

**UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS
TRANSIT DEPARTMENT
EMPLOYEES IN SAFETY SENSITIVE POSITIONS**

**POLICY ON SUBSTANCE ABUSE
AND DRUG AND ALCOHOL TESTING**

**Adopted by the Board of Commissioners of the Unified Government of
Wyandotte County/Kansas City, Kansas**

Adopted: June 8, 2007

Last revised: October 17 , 2019

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2007

I. Purpose and Scope

The Unified Government is committed to programs that promote safety in the workplace, employee health and well-being, and public confidence. The federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V, requires alcohol and drug testing of certain Unified Government employees. Consistent with the spirit and intent of the federal law and the Unified Government's commitment to safe and effective workplaces, the Unified Government has developed this policy statement regarding substance abuse and establishing an alcohol and drug testing program for Unified Government Transit Department employees who perform "safety sensitive" functions.

The Unified Government recognizes that many areas of its operations involve hazardous work and that all areas involve the public directly or indirectly. The Unified Government and each of its employees are responsible for providing safe and efficient operations for the protection and benefit of the public and fellow employees. The welfare of the public and UG employees requires that the operation of public transit vehicles and other safety sensitive functions be performed by employees who are physically and mentally fit and who do not misuse alcohol or legal drugs or use illegal drugs. The objective of this policy is to help prevent accidents and injuries resulting from the misuse of alcohol or legal drugs and illegal use of drugs by drivers of public transit vehicles or other employees in safety sensitive positions and to eliminate misuse of alcohol and legal drugs and illegal use of drugs and their effects in the workplace. With the cooperation of its employees, the Unified Government seeks to accomplish this objective consistent with prevailing legal principles and by means that least intrude upon its employees' legitimate expectations of privacy.

Employees who use illegal drugs or abuse alcohol or legal drugs are personally responsible for seeking evaluation and undertaking their own rehabilitation. The Unified Government encourages employees with substance abuse problems to seek help through the Employee Assistance Program, which provides free, confidential professional assistance to employees and family members.

The Unified Government recognizes that cooperation between employees and management is important in dealing with problems caused by substance abuse. Because the Employee Assistance Program is confidential, the Unified Government will not know about an employee who has sought help for a substance abuse problem. If an employee voluntarily seeks help through the Employee Assistance Program, the Unified Government will not impose discipline

for that action alone. The Unified Government will not consider the employee to have voluntarily sought assistance if the assistance is sought following an accident, initiation of an investigation, request for drug or alcohol test, threat of disciplinary action, arrest, or other manifestation of a substance abuse problem in the workplace.

Not all employees with substance abuse problems will voluntarily seek assistance. To carry out its responsibility to promote a safe and efficient workplace and the safe operation of public transit vehicles and in order to assist in determining the physical and mental abilities of its employees, the Unified Government has established a drug and alcohol testing program, which includes applicable provisions of the alcohol and drug testing rules adopted by the Federal Transit Administration (FTA). This policy contains guidelines for the detection of misuse of alcohol and illegal use of drugs and outlines the responsibility of supervisory employees, nonsupervisory employees, and applicants for employment. The Unified Government will require drug or alcohol tests or both of applicants for employment and employees in the following circumstances:

- Pre-employment/post offer (drug test only);
- Random;
- Under certain circumstances when there is reasonable suspicion to believe an employee is impaired;
- Following certain accidents;
- Upon return to duty; and
- During or following drug or alcohol rehabilitation.

This policy is intended to comply with all applicable federal regulations governing workplace anti-drug and alcohol programs in the transit industry. The Federal Transit Administration (FTA) 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 (DOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens. In addition, the federal government published 49 CFR Part 29, “the Drug-Free Workplace Act of 1988,” which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. Those requirements are incorporated in HRG Policy 2.4. The Unified Government has also adopted certain provisions in this policy which are not mandated by FTA regulations, and those provisions are so noted as required by 49 CFR §655.15(j).

This policy in part reflects the requirements of the Federal Transit Administration of the U. S. Department of Transportation and is intended to be construed together with the Unified Government’s Human Resources Guide (HRG) and any applicable bargaining agreements. The Human Resources Guide or an applicable bargaining agreement may contain stricter requirements concerning employee conduct and, if so, the HRG or the applicable bargaining agreement will apply. If this policy contains stricter provisions than the HRG or an applicable bargaining agreement, this policy will apply.

II. Condition of Employment

Compliance with this policy is a condition of employment. Refusal to take a drug or alcohol test or failure to pass a drug or alcohol test is just cause for discipline up to and including discharge.

III. Applicability

This policy applies to all Transit Department employees in safety sensitive positions; all applicants for employment in such positions who have been offered a position; and all employees who apply for transfer to such positions. The position titles of each position that includes the performance of safety-sensitive functions are listed in Appendix A, regardless of the percentage of the position's duties that are safety sensitive.

IV. Definitions

The following terms shall have the following definitions unless the context clearly indicates another meaning.

Accident means an occurrence involving one or more of the following: (1) death; (2) bodily injury of either an employee or a nonemployee who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; (3) disabling damage to one or more motor vehicles as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle; (4) when an employee is issued a citation as a result of an accident. ***[(4) is UG not FTA required]***

Actual knowledge means actual knowledge by a supervisor that an employee has used alcohol or drugs based on the supervisor's direct observation of the employee, information provided by the employee's previous employer(s), a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or drugs, or an employee's admission of alcohol or drug use except as provided in section VIII.B.4.1. Direct observation as used in this definition means observation of alcohol or drug use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under section VII.D. of this policy. ***[UG not FTA required]***

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of blood or breath expressed in terms of grams of alcohol per 100 milliliters of blood or 210 liters of breath as indicated by an evidential breath test.

