

# ANNAPOLIS TRANSIT DRUG AND ALCOHOL TESTING POLICY

**As mandated by the  
Federal Transit Administration**

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In some cases, the City reserves the prerogative to utilize stricter policies or procedures than the U. S. Department of Transportation when such are believed to be in the best interest of the City of Annapolis residents and employees. Any provisions set forth in this policy that are included under the sole authority of the City of Annapolis and are not provided under the authority of the above named Federal regulations are underlined indicating it is a requirement of The City of Annapolis for employment by that entity, and not required by the U. S. Department of Transportation.

Underlined text = Annapolis Transit requirements  
Regular text = FTA requirements

- Attachment A*            Safety-Sensitive Positions
- Attachment B*            Alcohol Fact Sheet
- Attachment C*            Drug Effects Fact Sheet

**ANNAPOLIS TRANSIT  
DRUG AND ALCOHOL TESTING POLICY**

Underlined text = Annapolis Transit requirements  
Regular text = FTA requirements

**A. PURPOSE**

The City of Annapolis, Annapolis Transit, provides public transit and para-transit services for the residents the City and parts of Anne Arundel County. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, Annapolis Transit declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.

Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

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

**B. APPLICABILITY**

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

## C. DEFINITIONS

*Accident*, means an occurrence associated with the operation of a revenue service vehicle even when not in revenue service or which requires a Commercial Drivers License to operate, if as a result—

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

This definition represents the FTA thresholds for an accident that would require post accident drug and alcohol testing. Under its own authority, Annapolis Transit tests covered employees for all accidents regardless of whether the accident meets FTA thresholds. For accidents that do not meet the FTA thresholds, Annapolis Transit will use non-DOT forms and procedures.

*Adulterated specimen*: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine. An adulterated specimen is considered a refusal to test, and subject to the same consequences as a positive test result.

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

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

*Alcohol Salvia Device (ASD)*: A device listed on the NHTSA conforming products list that is used to test the alcohol concentration in a saliva sample. Please note ASD testing can be used for screening purposes only. All positive alcohol saliva test results must be confirmed with an approved evidential breath-testing device within 30 minutes of the initial screening test result.

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

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

*Designated Employer Representative (DER)*: An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required

decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

*Department of Transportation (DOT):* Department of the federal government which includes the US Coast Guard, Federal Transit Administration, Federal Railroad Administration, Federal Highway Administration, Federal Motor Carrier Safety Administration, Research and Special Programs, and the Office of the Secretary of Transportation.

*Dilute specimen.* A specimen with creatinine and specific gravity values that is lower than expected for human urine.

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

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

*Medical Review Officer (MRO)* means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant biomedical information.

*Negative Dilute* is a drug test result that is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative test result* for a drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended. An alcohol concentration of less than 0.02 for breath of saliva samples is a negative test result.

*Non-negative test result* is a test result found to be adulterated, substitute, invalid, or positive for drug/drug metabolites.

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

*Positive test result* for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

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

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

transit system.

*Safety-sensitive functions* include (a) the operation of a transit revenue service vehicle even when the vehicle is not in revenue service; (b) the operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL); (c) maintaining a revenue service vehicle or equipment used in revenue service; (d) controlling the movement of a revenue service vehicle; and (e) carrying a firearm for security purposes.

*Substance Abuse Professional (SAP)* means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

*Substituted specimen.* A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

*Test Refusal* The following circumstances are considered a refusal to test;

