

<b>CITY OF APPLETON POLICY</b>		<b>TITLE:</b> <b>DRUG FREE WORKPLACE ACT OF 1988</b> <b>And 49 CFR Part 40 and Part 655</b>
ISSUE DATE: 1988	LAST UPDATE: July 2003 January 2004 May 2005 January 2007 2010 August 2013	SECTION: Safety
POLICY SOURCE: Human Resource Dept.	POLICY APPLICATION: Valley Transit Safety Sensitive & Non Safety Sensitive Employees	TOTAL PAGES: 16
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#### **I. PURPOSE:**

The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public for the risks posed by the misuse of alcohol and use of prohibited drugs. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. The Federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT) has published 49CFR Part 655, as amended, that mandate urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test. Every covered employee is required to submit to drug and alcohol testing administered in accordance with Part 655. The DOT has also published 49 CFR Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens. In addition, the Federal government published 49 CFP Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. This policy incorporates those requirements for safety sensitive employees and others when so noted. The inclusion of non-safety sensitive employees in this policy is not a requirement of FTA regulations, but part of Valley Transit's Drug and Alcohol Free Workplace Policy. Non-safety-sensitive employees will not be included in the random testing pool.

## II. POLICY:

Valley Transit performs a vital public service to our community. To ensure that this service is delivered safely, we are dedicated to providing and maintaining a drug and alcohol free working environment. It is Valley Transit's policy to:

- Assure that employees have the ability to perform assigned duties in a safe, healthy, and productive manner;
- Create a workplace free from the adverse effects of drug and alcohol abuse or misuse;
- Prohibit the unlawful distribution, possession, or use of controlled substances.

Valley Transit cares about the health and well being of its employees. We urge anyone who believes that they are having an alcohol or chemical dependency problem to seek treatment before their job performance and employment are endangered.

Failure to comply with this policy shall lead to disciplinary action up to and including discharge. Upon a discharge for illegal drug use, eligibility for benefits under Unemployment Compensation could be impacted.

## III. DISCUSSION:

This policy outlines the requirements mandated by the DOT & the FTA as outlined above.

## IV. DEFINITIONS:

Safety Sensitive Positions  
Bus Driver (Full-time, Part-time, and Stand-by)  
Mechanic I  
Mechanic II  
Lead Mechanic  
Driver-Dispatcher  
Communications Technician  
Service Person  
Utility Person  
Transit Operations Supervisor  
Transit Maintenance Supervisor  
Administrative Assistant  
Contract Paratransit Drivers  
Contract Paratransit Mechanics  
Contract Paratransit Dispatchers  
Contract Paratransit Supervisors  
~~Administrative Services Manager~~  
Assistant General Manager

Shall – is interpreted to mean required.

Should – is interpreted to mean recommend but not required.

BAT – Breath Alcohol Tester.

EBT – Evidential Breath Testing Device.

CDL – Commercial Driver's License.

SAP – Substance Abuse Professional.

DER – Designated Employer Representative

## V. PROCEDURES

### A. APPLICABILITY

This policy applies in general to all transit system employees: full-time, part-time, and contract employees, and contractors when they are on transit property or when performing transit-related business off property. Employees who perform safety-sensitive functions, or contractors performing safety-sensitive functions for Valley Transit will be subject to specific alcohol and drug testing as required by federal regulations. A safety-sensitive function is any duty related to the safe operation of mass transit service including the operation, dispatch, and maintenance of a revenue service vehicle (in or out of service), other employees who must hold a Commercial Drivers License to perform their job and certain security personnel. (A list of safety-sensitive positions are listed under definitions in Section IV.)