Alcohol test means analysis of a sample of breath or blood to determine the alcohol concentration. ***[UG not FTA required]***

Alcohol use means the drinking or swallowing of any beverage, liquid mixture, or preparation, including any medication, containing alcohol. ***[UG not FTA required]***

Applicant means an applicant for employment for a position covered by this policy, including a current Unified Government employee who applies to transfer to a position covered by the policy. ***[UG not FTA required]***

Collection site means a place designated by the Unified Government where individuals present themselves for the purpose of providing a specimen of their breath, blood, or urine to be analyzed for the presence of drugs or alcohol. It may include a mobile collection facility, a UG facility, hospital, or other facility.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles which is designed or used to transport passengers or property and which:

has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

has a gross vehicle weight rating of 26,001 or more pounds; or

is designed to transport 16 or more passengers, including the driver; or

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 (49 U.S.C. 5103(b)) and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (49 C.F.R. part 172, subpart F).

Designated employer representative (DER) means an employee authorized by the Unified Government to receive communications and test results from service agents as those individuals or entities are defined in part 40 and who is authorized to take immediate action to remove employees or to cause employees to be removed from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The names of the DERs are set out in Appendix B.

Drug means a controlled substance, specifically one of the substances identified in Section 40.85 of Title 49 of the Code of Federal Regulations (CFR) as it may be amended from time to time, unless the word “drug” is modified by either the word “legal,” “prescription,” or “prescribed” or unless it is clear from the context that the word “drug” means substances which may be lawfully possessed without a medical prescription.

Drug test means analysis of a sample of urine to identify the presence of the drugs listed in Section VI.A.2. or their metabolites.

Employee means any person appointed to a position at the Unified Government, whether on a temporary, probationary, regular, full-time, or part-time basis.

Employee Assistance Program (EAP) means the Unified Government-offered counseling program that provides assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems and which monitors the progress of employees while in treatment.

Human Resources Director means the director of the Unified Government’s Human Resources Department or his or her designated representative.

Licensed medical practitioner means a person who is licensed, certified, and/or registered in accordance with applicable Federal, State, local, or foreign laws and regulations to prescribe controlled substances.

Medical Review Officer (MRO) means the licensed physician who is responsible for reviewing and receiving laboratory results generated under this policy and evaluating medical explanations for certain drug test results.

Pass a drug test or pass an alcohol test means that the results of a drug or alcohol test, as applicable, administered under this policy:

1. Showed no evidence or insufficient evidence of a prohibited drug or drug metabolite or alcohol concentration;
2. Showed evidence of a prohibited drug or drug metabolite or alcohol concentration but there was a legitimate medical explanation for the result;
3. Were scientifically insufficient to warrant further action; or
4. Were suspect because of irregularities in the administration of the test or observation of chain of custody procedures.

Performing a safety sensitive function means any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety sensitive functions.

Positive test result means a test result which reveals either: (1) the presence verified by a MRO of one or more prohibited drugs or their metabolites at or above the minimum levels specified in 49 CFR Part 40, and amendments thereto; or (2) an alcohol concentration of .02 or greater based on an alcohol confirmation test as described in 49 CFR Part 40, and amendments thereto.

Possess means to have either in or on the individual's person, personal effects, motor vehicle, or areas substantially entrusted to the control of the individual (e.g., an employee's personal locker).

Safety sensitive function means any of the following activities:

1. Operation of a Transit Department vehicle, whether or not the vehicle is in service;
2. Operation of a commercial motor vehicle which requires operators to have commercial driver's license (CDL);
3. Controlling the dispatch or movement of a Transit Department vehicle;
4. Maintenance (including repairs, overhaul, and rebuilding) of Transit Department vehicles or equipment; or
5. First line supervision of any Transit Department employee who performs a safety sensitive function on a regular basis. [**#5—UG not FTA required**]

Safety sensitive position means a position that requires performance of any of the safety sensitive functions listed above even on an infrequent or occasional basis. A list of safety sensitive positions is contained in Appendix A.

Substance abuse professional or SAP means a person who evaluates employees who have violated a DOT drug and alcohol regulation or this policy and makes recommendations concerning education, treatment, follow-up testing, and aftercare. The SAP or SAPs approved by the Unified Government are listed in Appendix C.

V. Prohibited Activities

The following activities are prohibited for all employees subject to this policy.

A. Alcohol

1. ***Alcohol Possession.*** No employee shall be on duty or perform work duties while the employee possesses alcohol. If a supervisor has actual knowledge that an employee possesses alcohol, the supervisor shall not permit the employee to perform or continue to perform work duties. [**UG not FTA required**]
2. ***On-Duty Use.***
 - a. No employee shall consume alcohol while performing work duties. If a supervisor has actual knowledge that an employee is using alcohol while performing work duties, the supervisor shall not permit the employee to perform or continue to perform work duties.

- b. No employee shall report for duty or remain on duty while having an alcohol concentration of .02 or greater. If a supervisor has actual knowledge that an employee has an alcohol concentration of .02 or greater, the supervisor shall not permit the employee to perform or continue to perform any work duties.
- c. No employee with an alcohol concentration of .02 or greater, but less than .04, shall perform a safety-sensitive function or continue to perform a safety-sensitive function until a subsequent test measures less than .02 or the start of the employee's next regularly scheduled duty period, but not less than eight hours following the administration of the test. If a supervisor has actual knowledge that an employee has an alcohol concentration of .02 or greater, the supervisor shall not permit the employee to perform or continue to perform any safety sensitive function.