1. Failure to appear for any test (except pre-employment) within a reasonable time after being notified to do so.
2. Failure to remain at the testing site until the testing process is complete.
3. Failure to provide a specimen for any drug or alcohol test required by DOT/FTA rules.
4. Refusal to allow the observation or monitoring of a specimen collection when it is required.
5. Failure to provide a sufficient urine or breath sample without an adequate medical explanation for the failure.
6. Failure to take a second test that the employer or collector has directed the employee to take.
7. Failure to undergo a medical exam as directed by the employer or the MRO as part of the verification process, or “shy bladder” or “shy lung” procedures.
8. Failure to cooperate with the testing process (Examples: refusal to empty pockets when requested, behaving in a confrontational manner that disrupts the process, or failure to wash hands after being directed to do so by the collector).
9. For an *direct observation* collection; failure to follow the observer’s instructions to raise clothing above the waist, lower clothing and underpants to mid-thigh, and to turn around to allow the observer to see if employee is wearing a prosthetic or similar device that could be used to interfere with the collection process.
10. Possession or wearing of a device as described above intended to help the employee pass the drug test.
11. Admitting adulteration or substitution of the specimen to the collector or the MRO.
12. If the MRO reports a verified adulterated or substituted test result.
13. In alcohol testing, refusal to sign Step 2 of the Alcohol Testing Form.
14. An employee who is subject to post accident testing who fails to remain readily available for such testing, including notifying the City of his or her location if he or she leaves the scene of the accident prior to submission to a test.

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

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

*Validity testing:* The evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority.

## **D. DESIGNATED CONTACTS**

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s):

### ***Drug and Alcohol Program Manager (DAPM)***

Kimla Milburn, Human Resources Director (PRIMARY)  
City of Annapolis Human Resources  
145 Gorman Street Second Floor  
Annapolis, MD 21401  
(410) 263-7998

Tira Kimbo, Training Programs Administrator (SECONDARY)  
City of Annapolis Human Resources  
145 Gorman Street Second Floor  
Annapolis, MD 21401  
(410) 263-7998

### ***Designated Employer Representative (DER)***

Transportation Director  
City of Annapolis Department of Transportation  
308 Chinguapin Round Road  
Annapolis, MD 21401  
410-263-7964

## **E. PROHIBITED SUBSTANCES**

Prohibited substances addressed by this policy include the following;

- (1) *Illegally Used Controlled Substance or Drugs:* Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not

approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section M of this policy. Illegal use of these five drugs is prohibited at all times, and thus covered employees may be tested for these drugs anytime that they are on duty.

Under certain conditions, when licit and/or other drug usage is suspected, the City maintains the right to perform an expanded drug-testing panel to include other substances. This testing will be conducted exclusively under the auspices of The City of Annapolis Drug & Alcohol Testing Policy, and the specimen would be collected using a non-Federal chain of custody form.

- (2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, under the City's authority, an employee must inform any physician prescribing medication, that the employee is enrolled in a drug free workplace program. Further, any employee covered under this policy (Attachment A), must inform any physician prescribing medication, prior to actually using any medication, that the employee's duties include the performance of safety-sensitive functions. Any prescribing physician or employee with a question regarding the use of a prescribed medication and possible safety concerns surrounding the usage of such, must speak to the City of Annapolis' MRO and obtain written confirmation said usage does not pose any safety concerns prior to using the medication while on duty. If a medically legitimate prescription, that would preclude or inhibit the performance of safety sensitive functions, is dispensed to an employee, he or she will be placed on medical leave until the cessation of the prescribed medication is indicated.
- (3) Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions. Under the City of Annapolis authority, an alcohol test can be performed any time a covered employee is on duty if reasonable suspicion exists.

## **F. PRE-EMPLOYMENT TESTING**

All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

- (1) All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a covered position unless the applicant takes a drug test with verified negative results.