### B. PROHIBITED SUBSTANCES

The DOT prohibited drugs – marijuana, cocaine, opiates (codeine, morphine and 6-acetylmorphine), amphetamines (which includes MDMA-Ecstasy), methamphetamines, and PCP are always illegal and employees are prohibited from consuming any of them at any time. In addition, under the Drug-Free Workplace Act, the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited at any time. Use of prescription drugs which may impair job performance or mental or motor function by an employee or any other person to whom this Policy applies while on City of Appleton / Valley Transit premises or in the course of conducting City of Appleton / Valley Transit business, including while subject to being on-call in a paid status, at lunch or on breaks, is strictly prohibited. Employees covered by this policy can be tested for prohibited drugs anytime while on duty.

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### B.

Prohibited drugs are any illegal controlled substance including, but not limited to, marijuana, amphetamines, opiates, phenylclidine (PCP), cocaine and MDMA (Ecstasy), as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

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The use of any beverage or mixture, including any medication, containing alcohol during or prior to performing a safety sensitive function is also prohibited.

The appropriate use of legally prescribed drugs and non-prescription medication is not prohibited. However, the use of any substance which carries a warning label indicating that mental functioning, motor skills, or judgment will be adversely affected MUST be reported to a supervisor and a form filled out prior to performing safety-sensitive duties per Valley Transit Policy. It is the responsibility of employees to remove themselves from service if they are experiencing any adverse effects from medication. Legally prescribed drugs must include documentation of the patient's name, the substance name, the quantity to be taken, and the period of authorization. See the "Over the Counter and Prescription Drug" section at the end of this policy.

### C. PROHIBITED CONDUCT

Employees who are using, manufacturing, dispensing, distributing drugs or who are in the possession of, or impaired by, alcohol or drugs when reporting for duty, while on duty, or when on Valley Transit's premises are a threat to the health, safety, and security of themselves, their fellow employees, passengers, and other members of the public. Therefore, employees must not report for work or continue working under these circumstances. Such behavior is absolutely prohibited.

Employees who are reasonably suspected of not being fit for duty due to drug or alcohol use shall be suspended from job duties without pay pending an investigation and verification of condition. Employees who fail to pass a drug or alcohol test shall be removed from duty and subject to disciplinary action, up to and including discharge. Employees who pass a drug or alcohol test will be paid for any lost time. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body at or above the minimum thresholds defined in 49 CFR Part 40, as amended.

**ALCOHOL USE:** No safety-sensitive or non-safety-sensitive employee should report for duty or remain on duty when his/her ability to perform assigned safety-sensitive functions is adversely affected by alcohol or when his/her breath alcohol concentration is 0.02 grams of alcohol in 210 liters of that person's breath or greater per Valley Transit policy. No safety-sensitive or non-safety-sensitive employee will use alcohol while on duty, in uniform, while performing safety-sensitive functions, or just before or just after performing a safety-sensitive function. No safety-sensitive or non-safety-sensitive employee will use alcohol within four (4) hours of reporting for duty, while on call, or up to eight (8) hours following an accident when testing is required. Violation of these provisions is prohibited and punishable by disciplinary action up to and including discharge.

### D. COMPLIANCE WITH TESTING

All safety-sensitive and non-safety-sensitive employees will be subject to urine drug testing and breath alcohol testing. Any safety-sensitive or non-safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and their employment terminated. Refusals under 49 CFR Part 40 include:

- Failure to appear in a timely fashion for a drug or alcohol test (except for pre-employment);
- failure to remain until the drug or alcohol testing process is complete;
- failure to provide a breath specimen for an alcohol test; failure to provide a urine specimen for a drug test;
- failure to provide a sufficient specimen with no medical explanation in a drug or alcohol test;
- failure to undergo a medical evaluation as required by the Medical Review Officer or supervisor;
- failure to cooperate with any part of the testing process;
- failure to permit monitoring or observation in the case of a directly observed or monitored drug test collection;
- failure to take a second drug test as directed by the collector or supervisor;
- refusal to sign the certification at Step 2 of the Alcohol Testing Form;

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- leaving the scene of an accident without a valid reason before a drug and alcohol test has been conducted.
- In addition, the verification by the Medical Review Officer that an employee's drug test is adulterated or substituted is also considered refusal to test.