3. *On-Call Use.*

- a. No employee shall use alcohol while on call.
- b. Any time an employee is called to report for duty and the employee has used alcohol within four hours of the call, the employee must turn down the work. A supervisor shall give an employee the opportunity to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety sensitive function.
- c. If the employee acknowledges the use of alcohol but claims ability to perform his or her safety sensitive function, the employee must take an alcohol test.

4. *Pre-Duty Use.* No employee shall perform safety sensitive functions within four hours after using alcohol. If a supervisor has actual knowledge that an employee has used alcohol within four hours, the supervisor shall not permit an employee to perform or continue to perform safety sensitive functions.

5. *Use Following an Accident.* No employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.

B. Drugs

1. *Positive Test.* No employee shall report for duty, remain on duty, or perform work duties if the employee has a positive test result for drugs or has adulterated or substituted a test specimen. If a supervisor has actual knowledge that an employee has a positive test result for drugs or has adulterated or substituted a test specimen, the supervisor shall not permit the employee to perform or continue to perform work duties.
2. *On-Duty and Pre-Duty Use.* No employee shall report for duty or remain on duty when the employee uses any drug, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a commercial motor vehicle or perform other safety sensitive functions. If a supervisor has actual knowledge that an employee has used a drug in violation of this policy, the supervisor shall not permit the employee to perform or continue to perform work duties. ***[UG's rule is broader than FTA regs which prohibit only the use of the five tested drugs]***
3. *Drug Possession.* No employee shall possess drugs while the employee is on duty, except for those drugs which have been prescribed for the employee by a licensed medical practitioner and except for those drugs which may be lawfully possessed without a medical prescription. ***[not FTA required but is required by the Drug Free Workplace Act]***
4. *Legal Drugs [UG not FTA required]*
 - a. The UG does not prohibit an employee's use of prescription drugs pursuant to the instructions of a licensed medical practitioner or non-prescription drugs (including cough syrup) when used by the individual to whom the medication was prescribed and according to directions for the purpose manufactured. It is the employee's responsibility to remain fit for duty and avoid impairment.
 - b. Employees shall not work if their ability to perform their duties in a safe manner is impaired by the use of prescription or over-the-counter drugs.

C. Refusal to Submit to Test

1. No employee shall refuse to submit to an alcohol or drug test required under this policy. A supervisor shall not permit an employee who refuses to submit to a test to perform or continue to perform work duties. However, an employee may request to consult with union representatives

as long as it does not delay the testing process more than one hour. ***[The last sentence is not FTA required.]***

2. The following behaviors constitute a test refusal for all testing categories except pre-employment:
 - a. Failure to appear for a test within a reasonable time.
 - b. Failure to remain at the testing site until the testing process is complete.
 - c. Failure to attempt to provide a urine specimen for any drug test or an adequate amount of breath or saliva for any alcohol test required by this policy.
 - d. In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of provision of a specimen.
 - e. Failure to provide a sufficient amount of urine when directed and it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure.
 - f. Failure to take an additional drug test directed by the Unified Government or the collector.
 - g. Failure to undergo a medical examination or evaluation as directed by the MRO as part of the verification process or as directed by the Unified Government.
 - h. Failure to cooperate with any part of the testing process.
 - i. If the MRO reports that the employee has a verified adulterated or substituted test result.
 - j. Failure to provide a sufficient breath specimen and it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure.
 - k. Failure to undergo a medical examination or evaluation as directed by the Unified Government as part of the insufficient breath procedures in 49 CFR Part 40.
 - l. Refusal to sign Step 2 of the Alcohol Testing Form as prescribed by 49 CFR Part 40.
 - m. Failure to cooperate with any part of the testing process (e.g., refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process).
 - n. Admitting to the adulteration or substitution of a specimen to the collector or MRO.
 - o. Failure to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
 - p. Possessing or wearing a prosthetic or other device used to tamper with the collection process.

3. When an employee refuses to submit to a drug or alcohol test, the procedures outlined in 49 CFR Part 40 will be followed.

D. Obstruction of Testing Process

No employee shall cause or attempt to cause the alteration of a test sample, submit or attempt to submit a false test sample, or otherwise obstruct the testing process.

VI. Testing in General

A. Substances To Be Tested For

1. The Unified Government may test for the presence of alcohol.
2. When a drug test is required under this policy, a test will be given to detect the following drugs:
 - a. amphetamine/methamphetamine (e.g., speed, crystal);
 - b. cocaine;
 - c. opioids (e.g., codeine, heroin, morphine, hydromorphone, hydrocodone, oxymorphone, and oxycodone);
 - d. phencyclidine (PCP);
 - e. THC/marijuana.

B. Prohibited Amounts

An employee with a positive test result of a drug or alcohol test administered under this policy is in violation of the policy and subject to discipline.

C. Procedures

1. Employees required to take a test must present themselves at a location designated by the Unified Government.
2. All tests under this policy will be conducted in accordance with the procedures set out in 49 CFR Part 40, as it may be amended. The current version of Part 40 is available for review by employees upon request from the Human Resources Department.
3. The procedures utilized under this policy protect the employee and the

integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct employee.

4. Before performing a drug or alcohol test required by 49 CFR Part 655, the Unified Government will notify employees that the test is required by such regulations.

