

# **TRANSIT GROUP LLC**

**11159 Ridge Road, Medina NY 14103**

## **DOT Drug and Alcohol Policy**

Transit Group LLC is dedicated to the health and safety of our drivers. Drug and/or alcohol use may pose a serious threat to driver health and safety. Therefore, it is the policy of Transit Group LLC to prevent the use of drugs and abuse of alcohol from having an adverse effect on our drivers.

The serious impact of drug use and alcohol abuse has been recognized by the federal government. The Federal Motor Carrier Safety Administration (FMCSA) has issued regulations which require the company to implement an alcohol and controlled substances testing program.

The purpose of the FMCSA-issued regulations is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

The company will comply with these regulations and is committed to maintaining a drug-free workplace.

It is the policy of Transit Group LLC that the use, sale, purchase, transfer, possession, or presence in one's system of any controlled substance (except medically prescribed drugs) by any driver while on the company premises, engaged in company business, operating company equipment, or while under the authority of Transit Group LLC is strictly prohibited. Disciplinary action will be taken as necessary.

Neither this policy nor any of its terms are intended to create a contract of employment or contain the terms of any contract of employment. The company retains the sole right to change, amend, or modify any term or provision of this policy without notice. This policy is effective August 24, 2014, and will supersede all prior policies and statements relating to alcohol or drugs.

### **Responsibility**

In accordance with 49 CFR §382.601(a), each employer shall provide educational materials that explain the requirements in Part 382 and the employer's policies and procedures with respect to meeting these requirements. The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a safety-

sensitive function position (i.e., operating a commercial motor vehicle as defined in §382.107 requiring a CDL).

Each driver hired or transferring into a safety-sensitive function is responsible for reviewing the content of the information presented to drivers. Each driver is responsible for asking questions about the procedures if the content is unclear to him/her. Drivers may pose follow-up questions about the content of this policy and procedures to Stephen Dunn, 585-590-7002.

## **Drugs and alcohol procedures**

### ***Regulatory requirements***

All drivers who operate commercial motor vehicles that require a commercial driver's license under 49 CFR Part 383 are subject to the FMCSA's drug and alcohol regulations, 49 CFR Part 382.

### ***Non-regulatory requirements***

The Federal Motor Carrier Safety Regulations (FMCSRs) set the minimum requirements for testing. The company's policy in certain instances may be more stringent. This policy will clearly define what is mandated by the FMCSRs and what company procedure is.

### ***Who is*** responsible

It is the company's responsibility to provide testing for the driver that is in compliance with all federal and state laws and regulations, and within the provisions of this policy. The company will retain all records related to testing and the testing process in a secure and confidential matter.

Transit Group LLC's alcohol and drug program administrator who is designated to monitor, facilitate, and answer questions pertaining to these procedures is:

Stephen C Dunn

Drug and Alcohol Program Administrator

11159 Ridge Road, Medina NY 14103

585-590-7002

The driver is responsible for complying with the requirements set forth in this policy. The driver will not use, have possession of, abuse, or have the presence of alcohol or any controlled substance in excess of regulation-established threshold levels while on duty. The driver will not use alcohol within 4 hours of performing a "safety-sensitive" function, while performing a "safety-sensitive" function, or immediately after performing a "safety-sensitive" function. The driver must submit to alcohol and controlled substances tests administered under Part 382.

All supervisors must make every effort to be aware of a driver's condition at all times the driver is in service of the company. The supervisor must be able to make reasonable suspicion observations to determine if the driver is impaired in some way, and be prepared to implement the requirements of this policy if necessary.

## **Definitions**

When implementing and interpreting the drug and alcohol policies and procedures required by the FMCSA as well as the policies and procedures required by the company, the following definitions apply:

*Actual knowledge* means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the driver, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or a controlled substance, or a driver's admission of alcohol or controlled substance use under the provisions of Sec. 382.121. Direct observation as used in this definition means observation of alcohol or controlled substance use and does not include observation of driver behavior or physical characteristics sufficient to warrant reasonable suspicion testing under Sec. 382.307.

*Adulterated specimen* means a urine specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration.

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

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

*Alcohol screening device* (ASD) means a breath or saliva device, other than an evidential breath testing device (EBT) that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

*Alcohol use* means the consumption of any beverage, liquid mixture, or preparation, including any medication, containing alcohol.

