

# Niagara Frontier Transportation Authority Drug and Alcohol Policy



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**1.0 POLICY**

The Board of Commissioners of the Niagara Frontier Transportation Authority and its subsidiary corporation, Niagara Frontier Transit Metro System, Inc has adopted this policy and is committed to the development, maintenance/enforcement, and implementation of a program to maintain a work environment that is free from the use of prohibited drugs and the misuse of alcohol.

This policy is intended to comply with all applicable federal regulations governing workplace anti-drug and alcohol programs in the transportation industry. The Federal Transit Administration (FTA) has published 49 CFR Part 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations", 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 & 49 CFR Part 32, "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.

**Conditions of Employment for All NFTA/NFT Metro Employees**

1. All full-time, part-time, temporary, and seasonal employees of NFTA/NFT Metro are advised that it is unlawful to use, possess, dispense, sell, distribute, or manufacture a controlled substance in the workplace, or on company business while away from the workplace.

2. All full-time, part-time, temporary, and seasonal employees of NFTA/NFT Metro convicted under any criminal drug statute for a violation occurring in the workplace or on company business while away from the workplace must notify NFTA/NFT Metro IN WRITING not later than five (5) days after such a conviction.
3. All full-time, part-time, temporary, and seasonal employees agree to abide by the terms of DOT/FTA drug and alcohol regulations and NFTA's policy as a necessary condition of their continued employment. Failure to do so shall result in disciplinary action.

## **2.0 PURPOSE**

The purpose of this policy is to assure employee fitness for duty and to protect employees, customers, and the public from risk posed by worker use of prohibited drugs or alcohol.

It is the goal of this policy to prevent substance abuse and rehabilitate rather than terminate the employment of workers. However, all persons covered by this Policy should be aware that violations of the Policy will result in discipline, up to and including termination, or in not being hired.

## **3.1 APPLICABILITY AND CONDITIONS OF EMPLOYMENT**

- A. NFTA and NFT Metro Employees in Safety-Sensitive Positions (49 CFR Part 655):
  1. All employees of Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. in safety-sensitive positions are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655 and are prohibited from performing the duties of a safety-sensitive position with prohibited drugs or prohibited levels of drug metabolites in their system, or when having consumed alcohol within four hours of reporting for duty, or having a breath alcohol concentration of 0.02 or greater while on duty. A breath alcohol concentration of 0.04 or greater is considered a positive test.
  2. All employees of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., in safety-sensitive positions, as defined by the Federal Transit Administration, must submit to drug and alcohol testing procedures in accordance with 49 CFR Part 40 and 655.

### Safety-sensitive Positions as Defined by the FTA

Safety-sensitive positions are those whose duties relate to the safe operation of transportation services and include, but are not limited to, the following:

- Operators of revenue service vehicles, whether or not the vehicle is in revenue service;
- Dispatchers, controllers, and supervisors who direct the movement of revenue service vehicles;
- Operators of non-revenue service vehicles whose operation requires a Commercial Driver's License;
- Employees involved in the maintenance (including repairs, overhaul, and rebuilding) of revenue service vehicles or ancillary equipment used in revenue service;
- Employees who are required to carry a firearm for security purposes (e.g., Police Officers).

B. All employees of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., in safety-sensitive positions, governed by the Federal Motor Carrier Safety Administration, must submit to drug and alcohol testing procedures in accordance with 49 CFR Part 40 and 382.

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 shall 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 employer;
- All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter 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 §393.76 of this subchapter);
- 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.

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. This definition applies to every person and to all employers of such persons who

operate a commercial motor vehicle in commerce or every person who operates a commercial motor vehicle on any public roadway.

- C. FTA does not mandate the drug screening and alcohol testing of employees in non-safety sensitive positions. As NFTA policy, the provisions of this policy that refer to safety-sensitive employees including pre-employment, random, reasonable suspicion, return to duty and follow-up drug and alcohol testing, as well as the consequences and applicable post-test procedures, shall apply to **ALL** non-represented, full-time, part-time, temporary and seasonal employees of Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., as well as to employees represented by unions that have negotiated compliance with this policy as part of their collective bargaining agreements or past practice. All drug and/or alcohol tests for non-safety sensitive employees will be performed using non-DOT CCF's and ATF's.
- D. As NFTA policy, all non-represented, full-time, part-time, temporary, and seasonal employees of Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., as well as employees represented by unions that have negotiated compliance with this policy as part of their collective bargaining agreements or past practice, as NFTA policy are subject to the collection and testing procedures set forth in 49 CFR Part 40 and Part 655. All drug and/or alcohol tests for non-safety sensitive employees will be performed using non-DOT CCF's and ATF's.
- E. All employees of Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., whose positions require certification under Article 19-A of the NYS Motor Vehicle and Traffic Law are prohibited from operating or having control of a bus or rail car with either prohibited drugs or controlled substances in their system, or when having consumed alcohol within six hours of reporting for duty (New York State Department of Motor Vehicle and Traffic Law, Article 19-A 509 I (a), (b), and (c).

This policy and its applicability will be modified as required by FTA & FMCSA statutes or regulations.

### **3.2 PROVISIONS FOR EMPLOYEES COVERED BY 49 CFR PART 382, CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING - FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA)**

Refer to Appendix E

#### **4.1 ILLEGALLY USED CONTROLLED SUBSTANCES OR DRUGS**

The use of any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 CFR 1300.11 through 1300.15, is prohibited at all times unless a legal prescription has been written for the substance. This includes, but is not limited to marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, use of controlled substances prescribed for another individual and use of illegally obtained prescription drugs. Safety-sensitive employees will be tested at anytime while on duty for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in this policy.

#### **4.2 LEGALLY USED CONTROLLED SUBSTANCES OR DRUGS**

It is the employee's responsibility to inform any treatment provider prescribing medication that he or she operates a public transportation vehicle (or has a safety sensitive job) and ask if the prescribed medication could interfere with the ability to safely perform any safety sensitive job functions. Article 19A (Section 509-K) states: "No driver shall operate a bus while the driver's ability or alertness is so impaired or so likely to become impaired, through fatigue, illness or any other cause, as to make it make it unsafe for him to begin or continue to operate the bus."

#### **4.3 ALCOHOL**

Alcohol refers to the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol. Alcohol use is defined as the consumption of any beverage or substance, including any medication, mouthwash, food, candy or any other mixture, preparation, or any other substance (49 CFR Part 40.3). Alcohol (alcohol concentration greater or equal to 0.02) present in the body while performing any NFTA business is prohibited. Safety sensitive employees, while having an alcohol concentration of 0.04 or greater are prohibited from performing or continuing to perform a safety sensitive function (49 CFR 655.31(b)).