The following refusals to test are noted in the DOT Urine Specimen Collection Guidelines as additional behavior which constitutes a refusal to test: An employee admits to the collector that he or she adulterated or substituted their specimen.

- The employee fails 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.
- The employee possesses or wears a prosthetic or other device that could be used to interfere with the collection process.

A refusal to test constitutes a violation of this policy and will be treated as a positive test result. Any employee who refuses to submit to any drug or alcohol test will be removed from safety sensitive work, provided educational materials, and referred to a substance abuse professional. It is Valley Transit's policy that refusal to submit to any drug or alcohol test will also result in termination of employment.

a failure to take a second test as directed by the employer or collector, a failure to permit the observation or monitoring of the provision of a specimen when an observed collection is required, the verification by the MRO that a test is adulterated or substituted. Refusal also includes an inability to provide urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test, or failure to sign a DOT required testing form. Exhibit 3 includes a complete listing from 49 CFR Part 40.191

## **TESTING FOR SAFETY SENSITIVE EMPLOYEES**

1. Testing will be conducted in the following situations for all safety sensitive employees and anyone applying for a job in a safety sensitive position.
  - a. **Pre-employment** - Applicants for all safety-sensitive positions shall undergo urine drug testing after a conditional offer of employment has been made. Receipt by Valley Transit of satisfactory results is required prior to employment and failure to pass will disqualify an applicant. When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under 655.41, the employee must provide Valley Transit proof of having successfully completed a referral, evaluation and treatment plan as described in Sec. 655.62. In addition, if a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and has not been in the random selection pool during that time, the employee will be required to take a pre-employment drug test with a verified negative result prior to performing a safety-sensitive function.

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- b. **Reasonable Suspicion** – In cases in which an employee is acting in an abnormal manner or appears unfit to perform his/her duties in a safe manner and a supervisor has reasonable suspicion to believe the employee is using or is under the influence of alcohol or drugs, the employee shall be taken to a properly authorized testing facility for alcohol and drug testing. Reasonable suspicion means suspicion based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. These observations may include indications of the chronic and withdrawal effects of controlled substances. Once the test has been completed and the employee has been taken home, the supervisor must complete an “Observed Behavior Reasonable Suspicion Record” (Exhibit #1). This document is to be completed in carbon form and can be obtained from the Human Resources Department. The “Observed Behavior Reasonable Suspicion Record” must be completed as soon as practical. Such referrals will be made by supervisory personnel who have been trained in accordance with 49 CFR Part 655.14(b)(2) to detect the signs and symptoms of drug and alcohol use.
- c. **Random Testing** - Random alcohol testing will be conducted just before, during, or just after an employee’s performance of safety sensitive duties. Random drug testing will be conducted any time an employee is on duty. The employee will be randomly selected for testing from a “pool” of employees subject to testing. The testing dates and times are unannounced and will occur with unpredictable frequency throughout the year. Once notified of a required test, the employee must proceed directly to the testing site specified by the supervisor. There can be no delay or deviation.

The minimum and annual percentage rate for random drug and alcohol testing will be set by the Federal Transit Administration (FTA) and will be based on the annual cumulative total number of safety-sensitive employees in the “pool.”

The selection of employees for random testing will be administered by the City’s service provider using a scientifically valid method. This method will be a random number table of a computer-based random number generator matched with employees’ I.D. number. Under this selection process, each employee will have an equal chance of being tested each time selections are made. As a result, some employees may be tested more than once a year, while other employees may not be tested at all.

In the event an employee tests positive for either alcohol or controlled substances, the employee will be subject to disciplinary action up to and including discharge.