*Aliquot* means a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

*Breath Alcohol Technician* (or BAT) means an individual who instructs and assists individuals in the alcohol testing process, and operates an evidential breath testing device (EBT).

*Collection site* means a place designated by the company, where individuals present themselves for the purpose of providing a urine specimen for a drug test.

*Commercial motor vehicle* means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating of 26,001 or more pounds (11,794 or more kilograms) inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds (4,536 kilograms); or
- Has a gross vehicle weight rating of 11,794 or more kilograms (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 and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).

*Confirmatory drug test* means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

*Confirmatory validity test* means a second test performed on a different aliquot of the original urine specimen to further support a validity test result.

*Consortium/Third-party administrator (C/TPA)* is a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services for the company. C/TPAs typically perform administrative tasks concerning the operation of the company's drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers."

*Controlled substances* mean those substances identified in 49 CFR, Section 40.85. In accordance with FMCSA rules, urinalyses will be conducted to detect the presence of the following substances:

- Marijuana
- Cocaine
- Opiates
- Amphetamines
- Phencyclidine (PCP).

Detection levels requiring a determination of a positive result shall be in accordance with the guidelines adopted by the FMCSA in accordance with the requirements established in 49 CFR, Section 40.87.

*Designated employer representative (DER)* is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove drivers from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

*Dilute specimen* means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

*Direct observation* means the observer must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show, by turning around, that he/she does not have a prosthetic device. After observer has determined that the employee does not have such a device, he/she may permit the employee to return clothing to its proper position for observed urination.

*Disabling damage* means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

1. *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

## 2. Exclusions.

- a. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- b. Tire disablement without other damage even if no spare tire is available.
- c. Headlight or taillight damage.
- d. Damage to turn signals, horn, or windshield wipers which make them inoperative.

*Driver* means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operates a commercial motor vehicle at the direction of or with the consent of an employer.

*Drug* means any substance (other than alcohol) that is a controlled substance as defined in this policy and 49 CFR Part 40.

*Evidential breath testing device (EBT)* means a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and 0.04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

*FMCSA* means Federal Motor Carrier Safety Administration, U.S. Department of Transportation.

*Initial drug test* (also known as a Screening drug test) means an immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

*Initial validity test* means the first test used to determine if a urine specimen is adulterated, diluted, or substituted.

*Invalid result* means the result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

*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 and other drugs.

*Medical Review Officer (MRO)* is a person who is a licensed physician (Doctor of Medicine or Osteopathy) and who is responsible for receiving and reviewing laboratory results generated by the company's drug testing program and evaluating medical explanations for certain drug test results.

*Non-negative specimen* means a urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

*Oxidizing adulterant* means a substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

*Performing (a safety-sensitive function)* means a driver is considered to be performing a

safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

*Prescription medications* means the use (by a driver) of legally prescribed medications issued by a licensed health care professional familiar with the driver's work related responsibilities.

*Refuse to submit* (to an alcohol or controlled substances test) means that a driver:

1. Fails to appear for any test (except pre-employment) within a reasonable time, as determined by the company, consistent with applicable DOT regulations, after being directed to do so by the company. This includes the failure of a driver (including an owner-operator) to appear for a test when called by a C/TPA;
2. Fails to remain at the testing site until the testing is complete (except pre-employment if the driver leaves before the testing process begins);
3. Fails to provide a urine specimen for any DOT required drug test (except pre-employment if the driver leaves before the testing process begins);
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of the specimen;
5. Fails 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;
6. Fails or declines to take a second test the employer or collector has directed the driver to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER (In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment);
8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
9. For an observed collection, fails to follow the observer's instructions to raise his/her clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if he/she has any type of prosthetic or other device that could be used to interfere with the collection process.
10. Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
11. Admits to the collector or MRO that he/she adulterated or substituted the specimen.
12. Is reported by the MRO as having a verified adulterated or substituted test result.

*Safety-sensitive function* means all time from the time a driver begins to work or is required

to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- all time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the company;
- all time inspecting equipment as required by Secs. 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- all time spent at the driving controls of a commercial motor vehicle in operation;
- all time, other than driving time, in or upon any commercial motor vehicle, except time spent resting in a sleeper berth (a berth conforming to the requirements of Sec. 393.76);
- all time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

*Screening test technician (STT)* is a person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device (ASD).