#### **5.1 PRE-EMPLOYMENT TESTING**

Pre-employment testing applies to all new hires, as well as to employees upon promotion or transfer to a safety-sensitive position, when that employee is not already employed in an FTA-defined safety-sensitive position. Before allowing an employee or applicant to perform a safety-sensitive function for the first time, the employee must take a pre-employment drug test, with a verified negative result.

When an FTA safety-sensitive employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employee must take a pre-employment drug test with a verified negative result before the employee is allowed to return to work (49 CFR Part 655.41).

When a FMCSA safety-sensitive employee has not performed a safety-sensitive function for 30 consecutive calendar days, regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employee must take a pre-employment drug test with a verified negative result before the employee is allowed to return to work (49 CFR Part 382.301)

As NFTA policy, for pre-employment drug tests conducted prior to initial employment for any safety-sensitive or non-safety-sensitive positions, the NFTA may use hair testing, as well as the collection of urine specimens to test for the prohibited drugs listed in section 4.1 of this policy. Any applicant who tests positive on the drug test will be disqualified from consideration for employment with NFTA/NFT Metro.

Applicants who receive a negative dilute result of a urine test must take another test immediately (49 CFR Part 40). Unless the result of the second test is a verified negative the applicant will be disqualified from consideration for employment.

If an applicant/employee takes a pre-employment test and receives a verified negative result but does not begin working in or return to his/her safety-sensitive or non-safety-sensitive job within 30 days from the confirmed negative result, then he/she must take another non-DOT pre-employment test and receive a negative result before starting work for NFTA/NFT Metro System, Inc., or returning to or transferring to a safety-sensitive position. If more than 90 days pass elapse from the date of the confirmed negative result, then he/she must take another DOT pre-employment test, with a negative result (49 CFR Parts 655.41).

If a pre-employment test is cancelled, the employee must retake and pass the test before being hired into or returning to a safety-sensitive or non-safety-sensitive position, or promoted into a safety-sensitive position. For cancelled tests with no medical explanation that is acceptable to the MRO, a recollection is required under direct observation. No employee will be permitted to transfer from a non-safety-sensitive position to a safety-sensitive position or return to a safety-sensitive position until the employee takes a pre-employment drug test, with a verified negative result. As NFTA policy, failure to report as scheduled for a required pre-employment drug test will be considered as a withdrawal from employment, but will NOT constitute a refusal to test under DOT regulations. When a safety-sensitive employee or applicant has previously failed or refused a DOT pre-employment test prior to initial employment, the employee must provide the NFTA Substance Abuse Program Administrator proof of having successfully completed a referral, evaluation and treatment plan as described in section

655.62 of subpart G (49 CFR 655.41(a)(2)). As NFTA policy, any applicant who has previously failed a drug or alcohol test with another employer must demonstrate a five-year period of abstinence through documentation acceptable to the NFTA's Medical Review Officer or Substance Abuse Program Administrator before he/she will be considered for initial employment.

## **5.2 RANDOM TESTING**

A minimum annual rate of 50% of the total number of FTA safety-sensitive employees (or the rate set by FTA for that year for drugs) will be randomly chosen by a computer-generated selection process, and reasonably spread over a twelve-month period for drug testing. A minimum annual rate of 10% of the total number of FTA safety-sensitive employees (or the rate set by FTA for that year for alcohol) are randomly chosen by a computer-generated selection process, and reasonably spread over a twelve-month period for alcohol testing. The random selection process and scheduling of testing is the responsibility of the Human Resources Department. The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made (49 CFR Part 655.45(e)). Management/Supervisors do not have discretion with the random selection process. The NFTA shall ensure that the random drug and alcohol tests conducted are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of the day when safety-sensitive functions are being performed (49 CFR Part 655.45(g)). If the employee is performing a safety-sensitive function at the time of the notification, the NFTA shall ensure that the employee stops performing the safety-sensitive function and proceeds to the testing site immediately (49 CFR Part 655.45(h)). A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty (CFR Part 655.45 (i)). Employees are notified that they have been selected for testing as close to the actual time of the collection and/or test, as is reasonably possible. The employee will only be notified after he/she has reported for work on the day the urine specimen is to be collected and/or the alcohol test is to be conducted. The NFTA shall require that each covered employee who is notified of selection for random testing proceed to the test site immediately. Discretion will be used as employees are notified that they have been selected for random testing, and employees will be provided with as much privacy as is reasonably possible. ***An employee's failure to report as directed for random testing will be treated as a refusal to take a drug and/or alcohol test.***

Refer to 49 CFR Part 655.45 for additional information regarding random testing.

#### Previously Scheduled Commitment Program

As NFTA policy this program shall be used only for members of Amalgamated Transit Union

Random drug and/or alcohol testing shall be initiated no later than three hours before the end of an employee's shift where such an employee has provided advance verifiable documentation of the previously scheduled medical or childcare commitment for the period immediately following the employee's shift.

**Medical commitment** - the medical section of the required form must be completed and signed by your health care professional.

**Childcare commitment** – the childcare section of the required form must be completed and signed by your childcare provider.

The NFTA Medical Department **must** receive the **original (completed) form** with an **original signature** (no stamps) 24 hours prior to the start of the work shift of the weekday commitment or by 12:30 pm on the Friday preceding the weekend commitment. Phone and fax numbers are required. **Copies** and **incomplete** forms will not be accepted. If you have any question about this policy or how to obtain a form, please call the NFTA Medical Department at 855-7339, 855-6592 or 855-7409.

### **5.3 REASONABLE SUSPICION TESTING**

Employees may be tested upon reasonable suspicion of drug and/or alcohol use based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Reasonable Suspicion alcohol testing may be performed just before an employee performs safety sensitive duties, during that performance, and just after an employee has performed safety sensitive duties: the observations leading to Reasonable Suspicion alcohol testing must be made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with 49 CFR Part 655. FTA regulations require only one supervisor to determine if a reasonable suspicion test will be performed; however, as NFTA policy when possible two supervisors will make the reasonable suspicion determination. Any supervisor involved in making the determination of reasonable suspicion must have received at least one hour of training in recognizing the symptoms and effects of prohibited drug use and at least one hour of training in recognizing the symptoms and effects of prohibited alcohol use. In all cases involving reasonable suspicion, the supervisor(s) shall document their observations of the employee's behavior and factors leading to the act of reasonable suspicion of the employee's behavior and observed signs. Any employee exhibiting such signs or

appearing to be under the influence of drugs and/or alcohol will be removed from the vehicle or workplace and informed that there is reasonable cause to believe that he or she has been using a prohibited drug and/or alcohol. The employee will be given the opportunity to make a verbal statement or provide appropriate medical documentation explaining why his or her behavior or other physical signs may be indicating that he or she appears to be under the influence of prohibited drugs and/or alcohol, and will then be escorted by a responsible person as determined by the supervisor(s) to a collection/test site. The employee will be required to provide a urine specimen and/or perform an alcohol test under the guidelines for drug and alcohol testing (49 CFR Part 40). Alcohol testing is only permissible just before /during/just after safety sensitive duty. Urine collections may be performed anytime while on duty. In addition, the employee may be subject to a fitness for duty evaluation. Such an employee will only be allowed to return to work after a verified negative test result has been received by the MRO for prohibited drugs or if the employee tests negative for alcohol with a breath alcohol concentration below 0.02. If the reasonable suspicion drug and/or alcohol test(s) produces a verified negative test result(s), the employee will be made whole.

