

# MDOT SUBSTANCE ABUSE MANUAL

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SUBJECT: GENERAL

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SECTION: 2

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Revision No. 1

Page 1 of 13

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APPROVED: \_\_\_\_\_

Deputy Secretary, Department of Transportation

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## 1. Policy

- 1.1 It is the policy of the Maryland Department of Transportation (MDOT) to:
- 1.1.1 provide a drug and alcohol free workplace for employees;
  - 1.1.2 reduce the possibility of accidents or incidents related to the use of drugs and/or alcohol;
  - 1.1.3 provide safe, efficient, and effective service for the traveling public;
  - 1.1.4 assist with the recovery of employees who have a drug and/or alcohol dependency problem;
  - 1.1.5 take appropriate disciplinary action against those employees who are found to be in violation of this policy;
  - 1.1.6 require that all employees comply with this policy as a condition of employment; and
  - 1.1.7 provide all employees with information regarding substance abuse.

## 2. Applicability

- 2.1 This policy applies to all MDOT employees who are responsible for complying with the provisions of this policy.
- 2.2 This policy applies to any individuals who volunteer services to MDOT.
- 2.3 This policy applies to police officers within the Department. To the extent that this policy conflicts with the Law Enforcement Officers' Bill of Rights, the Law Enforcement Officers' Bill of Rights controls.

# MDOT SUBSTANCE ABUSE MANUAL

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 2 of 13

2.4 To the extent that this policy conflicts with federal regulations and the Collective Bargaining Agreements of the Maryland Transit Administration (MTA), including the Amalgamated Transit Union AFL-CIO Local 1300, Office and Professional Employees International Union Local No. 2 and AFSCME Council #67 Local No. 1859, federal regulations and the provisions of the Collective Bargaining Agreements shall control.

### 3. Definitions

3.1 Administration Technical Representative – An individual responsible for the scheduling of tests and the resolution of problems arising from the collection.

3.2 Adulterated specimen – A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

3.3 Alcohol - A legal depressant that slows down physical responses and progressively impairs mental functioning. Alcohol includes ethyl alcohol and ethanol.

3.4 Department's Medical Advisor – A licensed physician employed or contracted by the Department: to provide the required medical advisor services; to serve as the medical review officer for drug and alcohol testing; and to serve as the Department's medical expert on all employability and all other employment related matters.

3.5 Dilute specimen – A specimen with (creatinine and) specific values that are lower than expected for human urine.

3.6 Drugs – Controlled dangerous substances including narcotics, depressants, stimulants, hallucinogens, cannabis, prescription drugs, and over-the-counter drugs.

3.7 Follow-up Testing – Periodic drug and/or alcohol testing conducted after an employee has tested positive for drugs and/or alcohol.

3.8 Incident Triggered Testing - When an injury to the employee or another person occurs or property damage results and the employee was directly involved in the incident, the employee may be tested for drugs and/or alcohol.

\_\_\_ Indicates change since last revision

## MDOT SUBSTANCE ABUSE MANUAL

---

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 3 of 13

---

- 3.9 Maryland Department of Transportation – Comprised of headquarters and five administrations as follows:
- 3.9.1 Maryland Aviation Administration;
  - 3.9.2 Maryland Port Administration;
  - 3.9.3 Maryland Transit Administration;
  - 3.9.4 Motor Vehicle Administration;
  - 3.9.5 State Highway Administration; and
  - 3.9.6 The Secretary's Office.
- 3.10 Network Sites – Medical facilities contracted by the Department or by the Department's Medical Advisor for medical services.
- 3.11 Non-Safety Sensitive Employee - An employee who does not perform a safety sensitive function.
- 3.12 On-Call - A period of time during non-scheduled work hours when an employee is notified to be available to perform job duties, if needed.
- 3.13 On-Duty – A period of time when an employee is:
- 3.13.1 on all scheduled work periods;
  - 3.13.2 driving or attempting to drive a State vehicle or operate State equipment;
  - 3.13.3 required to report to the Department's Medical Advisor or a network site;
  - 3.13.4 assigned extra work or volunteering to work on a regularly scheduled day off, holiday, or leave day; or
  - 3.13.5 working during any unscheduled emergency conditions.
- 3.14 Over-the-Counter Drugs – Medications that can be purchased without a medical provider's prescription and contain alcohol derivatives or other drugs which have a warning that they may impair an individual's ability to operate a vehicle or machinery (for example, cold medicines, back pain relievers, allergy tablets, and alternative medicines).
- 3.15 Post-Accident Testing – Drug and/or alcohol testing conducted after an employee is involved in an on-duty accident.