*Stand-down* means the practice of temporarily removing a driver from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive drug test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

*Substance abuse professional (SAP)* is a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. A SAP must be:

- a licensed physician (Doctor of Medicine or Osteopathy);
- a licensed or certified social worker;
- a licensed or certified psychologist;
- a licensed or certified employee assistance professional; or
- a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC), or by the National Board for Certified Counselors, Inc and Affiliates/Master Addictions Counselor (NBCC).

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

## **Alcohol prohibitions**

Part 382, Subpart B, prohibits any alcohol misuse that could affect performance of safety-sensitive functions.

This alcohol prohibition includes:

- use while performing safety-sensitive functions;
- use during the 4 hours before performing safety-sensitive functions;
- reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater;
- use of alcohol for up to 8 hours following an accident or until the driver undergoes a post-accident test; or
- refusal to take a required test.

**NOTE:** Per FMCSA regulation (Sec. 382.505), a driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform, nor be permitted to perform, safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

## **Drug prohibitions**

Part 382, Subpart B, prohibits any drug use that could affect the performance of safety-sensitive functions. This drug prohibition includes:

- use of any drug, except when administered to a driver by, or under the instructions of, a licensed medical practitioner, who has advised the driver that the substance will not affect the driver's ability to safely operate a commercial motor vehicle. (The use of marijuana under California Proposition 215 or the use of any Schedule I drug under Arizona Proposition 200 is not a legitimate medical explanation. Under federal law, the use of marijuana or any Schedule I drug does not have a legitimate medical use in the United States.);
- testing positive for drugs; or
- refusing to take a required test.

All drivers will inform Stephen Dunn, Transit Group LLC, 11159 Ridge Road, Medina NY 585-590-7002, of any therapeutic drug use prior to performing a safety-sensitive function. He/she may be required to present written evidence from a health care professional which describes the effects such medications may have on the driver's ability to perform his/her tasks.

## **Circumstances for testing**

### ***Pre-employment §382.301***

In accordance with §382.301, all driver applicants will be required to submit to and pass a urine drug test as a condition of employment.

Each driver applicant will be asked whether he/she has tested positive, or refused to test, on any DOT pre-employment drug test administered by an employer to which the driver applicant applied for, but did not obtain, safety-sensitive transportation work during the past 2 years.

If the driver applicant admits that he/she has tested positive, or refused to test, on any DOT pre-employment test, the driver applicant may not perform any safety-sensitive functions for the company until and unless the driver applicant documents successful completion of the return-to-duty process.

Job applicants, who are denied employment because of a positive test under another motor carrier or under Transit Group LLC's DOT pre-employment testing, may reapply for employment after 1 year. The DOT return-to-duty process must be completed prior to operating Transit Group LLC's commercial motor vehicles.

Driver applicant drug testing shall follow the collection, chain-of-custody, and reporting procedures set forth in 49 CFR Part 40.

An employee of Transit Group LLC transferring to a safety-sensitive driving position is also subject to and must pass a urine drug test as a condition of the transfer.

If the employee transferring into a safety-sensitive function does not pass his/her DOT pre-employment drug screen, he/she will not be considered for the position.

### ***Reasonable suspicion testing (Sec. 382.307)***

If the driver's supervisor or another company official designated to supervise drivers believes a driver is under the influence of alcohol or drugs, the driver will be required to undergo a drug and/or alcohol test.

The basis for this decision will be specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.

The driver's supervisor or another company official will immediately remove the driver from any and all safety-sensitive functions and take the driver or make arrangements for the driver to be taken to a testing facility.

The person who makes the determination that reasonable suspicion exists to conduct an alcohol test may not administer the alcohol test. Per FMCSA regulation, reasonable suspicion alcohol testing is only authorized if the observations are made during, just preceding, or after the driver is performing a safety-sensitive function.

Per FMCSA regulation, if the driver tests 0.02 or greater, but less than 0.04, for alcohol the driver will be removed from all safety-sensitive functions, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

If an alcohol test is not administered within two hours following a reasonable suspicion determination, the program administrator will prepare and maintain a record stating the reasons why the test was not administered within 2 hours.

If the test was not administered within 8 hours after a reasonable suspicion determination, all attempts to administer the test shall cease. A record of why the test was not administered must be prepared and maintained.

A written record of the observations leading to an alcohol or controlled substance reasonable suspicion test, signed by the supervisor or company official who made the observation, will be completed within 24 hours of the observed behavior or before the results of the alcohol or controlled substances test are released, whichever is first.