D. Request for Retest

1. An employee who has a positive drug test result may request that the original split sample be analyzed again.
2. When an employee is notified by the MRO that he or she has a positive drug test or refusal to test because of adulteration or substitution, the applicant or employee has 72 hours from the time of notification to request a test of the split specimen. The request must be made to the MRO. The request may be verbal or in writing.
3. If the employee does not request a test of the split specimen within 72 hours, the employee may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented the employee from making a timely response. If the MRO concludes that there was a legitimate reason for the employee's failure to contact the MRO within 72 hours, the MRO will direct the test of the split specimen.
4. Retesting under this section shall be at the expense of the employee if the retest has a positive test result. If the Unified Government has advanced payment, the employee shall reimburse the Unified Government. If the retest has a negative test result, the Unified Government will pay for the retesting cost. ***[UG not FTA required]***

E. Use of Results

The results of a drug or alcohol test may be considered in processing an adverse personnel action against an employee and may be used for other administrative purposes. However, results of an initial test for drugs or a screening test for alcohol are not conveyed to the Unified Government by the MRO or the laboratory or the Breath Alcohol Technician and so are not used as a basis for an adverse personnel action or administrative action.

VII. Types of Testing

A. Pre-employment/Post Offer Testing

1. The Unified Government will notify all applicants for positions covered by this policy that they are required to submit to a drug test if the Unified Government offers them employment. An offer of employment will be conditioned upon the applicant passing a drug test.
2. The Unified Government will notify current employees who are applicants for positions covered by this policy that they are required to submit to a drug tests if such a position is offered to them. Any offer of employment to a current employee of a position covered by this policy will be conditioned upon the employee passing a drug test.
3. No employee will be permitted to perform a safety sensitive function for the Unified Government before completing the testing required by this section.
4. The Unified Government will give current employees who apply for safety sensitive positions 24 hours notice before any drug test is given under this section.
5. Every vacancy announcement for safety sensitive positions will state:

"All applicants for this position who do not presently hold a safety sensitive position with the Unified Government will be required to submit to a drug test after successful bid and before actual appointment."
6. Failure to give any notices does not preclude applicant testing.
7. When an applicant has previously failed or refused a pre-employment drug test administered under 49 CFR Part 655, the applicant must provide proof of having successfully completed a referral, evaluation, and treatment plan as described in 49 CFR Part 40.
8. When an employee has not performed a safety sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the random testing pool during that time, the employee must take and pass a pre-employment drug test.
9. Any drug test that is cancelled must be made up and the offer of employment will be conditioned upon the applicant passing the drug test.

B. Post-Accident Testing

1. Following an accident while on duty or operating a Unified Government vehicle, alcohol and drug tests will be administered to each surviving employee:
 - a. In the case of an accident involving the loss of human life—
 - (1) An employee who was operating a mass transit vehicle involved in the accident; or
 - (2) An employee whose conduct could have contributed to the accident, as determined by the Department Head or his or her designee using the best information available at the time of the decision.
 - b. In the case of all other accidents (no fatalities), where an individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident, or one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence —
 - (1) An employee who was operating a mass transit vehicle involved in the accident, unless the Department Head or his or her designee determines, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident; or
 - (2) Whose performance could have contributed to the accident, as determined by the Department Head or his or her designee, using the best information available at the time of the decision.
2. ***Timing of tests.*** The drug and alcohol testing shall be administered as soon as practicable following the accident.
 - a. *Alcohol tests.* If an alcohol test required by this section is not administered within two hours following the accident, the supervisor shall file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours, attempts to administer such test shall cease, and the supervisor shall state in the record the reasons.

- b. *Drug tests.* If a drug test required by this section is not administered within 32 hours following the accident, attempts to administer such test shall cease, and the supervisor shall file a record stating the reasons the test was not promptly administered.
3. The supervisor or other Unified Government representative shall take all reasonable steps to obtain drug and alcohol tests of the employee, but any injury should be treated first. **[UG not FTA required]**
 - a. In the case of a conscious but hospitalized employee, the supervisor must notify the hospital of the need for a sample.
 - b. If the employee gives his or her consent, Unified Government personnel must direct the medical facility to send the sample to the laboratory for testing. Unified Government personnel must ask the treating physician to determine whether the employee is able to understand a request to provide a sample.
 - c. If an employee is conscious and able to understand a request for a sample and refuses to be tested, the employee will be suspended without pay pending further review.
4. The decision not to administer a drug and/or alcohol test under this section shall be based on a determination by the Department Head or his or her designee, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.
5. An employee who is subject to post-accident testing must remain readily available for the testing or be deemed to have refused to submit to testing. Nothing in this section requires the delay of necessary medical attention for injured people following an accident or prohibits 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. Following an accident, the employee must notify his or her supervisor. If a drug test is required under this section, the supervisor must arrange for the employee to be taken immediately to an approved collection site for an alcohol test and a drug test. The employee will not be allowed to drive him- or herself. **[UG not FTA required]**

7. After the collection of the sample, the supervisor must arrange for the employee to be transported to his or her home address. The employee will not be allowed to drive himself or herself. This section does not apply if an alcohol test is administered and the alcohol concentration is less than .02. *[UG not FTA required]*
8. The results of a breath or blood test for the use of alcohol or a urine test for the use of drugs, conducted by federal, state, or local officials having independent authority for the test, shall meet the requirements of this section, if the tests conform to applicable federal, state, or local requirements and if the results of the tests are obtained by the Unified Government. Such test results may be used only when the Unified Government is unable to perform a post-accident test within the required periods noted in this section.
9. The Unified Government will provide employees subject to this policy with necessary post-accident information, procedures, and instructions, prior to the employee performing a safety sensitive function, so that the employee will be able to comply with the requirements of this section. *[UG not FTA required]*

