
- 2.13 **Commercial Motor Vehicle (CMV)**: Any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating, or gross combination weight of 4,536 kg (10,001 pounds) or more, whichever is greater.
- 2.14 **Confirmation Test - Drug Test**: A second analytical procedure to identify the specific drug(s) that is independent of the initial screening test and that uses a

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different technique and chemical principle from that of the screening. This is to ensure reliability and accuracy of the screening test. Gas Chromatography/Mass Spectrometry is the only authorized confirmation method for cocaine, marijuana, opioids, amphetamines, and phencyclidine.

- 2.15 **Covered Duty:** Includes, but is not limited to, operation or repair of CMVs and all duties of TWs such as using a variety of tools and power equipment, and performing duties in close proximity to maintenance equipment, traffic, and varying surroundings which are potentially dangerous. For railroad employees, this includes any duty which fall under a safety-sensitive position (see 2.28)
- 2.16 **Covered Employee:** One who is identified and classified within the TW's classification series or the employee's position performs covered duties and safety-sensitive functions including those functions on an intermittent basis. A railroad employee is covered if employed in a safety-sensitive position
- 2.17 **Direct Employee:** An employee of the Division of Multimodal Transportation Facilities' (DMTF) Rail section who is subject to all applicable policies of the agency and wages are paid by the agency.
- 2.18 **District Manager:** The administrative head of the District regardless of whether the person is an engineer or another classification. Regarding Parkways Authority, any reference to a Division Director or District Manager or HR in this Policy includes the Director of Operations and Training, or designee.
- 2.19 **Division Director:** Is the administrative head of a WVDOT Division.
- 2.20 **Evidential Breath Testing Device (EBT):** A breath alcohol testing device that is approved by the USDOT's Office of Drug and Alcohol Testing Policies and Compliance for the evidentiary testing of breath and placed on USDOT's "Conforming Products List" at the following website: <https://www.transportation.gov/odapc/approved-alcohol-screening-devices>.
- 2.21 **Federal Motor Carrier Safety Administration (FMCSA):** An agency in the USDOT that regulates the trucking industry in the United States. The primary mission of the FMCSA is to reduce crashes, injuries, and fatalities involving large trucks and buses.
- 2.22 **Federal Rail Authority (FRA):** An agency within the USDOT that promotes and regulates safety throughout the railroad industry. Their inspectors' primary mission is the industry's reliable and efficient movement of people and goods.
- 2.23 **FMCSA Drug and Alcohol Clearinghouse:** Secure online database that the Agency is required to use to share and collect testing violation data and related information.
- 2.24 **Medical Review Officer (MRO):** A licensed physician responsible for receiving laboratory results generated by the Agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to

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interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.

- 2.25 **Performing a Safety-Sensitive Function:** An employee is considered to be performing a safety-sensitive function during any period in which the employee is actually performing, ready to perform, or immediately available to perform a covered duty.
- 2.26 **Regulated Employee (Railroad):** a covered employee or maintenance-of-way (MOW) employee for the DMTF Rail section who performs regulated service for a railroad subject to [49 CFR Parts 40](#) and [219](#).
- 2.27 **Regulated Service (Railroad):** A covered service or MOW activities, of which the performance makes an employee subject to the requirements of 49 CFR Parts 40 and 219.
- 2.28 **Safety-Sensitive position (Railroad):** Employees who have been assigned to perform MOW duties covered by the definition of "Roadway Worker" in [49 CFR Part 214-7](#) or service subject to the [Hours of Service Act, 45 U.S.C. 61-64b](#), during a duty tour, whether or not the person has performed or is currently performing such service.
- 2.29 **Screening Test or Initial Test:** In drug testing, an immunoassay screen to eliminate negative urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
- 2.30 **Shipping Container:** A container capable of being secured with a tamper- evident seal that is used for the transfer of one or more urine specimen bottles and associated documentation from the collection site to the laboratory.
- 2.31 **Specimen Bottle:** The bottle that, after being labeled and sealed in accordance with [Title 49, Code of Federal Regulations, Part 40](#), Procedures for Transportation Workplace Drug and Alcohol Testing Programs, is used to transmit a urine sample to the laboratory.
- 2.32 **Substance Abuse Professional (SAP):** A licensed physician, or a licensed or certified psychologist, social worker, employer assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (CRC), or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) with knowledge of, and clinical experience in, the diagnosis and treatment of substance abuse.

3.0 COVERED EMPLOYEES

In addition to including all employees involved in job duties defined as safety-sensitive by the USDOT and FMCSA, all TWs, even those who do not possess a CDL or maintain or repair CMVs, are covered by this Policy.

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- 3.1 For regulated employees, covered duties include those safety-sensitive duties that relate to the operation or repair of a CMV as defined in [49 CFR part 382.107](#) and the employee is required to possess a CDL as a condition of employment. These employees are being tested under the authority of the FMCSA as established in 19 CFR Part 40 and Part 382. A CMV, as defined by 49 CFR part 382.107, means a motor vehicle or combination of motor vehicles if the motor vehicle:
- A. has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle rating of more than 10,000 pounds; or,
 - B. has a gross vehicle weight rating of 26,001 or more pounds; or,
 - C. is designed to transport 16 or more passengers, including the driver; or
 - D. is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR part 172, subpart F.
- 3.2 "Covered Duties" also apply to all other TWs whose duties do not include being dispatched to operate CMV equipment but work either to service the vehicles, frequently work in cooperation with the vehicle operators, or perform within crews. All TW employees, whether they possess a CDL or not, are subject to drug and alcohol tested.
- 3.3 All railroad employees identified as working in a safety-sensitive position are covered by these provisions as a condition of employment.