A driver awaiting the results of a reasonable suspicion drug test will be unqualified for any safety sensitive functions.

### ***Post-accident testing (Sec. 382.303)***

Drivers are to notify Stephen Dunn, 11159 Ridge Road, Medina NY 14103, 585-590-7002 as soon as possible if they are involved in an accident.

According to FMCSA regulations (Sec. 382.303), if the accident involved:

- a fatality,
- bodily injury with immediate medical treatment away from the scene *and* the driver received a citation, or
- disabling damage to any motor vehicle requiring tow away *and* the driver received a citation

the driver will be tested for drugs and alcohol as soon as possible following the accident. The driver must remain readily available for testing. If the driver isn't readily available for alcohol and drug testing, he/she may be deemed as refusing to submit to testing. A driver involved in an accident may not consume alcohol for 8 hours or until testing is completed.

If the alcohol test is not administered within 2 hours following the accident Stephen Dunn, 11159 Rdige Road, Medina NY 14103, 585-590-7002 will prepare a report and maintain a record stating why the test was not administered within two hours.

If the alcohol test is not administered within 8 hours following the accident, all attempts to administer the test will cease. A report and record of why the test was not administered will be prepared and maintained.

The drug test must be administered within 32 hours of the accident. If the test could not be administered within 32 hours, all attempts to test the driver will cease.

Stephen Dunn, 11159 Rdige Road, Medina NY 14103, 585-590-7002 will prepare and maintain a record stating the reasons why the test was not administered within the allotted time frame.

### ***Random testing (Sec. 382.305)***

Transit Group LLC will conduct random testing for all drivers as follows.

Transit Group LLC will use a company-wide selection process based on a scientifically valid

method, prescribed by FMCSA regulations.

Transit Group LLC will use a consortium. The consortium will use a selection process based on a scientifically valid method, prescribed by FMCSA regulations.

Express Labs will administer the random testing program, maintaining all pertinent records on random tests administered.

At least 10 percent of the consortium's average number of driver positions will be tested for alcohol each year. At least 25 percent (or FMCSA minimum) of the consortium's average number of driver positions will be tested for drugs each year.

The random testing will be spread reasonably throughout the calendar year. All random alcohol and drug tests will be unannounced, with each driver having an equal chance of being tested each time selections are made.

A driver may only be tested for alcohol while he/she is performing a safety-sensitive function, just before performing a safety-sensitive function, or just after completing a safety-sensitive function.

Once notified that he/she has been randomly selected for testing, the driver must proceed immediately to the assigned collection site.

### ***Return-to-duty testing (Sec. 382.309)***

After failing an alcohol test, a driver must undergo a return-to-duty test prior to performing a safety-sensitive function. The test result must indicate a breath alcohol concentration of less than 0.02.

After testing positive for a controlled substance, a driver must undergo a return-to-duty test *under direct observation* prior to performing a safety-sensitive function. The test must indicate a verified negative result for drug use.

### ***Follow-up testing (Sec. 382.311)***

Following the driver's violation of Part 382, Subpart B, the driver will be subject to follow-up testing. Follow-up testing will be unannounced. The number and frequency of such follow-up testing will be directed by the SAP, and consist of at least six tests in the first 12 months. Follow-up testing may be done for up to 60 months. Follow-up drug tests must be conducted *under direct observation*.

### **Refusal to submit**

According to Sec. 382.211, a driver may not refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substances test required by the regulations. A driver who refuses to submit to such tests may not perform or continue to perform safety-sensitive functions and must be evaluated by a substance abuse professional as if the driver tested positive for drugs or failed an alcohol test.

Refusal to submit includes failing to provide adequate breath or urine sample for alcohol or drug testing and any conduct that obstructs the testing process. This includes adulteration or substitution of a urine sample.

## **Dilute specimens**

If the MRO informs the company that a positive drug test was dilute, Transit Group LLC will simply treat the test as a verified positive test. The company will not direct the employee to take another test based on the fact that the specimen was dilute. This is in accordance with §40.197.

If the MRO directs the company to conduct a recollection under direct observation (i.e., because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL (see §40.155(c)), Transit Group LLC will do so *immediately*.