In cases where an employee has tested positive, the employee will be allowed to return to work only if he or she:

- Has been cleared through an SAP interview and evaluation.
- Has successfully complied with treatment regimen as developed by SAP and treatment provider.
- Has been cleared by the NFTA's Medical Review Officer, Substance Abuse Program Administrator, or other qualified medical personnel involved in the assessment/evaluation of the employee in question.
- Has a verified negative test result on a return-to-duty drug and/or alcohol test.

#### **5.4 POST ACCIDENT TESTING**

FTA regulations define an accident as an occurrence associated with the operation of a vehicle, if as a result: (1) An individual dies; or (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or (3) With respect to an occurrence in which the public transportation vehicle involved is a bus, electric bus, van or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or (4) With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation (49 CFR Part 655.4).

In addition, as NFTA policy, non-DOT post-accident testing will be conducted when an employee has received a citation under State or local law for a moving traffic violation arising from an accident but has not met a criterion for DOT Post Accident testing.

As soon as practicable following an accident involving the loss of human life, the NFTA shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. The NFTA shall also drug and alcohol test any other safety-sensitive employees whose performance could have contributed to the accident as determined by the employer using the best information available at the time of the decision.

As soon as practicable following an accident not involving the loss of human life meeting the criteria above in which a mass transit vehicle is involved, the NFTA shall drug and alcohol test each safety-sensitive employee operating the mass transit vehicle at the time of the accident unless the NFTA determines, using the best information available at the time of the decision, that the safety-sensitive employee's performance can be completely discounted as a contributing factor to the accident

The NFTA shall also drug and alcohol test any other safety-sensitive employee whose performance could have contributed to the accident, as determined by the NFTA using the best information available at the time of the decision. For example, in a collision between a train and a maintenance vehicle, the Train Operator, driver of the maintenance vehicle, Rail Controller and the employee who maintained the equipment may all be tested.

If an alcohol test required by this policy is not administered within two hours following the accident, the Controller or Supervisor overseeing the accident shall prepare and maintain 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 following the accident, the Controller or Supervisor overseeing the accident shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator (49 CFR Part 655.44).

Each safety-sensitive employee required to be drug tested under this policy is to be tested as soon as practicable but within 32 hours of the accident. The decision not to administer a drug and/or alcohol test shall be based on the NFTA's determination, using the best information available 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. As NFTA policy, the Controller or Supervisor overseeing the accident must provide the detailed documentation.

Nothing in this policy shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a safety-sensitive 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.

A safety-sensitive employee who is subject to post-accident testing who fails to remain readily available for such testing, and who fails to notify the NFTA or the NFTA representative of his or her location if he or she leaves the scene of the

accident prior to submission to such test, may be deemed by the NFTA to have refused to submit to testing (49 CFR Part 655.44).

As NFTA policy, employees required to participate in post-accident testing will be accompanied to the collection site by a supervisor.

For additional guidance regarding post-accident testing, refer to **Appendix E & F** (FMCSA/BNIA/NFIA Post Accident Testing Decision Tree) and **Appendix G** (FTA/NFT Metro System Post Accident Testing Decision Tree) of this policy and bargaining agreements between each respective union and NFTA/NFT Metro System.

## **5.5 RETURN-TO-DUTY TESTING**

Any employee who has either refused to take or has a verified positive drug and/or alcohol test result must report to the SAP and ultimately submit to a Return-to-Duty (Observed Collection) drug test and/or alcohol test (49 CFR Part 40, subpart O). If the employee is required to take a Return-to-Duty (Observed Collection) drug test, he or she will not be permitted to return to duty until a verified negative drug test result has been received from the MRO. If the employee is required to take a Return-to Duty alcohol test, he or she will not be permitted to return to duty unless the alcohol concentration is less than 0.02.

## **5.6 FOLLOW-UP TESTING**

A safety sensitive employee who has failed a drug and/or alcohol test and has successfully returned to duty is subject to unannounced testing (follow-up tests) pursuant to 49 CFR Part 40 Subpart O. The Follow-up testing period may be extended equal to the length of “breaks in service.”

As NFTA policy, all non-safety sensitive employees who have failed a drug and/or alcohol test and have successfully returned to duty are subject to unannounced follow-up tests mirroring the procedures described in 49 CFR Part 40 Subpart O. The Follow-up testing period may be extended equal to the length of “breaks in service.”

## **6.1 BREATH SPECIMEN COLLECTION PROCEDURES**

In accordance with 49 CFR 40.229, a Breath Alcohol Technician (BAT) will use a National Highway Traffic Safety Administration (NHTSA) approved evidential breath-testing device to perform the initial test. Confirmatory testing will be performed and collected by a Breath Alcohol Technician (BAT) using an NHTSA approved evidential breath testing device (EBT).

The BAT must prevent unauthorized personnel from entering the testing site. The only people the BAT is to treat as authorized personnel are employees being tested, BATs, DERs, and DOT agency representatives. The BAT may remove from the testing site any person who obstructs, interferes with, or causes unnecessary delay in the testing process. The BAT must not allow any person

other than the employee, or a DOT agency representative, to actually witness the testing process (49 CFR Part 40.241 - 40.255). A BAT must avoid distraction that could compromise security. A BAT is limited to conducting an alcohol test for only one employee at a time.

The BAT will take the following steps to begin all alcohol screening tests, regardless of the type of testing device being used:

- Contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive when a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time. If the employee's arrival is delayed beyond that time, the BAT must notify the DER that the employee has not reported for testing.
- Ensure that when the employee enters the alcohol-testing site, the BAT will begin the alcohol testing process without undue delay. For example, the BAT must not wait because the employee says he or she is not ready or because an authorized employer or employee (union) representative is delayed in arriving.
- Require that employee provide positive, photo identification upon his or her arrival at the testing site. The BAT may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, the BAT must contact the DER to verify the identity of the employee.
- Complete Step 1 of the Alcohol Testing Form (ATF) and then direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, the BAT must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This will constitute a refusal to test.

The following is the procedure to be followed for an alcohol-screening test using an EBT. The BAT must take the following steps:

- Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.
- Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
- Show the employee the displayed test result.
- Check to ensure that the information has been printed correctly onto the ATF if the device is one that prints the test number, testing device name and serial number, time, and result *directly onto the ATF*.

- Affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident if the device is one that prints the test number, testing device name and serial number, time and result, *on a separate printout rather than directly onto the ATF.*

The BAT must follow these steps to begin the confirmation test process:

- Ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.
- Observe the employee during the waiting period.
- Concerning the waiting period, tell the employee:
  - Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
  - The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
  - That following instructions concerning the waiting period is to the employee's benefit; and the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.
- Begin the confirmation test procedures in 49 CFR Part 40.253, not another screening test; even if more than 30 minutes have passed since the screening test result was obtained.
- Note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.

All specimen collection and testing procedures will be conducted according to the procedures put forth in 49 CFR Part 40, as amended.

## **6.2 URINE SPECIMEN COLLECTION PROCEDURES**

Urine specimens are obtained from employees at a "collection site." A collection site is defined as a "place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs."

The employee is required to provide positive identification upon his or her arrival at the collection site. The collector must see a photo ID issued by the employer or a driver's license. The collector may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, the collector must contact the DER to verify the identity of the employee (49 CFR Part 40.61).

The collection site, in accordance with the requirements in 49 CFR Part 40, will be secured as follows:

- The location will provide a privacy enclosure for urination, a toilet, a suitable clean writing surface and a water source for hand washing.
- The collection site must be secured when it is not in use, or, if this is not possible, the site must be visually inspected prior to use for each specimen collection to ensure that unauthorized persons are not present and that there are no unobserved entrance points.
- Access to the site must be restricted during specimen collection.
- A bluing agent must be added to toilet water, and other sources of water must be turned off if they are located within the privacy enclosure when urination occurs.
- The maintenance of chain of custody of the specimen is vital. In order to decrease the likelihood of human error, and to provide for the privacy, dignity and confidentiality of employees, the procedures in 49 CFR Part 40 will be adhered to. Only laboratories certified by the Department of Health and Human Services (DHHS) will perform testing.

All testing will be conducted according to the procedures set forth in 49 CFR Part 40, as amended. This will include photo identification of the employee, intact Federal Drug Custody and Control Form with unique specimen identification numbers completed by a trained collection site person (who ensures that the Federal Custody and Control Form is completed correctly and signed and certified by the donor), and collection of the split sample specimens which are sealed and dated by the collector and then initialed by the donor.

If a donor has a shy bladder, he or she has five days to obtain a medical evaluation from a provider acceptable to the Medical Review Officer (MRO) to determine that there is a medical explanation for the inability to provide a specimen. The employee will not be permitted to return to work until the results of the evaluation are made available to the MRO. As NFTA policy, the employee will be made whole if it is determined by the MRO that a valid medical reason exists for his or her inability to provide a sufficient amount of urine for testing. An employee who was unable to provide a urine specimen due to a confirmed shy bladder may be subject to other tests, as determined by the MRO.

### **6.3 DILUTE SPECIMEN**

If the MRO informs the NFTA DER that a negative drug test was dilute, the NFTA will direct the employee to take another test. When the NFTA directs the employee to take another test, the result of the second test – not that of the original test – becomes the test of record, on which the NFTA will rely for purposes of a dilute specimen report from the MRO. NOTE: For certain negative-dilute tests with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, a recollection is required under direct observation. If the NFTA directs the employee to take another test and the employee declines to do so, the employee will be considered as having refused the test under DOT agency regulations (49 CFR Part 40.197).

As NFTA policy, donors who provide a dilute specimen for a pre-employment drug test prior to initial employment must provide a second specimen (not under direct observation). If the second specimen is also dilute, the Company will withdraw the offer of employment unless the donor can provide medical proof acceptable to the MRO that he or she has a medical condition that precludes providing a non-dilute urine specimen. Dilute results will not be recorded as a positive test under DOT Regulations.

#### **6.4 COLLECTION UNDER DIRECT OBSERVATION**

1. A directly observed collection procedure is the same as a routine collection procedure with the additional requirement that an observer physically watches the employee urinate into the collection container. An observed collection is required when:
  - The employee attempts to tamper with his or her specimen at the collection site.
    - A. The specimen temperature is outside the acceptable range;
    - B. The specimen shows signs of tampering ~ unusual color / odor / characteristic; or
    - C. The collector finds an item in the employee's pockets or wallet, which appears to be brought into the site to contaminate a specimen; or the collector notes conduct suggesting tampering.
  - The Medical Review Officer (MRO) orders the direct observation because:
    - A. The employee has no legitimate medical reason for certain atypical laboratory results; or
    - B. The employee has a negative-dilute test result with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL; or
    - C. The employee's positive or refusal [adulterated / substituted] test result had to be cancelled because the split specimen test could not be performed (for example, the split was not collected).
  - The test is a Follow-Up test or a Return-to-Duty test.
2. The observer must be the same gender as the employee.
3. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry "clean" urine and urine substitutes AND for watching the employee urinate into the collection container.
4. Failure of the employee to permit any part of the direct observation procedure is a refusal to test.
5. As NFTA policy, the procedures for "Collection Under Direct Observation" of safety-sensitive employees shall also apply to **ALL** non-safety sensitive employees including non-represented full-time, part-time, temporary, and

seasonal employees of Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., as well as to employees represented by unions that have negotiated compliance with this policy as part of their collective bargaining agreements or past practice. Non-DOT CCF's are used for all tests performed for non-safety sensitive employees.

## **6.5 SPLIT SPECIMEN**

When the MRO notifies an employee of a verified positive drug test result or refusal to test (because of adulteration or substitution), the employee will have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If a split specimen from a positive test is unsuitable or unavailable for testing when requested, the donor must have a repeat collection under direct observation (49 CFR Part 40.201(e)).

Removal of the employee from a safety-sensitive position will not be stayed pending the result of the test of the split specimen. If the result of the test of the split specimen fails to reconfirm the presence of the drugs or drug metabolites found in the primary specimen, the MRO will cancel the test and report the cancellation and reasons for it to the Department of Transportation, NFTA/NFT Metro System, Inc. and the employee.

If an employee has not requested a test of the split specimen within 72 hours, he or she 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 him or her from making a timely request.

If the MRO concludes from the employee's information that there was a legitimate reason for the employee's failure to make contact within 72 hours, the MRO will direct that the test of the split specimen take place. The MRO will immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second DHHS-certified laboratory. The MRO will also document the date and time of the employee's request (49 CFR Part 40.171).

As NFTA policy, the employee will be made whole for time lost from work if the result of the split specimen fails to confirm the presence of prohibited drugs, or if the result of the repeat collection taken if the split specimen is unsuitable or unavailable is negative.