4.0 PARTICIPATION

Participation by all covered employees is a condition of employment. Refusal to participate in the testing programs is refusing to test and will result in discipline, up to and including dismissal. Employees are to comply with all instructions received from the BAT or urine sample collector. Failure to cooperate with the collector will result in discipline as well. A supervisor with the authority to remove the employee from duty must be at the collection site throughout the testing process in case an employee engages in prohibited behavior associated with the drug and alcohol testing rules.

- 4.1 Upon being identified as a Covered Employee, either at hiring or upon being transferred or promoted to a TW position, the employee will be required to complete forms explaining details of the policy and to document their acknowledgement. Those forms are listed below:
- A. [PE-1 Pre-employment Drug Testing Checklist](#)
 - B. [PE-2 Drug/Alcohol Testing Notification & Consent](#)
 - C. [PE-3 Previous Employer Authorization Consent](#)

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D. [PE-6 Drug & Alcohol Testing Policy Receipt](#)

4.2 These two forms are used when an employee's participation with the testing pool is interrupted or ceases:

A. [PE-4 Non-Participation in Drug & Alcohol Testing Programs](#)

B. [PE-5 Entering/Returning from Leave Checklist](#)

All of the above forms will be sent to Human Resources (HR) Division to be processed and filed by the Program Coordinator. The forms may be found on the [WVDOT Intranet](#).

5.0 REQUIRED HOURS OF COMPLIANCE; PROHIBITED BEHAVIOR

Covered Employees are required to follow this policy at work and prior to reporting for work. Alcohol use is prohibited:

- 5.1 while performing Covered Duties;
- 5.2 within four (4) hours prior to performing Covered Duties;
- 5.3 up to eight (8) hours following an accident, or until post-accident testing has occurred; and
- 5.4 when reporting for duty, while on duty, performing duties, under the influence of or impaired by alcohol, or having a breath alcohol concentration (BAC) of 0.02 or greater.

Use and ingestion of prohibited drugs is not allowed at any time, whether at work or not.

6.0 REQUIRED TESTS – DRUGS AND ALCOHOL

Regulations require the WVDOT to drug screen Covered Employees for the presence of:

- Marijuana or Tetrahydrocannabinol (THC)
- Cocaine
- Amphetamines
- Opioids
- Phencyclidine (PCP)

The five different situations that require mandatory participation for drug and alcohol testing by all COVERED EMPLOYEES are as follows.

- 6.1 **Pre-Employment:** All candidates approved for employment and identified as Covered Employees are required to produce a negative drug screen prior to beginning the job. There is no exception to this rule.

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- A. Should HR inquiries with an applicant's past employer or the FMCSA Clearinghouse produce information showing violations of USDOT regulations, specific documents may be requested for review from the applicant, the applicant's past employers, and the applicant's SAP. An applicant's failure to produce requested documentation will disqualify the applicant for employment.
- B. Once a candidate has been approved for employment, HR will contact the potential employee providing details of the drug testing procedure. The candidate will be informed to report for duty once a negative drug test result has been provided. Any positive result will disqualify the applicant for employment.
- C. When an employee transfers into a Covered Employee position from a job classification that is not covered by this policy, a pre-employment drug test is required. Employees transferring or being promoted will be allowed to report for their new duties upon receipt of a negative drug test report. A positive test result requires disciplinary action as defined by this policy.
 - On occasion an employee is directed to start employment prior to their drug test result being reported. In these cases, an employee may be assigned to core duties of the position, but must be prohibited from performing safety-sensitive duties until a negative test result is received.
 - If such an employee's test result is positive, the employee will face disciplinary action as defined by this policy.
 - No permanent record is to be kept for any applicant who decides to withdraw his or her application because of the testing requirement.
 - After a leave of absence of over 30 calendar days or any other situation that takes the employee out of the testing pool for 30 calendar days, an employee is required to report for a return to service drug test.

- 6.2 **Random:** Random testing provisions require Covered Employees be subject to drug testing at any time while at work and alcohol testing at any time an employee is performing or subject to perform duties as defined in Section 3.0.

Names will be selected for random testing using computer technology and methodology established by the USDOT and FMCSA in 49 CFR part 40 and part 382. The method of selection requires each employee to have an equal chance at being selected for any given testing period. Testing in one testing period does not preclude the employee from being selected again in another testing period. USDOT regulations require the WVDOT to maintain FMCSA regulated employees in a separate pool from other classifications of USDOT or non-regulated employees. Therefore, the WVDOT or its designee will maintain two testing pools.

- A. The regulated employees are contained in a testing pool with a minimum testing rate that is set by the FMCSA's Administrator. Currently, those rates require the WVDOT to test at least 50% of the total number in the testing pool for the presence of illegal drugs and 10% for prohibited alcohol

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concentration in a calendar year. Additionally, the FMCSA's Administrator announces the annual minimum rate of testing for transportation industry employers near the beginning of each calendar year. Nothing in this policy is to imply that the WVDOT cannot test Covered Employees at a rate higher than the minimum rate established by the USDOT.

- B. Non-Regulated employees (TWs without a CDL) are selected for random testing from a separate testing pool. The employees in this pool will be managed using the same software, collection processes, random testing rates, and disciplinary actions.
- C. Specimens from both testing pools are subject to split-specimen testing, and final reporting through Medical Review Officer (MRO).