C. *Random Testing*

1. Unannounced random drug and alcohol tests will be administered to employees in positions subject to this policy.
2. The Human Resources Director will administer the random testing, in which an employee will be selected for drug and alcohol testing on a random basis by using a computer-based random number generator that is matched with an employee's employee identification number.
3. The tests will be unannounced and the testing dates will be spread reasonably throughout the calendar year. Random testing will be conducted at all times of day when safety sensitive functions are performed.
4. Each employee in a position covered by this policy will be in the pool from which random selection is made. Each employee in the pool has an equal chance of selection and will remain in the pool, even after the employee has been tested.
5. Employees will be notified they have been selected for testing only after they have reported for duty on the day of collection and are on the job, and the Unified Government will transport the employees to the collection site immediately. If the employee is performing a safety sensitive function at

the time of the notification, the employee will cease to perform such function and wait to be transported to the collection site.

6. Employees will only be random tested for alcohol while they are performing safety sensitive functions, just before they are to perform safety sensitive functions, or just after they have ceased performing such functions.
7. The Unified Government will require random drug and alcohol testing at rates that meet or exceed the minimum annual percentage rates published in the Federal Register and posted online at <https://www.transportation.gov/odapc/random-testing-rates>.
8. A separate pool will be maintained for employees covered by regulations issued by the Federal Transit Administration.

D. Reasonable Suspicion Testing

1. The Unified Government requires an employee to submit to a drug or alcohol test, or both, when there is reasonable suspicion to believe the employee has used alcohol or drugs in violation of this policy.
2. In deciding whether there is reasonable suspicion to believe the employee has used alcohol or drugs in violation of this policy, the supervisor must base his or her conclusion on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.
3. The required observations for reasonable suspicion testing shall be made by a supervisor or Unified Government official who is trained in detecting the signs and symptoms of drug use and alcohol misuse. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test.
4. Alcohol testing will be performed only if the observations required by paragraph 2 of this section are made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with this policy. Alcohol testing under this section will be performed only while the employee is performing safety sensitive functions, just before the employee is to perform safety sensitive functions, or just after the employee has ceased performing such functions.
5. Once the supervisor has decided there is reasonable suspicion under this section, the employee must be taken immediately to an approved collection site to obtain a breath or urine sample. ***[UG not FTA required]***

6. The employee may request union representation as long as the testing is not delayed more than one hour. ***[UG not FTA required]***
7. If an alcohol test required by this section is not administered within two hours following the supervisor's determination of reasonable suspicion, the supervisor shall file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours, attempts to administer such test shall cease and the supervisor shall state in the record the reasons.
8. If a supervisor makes a determination of reasonable suspicion that an employee is under the influence of or impaired by alcohol under this section, the employee in question must be immediately removed from performing a safety sensitive function. ***[UG not FTA required but implied by 655.46]***
9. Except as provided in the preceding paragraph b, the Unified Government will take no action against an employee with respect to alcohol use based solely on the employee's behavior and appearance, in the absence of an alcohol test. ***[UG not FTA required]***
10. The supervisor shall document the incident, including a written record of the observations leading to an alcohol or drug reasonable suspicion test, signed by the supervisor or Unified Government official who made the observations, within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier. ***[UG not FTA required]***
11. After the collection of the sample, the employee will be transported to his or her home address. The employee will not be allowed to drive himself or herself. This section does not apply if an alcohol test is administered and the result is less than .02. ***[UG not FTA required]***

E. Return to Duty Testing

1. When an employee refuses to submit to a drug or alcohol test, has a positive test result for drugs or alcohol, or has violated any prohibition on the use of alcohol or drugs under the FTA regulations or this policy, if an employee is otherwise eligible to return to duty under this policy and other Unified Government rules, before the employee will be permitted to return to duty and to perform safety sensitive functions, the employee shall:
 - a. Receive an evaluation by a substance abuse professional (SAP);

- b. Successfully comply with any education and/or treatment prescribed by the SAP; and
 - c. Take and pass a return to duty alcohol or drug test or both as determined by the SAP. All specimen collection for a return to duty test must be conducted under direct observation.
2. The Unified Government will provide to each employee identified under paragraph 1 of this section the name, address, and telephone number of the EAP which is the only SAP acceptable to the Unified Government, and which is DOT-qualified.
3. When an employee in a position covered by this policy has not performed a safety sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the random selection pool covered by this policy during that time, the employee must pass a drug test.
4. All tests will be conducted under direct observation and in accordance with 49 CFR Part 40, Subpart O.

F. Follow Up Testing

1. For each employee who has committed a violation of this policy and who is otherwise eligible to return to duty and who seeks to resume the performance of safety sensitive functions, after the SAP has determined that the employee has successfully complied with the SAP's recommendations for education and/or treatment and after the employee has passed the required return to duty tests, the SAP will establish a written follow-up testing plan and will share the plan with the Unified Government.
2. The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the FMCSA regulations.
3. At a minimum the employee will be subject to six unannounced follow-up tests in the first twelve months of safety sensitive duty following the employee's return to safety sensitive functions. The SAP may require a greater number of follow-up tests during the first 12-month period of safety sensitive duty. The SAP may also require follow-up tests during the 48 months of safety sensitive duty following the first 12-month period.
4. The Unified Government will make the decision on specific dates on which to conduct the tests prescribed by the SAP. The Unified Government will not impose more testing requirements than are contained

in the SAP's follow-up testing plan.