## **6.6 MEDICAL REVIEW OFFICER AND THE VERIFICATION PROCESS**

The Medical Review Officer (MRO) is a licensed physician responsible for receiving the laboratory results generated by an employer's drug testing program. The MRO must possess knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

The MRO has the responsibility to do the following:

- Protect the confidentiality of the drug testing information.
- Act as an independent and impartial “gatekeeper” and advocate for the accuracy and integrity of the drug testing process.
- Provide quality assurance review of the drug testing process for the specimens under his or her purview.
- Determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid drug test results from the laboratory.
- Personally contact the employee to discuss a confirmed positive, adulterated, substituted, or invalid test result from the laboratory (49 CFR Part 40.131). Notify the employee of his or her right to have the split specimen tested (49 CFR Part 40.153).
- Follow CCF procedures to confirm positive, adulterated, substituted, or invalid drug test results (49 CFR Part 40.129).
- Notify the DER of a verified positive result in a timely manner.
- Notify the DER when retests are required.
- If the employee provides an adequate explanation for drug results that are confirmed positive by the laboratory, notify the DAPM/DER of a verified negative result.
- Raise fitness-for-duty (NYS 19-A) considerations with the NFTA Medical Department even if there is a legitimate medical explanation and verification of a drug test to be negative (49 CFR Part 40.327).

## **7.1 COMPLIANCE WITH TESTING REQUIREMENTS**

As NFTA policy, all employees will be subject to urine drug testing and breath alcohol testing. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty. The NFTA will consider the test refusal to be a positive test, and the employee will be referred to the Substance Abuse Professional (SAP) for evaluation. Failure of an employee to obtain an SAP evaluation and/or failure to follow the SAP’s recommended treatment plan will be cause for termination of employment. Any safety-sensitive employee who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of these actions will result in the employee's removal from duty.

Employees who refuse to submit to alcohol and/or drug testing will be considered to have tested positive. The definitions of the behaviors that constitute a refusal to submit to a test are:

- Failure to provide sufficient quantities of breath to be tested without a genuine inability to provide such quantities of breath as determined by a medical evaluation acceptable to the DAPM.
- Failure to provide a urine specimen as required by 49 CFR Part 40, without a legitimate medical explanation acceptable to the MRO.

- Refusal to submit to a random (49 CFR Part 655.45), reasonable suspicion (49 CFR Part 655.43), post-accident (49 CFR Part 655.44), or a follow-up (49 CFR Part 655.47) drug and/or alcohol test. The NFTA will not permit an employee who refuses to submit to such test to perform or continue to perform safety-sensitive functions. When an employee refuses to submit to a drug or alcohol test, the NFTA will follow the procedures outlined in 49 CFR Part 40.
- In a case where post-accident testing is required, failure to remain readily available for drug and alcohol testing; this includes an employee's failure to notify the NFTA or NFTA representative of his or her location if he or she leaves the scene of the accident prior to submission to a drug and/or alcohol test (49 CFR Part 655.44).
- Failure to permit the monitoring of specimen donation when so required (49 CFR Part 40.69(g)).
- Failure to sign the certification on Step 2 of the ATF form (49 CFR Part 40.261).
- Failure to appear for any test (except for pre-employment test) at the time specified by the NFTA (49 CFR Part 40.191).
- Failure to remain at the testing site until the testing process is complete, provided that an employee who leaves the testing site before the testing process commences (see 49 CFR Parts 40.63 (c) and 40.243 (a)) for a pre-employment test is not deemed to have refused to test (CFR 49 Parts 40.191(a)(2) and 40.261(a)(2)).
- Failure to undergo a medical examination or evaluation process, as directed by the MRO as part of the verification process, or as directed by the DER under 49 CFR Part 40.193 (d). 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 (49 CFR Part 40.191(a)(7)).
- Failure to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at 49 CFR Part 40.265 (c), (49 CFR Part 40.261(a)(5)).
- Failure to cooperate with any part of the testing process (e.g., refusing to empty pockets when so directed by the collector, failure to wash hands after being directed to do so, behaving in a confrontational way that disrupts the collection process) (49 CFR Parts 40.191 (a)(8) and 40.261 (a) (7)).
- Failure to take a second test required by the employer or collector (49 CFR Part 40.191(a)(6)).
- Verification by the MRO that a drug test has been adulterated or substituted (49 CFR Part 40.133).
- An admission to the collector or MRO by the employee that he or she adulterated or substituted their specimen.

- Failure to permit an observed collection and/or failure to follow the observer's instructions to raise and lower their clothing and to turn around to permit the observer to determine if the employee has a prosthetic or other device that could be used to interfere with the collection process.
- Possession of or wearing a prosthetic or other device that could be used to interfere with the collection process.

As NFTA policy, all DOT conditions listed above will also apply as a refusal to take NFTA-authorized non-DOT tests.

Refer to Sections 3.0 "Applicability and Conditions of Employment" and 4.0 "Prohibited Substances" of this policy for additional information relating to "Prohibited Conduct".

**AS NFTA POLICY, ALL EMPLOYEES WILL BE SUBJECT TO TERMINATION AS A RESULT OF:**

- Refusal to comply with an SAP referral after having tested positive for drugs and/or alcohol, or
- Failure of a post-accident drug and/or evidential breath alcohol test when a fatality is involved, or
- Failure to pass a drug and/or evidential breath alcohol test administered under this Drug and Alcohol Policy for a second time, or
- Failure to remain in compliance with a Continued Employment Agreement.
- Failure to pass a drug and/or evidential breath alcohol test administered under this Drug and Alcohol Policy, from date of new hire to end of probation period.

**7.2 ALCOHOL**

As NFTA policy, all employees are prohibited from consuming alcohol while performing their duties, and within four hours of reporting for duty. On-call employees are prohibited from consuming alcohol during their specified on-call hours. In accordance with 49 CFR 655.33 regarding on-call employees, NFTA/NFT Metro prohibits the consumption of alcohol for the specified on-call hours of each safety-sensitive employee who is on call. The procedure shall include:

1. The opportunity for the safety-sensitive employee 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;
2. The requirement that the safety-sensitive employee take an alcohol test, if the safety-sensitive employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function. No employee shall be permitted to perform or continue to perform his or her duties if he

or she has an alcohol concentration of 0.02 or greater in his or her system. Any employee whose alcohol test results in a confirmed breath alcohol concentration of 0.02 or greater shall be removed from his or her safety-sensitive position. Any employee with a breath alcohol concentration of 0.04 or greater will be referred to and told about educational and rehabilitation programs through a Substance Abuse Professional. An employee involved in an accident is subject to alcohol testing for a period of 8 hours following the accident (49 CFR Part 655).

Article 19-A of the NYS Motor Vehicle and Traffic Law prohibits employees whose positions require 19-A certification from operating or having control of a bus or rail car when having consumed alcohol within six hours of reporting for duty.

Alcohol use by any covered employee required to take a post-accident alcohol test is prohibited during the eight hours immediately following the accident, or until the employee undergoes a post-accident alcohol test, whichever occurs first (49 CFR 655.34). This includes alcohol in any form, e.g., in beverages, medication or food. Claims of ingesting alcohol in any form after an accident but before being tested will NOT be considered as a valid explanation for a positive test.