6.3 **Reasonable Suspicion:** Federal regulations require the WVDOT train supervisors to recognize the signs and symptoms of alcohol and drug misuse, abuse, and impairment in order to require employees to undergo reasonable suspicion testing when it can be reasonably suspected the Covered Employee has violated this policy. Appropriate supervisory training is provided on the WVDOT's intranet, through the online course titled, [Reasonable Suspicion: Helping Managers Fight Workplace Substance Abuse](#). As it applies to this section, "Supervisor" may include, but is not limited to, any supervisor of Covered Employees, selected staff of Legal Division's Investigations Section, and District Safety Officers. Supervisory Training is available through HR and may also be presented in group training sessions in some cases. Tests can only be ordered based upon contemporaneous (current), articulable (easily explainable) observations concerning the appearance, behavior, speech, or body odors of a Covered Employee while at work. Any Supervisor who has undergone the aforementioned training is presumed competent to make a reasonable suspicion determination, and may order that a Covered Employee be tested in accordance with this section.

- A. Covered Employees are prohibited from reporting for duty under the influence of, or impaired by, alcohol, as shown in the behavioral, speech, and performance indicators of alcohol misuse. The WVDOT will not allow a Covered Employee to perform or continue to perform their covered duties until an alcohol test is administered and the employee's BAC measures less than 0.02. Illegal use of drugs or misuse of prescription medications resulting in a Covered Employee being impaired at work is always prohibited under this policy.
- B. Supervisors are required to have a concurring opinion from another trained supervisor documenting the employee's conduct and behavior in all cases when practical. If a second, confirming supervisor is unavailable, one supervisor can request testing if necessary. Reasonable suspicion testing under this rule is authorized only if the required observations are made during, just preceding, or just after a period of the workday. For example, if an employee was impaired after work hours yesterday, the WVDOT cannot drug test that employee the next day unless that person is impaired at work. Immediate supervisors are to contact their Division Director, District Manager, organizational head, or a designee in order to discuss the circumstances as they relate to the employee's on-duty behavior. The

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District Manager, Division Director, organizational head, or a designee will determine whether to initiate testing and will inform HR as soon as practical.

- C. A completed [Form AH-505, Reasonable Suspicion Documentation](#), is to be maintained and forwarded to HR in all drug or alcohol reasonable suspicion testing situations. The form shall be an accurate account of those observations leading to a controlled substance test and signed by the supervisor who made the observations. Attachments should be included if space is not sufficient, and the completed form is to be submitted to HR within 24 hours of the observed behavior. If approval to test an employee is not granted, no record of the drug or alcohol reasonable suspicion indicators is to be kept for any reason. Positive test results require disciplinary action as defined by this policy.
- D. If a reasonable suspicion test is ordered for suspected prohibited drug use and/or impairment, the subject employee shall be removed from covered duties until prohibited substance testing is completed and results certified. Once an employee is informed that reasonable suspicion drug testing has been authorized, the employee must provide a urine sample, breath sample, or both as directed by the presiding supervisor, within eight hours of notification following the protocol in this section. It is the employee's responsibility to be available to provide a urine sample once they have been informed of the testing requirement, and failure to meet the testing requirement shall result in the test result being issued as positive, refusal to test.
- E. A reasonable suspicion test for prohibited alcohol use or impairment should be performed within two hours following the Division Director, District Manager, organization management, or a designee's approval to test. If an alcohol test is not performed within two hours following the Division Director, District Manager, organization management, or a designee's approval to test, the supervisor is to prepare and forward a record, Form AH-505, Reasonable Suspicion Documentation, with attachments if space is not sufficient stating the reasons the alcohol test was not administered promptly. This is to be accomplished every two hours for up to eight hours. If an alcohol test is not administered within eight hours following the Division Director, District Manager or a designee's approval, the supervisor shall cease attempts to administer the test and state in the record the reasons for not administering the test.
- F. Upon completion of the testing process the employee is placed in a leave status, making them eligible to use accrued leave up until the test result is received. If the result is negative, the employee's leave time that was used will be returned to their leave balance(s).

6.4 **Post-Accident:** For all Covered Employees, as soon as practical following a vehicle accident while at work, the WVDOT shall conduct drug and alcohol testing when the situation meets either A or B of the following criteria.

- A. The accident involves a fatality.

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- B. The employee receives a citation under state or local law for a moving traffic violation arising from the accident, **and**
 - 1. one or more of the vehicles involved in the accident cannot be moved or has to be towed from the scene, **or**
 - 2. someone receives medical treatment away from the scene of the accident.
- C. In the event of a vehicle accident in which the above criteria are not met, but the Covered Employee is observed by a trained Supervisor after the accident and the Supervisor reasonably suspects that the employee is impaired by alcohol and/or prohibited drugs, a reasonable suspicion test as described in Section 6.3 may still be ordered.
- D. Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit an employee from first seeking assistance in responding to the accident, or to obtain necessary medical treatment.
- E. A Covered Employee who is subject to post accident testing must remain available for testing or he or she will be disciplined for refusing to participate in the testing process. The employee subject to post accident testing cannot consume alcohol for eight hours following the accident, or until the employee submits to an alcohol test, whichever comes first. If medical treatment involving administration of a controlled substance, the employee must be drug tested prior to administration of any controlled substance.
- F. When the required controlled substance or alcohol test has not been administered in a reasonable time following the accident, the following actions shall be taken.
 - 1. If the employee has not submitted to an alcohol test within two hours, the Division or District Representative shall prepare and forward to HR a written record stating the reason the test was not properly administered.
 - 2. If the employee has not been tested for prohibited alcohol concentration within eight hours, attempts to administer the alcohol test shall cease, and the Division or District representative is to prepare and forward the written record to HR.
 - 3. If the employee has not submitted to a controlled substance test within 32 hours, the WVDOT shall cease attempts to administer the test, and the Division or District Representative is to prepare and forward the previously mentioned record to HR.
- G. Employees may be required to provide two different samples as a result of an accident. Federal regulation requires the WVDOT to screen for drug and alcohol for specific accidents. Law Enforcement may request testing under

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its authority as well. If the WVDOT cannot perform the required tests as a result of the accident, a drug or alcohol or a combination of both types of tests administered by federal, state, and local authorities will meet the requirements of the federal post-accident testing regulations under the following conditions.