5. The employee will not be permitted to perform safety sensitive functions unless follow-up testing is conducted as directed by the SAP.
6. Follow-up alcohol testing is only permissible just before, during, or just after performance of safety sensitive functions.
7. The follow-up tests will be unannounced, and the employee will not be given advance notice of such tests.
8. All specimen collection for follow-up tests must be conducted under direct observation.
9. Follow-up testing is separate from and in addition to random testing under this policy. Employees subject to follow-up testing will remain in the random testing pool, but a random test will not be substituted for a follow-up test.
10. A cancelled follow-up test will not be counted as a completed test. A cancelled follow-up test must be recollected.
11. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

G. Dilute Urine Specimen

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

H. Split Specimen Test

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The Unified Government guarantees that the split specimen test will be conducted in a timely fashion. The Unified Government will pay for the split specimen test; except that the Unified Government will seek reimbursement from the employee if the split specimen test yields a verified positive test result, or a verified adulterated or substituted result.

VIII. Consequences of a Confirmed Positive Test Result or Refusal to Take a Drug or Alcohol Test

A. Applicants

1. *Non-Employees*

The Unified Government will withdraw the offer of employment and will not hire the applicant if a drug test result indicates a positive test result or if the applicant refuses to consent to a drug test. Applicants will be informed in writing if they are rejected on the basis of a positive test result. The Unified Government will provide the applicant with a referral to a substance abuse professional.

2. *Employees Seeking Safety Sensitive Positions*

The Unified Government will withdraw the offer of a safety sensitive position to a current employee if the employee has a positive test result for drugs or if the employee refuses to consent to a drug test. Employees will be informed in writing if they are rejected on the basis of a positive test result. See Subsection B for other consequences of a positive test result for a current employee.

3. *Previously Failed or Refused*

An applicant or employee seeking a safety sensitive position who has previously failed or refused a DOT pre-employment drug and/or alcohol test (above .04 BAC) must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

B. Employees

1. *In General*

Compliance with this policy is a condition of employment. Refusal to take a required drug or alcohol test or failure to pass a drug or alcohol test is just cause for discipline including discharge.

2. *Removal from Safety Sensitive Functions*

a. An employee who is tested under this policy and has an alcohol concentration of .04 or greater or who has a positive test result for drugs or who refuses to take a test shall be immediately removed from performing safety sensitive functions and will be referred to

a SAP. If the Unified Government determines that the employee may otherwise return to duty, the employee may not perform any safety sensitive function until the employee has met all the requirements of 49 CFR Part 40 for returning to duty and this policy, including referral to and evaluation by the SAP, completion of any treatment ordered by the SAP, passing return to duty tests, and entry into a return to work agreement. ***[The return to work agreement is UG not FTA required]*** An employee cannot enter into a second or subsequent return to work agreement once receiving an additional verified positive test result or refusing to take a test.

- b.*** An employee who is tested under this policy and has an alcohol concentration of .02 or greater but less than .04 shall be immediately removed from performing safety sensitive functions. If the Unified Government determines that the employee may return to duty, the employee may not perform any safety sensitive functions until another test shows the employee has an alcohol concentration of less than .02; or until the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

3. Discipline

All discipline under this policy is adopted by the Unified Government under its independent authority and is not mandated by the FTA.

- a.*** An employee who is tested under this policy and has an alcohol test result of .02 or more or who refuses to take an alcohol test or who otherwise violates the provisions of this policy is subject to discipline including discharge. ***[UG not FTA authority if discipline is imposed based on alcohol test results between .02 and .04]***
- b.*** An employee who is tested under the provisions of this policy and who has a positive test result for drugs or refuses to take a drug test or who otherwise violates the provisions of this policy is subject to discipline including discharge.
- c.*** If an employee who has a positive test result is not terminated, the employee may be placed on probation for a period of up to 60 months, depending on the length of time recommended by the SAP for follow-up testing. If the employee violates any provisions of this policy or any other applicable provision of the Human Resources Guide or applicable bargaining agreement during the probationary period, the employee may be terminated, except as

provided in the following subsection B.4.

- d.* Action to discipline an employee must be taken in accordance with the Human Resources Guide or applicable bargaining agreement.
- e.* Any suspension from duty resulting from a violation of this policy is without pay, except that an employee who has undergone reasonable suspicion testing for drugs will be suspended with pay until the Unified Government receives the drug test result.

4. *Referral, Evaluation, Treatment, and Retention of Employment*

- a.* The Unified Government will advise each employee known to have engaged in conduct prohibited by this policy of the names, addresses, and telephone numbers of substance abuse professionals acceptable to the Unified Government.
- b.*
 - (1) This policy dictates that certain employees who violate the policy must be evaluated by a substance abuse professional who will determine what education and/or treatment, if any, the employee needs in resolving problems associated with alcohol misuse and drug use.
 - (2) If their employment is not terminated, those employees who have a positive test result for either drugs or alcohol or refuse to submit to a test (including by adulterating or substituting a urine specimen) must be evaluated by a SAP.
- c.* Following a violation of this policy and a return to duty, the employee will be on probation for at least 24 months and, if the SAP recommends a longer period of time for follow-up testing, will be on probation for the period of follow-up testing, up to 60 months. *[UG not FTA required]*
- d.* After any violation of this policy, if an employee is not terminated, the employee will retain his or her employment only if the employee fulfills all of the following requirements:
 - (1) Successfully complies with the SAP's evaluation recommendations for education and/or treatment as determined by the SAP;
 - (2) Passes all drug and alcohol return-to-duty and follow-up tests required by the SAP's testing plan;