- (2) When a covered employee or applicant has previously failed or refused a pre employment drug test administered under this part, the employee; must provide Annapolis Transit or the DER proof of having successfully completed a referral, evaluation and treatment plan as described in 49 CFR Section 655.62 and Part 40 Subpart O as amended. Under no circumstances will an employee be reinstated or an applicant hired to the conduct of safety-sensitive job functions prior to completion of the treatment plan set forth by the SAP. The cost for assessment and any subsequent treatment will be the sole responsibility of the employee.
- (3) A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test and the City receives a verified negative result.
- (4) If an applicant fails a pre-employment drug or alcohol test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least two years. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40 as amended and a negative pre- employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
- (5) When an employee being placed, transferred, or promoted from a non-covered position, to a covered position submits a drug test with a verified positive result; the employee shall be subject to a return to work agreement. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Annapolis Transit employment. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section J of this policy; The employee will not be considered eligible to work in a covered position until all the requirements of 49 CFR Part 40; Subpart O are successfully met.
- (6) If a pre-employment/pre-transfer test is canceled, Annapolis Transit will require the applicant to take and complete another pre-employment drug test with a verified negative test result.
- (7) In instances where a covered employee is on extended leave for a period of 90 days or more regardless of reason, the employee will be required to take a drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
- (8) An applicant with a dilute negative test result will be required to retest. In such cases, the employment decision will be based on the results of the second test.
- (9) Applicants are required to report previous DOT covered employer drug and alcohol test results consistent with 49 CFR Part 40.25.  
Failure to do so will result employment offer being rescinded.

## G. REASONABLE SUSPICION TESTING

All Annapolis Transit covered employees will be subject to a reasonable suspicion drug and/or alcohol test when there are reasons to believe that drug or alcohol use is impacting job performance and safety. *Reasonable suspicion* shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse.

1. Reasonable suspicion referrals must be made by one supervisor who is trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. Under FTA authority, a reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under Annapolis Transit's authority, a reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.
2. Annapolis Transit shall be responsible for transporting the employee to the testing facility. Supervisors should avoid placing themselves and/or others in a situation that might endanger the physical safety of those present. The employee shall be placed on administrative leave pending the test results. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary. The employee will also be required to successfully complete all requirements set forth in 49 CFR Part 40 Subpart O, before being considered eligible to return to duty.
3. A written record of the observations that led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation prior to the release of the test results. This written record shall be submitted to the Annapolis Transit DER and the DAPM shall be attached to the forms reporting the test results.
4. When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use or, but the employee (who is not already a participant in a treatment program) admits the use or abuse of alcohol or other substances to a supervisor, the employee shall be immediately removed from duty, referred to the SAP for an assessment. Annapolis Transit shall place the employee on administrative leave in accordance with the provisions set forth under Section P of this policy. Testing in this circumstance would be performed under the direct authority of Annapolis Transit. Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections F through K of this policy or the associated consequences as specified in Section P.

## H. POST-ACCIDENT TESTING

All covered employees will be required to undergo drug and alcohol testing if they are involved in an accident with a transit revenue service vehicle regardless of whether or not the vehicle is in revenue service if the accident results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident.

In addition, a post-accident test will be conducted if an accident results in injuries requiring medical treatment away from the scene; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident.

The above testing represents the FTA thresholds for an accident that would require post accident drug and alcohol testing. Under its own authority, Annapolis Transit tests covered employees for all accidents regardless of whether the accident meets FTA thresholds. For accidents that do not meet the FTA thresholds, Annapolis Transit will use non-DOT forms and procedures.

Post accident testing procedures include the following:

- (1) As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.
- (2) The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and within 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
- (3) Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.
- (4) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- (5) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- (6) In the rare event that Annapolis Transit is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), Annapolis Transit may use drug and alcohol post- accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

## **I. RETURN-TO-DUTY TESTING**

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must be immediately removed from the performance of safety sensitive duties. The employee must also contact and complete a Substance Abuse Professional evaluation. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug-and alcohol-free and there is no undo

concerns for public safety. The employee will be required to submit a negative return to duty alcohol and/or drug screen (collected under direct observation) prior to returning to duty. Under no circumstances will an employee be reinstated to the conduct of safety-sensitive job functions prior to completion of the treatment plan and the City's receipt verified negative return to duty test results. The cost for assessment and any subsequent treatment will be the sole responsibility of the employee. All return to testing will be performed in accordance with 49 CFR Part 40 Subpart O, which requires direct observation.