1. The official must have independent authority to conduct the test.
2. Test must conform to federal, state, and local requirements.
3. Alcohol tests require a blood or breath sample, and controlled substance testing requires urine samples to be collected.

H. A detailed record will be kept by HR utilizing the forms, (ACC-1) *Supervisor's Post Accident Testing Checklist* and (ACC-2) *Post Accident Drug and Alcohol Certification*. If a decision should be made to request medical or testing records from a hospital or Law Enforcement, the respective forms for use are (ACC-3) *Authorization for Release of Post-Accident Hospital Records* or (ACC-4) *Authorization for Release of Test Results Performed By Law Enforcement*.

I. In addition to any disciplinary action resulting from the accident itself, the WVDOT will initiate disciplinary action, as defined by this policy, for any positive test result provided by any Covered Employee under post-accident requirements.

- 6.5 **Return to Duty/Follow-Up:** A Covered Employee will not return to covered duty after engaging in conduct that is prohibited under this policy, until the employee undergoes a return to duty alcohol test indicating a BAC of 0.02 or less and provides a certified negative, drug test result where appropriate based on the employee's violation of this policy. This type of testing is required for employees who have been evaluated by a SAP and participated in a substance abuse assistance program, or those who may have voluntarily sought assistance for a substance use disorder.

Following the WVDOT's receipt of a SAP's confirmation that the employee has complied with their recommendations and is eligible to return to safety-sensitive duties, the WVDOT shall ensure the employee is subject to unannounced follow-up alcohol, drug or both alcohol and drug testing as directed by the SAP. Federal regulations require the employee be subject to a minimum of six follow up tests during the first 12 months after he or she returns to work. All return-to-duty and follow-up testing must be observed collections using direct observation procedures (49 CFR 40.67). Follow-up testing, under the direction of the employee's SAP, can be conducted for up to 60 months.

7.0 SUBSTANCE ABUSE PROFESSIONALS

The WVDOT, through HR, will advise employees of local SAPs who meet the USDOT minimum requirements for substance abuse professions. Employees may choose their own SAP provided the selected individual's level of training meets the minimum requirements established in 49 CFR part 40.281.

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8.0 REFUSAL TO TEST

- 8.1 Covered Employees are required to participate in the testing programs as a condition of employment. Certain behaviors constitute a refusal to test, which automatically initiates a positive result and disciplinary action as defined within this policy will be initiated.
- 8.2 Employees are required to follow all instructions provided by the BAT, urine sample collector, or the collection site's supervisor. Cooperation in the drug and alcohol testing process is a mandatory condition of employment.
- 8.3 Other conduct constituting a refusal to test, besides blatant unwillingness to submit to testing procedures, is:
- A. tampering with or attempting to adulterate the specimen or collection procedure, or
 - B. altering or attempting to discard a Custody Control Form or Alcohol Testing Form, or
 - C. failure to appear to the collection site after being directed to do so, or
 - D. reporting to a testing site and then leaving the premises before completing the testing process, or
 - E. leaving the scene of a vehicle accident as defined by the policy without a valid reason before testing has been conducted, or
 - F. arguing proper, established procedures or failure to cooperate with any part of the testing process, including completion of paperwork, or
 - G. failure to provide adequate breath/urine samples without a valid medical reason issued by an acceptable physician to WVDOT, or
 - H. possession of any device, substance, or container that could be used to adulterate or substitute the specimen during the testing process.
- 8.4 Employees are to provide an adequate amount of breath upon the instruction of the BAT. The BAT will ask an employee who is unable to provide an adequate amount of breath to complete the test. If the employee is unable to provide an adequate breath sample, the collection site supervisor is to be notified that a Refusal to Test result is declared as a result of the employee's inability to provide an adequate sample. After notifying HR, the supervisor shall refer the employee to a licensed physician acceptable to the WVDOT. The physician is to make a determination as to whether the employee has a medical condition, or could have a medical condition, that precluded the employee from providing an adequate breath sample. If the physician cannot make such a determination, the employee's test result will be considered as refusal to test and appropriate disciplinary action