The following provisions apply to all tests that Transit Group LLC sends the driver for under the directive of the MRO:

- The employee is given the minimum possible advance notice that he or she must go to the collection site;
- The result of the retest taken under §40.197(b), and not a prior test, is accepted as the test result of record;
- If the result of the retest taken under §40.197(b) is also negative and dilute, Transit Group LLC will not make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs Transit Group LLC to conduct a recollection under direct observation under §40.197(b)(1), the company must immediately do so.
- If the employee declines to take a test as directed in accordance with §40.197(b), the employee has refused the test for purposes of Part 40 and DOT agency regulations.

If the creatinine concentration of the dilute specimen is greater than 5 mg/dL, Transit Group LLC has elected to include the optional retest provision in its company policy. Transit Group LLC will direct the employee to take another test immediately under company policy in accordance with §40.197. Such recollections will not be collected under direct observation, unless there is another basis for use of direct observation (see § 40.67 (b) and (c)).

The following provisions apply to all retests that Transit Group LLC sends the driver for under company policy:

- The employee is given the minimum possible advance notice that he or she must go to the collection site;
- The result of the retest taken under §40.197(b), and not a prior test, is accepted as the test result of record;
- If the result of the retest taken under §40.197(b) is also negative and dilute, Transit Group LLC will not make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs Transit Group LLC to conduct a recollection under direct observation under §40.197(b)(1), the company must immediately do so.
- If the employee declines to take a test as directed in accordance with §40.197(b), the employee has refused the test for purposes of Part 40 and DOT agency regulations.

## Invalid results

When the laboratory reports that the test result is an invalid result, the MRO must:

- Contact the employee and inform the employee that the specimen was invalid. In contacting the employee, he/she uses the procedures set forth in §40.131.
- After explaining the limits of disclosure (see §§40.135(d) and 40.327), the MRO must determine if the employee has a medical explanation for the invalid result. He/she must inquire about the medications the employee may have taken.

If the employee gives an explanation that is acceptable, the MRO must:

- Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection not required" on the "Remarks" line.
- Report to the DER that the test is cancelled, the reason for cancellation, and that no further action is required unless a negative test result is required (i.e., pre-employment, return-to-duty, or follow-up tests). If a negative test result is required and the medical explanation concerns a situation in which the employee has a permanent or long-term medical condition that precludes him or her from providing a valid specimen, the MRO must follow the procedures outlined at §40.160 for determining if there is clinical evidence that the individual is an illicit drug user.
  - If the medical evaluation reveals no clinical evidence of drug use, the MRO must report this to the employer as a negative test result with written notations regarding the medical examination. The report must also state why the medical examination was required (i.e., either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted in another invalid result for the same reason, as appropriate) and for the determination that no signs and symptoms of drug use exist.
  - If the medical evaluation reveals clinical evidence of drug use, the MRO must report the result to the employer as a cancelled test with written notations regarding the results of the medical examination. The report must also state why the medical examination was required (i.e., either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted in another invalid result for the same reason, as appropriate) and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purpose of an actual negative test result **(i.e., the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test result is needed for that purpose).**

If the employee does not give a reasonable explanation, the MRO:

- Places a check mark in the "Test Cancelled" and enters "Invalid Result" and "direct observation collection required" on the "Remarks" line.
- Reports to the DER that the test is cancelled, the reason for cancellation, and that a

second collection must take place immediately under direct observation.

- Instructs the employer to ensure that the employee has the minimum possible advance notice that he or she must go to the collection site.

If the employee admits to the MRO that he or she tampered with the specimen, the result is reported as a refusal to be tested.

If the employee admits to the MRO that he or she used drugs, the test is cancelled with the reason noted (invalid) and the DER is notified of the admission. The DER has actual knowledge of a violation, and the occurrence is treated the same as a positive result.

### **Alcohol testing procedures**

Alcohol testing will be conducted at WorkFit Medical by a qualified breath alcohol technician (BAT) or screening test technician (STT), according to 49 CFR Part 40 procedures. Only products on the conforming products list (approved by the National Highway Traffic Safety Administration (NHTSA)) and Part 40 requirements will be utilized for testing under this policy.

The testing will be performed in a private setting. Only authorized personnel will have access, and are the only individuals who can see or hear the test results.

When the driver arrives at the testing site, the BAT or STT will ask for identification.

The driver may ask the BAT or STT for identification.

The BAT or STT will then explain the testing procedure to the driver. The BAT or STT may only supervise one test at a time, and may not leave the testing site while the test is in progress.