#### Positive Test Result for Alcohol

NFTA policy requires immediate removal of an employee from his/her workplace upon notice of a positive test result.

1. Alcohol concentration of 0.02 or greater but less than 0.04 with no fatality
  - For a first instance, immediate removal from safety-sensitive duties for a mandatory eight-hour waiting period without pay, unless a confirmatory test results in a concentration of less than 0.02. After the eight-hour waiting period, as NFTA policy, an employee is required to be retested and referred to EAP.
  - As NFTA policy, for a second instance within two years from the first failure of a test with an alcohol concentration of 0.02 or greater but less than 0.04 with no fatality, immediate removal from safety-sensitive duties a mandatory five-day waiting period without pay, and referral to a substance abuse counselor for evaluation. The employee will not be allowed to return to duty until a Conditions for Continued Employment Agreement has been executed and the employee has been retested for alcohol with a non-DOT breath alcohol concentration test result of less than 0.02.
2. Positive alcohol test with alcohol concentration of 0.04 or greater, with no fatality.

- An employee who has a verified positive alcohol test result with a breath alcohol concentration of 0.04 or greater, or refuses to submit to an alcohol test, will be removed immediately from performing the safety-sensitive function (49 CFR Parts 655.61(a)(2)(3)), be subject to a mandatory five-day waiting period without pay, and referred to and evaluated by a Substance Abuse Professional (49 CFR Part 655.62). The employee will not be allowed to return to duty until the employee has been retested for alcohol with a breath alcohol concentration test result of less than 0.02. Employees who are being discharged must be provided contact information for qualified Substance Abuse Professionals. In addition, as NFTA policy a Conditions for Continued Employment Agreement must be executed.
- NFTA policy requires immediate removal of a non-safety-sensitive employee from his/her workplace upon notice of a positive test result, a mandatory five-day waiting period without pay, and referral to and evaluation by a substance abuse counselor. Employees who are being discharged must be referred to and offered evaluation by a substance abuse counselor.

The breath alcohol concentration thresholds listed above govern the consequences of a positive alcohol test result for both safety-sensitive and non-safety-sensitive employees.

A donor who fails to provide enough breath for an alcohol test has five days to obtain a medical evaluation from a medical provider acceptable to the DAPM. The employee will not be permitted to return to work until the results of the evaluation are made available to the DAPM. As NFTA policy, the employee will be made whole if it is determined by the DAPM that a valid medical reason exists for his or her inability to provide enough breath for an alcohol test.

### **7.3 DRUGS**

The following is a description of the consequences of a verified positive drug test result:

- Immediately after receiving notice from a Medical Review Officer (MRO) or a Consortium/Third Party Administrator (C/TPA) that a covered employee has a verified positive drug test result, FTA regulations require immediate removal of the employee from performing safety-sensitive duties. A refusal to submit to a test is treated as a positive test; therefore, if an employee refuses to submit to a drug test, the NFTA shall require that the covered employee cease performing a safety-sensitive function (49 CFR Part 655.61(a)(1)(3)).
- The NFTA policy further requires, for the safety-sensitive employee, a mandatory five-day waiting period without pay and referral to an SAP for

evaluation. The employee will not be allowed to return to duty until a Conditions for Continued Employment Agreement has been executed and a return-to-duty test has been performed with verified test results.

- NFTA policy requires immediate removal of a non-safety-sensitive employee from his/her workplace upon notice of a positive test result. The NFTA policy further requires a mandatory five-day waiting period without pay and referral to a substance abuse counselor for evaluation. The employee will not be allowed to return to duty until a Conditions for Continued Employment Agreement has been executed and a return-to-duty test has been performed with verified negative test results.
- If a covered applicant has a verified positive pre-employment drug test result or refuses to submit to a drug test, the NFTA shall advise the applicant of the resources available for evaluating and resolving problems associated with prohibited drug use (49 CFR Part 655.62).
- If a covered employee is discharged as a consequence of a verified positive drug test result or refusal to test, the NFTA shall advise the discharged employee of the resources available for evaluating and resolving problems associated with prohibited drug use (49 CFR Part 655.62).

#### **7.4 TREATMENT REQUIREMENTS**

DOT regulations require immediate removal of the employee from performing safety-sensitive duties and referral to a Substance Abuse Professional for evaluation upon notice of:

- A positive drug test result, and/or
- Breath alcohol concentration of 0.04 or greater.

NFTA policy requires immediate removal of a non-safety-sensitive employee from his/her workplace and referral to a Substance Abuse Counselor for evaluation upon notice of:

- A positive drug test result, and/or
- Breath alcohol concentration of 0.02 or greater.

The NFTA policy requires a mandatory five-day waiting period without pay for all employees with a positive drug test result and/or breath alcohol concentration of 0.04 or greater. The employee will not be allowed to return to duty until a Conditions for Continued Employment Agreement has been executed and a return-to-duty test has been performed with verified negative test results.

Any safety-sensitive employee who refuses or fails to comply with the SAP's requirements for treatment, after care or return-to-duty directives, will be cause for termination of employment.

As NFTA policy, non-safety-sensitive employees also must adhere to these same guidelines. Non-safety-sensitive employees are exempt under DOT guidelines, but adherence is regulated by the NFTA's policy.

#### Use of Vacation and/or Sick Leave During EAP-Sponsored Rehabilitation

The following is NFTA policy and not mandated by DOT regulations:

An employee who is absent from work for an extended period of time as the result of his or her undergoing treatment in an EAP-sponsored rehabilitation program will be allowed to use accrued vacation and/or sick leave during this period, excluding the mandatory five-day waiting period. Employees with questions regarding this policy or who are interested in obtaining information concerning educational and rehabilitation programs related to alcohol and/or drug use/dependency should contact the Employee Assistance Program Office at 716-681-4300. All inquiries are strictly confidential.

### **8.0 INFORMATION DISCLOSURE**

Drug/alcohol testing records shall be maintained by the NFTA Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee. The NFTA will strictly adhere to all drug and alcohol testing procedures of 49 CFR Part 40 and 655 regarding standards of confidentiality and release of information.

1. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications (49 CFR Part 655.73). Employees may not have access to SAP follow-up testing plans.
2. Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, Director of Human Resources and Department Supervisors on a need-to-know basis.
3. Records will be released to a subsequent employer only upon receipt of a written request from the employee (49 CFR Part 655.73).
4. Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test (including, but not limited to, a Workers' Compensation, Unemployment Insurance, or other proceeding relating to a benefit sought by the safety-sensitive employee). The records will be released to the decision maker in the preceding. The information will only be released with

binding stipulation from the decision maker will make it available only to parties in the preceding.