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- will be initiated. The physician is to provide the basis for their conclusions in writing to HR.
- 8.5 NOTE: 49CFR40.277 states only breath or saliva can be accepted as a screening test, and only a breath test is approved for confirmation testing for alcohol.
- 8.6 Drug tests require at least 45 milliliters of urine. If the employee cannot provide this minimum amount, the collector will advise the employee to drink not more than 40 ounces of fluid. After a period not to exceed three hours, the collector will advise the employee to provide an adequate amount of urine. The original sample is to be discarded. If, after three hours, the employee still cannot provide an adequate sample, the specimen is to be discarded and testing discontinued. the collector will inform the site supervisor that the employee cannot provide an adequate sample. The site supervisor will inform HR who will inform the drug testing program's MRO who will contact the employee and refer them to a licensed physician acceptable to the WVDOT. The physician will determine if there could be a medical reason for the employee's failure to provide an adequate urine sample. If the physician cannot make such a determination, the test result is to be issued as refusal to test and appropriate disciplinary action will be initiated.
- 8.7 In the event an employee is not able to provide an adequate breath or urine sample, the employee is to be removed from covered duty immediately and be temporarily reassigned non-safety-sensitive duties. The employee is to be advised they must provide medical documentation of a medical condition causing the inability to provide an adequate sample within seven calendar days of the date of referral from a licensed physician. Failure to do so will be considered as refusing to test and disciplinary action initiated.
- 8.8 NOTICE: 49 CFT §40.153 provides that the MRO will inform the employee who has produced sufficient urine and received a positive result or a refusal to test because of adulteration or substitution, of their right to have the split sample tested. The employee has 72 hours from the notice to request a test of the split sample. 49 CFR §40.210 prohibits drug tests other than urine tests conducted pursuant to this policy from being used by the employer or the employee.

9.0 TESTING PROCEDURES

For random testing, a site supervisor with authority to relieve an employee from duty for prohibited conduct will represent supervisory authority at all collection locations. The BAT or urine sample collector will report to the designated HR representative at a testing location before any collections are to take place. Employees will be verbally informed by a supervisor that they are to report to a specific location for testing.

Once informed, the employee is to report for testing immediately.

Often, employees are not available to test at a random testing site due to being on leave, assigned to duties outside of that area, attending training, etc. The Program Coordinator may choose to test such employees on a second, later date. Such testing will be scheduled and completed before the start of the next period's random selections are made.

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Employees are to identify themselves through picture identification. In the event no picture identification is readily available, the collection site supervisor can verify the employee's identity. Employees who refuse to cooperate with the BAT, urine sample collector, or site supervisor will have their test results issued as positive, refusal to test.

For random testing, usually a local WVDOT facility is declared as the official collection site. Collections can take place at any WVDOT facility that meets the minimum requirements for collection and security established by the federal regulations. Employees may receive instructions that a collection will occur at a clinic. Each District has designated clinics that are regularly used to meet the WVDOT's needs for testing.

9.1 Drug Testing Procedures

The collector will inform the employee of the procedures necessary to fulfill their obligation under the drug testing rules. The employee's privacy will be maintained and allowed individual privacy unless there is a reason to believe that an individual may alter or substitute the specimen to be provided.

- A. For purposes of this policy, the following circumstances are the exclusive grounds constituting a reason to believe that an individual may alter or substitute the specimen, mandating a witnessed collection.
 - 1. The employee has presented a urine specimen that falls outside the normal temperature range (32-38 degree Centigrade or 90-100 degree Fahrenheit).
 - 2. The last urine specimen provided by the employee on a previous occasion was determined by the laboratory to have a specific gravity of less than 1.003 and a creatine concentration below 0.2 g/L.
 - 3. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.).
 - 4. The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under this policy provision for follow-up testing upon or after return to service.
- B. Only the urine sample collector has the authority to witness an employee providing a urine sample, and they must be of the same gender as the person providing the sample. The Director of HR, or designee, is to be contacted for approval by the collection site supervisor or the urine sample collector prior to any witnessed collection requirements directed by this policy.
- C. Collectors will be trained in the procedures established by the federal regulations and will conduct all testing in accordance with those standards. Witnessed collections will be conducted using the direct observation procedures described in 49 CFR 40.67 [eCFR :: 49 CFR 40.67 -- When and how is a directly observed collection conducted?](#). Additionally, in some

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cases, the MRO may cancel a specimen and order the WVDOT to collect another specimen using direct observation procedures.

- D. At the collection site, employees will be asked to provide a urine sample for analysis. The split sample method of collection will be utilized, meaning the larger sample will be divided into two smaller ones. Both bottles will be sealed and shipped in a single container to the laboratory for analysis. Chain of Custody forms and procedures established in 49 CFR part 40 and part 382 [eCFR :: 49 CFR Part 382 -- Controlled Substances and Alcohol Use and Testing](#) apply to all urine collections and will easily identify test results so they are attributed to the correct employee. Laboratories must be certified to perform the analysis by the U.S. Department of Health and Human Services, under the National Laboratory Certification Program LCP. A MRO, a licensed Physician, certifies the results of the drug tests to HR.
- E. If the test result of the primary sample is positive, the employee may request the secondary sample be analyzed at a different certified laboratory for the presence of the drug(s) initially certified as positive by the MRO. The employee will be required to pay for the second sample to be shipped and tested. The required payment is subject to change per the WVDOT's drug testing vendor contract. Every reasonable attempt will be made to contact the employee to discuss whether a medical or other condition may have triggered a positive result. The employee will be allowed 72 hours from the time of positive test notification to request the second analysis be conducted.

Any employee providing a certified positive urine sample is to be removed immediately from covered safety-sensitive duty until the end of the current shift, referred to a SAP and disciplined under the authority of this policy.

9.2 Alcohol Testing Procedures

BATs are to be trained to proficiency in the use of the EBT device to be used in alcohol testing procedures. The EBT must be one approved for use by the USDOT/FMCSA.