A screening test is performed first. When a breath testing device is used, the mouthpiece of the breath testing device must be sealed before use, and opened in the driver's presence. Then the mouthpiece is inserted into the breath testing device.

The driver must blow forcefully into the mouthpiece of the testing device for at least 6 seconds or until an adequate amount of breath has been obtained.

Once the test is completed, the BAT must show the driver the results. The results may be printed on a form generated by the breath testing device or may be displayed on the breath testing device. If the breath testing device does not print results and test information, the BAT is to record the displayed result, test number, testing device, serial number of the testing device, and time on the alcohol testing form. If the breath testing device prints results, but not directly onto the form, the BAT must affix the printout to the alcohol testing form in the designated space.

When an alcohol screening device (ASD) is used, the screening test technician (STT) must check the device's expiration date and show it to the driver. A device may not be used after its expiration date.

The STT will open an individually wrapped or sealed package containing the device in front of the driver and he/she will be asked to place the device in his/her mouth and use it in the manner described by the device's manufacturer.

If the driver declines to use the device, or in a case where the device doesn't activate, the

STT must insert the device in the driver's mouth and use it in the manner described by the device's manufacturer. The STT must wear single-use examination gloves and must change the gloves following each test.

When the device is removed from the driver's mouth, the STT must follow the manufacturer's instructions to ensure the device is activated.

If the procedures listed above can't be successfully completed, the device must be discarded and a new test must be conducted using a new device. Again, the driver will be offered the choice of using the new device or having the STT use the device for the test.

If the new test can't be successfully completed, the driver will be directed to immediately take a screening test using an evidential breath testing device (EBT).

The result displayed on the device must be read within 15 minutes of the test. The STT must show the driver the device and its reading and enter the result on the ATF.

If the reading on the EBT or ASD is less than 0.02, both the driver and the BAT or STT must sign and date the result form. The form will then be confidentially forwarded to the company's designated employer representative (DER).

If the reading on the EBT or ASD is 0.02 or more, a confirmation test must be performed. An EBT must be used for all confirmation tests.

The test must be performed after 15 minutes have elapsed, but within 30 minutes of the first test. The BAT will ask the driver not to eat, drink, belch, or put anything into his/her mouth. These steps are intended to prevent the buildup of mouth alcohol, which could lead to an artificially high result.

A new, sealed mouthpiece must be used for the new test. The calibration of the EBT must be checked. All of this must be done in the driver's presence.

If the results of the confirmation test and screening test are not the same, the confirmation test will be used.

Refusal to complete and sign the alcohol testing form or refusal to provide breath or saliva will be considered a failed test, and the driver will be removed from all safety-sensitive functions until the matter is resolved.

### **Drug testing procedures**

Drug testing will be conducted at WorkFit Medical. Specimen collection will be conducted in accordance with 49 CFR Part 40 and any applicable state law. The collection procedures have been designed to ensure the security and integrity of the specimen provided by each driver. The procedures will strictly follow federal chain of custody guidelines.

A drug testing custody and control form (CCF) will be used to document the chain of custody from the time the specimen is collected at the testing facility until it is tested at the laboratory.

A collection kit meeting the requirements of Part 40, Appendix A must be used for the drug test.

The collection of specimen must be conducted in a suitable location and must contain all

necessary personnel, materials, equipment, facilities, and supervision to provide for collection, security, and temporary storage and transportation of the specimen to a certified laboratory.

When the driver arrives at the collection site, the collection site employee will ask for identification. The driver may ask the collection site person for identification.

The driver will be asked to remove all unnecessary outer garments (coat, jacket) and secure all personal belongings. The driver may keep his/her wallet.

The driver will then wash and dry his/her hands. After washing hands, the driver must remain in the presence of the collection site person and may not have access to fountains, faucets, soap dispensers, or other materials that could adulterate the specimen.

The collection site person will select, or allow the driver to select, an individually wrapped or sealed container from the collection kit materials. Either the collection site person or the driver, with both individuals present, must unwrap or break the seal of the collection container. The seal on the specimen bottle may not be broken at this time. Only the collection container may be taken into the room used for urination.

The driver is then instructed to provide his/her specimen in a room that allows for privacy.

The specimen must consist of at least 45 mL of urine. Within 4 minutes after obtaining the specimen, the collection site person will measure its temperature. The acceptable temperature range is 90 to 100 degrees Fahrenheit. If the specimen temperature is outside the acceptable range, the collector must note this on the CCF and must immediately conduct a new collection using direct observation procedures outlined in Sec. 40.67. Both specimens must be sent to the lab for testing. The collector must notify both the DER and collection site supervisor that the collection took place under direct observation and the reason for doing so.