Employees who self report a substance abuse problem shall be subject to a return to work agreement. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Annapolis Transit employment. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing

## **J. FOLLOW-UP TESTING**

Covered employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty after any violation of the drug and alcohol testing regulations in 49 CFR Parts 40 or 655 as amended. The follow-up testing will be performed for a period of one to five years, with a minimum of six tests to be performed during the first 12 months. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing. All follow up testing will be performed in accordance with 49 CFR Part 40 Subpart O, which requires collection under direct observation.

Employees who self report a substance abuse problem shall be subject to a return to work agreement. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Annapolis Transit employment. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee will agree to submit to periodic unannounced follow-up testing.

## **K. RANDOM TESTING**

All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

- (1) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, days of the week, and hours that safety sensitive functions are performed.
- (2) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The

City of Annapolis combines safety sensitive employees of more than one agency into the eligible pool of safety sensitive employees. This testing percentage rates are conducted at the highest percentage rate established by agencies for which the employees included in the pool are subject to.

- (3) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.
- (4) Covered transit employees who fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of employees that are included solely under the City's authority.
- (5) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. However, under the City's authority, a random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.
- (6) Employees are required to proceed immediately to the collection site upon notification of their random selection. In all practical instances, a supervisor will transport the employee to and from the collection site.

## **L. PROHIBITED BEHAVIOR**

- (1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.
- (2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline.
- (3) The Annapolis Transit shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
- (4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.
- (5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- (6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- (7) The City of Annapolis, under its own authority also prohibits the consumption of alcohol all times employee is on duty, or anytime the employee is in uniform.
- (8) Consistent with the Drug-Free Workplace Act of 1988, all Annapolis Transit employees

- are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including Annapolis Transit premises, transit vehicles, while in uniform or while on Annapolis Transit business.
- (9) If an employee has reason to believe he or she is unfit to perform safety sensitive functions and voluntarily seeks assistance, due to a drug and/or alcohol problem, the employee **must** contact one of the City of Annapolis Drug & Alcohol Program Managers or the Designated Employer Representative, and request a temporary leave from the performance of safety sensitive functions. The employee will be reassigned to non-safety sensitive functions, while under treatment. The employee will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. The City will not consider a request for assistance with a drug and/or alcohol problem, after an employee is required to report for testing as a "voluntary" or "self report". In any case, the employee would still be required to submit to any requested drug and/or alcohol testing, and subsequently be terminated if adverse results are received.
- (10) Consistent with the Drug Free Workplace Act of 1998, failure to notify the Annapolis Transit management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to report this information will result in termination.

## **M. TESTING METHODS**

### ***Drug Testing Procedure:***

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities that have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

The drugs that will be tested for are established in 49 CFR Part 40 as amended, and include marijuana, cocaine, opiates, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and specimen validity testing will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered laboratory positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

Following a negative dilute test result, employees will be required to undergo another test. This test **will not** be done under direct observations unless there is another reason to conduct an observed test. If the second test result is also negative dilute, the test will be considered negative and not additional testing will be required unless directed by the MRO.

Under certain conditions, when licit and/or other drug usage is suspected, the City maintains the right to perform an expanded drug-testing panel to include other substances. This testing will be conducted exclusively under the auspices of The City of Annapolis Drug & Alcohol Testing Policy, and the specimen would be collected using a non-Federal chain of custody form.

The test results from the HHS certified laboratory will be reported to a Medical Review Officer (MRO). A MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the City of Annapolis Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM and no further action will be taken. If the test is invalid without a medical explanation, a retest will be conducted under direct observation.

Any covered employee who questions the results of a required drug test under Sections F through L of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Annapolis Transit will ensure that the cost for the split specimen testing is covered in order for a timely analysis of the sample. Employees will not have access to a test of their split specimen following an invalid test. The City will seek reimbursement for the split sample test from the employee. While the employee is responsible for paying the cost of split specimen testing, they will not be denied such based on inability to pay for the testing.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct Annapolis Transit to retest the employee under direct observation.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

***Direct Observation Collections:***

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

- (1) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to

- Annapolis Transit that there was not an adequate medical explanation for the result.
- (2) The MRO reports to Annapolis Transit that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed or reconfirmed.
  - (3) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen.
  - (4) The collector observes that the original specimen appears to have been tampered with.
  - (5) The temperature on the original specimen was out of range.
  - (6) Any return to duty and follow up testing conducted after the employee violates drug and alcohol testing regulations outlined in Part 40, as amended or 655.