- d. **Post-Accident Testing** - Safety-sensitive employees are required by federal regulations to be tested if they are involved in an accident involving a Valley Transit vehicle (in or out of service and the service area) that results in:
- Fatality; (MANDATORY)
  - Non-fatality;

Any time an individual requires immediate transportation to a medical treatment facility or one or more vehicles have disabling damage that requires

a tow, unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident.

The alcohol breath test must be administered as soon as possible, but not later than eight (8) hours following the accident and the drug test must be administered within thirty-two (32) hours of the accident. If the alcohol test is not administered within two (2) hours of the accident, the supervisor will complete a report explaining the reasons for the delay in conducting the test. If the alcohol test is not administered within eight (8) hours of the accident or the drug test is not administered within thirty-two (32) hours of the accident, the supervisor will complete a report explaining why the test was not administered.

An employee who is subject to post-accident testing will remain readily available for such testing or may be deemed by Valley Transit to have refused to submit to testing.

Any safety-sensitive employee who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test and be subject to termination of their employment. Employees tested under this provision will include not only bus operators, but also any other safety-sensitive employee whose performance could have contributed to the accident.

Non-safety-sensitive employees are subject to being tested following work-related vehicle accidents when drug or alcohol use may be involved.

- e. **Return-to-Duty/Follow-Up Testing** - The City of Appleton/Valley Transit DER will ensure that, after being found to have engaged in conduct prohibited by Federal Regulations, the employee must complete a SAP mandated evaluation and/or treatment and shall undergo a return-to-duty alcohol and/or controlled substance test with a result indicating an alcohol concentration of less than 0.02 and verified negative result for controlled substance use.

The SAP will also make a recommendation for unannounced follow up alcohol and/or controlled substance testing. The duration and frequency of the tests will be determined by the SAP.

## **DRUG AND ALCOHOL TESTING PROCEDURES**

All employees will be subject to testing prior to employment, for reasonable suspicion, and prior to return to duty after failing a test or upon the completion of substance abuse treatment. Those employees who perform safety-sensitive functions as defined in the attachment to this policy shall also be subject to testing on a random, unannounced basis and following an accident as defined in "Post Accident Testing".

### **A. CONFIDENTIALITY**

Confidentiality is maintained throughout the drug/alcohol testing process. All positive test results are first forwarded to the City of Appleton's Medical Review Officer (MRO) for review. The MRO reviews the individual medical history and affords the employee an opportunity to offer any clarifying information that would explain the positive test. The MRO will notify the employee that he/she has seventy-two (72) hours in which to request a split sample analysis by a second laboratory. The MRO

will not reveal individual test results to anyone except the Director of Human Resources for the City of Appleton and Valley Transit's General Manager, unless the MRO has been presented with a written authorization from the tested employee. Valley Transit will maintain results in the strictest of confidence in a medical file separate from the official personnel file. In cases where disciplinary action results from a positive test, such information is shared only with those in a supervisory capacity involved in that action, and with the union if the employee provides such authorization. Valley Transit will carry out this policy in a way that respects the dignity and confidentiality of those involved.

## B. METHODOLOGY

Testing will be conducted in a manner to assure a high degree of accuracy and reliability by using the techniques, chain of custody procedures, equipment, and laboratory facilities that have been approved by the U.S. Department of Health and Human Services (DHHS) as called for in the regulations (49 CFR Part 40). Both alcohol and drug testing will be conducted in an environment that affords maximum privacy.

1. —

### Testing for drugs will be conducted by urinalysis.

- 1) Initial Test: Initial testing will be performed on the primary sample using the EMIT Immunoassay technique. If the results are negative, no further testing will be required and a report will be provided to the Medical Review Officer (MRO). The MRO is responsible for evaluating, interpreting, and verifying laboratory test results and communicating them to the City of Appleton.
- 2) Confirmation Test: Whenever a positive result is obtained on the initial test, confirmation testing will be automatically performed using Gas Chromatography/Mass Spectrometry (GC/MS). Results of confirmation testing will be sent to the Medical Review Officer (MRO).