- A. Alcohol testing is to be conducted in a location that affords visual and aural privacy to the individual being tested, sufficiently to prevent unauthorized persons from seeing or hearing test results. No unauthorized person(s) shall be permitted access to the testing location at any time while testing is being conducted. In unusual circumstances, a test may be administered within active work areas that will challenge the collector to provide for the privacy of the employee. Measures to provide privacy to the fullest extent possible will be taken in all circumstances.
- B. Standard forms have been created by the USDOT for use in the alcohol testing process, ensuring results are attributed to the correct employee.
- C. Once the employee has identified his or herself, an individually sealed mouthpiece is to be removed and attached to the EBT in the employee's

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presence. The employee is to forcibly blow into the mouthpiece for at least six seconds or until the EBT indicated a sufficient amount of breath has been accomplished. The employee is to be shown their test result, and the test result test number, testing device, serial number of the testing device, time and quantified result are to be recorded by the BAT.

- D. When results of less than 0.02 are generated, the actual testing procedure is over, and the BAT will inform the employee of the signature requirements of the reporting form. If the BAC is 0.02 or greater, a confirmation test shall be performed. The BAT will instruct the employee in the steps necessary to complete the confirmation test. The confirmation test is to be conducted within 30 minutes, but not less than 15 minutes, of the initial test.
- E. The BAT shall note and terminate the testing process immediately upon refusal by an employee to complete and sign the breath alcohol testing form or to provide adequate amounts of breath, or otherwise cooperate with the testing process preventing the completion of the test.
- F. In addition to the requirement of disciplinary action under this policy, any covered employee with an BAC of 0.02, but less than 0.04, is required to be removed from covered duty for a period of no less than 24 hours. Any employee with BAC of 0.04 or greater is to be removed immediately from safety-sensitive duties, referred to a SAP and disciplined under the authority of this policy.
- G. The collection site supervisor is to be notified by the BAT that an employee possesses a BAC at levels of 0.02 and greater. The supervisor is to relieve the employee from covered duty and contact the Director of HR, or designee.
- H. A breath alcohol test is to be considered invalid under the following circumstances.
 - 1. The next scheduled calibration check on the EBT produces a result that differs by more than the tolerance stated in the Quality Assurance Plan of the manufacturer from the known value of the test standard. In this event, every result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid.
 - 2. The BAT does not observe the minimum 15 minute waiting period prior to a confirmation test.
 - 3. The BAT does not perform an air blank on the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to the administration of the test.
 - 4. The BAT does not sign the form as required.
 - 5. The BAT has failed to note in the remarks section of the form with the affixed test result that the employee has failed to sign, or refused to sign the form.

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6. An EBT fails to print a confirmation test result.
7. On a confirmation test, or where applicable on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

10.0 RECORDS

All drug and alcohol testing records will be maintained under rules of confidentiality established in the federal regulations. HR will provide employees with their testing records upon receipt of a written request for the records. Records will be disclosed only to those individuals authorized by the USDOT/FMCSA regulations to receive such information.

In 2020, the WVDOT began reporting and collecting drug and alcohol violation data through the FMCSA Drug and Alcohol Clearinghouse. Information is collected for all CDL holders during their pre-employment processing and, again annually, per 49 CFR 382, Subpart G [eCFR :: 49 CFR Part 382 Subpart G -- Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse](#). Any of the following will be reported to the Clearinghouse for employees performing safety-sensitive duties.

- An alcohol confirmation test result measuring 0.04 or greater.
- A negative return-to-duty test following a violation and completion of SAP's requirements.
- A refusal to take an alcohol test (including an inadequate breath sample without a valid medical reason from a physician).
- A refusal to cooperate with the testing process. See Section 8.0.
- An employee's completion of their assigned follow-up tests.
- When the WVDOT has actual knowledge of an employee's on-duty alcohol use or pre-duty, less than two hours, alcohol use.
- When the WVDOT has actual knowledge of an employee reporting for duty or remaining on duty under the influence of a non-prescribed, prohibited substance.

11.0 CONSEQUENCES OF PROHIBITED CONDUCT

The WVDOT's MRO will certify positive drug test results to HR. Alcohol test results are available on-site, and supervisors are to proceed based upon the criteria established under this policy. HR will inform the Division Director, District Manager, or a designee, of the positive drug test results. The Director of HR, or designee, is to be informed by the site supervisor of the positive alcohol test of 0.02 or greater and the actions taken as mandated by this policy. The employee is to be removed from safety-sensitive duties immediately upon notification of positive test results. The employee is to be referred to a SAP for positive drug test results or BAC of 0.04 or greater in the workplace.

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Conditions set forth in the disciplinary actions offered below must be met and the employee is fully expected to complete all necessary assessments and counseling through to conclusion. There are no exceptions to this rule.

If, for any reason, errors are made in reporting employee test results which cause the employee monetary loss or disciplinary action, the affected employee will have their status restored as if the error in test result reporting never occurred. All documentation relating to a situation such as this will be purged from the WVDOT's Drug and Alcohol Testing Records and the employee's files.

The WVDOT has the authority to administer discipline to employees found to be in violation of prohibited workplace activity. The following disciplinary schedule applies to all Covered Employees.