# MDOT SUBSTANCE ABUSE MANUAL

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 4 of 13

- 3.16 Pre-Employment Drug Testing – Drug test given to a candidate selected to fill a safety sensitive position, after the offer of employment has been made, but prior to the candidate’s start date. The offer of employment is contingent upon the results of the drug test.
- 3.17 Reasonable Suspicion Testing – Drug and/or alcohol testing shall be conducted when there are reasonable and specific grounds to believe that a drug and/or alcohol test of an employee will produce evidence of use of drugs and/or alcohol.
- 3.18 Return-to-Duty Testing – After testing positive for drugs and/or alcohol, an employee must take another mandatory drug and/or alcohol test prior to returning to work.
- 3.19 Safety Sensitive Employee - An employee who performs a safety sensitive function. Each Administration shall maintain a list of safety sensitive positions.
- 3.20 Substance – Alcohol or drugs as defined in Section 2 – General of this policy.

## 4. Authority References

- 4.1 Policies promulgated under State authority alone (Governor's Executive Order, the Transportation Article of the Maryland Annotated Code, or Code of Maryland Regulations) shall be referenced by the following notation: (promulgated by State authority).
- 4.2 All other policies have been promulgated under the authority of applicable federal regulations.

## 5. General

- 5.1 Employees are responsible for compliance with this policy as a condition of employment.
- 5.2 MDOT may conduct drug and/or alcohol tests of safety sensitive employees under the following circumstances:
- 5.2.1 Pre-employment;
- 5.2.2 Reasonable suspicion;
- 5.2.3 Post accident;

     Indicates change since last revision

## MDOT SUBSTANCE ABUSE MANUAL

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995

Revision No. 1

Effective: 12/01/2006

Page 5 of 13

- 5.2.4 Incident triggered situation;
- 5.2.5 Required participation in a drug and/or alcohol rehabilitation program;
- 5.2.6 Return to duty;
- 5.2.7 Follow-up testing; or
- 5.2.8 After an arrest, charge, or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.
- 5.3 Random Testing - In addition to the testing provided for in subsection 5.2 of this policy, a safety sensitive employee may be tested for drugs and/or alcohol on a random basis as specified under State and federal regulations.
- 5.4 MDOT may conduct drug and/or alcohol tests of any non-safety sensitive employee (promulgated under State authority) under the following circumstances:
  - 5.4.1 Reasonable suspicion;
  - 5.4.2 Post accident;
  - 5.4.3 Incident triggered situation;
  - 5.4.4 Required participation in a drug and/or alcohol rehabilitation program;
  - 5.4.5 Return to duty;
  - 5.4.6 Follow-up testing; or
  - 5.4.7 After an arrest, charge, or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.
- 5.5 MDOT shall conduct drug and/or alcohol tests of any safety sensitive or non-safety sensitive employee when there is reason to believe that the employee is using drugs and/or alcohol.

## MDOT SUBSTANCE ABUSE MANUAL

---

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 6 of 13

---

- 5.6 The drugs that shall be screened include, but are not limited to the following:
- 5.6.1 Marijuana/cannabinoids;
  - 5.6.2 Cocaine;
  - 5.6.3 Opiates;
  - 5.6.4 Amphetamines; and
  - 5.6.5 Phencyclidine (PCP).
- 5.7 An Appointing Authority may submit to the Secretary or designee a written request for approval to screen for a drug or controlled dangerous substance other than those listed in subsection 5.6 of this policy. If the Secretary approves the request, the Appointing Authority shall notify all employees subject to testing for the drug(s) of the addition of that drug(s) to the list.
- 5.8 Drugs will be tested for by urinalysis and alcohol will be tested for by breath analysis.
- 5.9 All protocols, procedures, personnel, and equipment associated with testing will be in full compliance with U.S. Department of Transportation Regulation 49 CFR Part 40.
- 5.10 Drug and/or alcohol testing will be conducted by the Department's Medical Advisor or a network site.
- 5.11 Law enforcement officers who have been certified by State or local governments to conduct breath alcohol testing are also qualified to conduct breath alcohol testing for MDOT when not practical to be conducted by the Department's Medical Advisor or a network site.
- 5.12 MDOT may accept blood alcohol test results obtained by blood analysis or urinalysis by non-MDOT health care providers under extenuating circumstances (for example, by emergency room staff after an accident).
- 5.13 All employees testing positive for illegal drugs and/or alcohol under the provisions of this section shall be subject to discipline as specified in Section 9 - Discipline of this policy.