Validity Testing: The laboratory also may conduct validity testing to determine if the specimen has been adulterated, tampered with, or diluted. If the MRO reports a "negative-dilute" test result with creatinine levels greater than or equal to 2mg/dL but equal to or less than 5 mg/dL, the employee will be required to take a second test immediately under direct observation with no advance notice. If the MRO reports a "negative-dilute" test result with creatinine levels greater than 5 mg/dL, the employee will be required to take a second test immediately (not observed) with no advance notice.

Drug Testing Split Specimen: The urine specimen collected for FTA testing will be split and poured into two specimen bottles. This provides the employee or applicant with the option of having an analysis of the split sample performed at a second laboratory that meets the requirements of 49 CFR Part 40. The employee or applicant has 72 hours after being informed by the MRO of a verified positive, adulterated, or substituted test result to request a test of

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the split sample. All requests for split specimen analysis will be processed by the MRO.

It is Valley Transit's policy that employees awaiting the result of a split specimen test following a verified positive, adulterated, or substituted test result may not perform safety sensitive duties pending the outcome of the split specimen test. The employee will be placed on an Administrative **Unpaid** Suspension pending the result of the split specimen test. Employees placed on an Administrative Suspension must be in a position to be easily contacted by Valley Transit once the result of the split specimen test is reported. Employees who cannot be easily contacted within a reasonable time period will be considered to have abandoned their job and are subject to termination. Valley Transit will seek payment or reimbursement for the cost of the split specimen from the employee, should the employee request testing of the split sample, unless the split specimen analysis fails to confirm the result of the primary specimen analysis.

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Analytical urine testing will be conducted for marijuana, cocaine, opiates, amphetamines, and phencyclidine. An initial drug screen will be conducted on each specimen after a split sample is provided to the laboratory. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry will be performed. A positive test result, above the minimum thresholds set forth by federal regulation, verified by the MRO, will be considered a violation of this policy.

2. Tests for alcohol concentration will be conducted using National Highway Traffic Safety Administration approved evidential breath testing devices operated by trained technicians. An employee who tests at 0.02 grams of alcohol in 210 liters of that person's breath or above will receive a confirmatory test no sooner than fifteen (15) minutes nor later than thirty (30) minutes after the completion of the initial test. A confirmed alcohol concentration of 0.02 or greater will be considered a positive alcohol test and a violation of this policy.

An employee who tests positive for drugs and alcohol will be removed from safety-sensitive job duties for at least eight (8) hours, informed about educational and rehabilitation programs available, and evaluated by a Substance Abuse Professional (SAP). The SAP will evaluate each employee to determine what assistance, the employee needs in resolving problems associated with substance abuse. Assessment by an SAP does not protect an employee from disciplinary action or guarantee employment.

### **C. RESULTS OF A POSITIVE ALCOHOL OR DRUG TEST**

Under FTA regulations, discipline for program violations are determined at the local level. In the event of a positive alcohol test or a positive drug test which is verified by the MRO, or a refusal the employee shall be removed from duty and subject to disciplinary action up to and including discharge without receipt of a prior warning letter as outlined in the current labor agreement.

## **D. D- NEGATIVE DILUTE TESTS**

Dilute Specimens: A dilute specimen is a specimen with creatinine and specific gravity values that are lower than expected for human urine. If the test is reported as a **dilute positive**, the test should be treated as a verified positive test result.

If the results of a drug test as determined by the MRO is negative dilute, the following conditions will apply depending on the type of test:

- Pre-employment test – a second test will be performed and the results reported prior to the performance of a safety sensitive function.
- Random test – no second test is required, the results of the first test is the test date of record
- Post accident test – a second test is performed as soon as possible, but not later than 32 hours following the accident
- Reasonable suspicion – a second test is performed as soon as possible, but not later than 32 hours after the initial test
- Return to duty/follow-up – a second test is performed as soon as possible

In the event that a second test is required, the second test becomes the test of record. In the event that a second test is also negative dilute, a third test is not required. The second test is not observed or monitored unless it is a return to duty test, a mandatorily observed follow-up test, or unless there is another basis for observed collection.