The collection site person will also inspect the specimen for color and look for signs of contamination or tampering. If there are signs of contamination or tampering, the collector must immediately conduct a new collection using direct observation procedures outlined in Sec. 40.67. Both specimens must be sent to the lab for testing. The collector must notify both the DER and collection site supervisor that the collection took place under direct observation and the reason for doing so.

The 45mL sample provided must be split into a primary specimen of 30 mL and a second specimen (used as the split) of 15 mL. The collection site person must place and secure the lids on the bottles, place tamper-evident bottle seals over the lids and down the sides of the bottles, and write the date on the tamper-evident seals. The driver then initials the tamper-evident bottle seals to certify that the bottles contain specimens he/she provided. All of this must be done in front of the driver.

All identifying information must be entered on the CCF by the collection site person.

The CCF must be signed by the collection site person, certifying collection was accomplished in accordance with the instructions provided. The driver must also sign this form indicating the specimen was his/hers.

The collector is responsible for placing and securing the specimen bottles and a copy of the CCF into an appropriate pouch or plastic bag.

At this point, the driver may leave the collection site.

The collection site must forward the specimens to the lab as quickly as possible, within 24 hours or during the next business day.

### ***Laboratory analysis***

As required by FMCSA regulations, only a laboratory certified by the Department of Health and Human Services (DHSS) to perform urinalysis for the presence of controlled substances will be retained by Transit Group LLC. The laboratory will be required to maintain strict compliance with federally-approved chain-of-custody procedures, quality control, maintenance, and scientific analytical methodologies.

All specimens are required to undergo an initial screen followed by confirmation of all positive screen results.

### ***Results***

According to FMCSA regulation, the laboratory must report all test results directly to Transit Group LLC's medical review officer (MRO). All test results must be transmitted to the MRO in a timely manner, preferably the same day that the review by the certifying scientist is completed. All results must be reported.

The MRO is responsible for reviewing and interpreting all confirmed positive, adulterated, substituted, or invalid drug test results. The MRO must determine whether alternate medical explanations could account for the test results. The MRO must also give the driver who has a positive, adulterated, substituted, or invalid drug test an opportunity to discuss the results prior to making a final determination. After the decision is made, the MRO must notify the DER.

If the MRO, after making and documenting all reasonable efforts, is unable to contact a tested driver, the MRO shall contact the DER instructing him/her to contact the driver. The DER will arrange for the driver to contact the MRO before going on duty.

The MRO may verify a positive, adulterated, or substituted specimens without having communicated with the driver about the test results if:

- the driver expressly declines the opportunity to discuss the results of the test;
- neither the MRO or DER has been able to make contact with the driver for 10 days; or
- within 72 hours after a documented contact by the DER instructing the driver to contact the MRO, the driver has not done so.

The MRO may verify an invalid test result as cancelled (with instructions to recollect immediately under direct observation) without interviewing the employee, as provided at §40.159 if:

- the driver expressly declines the opportunity to discuss the test with the MRO;
- the DER has successfully made and documented a contact with the driver and instructed the driver to contact the MRO and more than 72 hours have passed since the time the DER contacted the driver; or

- neither the MRO nor the DER, after making and documenting all reasonable efforts, has been able to contact the driver within ten days of the date on which the MRO received the confirmed invalid test result from the laboratory.

### ***Split sample***

As required by FMCSA regulations, the MRO must notify each driver who has a positive, adulterated, or substituted drug test result that he/she has 72 hours to request the test of the split specimen. If the driver requests the testing of the split, the MRO must direct (in writing) the lab to provide the split specimen to another certified laboratory for analysis. There is no split specimen testing for an invalid result.

Driver will pay for the testing of the split specimen.

If the analysis of the split specimen fails to reconfirm the results of the primary specimen, or if the split specimen is unavailable, inadequate for testing, or unstable, the MRO must cancel the test and report the cancellation and the reasons for it to the DER and the driver.

### ***Specimen retention***

Long-term frozen storage will ensure that positive urine specimens will be available for any necessary retest. Transit Group LLC's designated drug testing laboratory will retain all confirmed positive specimens for at least 1 year in the original labeled specimen bottle.