## MDOT SUBSTANCE ABUSE MANUAL

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 7 of 13

### 6. Employee Responsibilities - Drugs

- 6.1 Employees shall not manufacture, distribute, dispense, sell, possess, or use unlawful drugs at any time. (promulgated by State authority)
- 6.2 Employees shall not abuse prescription drugs and/or over-the-counter drugs. (promulgated by State authority)
- 6.3 Safety sensitive employees shall report to an immediate supervisor the use of over-the-counter medications and/or prescriptions that the employee believes or has reason to believe may affect their ability to perform a safety sensitive function. (promulgated by State authority)
- 6.4 While on-duty, safety sensitive employees shall not possess prescription drugs and/or over-the-counter drugs that contain alcohol unless the packaging seal is unbroken. (promulgated by State authority)
- 6.5 Safety sensitive employees shall submit to drug testing in accordance with subsections 5.2 and 5.3 of this policy.
- 6.6 A non-safety sensitive employee shall submit to drug testing in accordance with subsection 5.4 of this policy.
- 6.7 Any safety sensitive or non-safety sensitive employee arrested, charged or convicted of a controlled dangerous substance offense shall report the arrest, charge, conviction (a plea of guilty, a finding of guilty, or a plea of *nolo contendere*) or a probation before judgment to the employee's supervisor on the employee's next scheduled workday or within 5 days of the event whichever is earlier. Failure of the employee to report any of the above shall result in disciplinary action as specified in Section 9 – Discipline. The employee's supervisor shall report any event to the Appointing Authority. (promulgated by State authority)
- 6.8 An applicant for employment, a safety sensitive employee or non-safety sensitive employee found to have a dilute specimen as a result of a test required due to subsections 5.2, 5.3 and 5.4 in Section 2 - General shall be required to take another drug test immediately with the minimum possible advance notice. The results of the second drug test shall become the test of record. If the applicant or employee refuses to submit to a second drug test, the applicant or employee will be considered to have refused to test and be subject to the same disciplinary action as employees having a positive test result as specified in Section 9- Discipline. (promulgated by State authority)

\_\_\_ Indicates change since last revision

## MDOT SUBSTANCE ABUSE MANUAL

---

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 8 of 13

---

### 7. Employee Responsibilities - Alcohol

- 7.1 Employees shall not consume alcohol or be under the influence of alcohol while on duty. (promulgated by State authority)
- 7.2 Safety sensitive employees shall not possess, consume, be under the influence of alcohol, prescription drugs and/or over-the-counter drugs that contain alcohol unless the packaging seals is unbroken or have any measurable alcohol concentration or detected presence of alcohol while on duty.
- 7.3 Safety sensitive employees shall not possess or consume alcohol (promulgated by State authority):
- 7.3.1 when in the performance of a safety sensitive function;
  - 7.3.2 just before (within 4 hours) the performance of a safety sensitive function;
  - 7.3.3 when on-call to perform a safety sensitive function (promulgated by State authority); or
  - 7.3.4 for up to 8 hours following an accident or until undergoing an alcohol test, whichever occurs first.
- 7.4 Safety sensitive employees shall submit to alcohol testing as provided in subsections 5.2 and 5.3 under the following circumstances:
- 7.4.1 when in the performance of a safety sensitive function;
  - 7.4.2 just before (within 4 hours) the performance of a safety sensitive function;
  - 7.4.3 while on duty and just after (within 4 hours) the performance of a safety sensitive function; or
  - 7.4.4 when on-call to perform a safety sensitive function. (promulgated by State authority)
- 7.5 Any safety sensitive employee not covered by subsection 7.4, or non-safety sensitive employee shall submit to alcohol testing when there is reasonable suspicion that the employee has consumed alcohol. (promulgated by State authority)