5. Records will be released to the National Transportation Safety Board during an accident investigation (49 CFR Part 655.73).
6. Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees (49 CFR Part 655.73).
7. Records will be released if requested by a Federal, state, or local safety agency with regulatory authority over NFTA or the employee.
8. If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended necessary legal steps to contest the issuance of the order will be taken.
9. The NFTA shall release information regarding a safety-sensitive employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person (49 CFR Part 655.73).

## **9.0 EMPLOYEE AND SUPERVISOR TRAINING**

- All safety-sensitive employees are required to attend training relating to alcohol misuse and prohibited drug use for a minimum of 60 minutes.
- NFTA policy requires all employees to attend training relating to alcohol misuse and prohibited drug use for a minimum of 60 minutes.
- All supervisors are required to attend a minimum of 60 minutes training for reasonable suspicion including the signs and symptoms of prohibited drug use and an additional 60 minutes on signs and symptoms of alcohol misuse.

### ***Appendix A***

#### **Effects of Alcohol Use**

##### Effects of Alcohol Misuse

##### Signs and Symptoms of Use

- Dulled mental processes/memory/concentration
- Staggering/lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Drowsy, sleepy, or stuporous condition
- Slowed reaction rate
- Slurred speech
- Perceptual disorder

- Inappropriate behavior – loudness, abusive language, grossly insubordinate
- Blood shot eyes, watery eyes

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

### Health Effects

The chronic consumption of alcohol – average of three servings per day of beer (12 ounces), whiskey (one ounce) or wine (six-ounce glass) over time, may result in the following health hazards:

- Decreased sexual functioning
- Dependency – Up to ten percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed “alcoholic”
- Fatal liver disease
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Spontaneous abortion and neonatal mortality
- Birth defects
- Gastrointestinal diseases
- Pancreatitis
- Cardiovascular diseases
- Malnutrition
- Brain damage
- Accidents, murders, suicides
- Drug interaction
- Hypertension
- Arrhythmias
- Hematopoietic changes

### Personal Life and Workplace Issues/Statistics

- More than 60 percent of burns, 40 percent of falls, 10 percent of boating accidents and 6 percent of private aircraft accidents are alcohol related
- Forty percent of family court cases are alcohol problem related
- The rate of separation and divorce in families with alcohol dependency problems is seven times the average
- It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body (0.030 BAC)

A person who is legally intoxicated (BAC level of 0.08) is six (6) times more likely to have an accident than a sober person

### Methods of Intervening when an Alcohol Problem is Suspected

The following can make referrals of employees to the Employee Assistance Program:

- Directors, Department/Division Heads, Managers and Supervisors
  - Union Executive Board Members and Stewards
  - Self-referral by the employee
- 
- It is essential that a mechanism be available to objectively address such problems in a manner that will result in a fair and rational way of dealing with such problems.
  - The Niagara Frontier Transportation Authority as an additional direct benefit has made available the Employee Assistance Program for each employee and his/her family.
  - The EAP is designed to appropriately, and in a timely manner, deal with problems, which have had a negative impact on the job performance of an employee.

### **Appendix B** **Drug Screen Cutoff Levels**

#### Initial Screen and Confirmatory Cutoff Levels

The following are the test cutoff levels currently set forth in Department of Transportation Regulations 49 CFR 40.87 for the initial screen and for the confirmatory test when the initial screen is positive:

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) <sup>2</sup>	50 ng/mL <sup>3</sup>	THCA	15 ng/mL.
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL <sup>3</sup>	Benzoyllecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.

Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA <sup>4</sup> /MDA <sup>5</sup>	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

The above is subject to change by the Department of Transportation.

### Alcohol Test Results

Positive - Alcohol concentration 0.04 or greater

Non-Negative – Alcohol concentration 0.02 or greater but less than 0.04

Negative - Alcohol concentration less than 0.02

### **Appendix C Substance Abuse Program Contact Personnel and DHHS-Certified Laboratory**

#### Substance Abuse Program Contact Personnel

**Medical Department**  
HealthWorks-WNY  
 1900 Ridge Road  
 West Seneca, NY 14224  
 (716) 712-0670

**Medical Review Officer**

Philip A. Lopez, MD  
Mainline Medical Review  
200 Welsh Road, Building 4 #160  
Horsham, PA 19044  
Phone: (215) 443-0531  
Fax: (215) 443-0670

**Employee Assistant Program**

Child & Family Services  
2495 Main Street, Suite 357  
Buffalo, NY 14214  
(716) 681-4300

**Drug and Alcohol Program Administrator/Manager (DAPM/DER)**

Medical Department  
Niagara Frontier Transportation Authority  
Medical Office 4th floor  
181 Ellicott Street, Buffalo, NY (716) 855-7339, fax (716) 855 -7336

**HR Coordinator/Medical (Alternate DER)**

Melanie Chiarmonte  
Niagara Frontier Transportation Authority  
Medical Office 4th floor  
181 Ellicott Street, Buffalo, NY (716) 855-7337, fax (716) 855-7336

**The above names and titles are subject to change.**

**DHHS-CERTIFIED LABORATORY**

The NFTA currently utilizes the following laboratory for evaluation and results of the primary urine specimen:  
Quest Diagnostics Incorporated  
400 Egypt Road  
Norristown, PA 19403  
(610) 631- 4600  
(877) 642-2216

**The laboratory is subject to change without notice.**

**Appendix D  
Definitions**

**DEFINITIONS AND ABBREVIATIONS OF TESTING PERSONNEL AND EQUIPMENT**

**Alcohol Screening Device (ASD) - approved devices as listed on ODAPC's website.**

**Alcohol Testing Form (ATF)** – The form utilized to document alcohol testing and results.

**Breath Alcohol Technician (BAT)** – A person who instructs and assists employees in the alcohol testing process and operates an evidential breath-testing device.

**Chain of Custody Form (CCF)** – The form used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed.

**Collection site** – a place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**DOT, the Department, DOT Agency** - all DOT agencies, including, but not limited to, FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency. **Non-Negative** – alcohol concentration of 0.02 or greater but less than 0.04

**NFTA or Company policy – (NOT MANDATED BY FTA POLICY)** Policies adopted by the Board of Commissioners of the NFTA.

**Designated Employer Representative (DER)** - An employee authorized by the NFTA and DAPM Drug and Alcohol Program Manager (DAPM) to take immediate action(s) to remove employees from safety-sensitive duties, **or cause employees to be removed from these safety-sensitive duties**, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the NFTA, consistent with the requirements of this part. Service agents cannot act as DERs. The DAPM is always the primary DER. The designation of any additional DERs must be documented and communicated by the DAPM.

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

**DHHS Certified Laboratory** – A laboratory certified by the Department of Health and Human Services, which provides positive and negative test results to the Medical Review Officer.