### ***Confidentiality/recordkeeping***

All driver alcohol and controlled substance test records are considered confidential (Sec. 382.401). For the purpose of this policy/procedure, confidential recordkeeping is defined as records maintained in a secure manner, under lock and key, accessible only to the program administrator.

Driver alcohol and controlled substance test records will only be released in the following situations:

- to the driver, upon his/her written request;
- upon request of a DOT agency with regulatory authority over Transit Group LLC;
- upon request of state or local officials with regulatory authority over Transit Group LLC;
- upon request by the United States Secretary of Transportation;
- upon request by the National Transportation Safety Board (NTSB) as part of an accident investigation;
- upon request by subsequent employers upon receipt of a written request by a covered driver;
- in a lawsuit, grievance, or other proceeding if it was initiated by or on behalf of the complainant and arising from results of the tests; or

- upon written consent by the driver authorizing the release to a specified individual.

All records will be retained for the time period required in Sec. 382.401.

### ***Supervisor training***

According to FMCSA regulation, all employees of Transit Group LLC designated to supervise drivers will receive training on this program. The training will include at least 60 minutes on alcohol misuse and 60 minutes on drug use. The training content will include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug use. The training allows supervisors to determine reasonable suspicion that a driver is under the influence of alcohol or drugs.

### ***Referral, evaluation, and treatment (Sec. 382.605)***

According to FMCSA regulation, a list of substance abuse professionals will be provided to all drivers who fail an alcohol test or test positive for drugs.

The alcohol and drug program administrator will be responsible for designating the appropriate substance abuse professional (SAP) who, in conjunction with the driver's physician, will diagnose the problem and recommend treatment. In the event a driver violates Part 382, Transit Group LLC will identify (at that time of the violation) who they prefer to contract with for the SAP services.

The Driver will pay for the evaluation by the SAP and any treatment required.

According to FMCSA regulations, prior to returning to duty for Transit Group LLC, a driver must be evaluated by a SAP and must complete the treatment recommended by the SAP. Successful completion of a return-to-duty test and all follow-up tests is mandatory.

A driver who fails to complete an evaluation by the SAP, treatment recommended by the SAP, a return-to-duty test, or a follow-up test will be terminated.

### ***Self-identification program***

Transit Group LLC will not take disciplinary action against a driver who makes a voluntary admission of alcohol misuse or controlled substance use if:

- the admission is in accordance with the company's voluntary self-identification program;
- the driver does not self-identify in order to avoid Part 382 testing;
- the driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety-sensitive function; and
- the driver does not perform a safety-sensitive function until the company is satisfied that the driver has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

The driver will be allowed to return to safety-sensitive duties upon successful completion of an education or treatment program, as determined by a drug and alcohol abuse evaluation expert. Also, the driver must undergo:

- a return-to-duty test with a result indicating an alcohol concentration of less than 0.02; and/or
- a return-to-duty controlled substances test with a verified negative test result.

## **Discipline**

The company may not stand-down a driver before the MRO has completed his/her verification process unless the company has applied for and has received an FMCSA-issued waiver.

According to FMCSA regulation, no person who has failed an alcohol or drug test, or refused to test, will be allowed to perform safety-sensitive functions until the referral, evaluation, and treatment requirements have been complied with. The following company disciplinary measures apply to all reasonable suspicion, post-accident, and random tests.

### ***Controlled substance positive test result***

Upon notification that a driver has a drug test result of positive, adulterated, or substituted, the driver will be given the option of requesting a test of the split sample within 72 hours. If the driver has requested a test of the split sample, the driver will be unqualified to drive until the results of a split sample test are obtained.

If the driver doesn't request a split sample test or the split sample test confirms the initial positive, adulterated, or substituted drug test result, the driver will be terminated.

If the split sample testing disputed the initial test results or if the initial test results are designated invalid, the driver will be reinstated.

### ***Refusal to test***

A driver's refusal to test for alcohol or controlled substances will be considered a positive test result. Adulteration or tampering with a urine or breath sample is considered conduct that obstructs the testing process and is considered a refusal to test. A driver whose conduct is considered a refusal to test will be terminated.

### ***Failed alcohol test result***

Upon notification that a driver has failed an alcohol test (0.04% BAC or greater), the driver will be terminated.

Upon notification that a driver tested 0.02% BAC or greater, but less than 0.04% BAC in initial and confirmatory tests for alcohol, the driver will be terminated.