- (3) Enters into a return to work agreement; and *[UG not FTA required]*
 - (4) Does not commit any other violations of this policy or of the return to work agreement. *[UG not FTA required]*
- e.* During the probationary period following return to duty, an employee who voluntarily admits a relapse of a substance abuse problem prior to being notified to report for testing may be given another opportunity for rehabilitation if the conditions set out in subsection d. of this section are met. A modified return to work agreement will be required, and the employee will be subject to a new 24-month period or longer of non-federal follow up testing on non-DOT forms as determined by the substance abuse counselor. *[UG not FTA required]*
- f.* Employees on probation must adhere to all other Human Resources Guide provisions. Nothing in this policy or in a return to work agreement shall preclude termination of an employee for a violation of the HR Guide. *[UG not FTA required]*
- g.* An employee who has violated this policy and has retained his or her employment under the provisions of this section VIII.B.4. who again violates this policy is subject to immediate termination. *[UG not FTA required]*
- h.* The decision to retain an employee who has completed a rehabilitation program and has returned to work and thereafter requests to enter a rehabilitation program again rests solely within the discretion of the County Administrator. *[UG not FTA required]*
- i.* Employees should attempt to schedule SAP- or substance abuse counselor-prescribed education and treatment sessions outside of normal work hours whenever possible. However, employees will be allowed to use their sick leave or vacation leave while participating in SAP- or substance abuse counselor-prescribed programs during normal working hours. *[UG not FTA required]*
- j.* Employees are responsible for the cost of SAP- or substance abuse counselor-prescribed education and treatment. An employee is not prohibited from using the Unified Government Employee Health Benefit Plan to pay for such education and treatment, but whether it is a covered benefit under the Plan depends on the terms and conditions of the Plan. Any drug or alcohol tests ordered by the SAP, or non-federal drug or alcohol tests on non-DOT forms ordered by the substance abuse

counselor, prior to an employee's return to duty must be paid for by the employee. *[UG not FTA required]*

k. If the Unified Government receives a recommendation from the SAP or substance abuse counselor that ongoing services (in addition to follow-up tests are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety sensitive duties, the UG, as part of a return to work agreement with the employee, may require the employee to participate in the recommended services. The UG may monitor and document the employee's participation in the recommended services. The employee is obligated to comply with the SAP's or substance abuse counselor's recommendations for these services. If the employee fails or refuses to do so, he or she may be subject to disciplinary action. *[UG not FTA required]*

l. *Voluntary Self-Identification [UG not FTA required]*

(1) An employee who voluntarily identifies himself or herself as a user of illegal drugs or an abuser of legal drugs or alcohol, before being identified through other means, will be considered a candidate for retention of employment, provided he or she first:

(a) Submits to an evaluation by a substance abuse counselor acceptable to the Unified Government;

(b) Successfully complies with the substance abuse counselor's evaluation recommendations for education and/or treatment as determined by the substance abuse counselor;

(c) Passes all non-federal drug and alcohol return-to-duty and follow-up tests recorded on non-DOT forms that are required by the substance abuse counselor's testing plan;

(d) Enters into a return to work agreement; and

(e) Thereafter refrains from violations of this policy or the return to work agreement.

(2) This self-identification option is only available if:

(a) The employee does not self-identify in order to

avoid testing under the requirements of this policy;

- (b) The employee makes the admission of illegal drug use or alcohol or legal drug misuse prior to performing a safety-sensitive function (i.e., prior to reporting for duty); and
 - (c) The employee does not perform a safety-sensitive function until the employee successfully complies with the requirements of subsection *l.*(1) above.
- (3) The employee will only be permitted to return to performing safety-sensitive duties upon successful completion of the requirements of subsection *l.*(1) above.
 - (4) The Unified Government will not take adverse action against an employee for voluntary self-identification under this section *l.* if the employee complies with all the requirements contained herein.

IX. Employee Assistance Program

The EAP plays an important role in preventing and resolving an employee's misuse of alcohol and use of drugs. Any employee found to be using illegal drugs or misusing alcohol or legal drugs may be referred to the EAP. The EAP, however, is available to all employees without regard to a finding of use of illegal drugs or misuse of alcohol or legal drugs. The EAP provides counseling and rehabilitation for all referrals as well as education and training regarding misuse of alcohol or drugs. The EAP is available not only to employees but, when feasible, to the families of employees with alcohol or drug problems and to employees with family members who have such problems.

Although employees are encouraged to receive help for drug or alcohol problems, participation in the EAP or any other rehabilitation program will not excuse an employee's failure to comply with the requirements of this policy or any other provision of the HR Guide.

X. Notification to Employees

- A. The Unified Government will provide the following materials to all employees covered by this policy:
 - 1. A copy of this policy;
 - 2. A copy of 49 CFR Part 40; *[UG not FTA required]*
 - 3. Information concerning the effects of alcohol and drug use on an

individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a co-worker's); and available methods of intervening when an alcohol or a drug problem is suspected, including confrontation, referral to any employee assistance program, or referral to management.