### ***Alcohol Testing Procedure:***

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA CPL (Conforming Products List. This testing will be performed by a trained Screening Test Technician (STT).

If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This test result, test number, time, and unit identifier will be provided on each EBT printout in triplicate. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

An employee who has a confirmed alcohol concentration of 0.02 to 0.039 (STAGE I) is not considered positive, the employee shall still be removed from duty for at least 24 hours. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC. An alcohol concentration of less than 0.02 will be considered a negative test.

An employee who has a confirmed alcohol concentration of 0.04 or greater (STAGE II) will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section P of this policy.

Annapolis Transit affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

## **N. TESTING REQUIREMENTS**

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

## **O. REFUSAL TO TEST**

The following circumstances are considered a refusal to test;

1. Failure to appear for any test (except pre-employment) within a reasonable time after being notified to do so.
2. Failure to remain at the testing site until the testing process is complete.
3. Failure to provide a specimen for any drug or alcohol test required by DOT/FTA rules.
4. Refusal to allow the observation or monitoring of a specimen collection when it is required.
5. Failure to provide a sufficient urine or breath sample without an adequate medical explanation for the failure.
6. Failure to take a second test that the employer or collector has directed the employee to take.
7. Failure to undergo a medical exam as directed by the employer or the MRO as part of the verification process, or “shy bladder” or “shy lung” procedures.
8. Failure to cooperate with the testing process (Examples: refusal to empty pockets when requested, behaving in a confrontational manner that disrupts the process, or failure to wash hands after being directed to do so by the collector).
9. For an *direct observation* collection; failure to follow the observer’s instructions to raise clothing above the waist, lower clothing and underpants to mid-thigh, and to turn around to allow the observer to see if employee is wearing a prosthetic or similar device that could be used to interfere with the collection process.
10. Possession or wearing of a device as described above intended to help the employee pass the drug test.
11. Admitting adulteration or substitution of the specimen to the collector or the MRO.
12. If the MRO reports a verified adulterated or substituted test result.
13. In alcohol testing, refusal to sign Step 2 of the Alcohol Testing Form.
14. An employee who is subject to post accident testing who fails to remain readily available for such testing, including notifying the City of his or her location if he or she leaves the scene of the accident prior to submission to a test.

## **P. CONSEQUENCES OF A POSITIVE TEST OR SELF REPORT**

### ***Positive Test***

Any covered employee that has a verified positive drug or alcohol test will be removed from safety-sensitive duties, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. The employee will be required to complete all requirements outlined in 49 CFR Part 40 Subpart O, as amended. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

A positive drug and/or alcohol test will also result in disciplinary action as specified herein.

- (1) As soon as practicable after receiving notice of a verified positive drug test result, a

confirmed alcohol test result, or a test refusal, the Annapolis Transit Drug and Alcohol Program Manager will contact the employee's supervisor to have the employee cease performing any safety-sensitive function.

- (2) The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.
- (3) An alcohol test result of  $>0.02$  to  $\leq 0.039$  BAC shall result in the removal of the employee from duty for 24 hours. The employee will not be allowed to return to safety-sensitive duty or his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC. If the employee has an alcohol test result of  $>0.02$  to  $\leq 0.039$  BAC two or more times within a six month period, the employee will be removed from duty and referred to the SAP for assessment and treatment as part of a return to work agreement.
- (4) The cost of any treatment or rehabilitation services will be paid directly by the employee or his/her insurance provider. The employee will be permitted to take accrued sick leave or administrative leave to participate in the SAP prescribed treatment program. If the employee has insufficient sick leave accrual, the employee shall be allowed to use vacation or personal leave. If the employee has insufficient leave balances, the employee shall be placed on leave without pay until the SAP has determined that the employee has successfully completed the required treatment program and releases him/her to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

### ***Self Report***

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

- (a) Mandatory referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
- (b) Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Annapolis Transit employment. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy;
- (c) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.
- (d) A self-referral to the SAP that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result.
- (e) Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral which results in a verified positive shall be considered a positive test and a violation of the return to work agreement.
- (f) A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Annapolis Transit.
- (g) A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

## **Q. EDUCATION AND TRAINING**

Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use. This training will be conducted when practical prior to the employees performance of safety sensitive duties, or within 30 days of commencing such.