## **E. CONFIDENTIALITY OF RECORDS**

Valley Transit will strictly adhere to all standards of confidentiality and assure that testing records and results will be released only to those authorized by the FTA to receive such information. Those are:

- The employee, if requested in writing
- The National Transportation Safety Board, when investigating an accident
- The decision-maker in a lawsuit, grievance, or other proceeding initiated on behalf of the employee and arising from the result of a drug or alcohol test administered under FTA rules
- Subsequent employers, if requested in writing by the employee
- Other identified persons as requested in writing by the employee

## **F. REPORTING OF CONVICTIONS**

1. As a condition of employment, all City employees shall abide by the Drug and Alcohol Free Workplace Policy and notify the City (your immediate supervisor

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and the Human Resources Director) of any criminal drug statute conviction no later than five (5) days after such conviction.

2. Employees who are required to have a Commercial Driver's License must report all driving while intoxicated violations.

#### **G. PREVENTION AND REHABILITATION**

Valley Transit supports employees who volunteer for treatment of alcohol or drug abuse. Alcoholism and drug dependency are treatable illnesses and can be successfully dealt with if identified in their early stages and referred to an appropriate source for treatment. Indications of alcohol and drug abuse include extreme changes in personality, problems with employer or other employees, interrupted or changing sleep patterns, attendance and late problems, concealment of social habits involving drugs and alcohol, and family problems. Continued alcohol and drug dependency can lead to deteriorating health.

Valley Transit encourages employees to seek treatment voluntarily and makes available the Employee Assistance Program. Any employee who comes forth and notifies the agency of alcohol or chemical abuse problems will be given the assistance extended to employees with any other illness. Sick leave, vacation leave, or leave of absence without pay may be granted for treatment and rehabilitation as in other illnesses, and insurance coverage for treatment will be provided to the extent of individual coverage.

Employees are encouraged to contact Valley Transit or the City of Appleton Human Resources Department for help in understanding benefits and leave policies when participating in the EAP. Any decision to seek help through the EAP or privately will not interfere with an employee's continued employment or eligibility for promotional opportunities. CONFIDENTIALITY of information will be maintained at all times.

While Valley Transit is willing to assist employees with alcohol or chemical dependency problems, employees are expected to remember that safety is the Agency's first priority. Therefore, employees must not report for work or continue working if they are under the influence or impaired. Failure to observe the Prohibited Conduct rules established in this policy will result in disciplinary action up to and including discharge, (see Discipline section) regardless of whether or not an employee is participating in a treatment program. Such employees are expected to observe all other job performance standards and work rules, including attendance, required of all employees.

#### **H. LEAVE OF ABSENCE PRIOR TO TESTING**

An employee shall be permitted to take a leave of absence for the purpose of undergoing treatment pursuant to an approved program of alcoholism or drug use verified by the City. The leave of absence must be requested prior to being notified of a required drug or alcohol test and prior to the commission of any act subject to disciplinary action, and will be in compliance with City policies.

Employees requesting to return to work from a leave of absence for drug use or alcoholism will be required to submit to three tests without prior notice on the following basis:

1. Two tests to occur within six months of the employee's return to employment.
2. One test to occur within six to twelve months after the employee's return to employment.

A positive test result or a refusal to submit to any of these three tests will lead to immediate discharge. These tests will be performed under Valley Transit's authority, not the FTA's.