- B. The Unified Government will provide written notice of the availability of the policy and associated materials to the employee bargaining unit representing such employees.
- C. Each employee shall sign a statement certifying he or she has received a copy of this policy and other materials required by this section. *[UG not FTA required]*

XI. Contact Person

- A. The identity of the persons designated by the Unified Government to answer employee questions about this policy and related materials is listed in Appendix B.
- B. The names, addresses, and telephone numbers of the MRO and of the EAP/SAP are listed in Appendix C. *[UG not FTA required]*

XII. Training of Employees and Supervisors

- A. All employees covered by this policy must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.
- B. All supervisors of employees subject to this policy and all UG employees authorized to make reasonable suspicion determinations shall receive at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on drug use, including the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs.

XIII. Record Keeping and Confidentiality

- A. The Human Resources Department shall maintain the records of the Drug and Alcohol Awareness and Testing Program in a secure location with controlled access in accordance with federal regulations.
- B. The types of records to be maintained, their location, and their minimum period of retention shall be as prescribed by federal DOT regulations.

- C. Except as otherwise provided in this section XIII and federal law, no individual test results or medical information will be released to third parties without the employee’s specific written consent.
 - 1. A “third party” is any person or organization to whom other parts of this policy or applicable federal regulations do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.
 - 2.. “Specific written consent” means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. Blanket releases, in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers or companies to which the employee may apply for employment) are prohibited by federal regulation and will not be accepted by the Unified Government.

- D. Test results will be released without the employee’s written consent in the following circumstances.
 - 1. In certain legal proceedings as follows:
 - a. These proceedings include a lawsuit, grievance, or administrative proceeding brought by, or on behalf of, an employee and resulting from a positive drug or alcohol test or a refusal to test (including but not limited to adulterated or substituted test results and including but not limited to a worker’s compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
 - b. These proceedings also include a criminal or civil action resulting from an employee’s performance of safety sensitive duties in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the Unified Government to produce the information.
 - c. In such a proceeding, the Unified Government may release the information to the decisionmaker in the proceeding only with a binding stipulation that the decisionmaker to whom it is released will make it available only to parties to the proceeding.
 - d. The Unified Government will immediately notify the employee in writing of any information released under this section.

2. Upon the request of DOT agency representatives, the Unified Government will provide, among other things, all written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports).
 3. If requested by the National Transportation Safety Board as part of an accident investigation, the Unified Government will provide information concerning post-accident tests administered after the accident.
 4. If requested by a federal, state, or local safety agency with regulatory authority over the Unified Government or the employee, the Unified Government will provide drug and alcohol test records concerning the employee.
 5. The test results will be released to one of the Unified Government DERs, and the DER may release the results to those Unified Government personnel directly involved in the decision for the tested employee's discharge or disciplinary action and to the Unified Government Legal Department attorneys. *[UG not FTA required]*
- E. An employee is entitled, upon written request, to obtain copies of any records relating to his or her use of drugs or alcohol, including any records pertaining to his or her drug or alcohol tests. The Unified Government shall promptly provide the records requested by the employee.
- F. Records will be made available to a subsequent employer upon receipt of a written request from the employee.
- G. The Unified Government will release information regarding an employee's records maintained under this policy as directed by the specific written consent of the employee authorizing release of the information to an identified person.

XIV. Search and Seizure

The Unified Government reserves the right to search for alcohol or illegal drugs, without employee consent, all areas and property in which the Unified Government maintains full control or joint control with the employee, which areas and property do not include personal vehicles, lockers, and personal items, such as but not limited to lunch boxes, purses, and briefcases. Supervisors shall notify their Department Head when they have reasonable suspicion that the employee has alcohol or illegal drugs in violation of this policy in his or her possession or in an area not jointly or fully controlled by the Unified Government. If the Department Head concurs that there is reasonable suspicion of alcohol or drug possession which violates this policy, the Department Head shall notify the Human Resources Director and the Legal Department. *[UG not FTA required]*

RELATED POLICY: 2.4 Drug-Free Workplace

RELATED FORM: Reasonable Suspicion Report Form

APPENDIX A – SAFETY SENSITIVE POSITIONS

DISPATCHER I
DISPATCHER II
GENERAL LABORER
TRANSIT OPERATOR
OPERATIONS SUPERVISOR
OPERATIONS SUPERINTENDENT

Effective: 06-08-07

APPENDIX B: DESIGNATED EMPLOYER REPRESENTATIVE(S)

1. J. Renee Ramirez, Director
Unified Government Human Resources Dept.
701 North 7th Street, Room 646
Kansas City, Kansas 66101
Ph. No. (913) 573-5660
Fax No. (913) 573-5684

2. Shakeva Christian, Human Resources Manager
Unified Government Human Resources Dept.
701 North 7th Street, Room 646
Kansas City, Kansas 66101
Ph. No. (913) 573-5660
Fax No. (913) 573-5684

3. Dave Wimberly, Safety Officer
Unified Government Human Resources Dept.
701 North 7th Street, Room 646
Kansas City, Kansas 66101
Ph. No. (913) 573-5660
Fax No. (913) 573-5684

(or their successors)

Effective: 06-08-07

**APPENDIX C: MEDICAL REVIEW OFFICER (MRO) AND
EMPLOYEE ASSISTANCE PROGRAM (EAP)**

Dr. Maiko Ebersole Robinson, MD
(Medical Review Officer)
The University of Kansas Occupational Health
4810 State Avenue
Kansas City, KS 66102

New Directions Behavioral Health (NDBH)
Employee Assistance Program
1-800-624-5544 or ndbh.com

(or their successors)

Effective: 06-01-06