**Evidential Breath-Testing Device (EBT)** – A device approved by NHTSA for the evidential testing of breath at the .02 and .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. List of approved devices as listed on ODAPC's website

#### **Federal Motor Carrier Safety Administration (FMCSA)**

#### **Federal Transit Administration (FTA)**

**Medical Review Officer** – A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program; must possess knowledge of substance abuse disorders and have appropriate medical

training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

**Mass Transit Vehicle** – Bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel.

### **National Highway Traffic Safety Administration (NHTSA)**

**NFTA Second Chance Policy** – FTA Regulations require immediate removal of the employee from safety-sensitive duties. NFTA policy requires removal from the workplace, a mandatory five (5) day waiting period without pay, and referral to an SAP for evaluation. The employee will not be allowed to return to duty until a Conditions for Continued Employment Agreement has been executed, and a return-to-duty test has been performed with negative test results.

**Split Specimen** – In drug testing, the portion of the urine specimen that is sent to a first laboratory and retained unopened, which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test result of the primary specimen, or a verified adulterated or substituted test result.

**Substance Abuse Professional (SAP)** – 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 licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed, or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

## **Appendix E**

### **Provisions for employees covered by 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing - Federal Motor Carrier Safety Administration (FMCSA)**

#### **Pre-employment Testing**

- Pre-employment testing shall be performed as set for in 49 CFR part 382.301.
- As NFTA policy, a verified negative result of a pre-employment test is valid only for a period of 30 days from the confirmation date, as determined by the Medical Review Officer. If an applicant/employee takes a pre-employment test and receives a verified negative result but does not begin working in or return to his/her safety-sensitive job within 30 days from the confirmed negative result, then he/she must take a non-DOT pre-employment test and receive a negative result before starting work for NFTA/NFT Metro System, Inc.

## Random Testing

- A minimum annual rate of 50% of safety-sensitive employees (or the rate set by FMCSA for that year for drugs) will be randomly chosen by a computer-generated selection process, and evenly spread over a twelve-month period for drug testing.
- A minimum annual rate of 10% of safety-sensitive employees (or the rate set by FMCSA for that year for alcohol) are randomly chosen by a computer-generated selection process, and evenly spread over a twelve-month period for alcohol testing.

## Post-Accident Testing

DOT/FMCSA Table is used to determine when a DOT/FMCSA test shall be performed. This table is used only for accidents occurring on a public access road.

<b>DOT/FMCSA Table</b>	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

**Non-DOT** table is used to determine when a Non-DOT test shall be performed. This table is used only for accidents occurring on company property with restricted public access.

<b>Non-DOT Table</b>	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	YES
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	YES

Contact DAPM for case-by-case clarification as needed.

## **Reasonable Suspicion Testing**

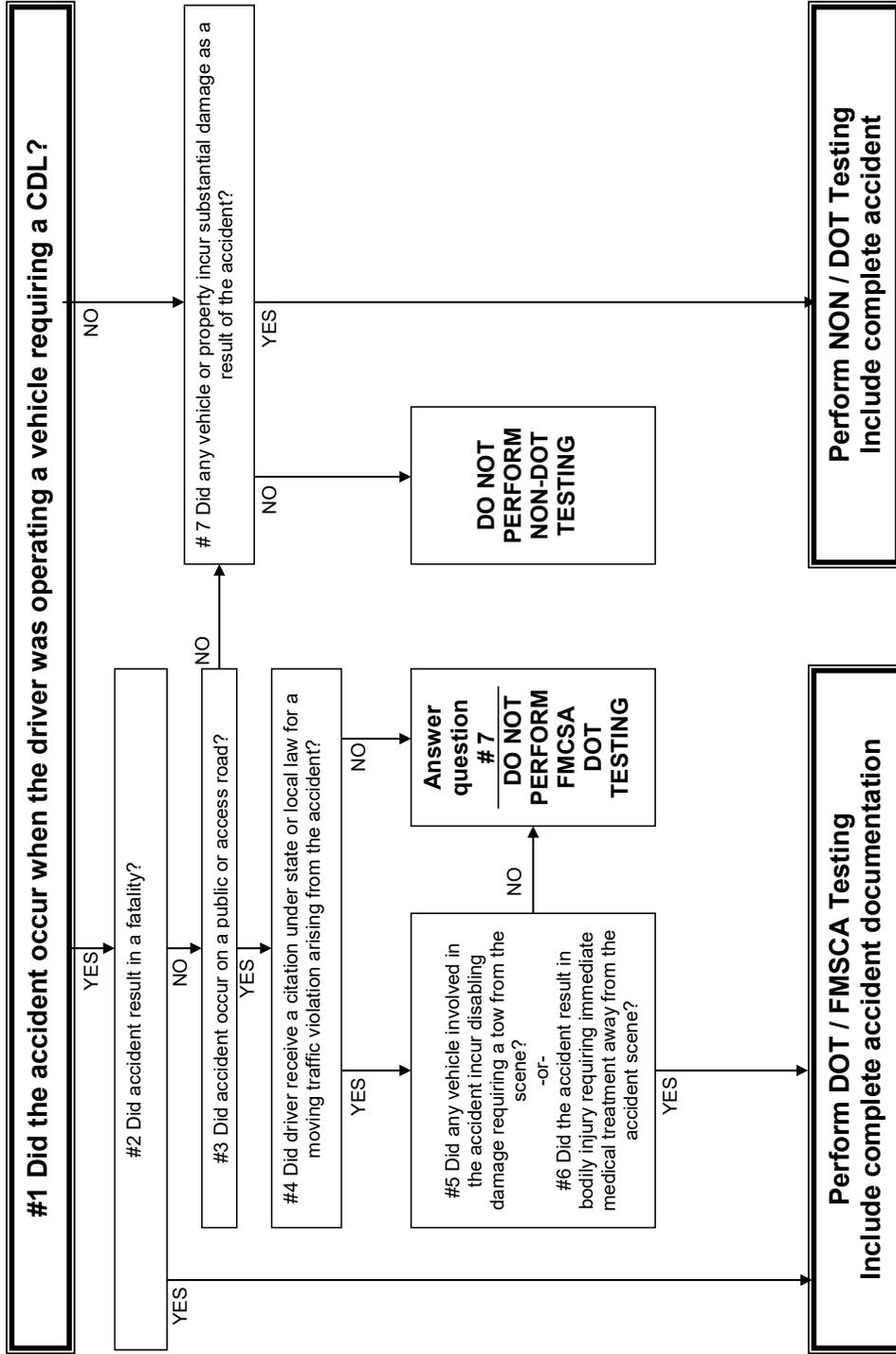
Reasonable suspicion testing shall be performed as set for in 49 CFR Part 382.307.

## **BAC 0.020-0.039 Alcohol Prohibitions**

As per 49 CFR Part 382.505(a), No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue 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.

Appendix F – FMCSA/BNIA/NFIA Post Accident Testing Decision Tree

**FMCSA & NFTA Policy  
BNIA & NFIA Post Accident Testing Decision Tree**



12-02-2008