## **VI. EDUCATION AND TRAINING**

It is the policy of Valley Transit that training and education programs will be made available to all agency employees. Supervisors, managers, and union officials will receive instruction on how to identify the signs of drug and/or alcohol use or impairment and what to do in such reasonable suspicion cases, however, only supervisory personnel trained in accordance with 49 CFR Part 655.14(b)(2) are qualified to make reasonable suspicion referrals. Valley Transit is responsible for administering the Drug and Alcohol Free Workplace Policy. Any questions about the policy or testing program may be addressed to the Operations Supervisor/Drug and Alcohol Program Manager (832-6100), General Manager (832-6100), or the City of Appleton's Human Resources Department (832-6455).

### **A. OVER THE COUNTER & PRESCRIPTION DRUGS**

1. Employees have the responsibility to explain their job duties to their doctor and ensure that the use of prescribed medications will not pose a safety risk to themselves, other employees, or the general public. If there is a risk, the transit employee should discuss other treatment options. If no other options are available, the employee should not report to work, but obtain a note from the prescribing physician stating when it is safe to return to work.

When selecting an over the counter medication, employees must read all warning labels. Employees must avoid selecting a medication that may cause drowsiness, affect mental functioning, affect motor skills or judgment, or produce any other side effect, while working, that would prohibit the employee from performing his/her job safely. If an employee is unsure which medication is safe to take while performing his/her job, he/she should consult their pharmacist or physician.

It is the employees' responsibility to take all medications as prescribed.

The employee must submit a Drug Notification Form to their supervisor before performing any safety-sensitive duty when taking any medication, prescription or non-prescription, which may affect their performance of such duty. Valley Transit's Medical Review Officer may review Drug Notification Forms. All Drug Notification Forms will be kept in the employees' confidential medical file.

Employees who experience side effects or do not feel fit for duty must immediately notify the supervisor on duty and remove themselves from the performance of any safety sensitive function.

2. A legally prescribed drug is one where the employee has a prescription or other written approval from a physician for the use of the drug in the course of medical treatment. The prescription must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing City business is prohibited by City policy.

**RECEIPT OF ACKNOWLEDGMENT AND UNDERSTANDING OF  
“DRUG FREE WORKPLACE ACT OF 1988,  
AND 49 CFR PART 40” POLICY  
FOR  
CITY OF APPLETON VALLEY TRANSIT EMPLOYEES**

I acknowledge the receipt of a copy of the City of Appleton’s “Drug Free Workplace Act of 1988 and 49 CFR Part 40” Policy. I have read and familiarized myself with the contents and understand my responsibility for adhering to this policy.

I agree to follow the City of Appleton’s rules and procedures as outlined in this policy.

\_\_\_\_\_  
Employee Name (Please Print)

\_\_\_\_\_  
Department

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

**EXHIBIT 1****OBSERVED BEHAVIOR  
REASONABLE SUSPICION RECORD****NAME:****DATE****ADDRESS OF INCIDENT:**

Street City

**TIME  
OBSERVED:**

Record employee observed behavior for reasonable suspicion for the use of alcohol or controlled substances. According to 49 CFR §382.307 Reasonable Suspicion Testing, the employer shall require the driver to submit to a controlled substance or alcohol test if a supervisor or company official who is trained in accordance with §382.603 determines that reasonable suspicion exists.