- 11.1 **First Offense:** A refusal to test, a positive test result is received for a drug test or a BAC of 0.04 or greater result in the workplace.
- A. Probationary employees shall be dismissed from employment and also provided SAP contact information (as Federally mandated) if they possess a CDL.
 - B. If this violation is due to a refusal to test, a *POS-1 Form, Refusal to Test/Cooperate with Testing Process*, will be completed by the collection site supervisor, the BAT, or sample collector, and the employee (if cooperating). The *POS-1* will be the written record that generates disciplinary action and will be sent to HR, together with any additional, pertinent statements.
 - C. If this violation is due to a BAC at, or above 0.02, a *POS-2 Form, Alcohol Verbal Results* will be completed by the BAT, collection site supervisor, and employee. Until HR receives the original testing forms and EBT printed results, the *POS-2 Form* will be the written record that generates disciplinary action and will be sent to HR, together with any additional, pertinent statements.
 - D. The employee shall incur a five day unpaid suspension at the close of the day upon notification of test results and shall be referred to a SAP. If applicable, the employee will immediately be relieved from safety-sensitive duties. Safety-sensitive employees will sign a *POS-3, Removal From Safety-Sensitive Duty Form*. Also, regarding safety-sensitive employees, USDOT regulations require the Agency's Medical Review Officer and the employee's SAP to enter information into the FMCSA Drug and Alcohol Clearinghouse. The employee may need to register with that website, if not already.
 - E. At the initial meeting with the SAP the employee will be assessed, and a treatment program established. After the completion of the five day suspension the employee will be allowed a Leave Status upon receipt by the WVDOT of the date and time of the initial visit with the SAP. The employee's SAP must provide information to HR on the employee's progress or lack thereof.

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- F. HR will provide a *POS-5 Form, Authorization for the Release of SAP Documentation*, to be completed and signed by the employee and given to the SAP upon their first meeting. The employee must report to a SAP within seven calendar days of positive test result notification. Failure to report will result in the employee's dismissal. The employee will be granted the use of leave consistent with the WVDOT's rule, 217CSR 1, Employment Procedures, and the Parkways Authority Policy and Procedures. The employee may not return to the workplace until return-to-duty drug and/or alcohol testing is completed, which will not occur until after HR receives the SAP's report showing the employee's successful completion of their counseling and/or education.
 - G. Once eligible, the employee will be called in and escorted to a predetermined clinic location for the return-to-duty drug and/or alcohol test. The employee will be paid for time spent in alcohol or drug testing, and then placed on a leave, as before, eligible to use accrued leave time, up until the result is received. Due to established policy, such a call-in will always be paid a minimum of 2 hours worked.
 - H. Again, all conditions set forth by the SAP must be met, and alcohol test showing a BAC of less than 0.02, a negative drug test, or both is required of the employee before returning to the workplace. If the return to work drug test or any of the follow-up drug test are positive, the employee shall be terminated.
 - I. Using the SAP's report, the WVDOT will make a fitness for duty determination for the employee. Follow-up testing, at a rate directed by the SAP, will be conducted on an unannounced basis not less than six times during the first 12 months following the employee's return to work. Follow-up testing cannot exceed a period of 60 months from the employee's return to duty. The SAP may modify the follow-up testing requirement at any time after the completion of the first 12 months of assigned tests. Any employee who does not follow the entire plan set forth by the SAP will be terminated upon written verification of such failure.
- 11.2 **Second Offense:** A refusal to test, or a positive drug test result, or an alcohol test with a concentration of 0.02 or greater **within** five years from the testing date of the prior offense.
- Dismissal and safety-sensitive employees will be provided SAP contact information (as federally mandated)
- 11.3 **Subsequent Offense after five years:** A refusal to test, or a positive drug test result, or an alcohol test with a concentration of 0.02 or greater **beyond** five (5) years from the testing date of the prior offense.
- This will be equal to a first offense and the discipline and treatment process will be repeated. See the previous entry in Section 11.0.

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11.4 Offenses involving Alcohol Concentration At or Above 0.02, But Less than 0.04.

- A. **First Offense:** The employee is to be relieved from safety-sensitive duties as required by this policy for no less than 24 hours from the time of being informed of the results. In addition, the employee is to receive progressive discipline in the form of a Written Reprimand.
- B. **Second Offense:** The employee is to be relieved from safety-sensitive duties, suspended for five days without pay at the close of the day upon notification of test results and will be referred to a SAP. The employee will be allowed a Leave Status upon completion of the five day suspension and upon receipt by the Division or District Representative of the date and time of initial visit from the SAP in order to initiate a treatment program. Employees must report to the SAP within seven calendar days from notification. Failure to report to the SAP shall result in employee dismissal. The employee will be granted the use of leave consistent with the WVDOT's rule, 217 CSR 1, Employment Procedures, and the Parkways Authority Policy and Procedures. All conditions set forth by the SAP must be met by the employee and a Return-to-Duty test showing a BAC of less than 0.02 or a negative drug test, or both is required of the employee before they may be permitted to return to the workplace. Using the SAP's report, the WVDOT will make a fitness for duty determination for the employee. Follow-up testing, at a rate directed by the SAP, will be conducted on an unannounced basis not less than six times during the first 12 months following the employee's return to work. Follow-up testing cannot exceed a period of 60 months from the employee's return to duty. The SAP may modify the follow-up testing requirement at any time after the completion of the first 12 months of assigned tests.
- C. Once eligible, the employee will be called in and escorted to a predetermined clinic location for the return-to-duty drug and/or alcohol test. The employee will be paid for time spent in alcohol or drug testing, and then placed on a leave, as before, eligible to use accrued leave time, up until the result is received. Due to established policy, such a call-in will always be paid a minimum of 2 hours as worked.
- D. Federal Regulations require that return-to-duty and follow-up testing must be completed under direct observation for safety-sensitive employees. Any employee who does not follow the entire plan set forth by the SAP will be terminated upon written verification of such.
- E. **Third Offense:** Dismissal.

12.0 CONTACT PERSON

HR will maintain a Program Coordinator to answer questions about this policy and administer the program and who may be reached via telephone at 304-558-3111.