All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. This training is required prior to making any decision regarding fitness for duty or reasonable suspicion testing determination. This training is conducted onsite throughout the year. All supervisors are required to have initial and/or refresher training annually. Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in *Attachment B* and *Attachment C* of this policy.

## **R. INFORMATION DISCLOSURE**

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

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

- (7) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Annapolis Transit or the employee.
- (8) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended necessary legal steps to contest the issuance of the order will be taken.
- (9) 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.

*Attachment A*  
**Safety-Sensitive Positions**

Director of Transportation  
Bus Driver I  
Bus Driver II  
Bus Driver Trainee  
Lead Bus Driver  
Fleet Maintenance Specialist  
Fleet Maintenance Supervisor  
Fleet Technician I  
Fleet Technician II  
Transportation Specialist  
Transportation Superintendent  
Transportation Supervisor  
Contractual Maintenance Mechanic

## ***Attachment B*** **Alcohol Fact Sheet**

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

### *Signs and Symptoms of Use*

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stupor us condition
- Slowed reaction rate
- Slurred speech
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.

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

### *Health Effects*

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

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

### *Social Issues*

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- Forty percent of family court cases are alcohol problem related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.

- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

### *The Annual Toll*

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

### *Workplace Issues*

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

*Attachment C*  
*Drugs of Abuse*

***Cannabinoids: (Marijuana, Hashish)***

*Effects:* Euphoria, slowed thinking and reaction time confusion, impaired balance and coordination impaired memory, increased heart rate, anxiety

***Depressants: (Barbiturates, Benzodiazepines)***

*Effects:* Reduced anxiety, feeling of well being, lowered inhibitions, slowed pulse, poor concentration, impaired coordination, memory loss, addiction

***Opioids: (Codeine, Morphine, Heroin, Opium)***

*Effects:* Euphoria, drowsiness, nausea, vertigo, confusion, sedation, addiction, coma, increased tolerance, respiratory depression and arrest.

***Stimulants (Amphetamine, Cocaine)***

*Effects:* Increased heart rate, blood pressure, metabolism euphoria, reduced concentration, rapid irregular, heart rate, weight loss, decreased appetite, heart failure.

***Dissociative Anesthetics: (PCP)***

*Effects:* Increased heart rate, impaired motor function, psychotic behavior, numbness, nausea, memory loss, catatonia, lethargy, flashbacks

*Attachment D*

*Substance Abuse Counseling, Treatment and Rehabilitation Providers*

***CITY OF ANNAPOLIS EAP PROGRAM  
LIFEWORKS STRATEGIES  
(877) 252-8550***

***CITY OF ANNAPOLIS-SAP  
NSAP  
(800) 879-6428***

(The City does not endorse or have contractual agreements with any of the following providers)

CHRYSALIS HOUSE  
8148 Jumpers Hole Road  
Pasadena MD 21122

ALANON/ALATEEN  
Annapolis MD 21401  
(410) 766-1984

COMMUNITY INTERVENTION  
(Similar to Open Door, for South  
County and West County Residents only)  
Annapolis MD 21401  
(410) 222-7428

ALCOHOL & DRUG PROGRAMS  
132 Holiday Court #211  
Annapolis MD 21401  
(410) 266-8222

ALCOHOL & DRUG RECOVERY (ADR)  
929 West Street, Suite 210  
Annapolis MD 21401  
(410) 268-6800

ALCOHOL ABUSE ACTION HELPLINE/REF  
York Road  
Baltimore MD  
(410) 800-888-9393