



# KOOTENAI COUNTY

## TRANSIT SYSTEM

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### Kootenai County Transit System Drug and Alcohol Policy for Federal Transit Administration Public Transportation Safety Sensitive Employees

Adopted by the Kootenai County

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# 1. Purpose of Policy

This policy complies with 49 CFR Part 655, as amended and 49 CFR Part 40, as amended. Copies of Parts 655 and 40 are available in the drug and alcohol program manager's office and can be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website <http://transit-safety.fta.dot.gov/DrugAndAlcohol/>.

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

Portions of this policy are not Federal Transit Administration (FTA) mandated, but reflect Kootenai County Transit System's policies. These additional provisions are identified by **bold text**.

In addition, DOT has published 49 CFR Part 32, implementing 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.

**All Transit System employees are subject to the provisions of the Drug-Free Workplace Act of 1998, but only Kootenai County Transit System's employees, as described below are subject to DOT Safety Sensitive rules. This policy does not apply to Kootenai County employees not affiliated with the Transit Department or System, and only applies to safety sensitive employees funded by FTA funds.**

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify their organization's contact person as listed in Section 11 below no later than five days after such conviction and may be terminated.

# 2. Definitions

**Accident** means 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 mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-grant 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 public transportation vehicle is removed from operation.

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol's 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 (EBT).

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

**Breath Alcohol Technician (BAT)** is an individual who instructs and assists individuals in the alcohol testing process and operates an (EBT). BATS shall have successfully completed training in the complete operation of the intoxilizer instrument, Department of Transportation DOT protocol and shall be CMI certified.

**Covered Employee** means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for public transportation as regulated by FTA and as further described in section 3 of this policy.

**Confirmation Test** for alcohol testing means a second test, following a screening test that had a result of .02 or greater, which provides quantitative data of alcohol concentration. For controlled substances testing, it means a second analytical procedure to identify the presence of a specific drug or metabolite; the confirmation test must be independent of the screen test and use a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

**Drug Testing** means the scientific analysis of urine, breath, and/or blood for the purpose of detecting a drug or alcohol.

**Evidential Breath Testing device (EBT)** is a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath for alcohol concentration and placed on NHTSA's "Conforming Products List of evidential breath measurement devices" (CPL).

**Illegal Drug** means any drug which is not legally obtainable; any drug which is legally obtainable but has not been legally obtained; any prescribed drug not legally obtained; any prescribed drug not being used for the prescribed purpose; any over-the-counter drug being used at a dosage level other than recommended by the manufacturer or being used for a purpose other than intended by the manufacturer; and any drug being used for a purpose not in accordance with medical therapy. Examples of illegal drugs are cannabis substances, such as marijuana and hashish, cocaine, heroin, phencyclidine (PCP), methamphetamine, amphetamine, and so called designer drugs and look-alike drugs.

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

**Substance Abuse Professional (SAP)** means a licensed physician (MD or Doctor of Osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

**Screening Test Technician**, in alcohol testing is a qualified person who is trained to proficiency in the operation of one or more approved alcohol screening test devices.

**Possession** includes both actual and constructive possession.

**Reasonable Suspicion** is the belief that an employee has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

**Screening Test** (initial test), in alcohol testing means an analytical procedure to determine whether an employee may have prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

### 3. Covered Employees

This policy applies to every person, including an applicant or transferee, who performs or will perform a transit system “safety-sensitive function” per definitions and guidance provided in 49 CFR 655.4.

You are a covered employee if you perform any of the following:

#### Transit (FTA)

- Operating a revenue service vehicle, in or out of revenue service
- Operating a non-revenue vehicle requiring a commercial driver’s license
- Controlling movement or dispatch of a revenue service vehicle
- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

### 4. Prohibited Behavior

Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in Part 40. Prohibited drugs include:

- Marijuana
- Cocaine
- Phencyclidine (PCP)
- Opioids
- Amphetamines
- Alcohol

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration of **0.02** or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test with a result of less than 0.02 prior to performance.

All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

All covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

### 5. Consequences for Violations

Per policies of the Kootenai County Transit System, any employee who tests positive for drugs or alcohol (BAC at or above **0.02**) or refuses to test will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional (SAP) and may be subject to dismissal.

## Zero Tolerance

Per Kootenai County Transit System policy, any employee who tests positive for drugs or alcohol (BAC at or above 0.04) or refuses to test will be referred to a Substance Abuse Professional (SAP) **and terminated from employment.**

## 6. Circumstances for Testing

### Pre-Employment Testing

Pre-employment alcohol tests are conducted after making a contingent offer of employment or transfer. All pre-employment alcohol tests will be conducted using the procedures set forth in 49 CFR Part 40. An alcohol test result of less than 0.02 is required before an employee can first perform safety-sensitive functions. If a pre-employment alcohol test is cancelled, the individual will be required to undergo another test with a result of less than 0.02 before performing safety-sensitive functions.