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Questions about drug abuse, alcohol misuse, and SAPs can be directed to the HR Division at 304-414-6810 or addressed to the following:

Human Resources Division
1900 Kanawha Boulevard, East
Building Five, Room 450
Charleston, West Virginia 25305-0430

Employees of the Parkways Authority can refer questions about drug abuse, alcohol misuse, SAPs, and policy and procedures to:

Office of the Director of Training and Operations
3310 Piedmont Road
Charleston, West Virginia 25305
304-926-1900

13.0 EFFECTS OF DRUGS AND ALCOHOL

Supervisory training on the effects of substance misuse or abuse is provided through the WVDOT intranet. The curriculum, [Reasonable Suspicion: Helping Managers Fight Workplace Substance Abuse](#), explains the varying effects from one category of substances compared to another and is a tool that aids the WVDOT's supervisors when confronting a possibly impaired individual.

To learn more about the effects of substances visit the following sites:

- *Drugs and Human Performance Fact Sheet*, www.nhtsa.dot.gov.
- *Drunk Driving*, www.nhtsa.dot.gov.
- *Drug-Impaired Driving*, www.nhtsa.dot.gov.
- General substance abuse information, www.workplace.samhsa.gov.
- Drug Facts, www.justice.gov/dea/druginfo/factsheets.shtml.

14.0 Special Provisions for Division of State Rail

The Federal Railroad Administration requires all railroads to file a Railroad Compliance Plan under 49 CFR Part 219 for Control of Alcohol and Drug Use. The federally approved plan preempts this policy for any provision that varies from the approved Plan.

For purposes of 49 CFR Part 219, FRA has designated regulated employees to be those who perform service under the hours-of-service laws (covered service) and maintenance-of-way employees as defined as a "roadway worker" in 49 CFR 214.7. In addition, any employee who, on behalf of a railroad, performs mechanical tests or inspections required by 49 CFR Parts 215, 221, 229, 230, 232, or 238 on railroad rolling equipment, or its components, is also subject to Part 219 requirements.

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As of March 4, 2022, the term "regulated service" includes all hours-of-service employees, roadway workers, and mechanical employees, inclusive of "regulated service" contractors, and also individuals who may volunteer to perform regulated service duties for a railroad. These generally include the following crafts or functions:

- Train and engine service employees involved in the movement of trains or engines (e.g., conductors, brakemen, switchmen, engineers, locomotive hostlers/helpers)
- Dispatching employees who issue mandatory directives (e.g., train dispatchers, control operators)
- Signal employees who inspect, repair, or maintain signal systems
- Maintenance-of-way employees performing duties of roadway workers as defined in Section 214.7
- Any employee who, on behalf of a railroad, performs mechanical tests or inspections required by Parts 215, 221, 229, 230, 232, or 238 on railroad rolling equipment, or its components, as defined in "Mechanical or MECH employee" in Section 219.5, which became effective March 4, 2022.

15.0 FORMS

Pertinent Policy Forms are listed below and can be found on the following link:

<https://sites.google.com/wv.gov/dot/highways/human-resources/drug-alcohol>

- | | | |
|-------|------------------------|--|
| 15.1 | PE-1 | Pre-employment Drug & Alcohol Testing Checklist |
| 15.2 | PE-2 | Drug & Alcohol Testing Notification and Consent |
| 15.3 | PE-3 | Previous Employer Authorization/Consent |
| 15.4 | PE-4 | Non-Participation in Drug & Alcohol Testing Programs Verification |
| 15.5 | PE-5 | Return from Leave Checklist |
| 15.6 | PE-6 | Drug & Alcohol Testing Policy Receipt |
| 15.7 | PE-7 | Pre-employment Clearinghouse Inquiry Checklist (for use by Human Resources Drug & Alcohol Program Coordinator) |
| 15.8 | AH-505 | Reasonable Suspicion Documentation |
| 15.9 | POS-1 | Refusal to Test/Cooperate with Testing Process |
| 15.10 | POS-2 | Alcohol Verbal Results |
| 15.11 | POS-3 | Removal from Safety-Sensitive Duty |
| 15.12 | ACC-1 | Supervisor's Post-Accident Testing Checklist |
| 15.13 | ACC-2 | Post-Accident Drug & Alcohol Certification |
| 15.14 | ACC-3 | Authorization for Release of Pos-Accident Hospital Records |

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Detailed records are kept by HR utilizing the following forms involving Post-Accident and Release of information as described in Section 6.4 D of this policy.

16.0 CHANGE LOG

October 1, 2019 -

- Changed format per Policy and Procedure work group.
- Revised policy to include any employee whose job classification is within the TW classification series. TWs who do **not** possess a CDL or maintain or repair CMVs are now covered employees under this policy and will follow the same guidelines as those employees in the Transportation Worker series who have a CDL.

June 5, 2023 –

- Revised to comply with current law.
- Cleaned up formatting, grammar, and drafting style.
- Separated Drug Free Workplace from the Drug and Alcohol Testing policy.
- Included State Rail Section where appropriate and referred to FRA approved plan as controlling.

August 29, 2023 –

- Following a suspension, the employee will not be given alternative duties. The employee may use annual and sick leave following the five (5) day suspension throughout the SAP process.
- With regard to Reasonable Suspicion Testing, an employee is required to accept a leave status, using their own accrued leave, up until the result of their drug test is received.
- Clarified that the “second chance” option for employees testing positive for drugs, is referral to appropriate ASP program. DOT will not provide altered duties or additional rehabilitation if return-to-duty or subsequent tests are positive. They will result in termination.

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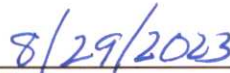
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Approved by:



Jimmy D. Wriston, P.E.
Secretary of
Transportation
Commissioner of
Highways



Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.