## MDOT SUBSTANCE ABUSE MANUAL

---

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 9 of 13

---

7.6 Any safety sensitive or non-safety sensitive employee arrested, charged or convicted of an alcohol related driving offense shall report the charge(s), conviction (a plea of guilty, a finding of guilty, or a plea of *nolo contendere*) or a probation before judgment to the employee's supervisor on the employee's next scheduled workday or within 5 days of the event, whichever is earlier. Failure of the employee to report any of the above shall result in disciplinary action as specified in Section 9 - Discipline. The employee's supervisor shall report any event to the Appointing Authority. (promulgated by State authority)

### 8. Supervisor Responsibilities

8.1 Supervisors will be held accountable for the consistent application and enforcement of this policy. (promulgated by State authority)

8.2 Supervisors shall attend substance abuse training as provided by their respective Administration. (promulgated by State authority)

8.3 Supervisors shall apply this policy without discrimination on the basis of race, color, creed, national origin, marital status, sexual orientation, gender, political or religious affiliation, physical or mental disability, veteran status, or age. (promulgated by State authority)

### 9. Use of Over-the-Counter and/or Prescription Medications

9.1 A safety sensitive employee shall report to an immediate supervisor the use of over-the-counter and/or prescription medications if the employee believes or has reason to believe that his/her safety sensitive functions may be impaired by the use of the medication.

9.2 Safety sensitive employees who report the use of over-the-counter and/or prescription medications as specified in subsection 9.1 may be temporarily reassigned by a supervisor with the approval of the Administration's human resources office to a non-safety sensitive function. (promulgated by State authority)

9.3 If no reassignment duties are available, the employee may use available leave until able to resume the performance of safety sensitive functions.

## MDOT SUBSTANCE ABUSE MANUAL

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 10 of 13

9.4 To avoid temporary reassignment as specified in subsection 9.2, a safety sensitive employee who is using over-the-counter and/or prescription medications may provide the Administration's human resources office with medical documentation that states that the medication will not affect the employee's ability to perform a safety sensitive function. (promulgated by State authority)

### 10. Use of Alcohol While On-Call

10.1 A safety sensitive employee who has consumed alcohol when on-call shall have the opportunity to acknowledge to the employee's supervisor the consumption of alcohol and the inability to perform a safety sensitive function at the time of being called to duty. (promulgated by State authority)

10.2 A safety sensitive employee who acknowledges the consumption of alcohol as described in subsection 10.1 shall not be permitted to perform the safety sensitive function and may be subject to disciplinary action as specified in Section 9 - Discipline. (promulgated by State authority)

10.3 A safety sensitive employee who acknowledges the consumption of alcohol while on-call, but claims the ability to perform the safety sensitive function shall be subject to an alcohol test prior to performing any safety sensitive function. (promulgated by State authority)

10.4 If the alcohol test indicates an alcohol concentration of 0.02 or greater, the employee will not be permitted to perform the safety sensitive function and shall be subject to disciplinary action as specified in Section 9 - Discipline. (promulgated by State authority)

### 11. Refusals to Submit to Testing

11.1 A refusal to submit to a test includes:

11.1.1 expressing verbal or non-verbal refusal to take a test;

11.1.2 failing to provide sufficient breath or urine for testing without a valid medical explanation;

11.1.3 tampering with or attempting to adulterate the specimen or collection procedure;

## MDOT SUBSTANCE ABUSE MANUAL

---

**SUBJECT: GENERAL**

**SECTION 2**

**Issued: 01/01/1995**

**Revision No. 1**

**Effective: 12/01/2006**

**Page 11 of 13**

---

- 11.1.4 failing to appear at a designated collection site within 1 hour after notification of the test requirement without a valid explanation as determined by the Administration Technical Representative (promulgated by State authority);
- 11.1.5 leaving the scene of an accident before testing is conducted without a valid reason as determined by the Administration Technical Representative;
- 11.1.6 refusing to complete or sign the Breath Alcohol Test Form and/or the Drug Testing Custody and Control Form;
- 11.1.7 failing to remain at the testing site until the testing process is complete;
- 11.1.8 failing to appear at a designated collection site due to illness without providing detailed medical documentation from a medical doctor subject to review by the MDOT Medical Review Officer which specifically states that the employee was physically unable to comply with the test procedure for the entire test period; or
- 11.1.9 refusing to cooperate with any part of the drug and/or alcohol test that prevents the completion of the test protocols.
- 11.2 Refusal to take a test constitutes insubordination and a violation of the Substance Abuse Policy. Employees refusing to submit to a test shall be subject to the same disciplinary action as employees having a positive test result as specified in Section 9 - Discipline. (promulgated by State authority)