A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

### Reasonable Suspicion Testing

All covered employees shall be subject to a drug and/or alcohol test when the Kootenai County Transit System has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing 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.

### Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

#### Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by the Kootenai County Transit System, using the best information available at the time of the decision, will be tested.

#### Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (3) The vehicle is a rail car, trolley car or bus, or vessel, and is removed from operation, and the covered employee can be completely discounted as a contributing factor to the accident

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the Kootenai County Transit System using the best information available at the time of the decision, will be tested.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered 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.

## Random Testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at <http://www.dot.gov/odapc/random-testing-rates>.

The selection of Safety Sensitive employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee will 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.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

## Random Testing – End of Shift

Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or child care commitment, for the period immediately following an employee's shift, must be provided before the shift begins.

## 7. Testing Procedures

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

### Dilute Urine Specimen

If there is a negative dilute test result, the Kootenai County Transit System will conduct one additional retest. The result of the second test will be the test of record.

Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate re-collection under direct observation (see 49 CFR Part 40, section 40.67).

### Split Specimen Test

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. Kootenai County Transit System guarantees that the split specimen test will be conducted in a timely fashion. The cost will be paid for by the employee.

## 8. Test Refusals

As an FTA covered employee, you have refused to test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by Kootenai County.
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or Kootenai County for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or Kootenai County's Designated Employer Representative (DER).



- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.

As an FTA covered employee, if the MRO reports a verified adulterated or substituted test result, it will be considered a refusal to test and may be subject to dismissal.

If a covered employee refuses to take a drug and/or alcohol test, he/she will incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and referred to a SAP.

## 9. Voluntary Self-Referral

**Any employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable suspicion, random or post-accident testing or has not refused a drug or alcohol test may voluntarily refer her or himself to the organization appropriate contact listed in Section 11 below who will refer the individual to a substance abuse counselor for evaluation and treatment.**

The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.

Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program.

## 10. Prescription Drug Use

**Prescription Medications for Safety Sensitive Employees** - The appropriate use of legally prescribed medications is not prohibited. However, the employee has the responsibility to discuss the potential effects of any prescription medication with the prescribing physician including its potential to impair mental functioning, motor skills, or judgment. The employee must refrain from performing any safety-sensitive function any time their ability to safely perform their job duties is adversely impacted by the use of a prescription medication.

1. A legally prescribed drug means the employee has a prescription or other written approval from a physician for his/her use of a drug in the course of medical treatment. The written statement must include the employee's name, the name of the substance, quantity/amount to be taken, and the period of authorization.
2. The misuse or abuse of prescription medications is prohibited. Examples of misuse and/or abuse include, but are not limited to:
  - Use of a medication that is not prescribed by the employee.

- The employee exceeds the prescribed dosage.
- Use of any medication that contains alcohol within four hours of performing safety-sensitive functions.
- The use of any prescription medications that adversely impacts the employee's ability to safely perform his/her safety-sensitive job functions.

Kootenai County Transit System requires that all safety-sensitive employees obtain a statement from their physician for each medication prescribed indicating whether the employee should be medically disqualified from performing safety-sensitive functions during the duration of the treatment. The statement must be provided to the appropriate contact as listed below, or direct supervisor, as applicable, where it will be kept in the employee's confidential medical file.

Ultimately, the employee is the best judge of how a substance is impacting him/her. As such, the employee has the responsibility to inform the prescribing physician of performance altering side effects and request medical disqualification from performance of their safety-sensitive duties. The employee is encouraged to discuss/consider alternative treatments that do not have the performance altering side effects.

An employee will be medically disqualified from the performance of safety-sensitive functions if the physician determines that the employee's medical history, current condition, side effects of the medication being prescribed and other indications pose a potential threat to the safety of co-workers, the public and/or the employee.

The prescribing physician's determination is subject to review by the designated Medical Review Officer at the behest of the Kootenai County Transit System. The MRO may consult with the prescribing physician to obtain additional information as necessary. Based on the information provided, the MRO may overrule the prescribing physician's determination and medically disqualify the employee. The MRO's decision will be deemed final.

The physician statements and any other medical information obtained through this process are confidential information and will be maintained in confidential medical files in the appropriate Human Resources office.

## 11. Contact Persons

For questions about the Kootenai County Transit System's Drug and Alcohol Policy, or for information regarding maintaining a drug free workplace, available drug counseling or employee assistance programs, contact Chad Ingle at the Transit Department at 208.446.2102 for your appropriate Designated Employee Representative.

## 12. Oversight of Subrecipients and Contractors

Kootenai County retains the right to oversee subrecipient and contractor's Drug and Alcohol Programs. Kootenai County will:

1. Review Drug and Alcohol Policies
2. Receive MIS results on a yearly basis

3. Receive notification of test results as a result of an accident or incident
4. Visit the Drug and Alcohol Facility on a yearly basis