Reasonable suspicion determined for:		<input type="checkbox"/> Alcohol	<input type="checkbox"/> Drugs
Mark items that apply and describe specifics			
1.	<b>WALKING/BALANCE:</b>		
	<input type="checkbox"/> Stumbling	<input type="checkbox"/> Staggering	<input type="checkbox"/> Falling
	<input type="checkbox"/> Unable to Stand		
	<input type="checkbox"/> Swaying	<input type="checkbox"/> Unsteady	<input type="checkbox"/> Holding on
	<input type="checkbox"/> Rigid		
	<input type="checkbox"/> Sagging at knees	<input type="checkbox"/> Feet wide apart	
2.	<b>SPEECH:</b>		
	<input type="checkbox"/> Shouting	<input type="checkbox"/> Whispering	<input type="checkbox"/> Slow
	<input type="checkbox"/> Rambling		
	<input type="checkbox"/> Slurred	<input type="checkbox"/> Slobbering	<input type="checkbox"/> Incoherent
3.	<b>ACTIONS:</b>		
	<input type="checkbox"/> Resisting communications	<input type="checkbox"/> Insulting	<input type="checkbox"/> Hostile
	<input type="checkbox"/> Drowsy		
	<input type="checkbox"/> Fighting/insubordinate	<input type="checkbox"/> Profanity	<input type="checkbox"/> Threatening
	<input type="checkbox"/> Erratic		
	<input type="checkbox"/> Hyperactive	<input type="checkbox"/> Crying	<input type="checkbox"/> Indifferent
4.	<b>EYES:</b>		
	<input type="checkbox"/> Bloodshot	<input type="checkbox"/> Watery	<input type="checkbox"/> Dilated
	<input type="checkbox"/> Glassy		
	<input type="checkbox"/> Droopy	<input type="checkbox"/> Closed	<input type="checkbox"/> Wearing Sunglasses
5.	<b>FACE:</b>		
	<input type="checkbox"/> Flushed	<input type="checkbox"/> Pale	<input type="checkbox"/> Sweaty
6.	<b>APPEARANCE/CLOTHING:</b>		
	<input type="checkbox"/> Disheveled	<input type="checkbox"/> Messy	<input type="checkbox"/> Dirty
	<input type="checkbox"/> Partially dressed		
	<input type="checkbox"/> Having odor	<input type="checkbox"/> Stains on clothing	
7.	<b>BREATH:</b>		
	<input type="checkbox"/> Alcoholic odor	<input type="checkbox"/> Faint alcohol odor	<input type="checkbox"/> No alcohol odor
	<input type="checkbox"/> Marijuana odor		
8.	<b>MOVEMENTS:</b>		
	<input type="checkbox"/> Fumbling	<input type="checkbox"/> Jerky	<input type="checkbox"/> Slow
	<input type="checkbox"/> Nervous		
	<input type="checkbox"/> Hyperactive		

EXHIBIT 2

CITY OF APPLETON MEDICATION REPORTING FORM

Date: \_\_\_\_\_

Employee Name: \_\_\_\_\_ Department: \_\_\_\_\_

Drug Name	Dose	Anticipated Length/Period of Authorization

☐ \_\_\_\_\_ *Employee Name* is able to safely perform a safety sensitive function/job while taking the medication/dose noted above.

☐ \_\_\_\_\_ *Employee Name* is not able to safely perform a safety sensitive function/job while taking the medication/dose noted above.

☐ I have discussed the nature of my work with my physician.

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

Physician Signature \_\_\_\_\_ Date \_\_\_\_\_  
(the physician signature is not needed for over the counter medications)

\*This notification may be shared with the City's occupational health provider.





EXHIBIT 3

Subpart I—Problems in Drug Tests

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) As an employee, you have refused to take a drug test if you:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a));

(2) Fail 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 §40.63 (e)) for a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided, That an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63 (c)) for a pre-employment test is not deemed to have refused to test;

(4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));

(6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, §40.197(b));

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §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. If there was no contingent offer of employment, the MRO will cancel the test; or

~~(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).~~

(9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.

(10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.

(11) Admit to the collector or MRO that you adulterated or substituted the specimen.

(b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(d) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.

(1) As the collector, you must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF.

(2) As the MRO, you must note the refusal by checking the "Refusal to Test" box in Step 6 on Copy 2 of the CCF, checking whether the specimen was adulterated or substituted and, if adulterated, noting the adulterant/reason. If there was another reason for the refusal, check "Other" in Step 6 on Copy 2 of the CCF, and note the reason next to the "Other" box and on the "Remarks" lines, as needed. You must then sign and date the CCF.

(e) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 71 FR 49384, Aug. 23, 2006; 73 FR 35974, June 25, 2008; 75 FR 59108, September 27, 2010]