### **12. Test Administration**

- 12.1 After the determination of the requirement for testing, employees subject to testing shall be notified of the testing requirement.
- 12.2 Upon notification of the test requirement, employees shall proceed or be escorted immediately to the designated testing site.
- 12.3 Employees not appearing at a collection site for testing within 1 hour of notification of the test requirement, without a valid explanation as determined by the Administration Technical Representative, shall be deemed to have refused to take the test. (promulgated by State authority)

## MDOT SUBSTANCE ABUSE MANUAL

---

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 12 of 13

---

- 12.4 If an alcohol test is not administered within 2 hours of the determination of the test requirement, the Administration Technical Representative shall prepare and maintain on file a record stating the reasons the test was not promptly administered.
- 12.5 If an alcohol test is not administered within 8 hours of the determination of the test requirement, the employee shall not be tested and the Administration Technical Representative shall record the reasons for not administering the test.
- 12.6 If a drug test is not administered within 32 hours of the determination of the test requirement, the Administration Technical Representative shall prepare and maintain on file a record stating the reasons the test was not promptly administered.

### 13. Consequences of Drug and/or Alcohol Use

- 13.1 Employees who test positive for the use of drugs shall be subject to disciplinary action as specified in Section 9 - Discipline. Refusal to take a test constitutes insubordination and a violation of the Substance Abuse Policy. (promulgated under State authority)
- 13.2 Safety sensitive employees shall be subject to disciplinary action (promulgated under State authority) as specified in Section 9 - Discipline when found to have an alcohol concentration of 0.02 or greater:
- 13.2.1 when in the performance of a safety sensitive function;
- 13.2.2 just before (within 4 hours) the performance of a safety sensitive function;
- 13.2.3 while on duty and just after (within 4 hours) the performance of a safety sensitive function; or
- 13.2.4 when on-call to perform a safety sensitive function.
- 13.3 Safety sensitive employees in circumstances not covered in subsection 13.2, shall be subject to disciplinary action as specified in Section 9 - Discipline when, after reasonable suspicion testing, they are found to have an alcohol concentration of 0.02 or greater. (promulgated under State authority)
- 13.4 Non-safety sensitive employees found to have an alcohol concentration of 0.02 or greater after a reasonable suspicion test shall be subject to disciplinary action as specified in Section 9 – Discipline (promulgated by State authority).

     Indicates change since last revision

## MDOT SUBSTANCE ABUSE MANUAL

SUBJECT: GENERAL

SECTION 2

Issued: 01/01/1995 Revision No. 1

Effective: 12/01/2006

Page 13 of 13

### 14. Appeal Rights

14.1 Employees may contest any discipline mandated by this policy in accordance with established appeal and/or grievance procedures as specified in COMAR Title 11.02.08, Transportation Service Human Resources System Policy, and applicable MTA Collective Bargaining Agreements.

### 15. Authority

15.1 Code of Federal Regulations, 49 CFR Part 29. (USDOT Drug Free Workplace Act Implementation)

15.2 Code of Federal Regulations, 49 CFR Part 40. (USDOT Drug and Alcohol Testing Protocols)

15.3 Code of Federal Regulations, 49 CFR Part 655. (FTA Alcohol and Drug Testing)

15.4 Code of Federal Regulations, 49 CFR Parts 382, 383, 392 and 395. (FHWA CDL Holder Substance Testing Rules)

15.5 Code of Federal Regulations, 14 CFR Parts 61, 63, 65, 121, and 135. (FAA Drug and Alcohol Testing Rules)

15.6 Section 17-214 Health-General, Annotated Code of Maryland. (Notification Requirements for positive tests)

15.7 Governor's Executive Order No. 01.01.1991.16 - State of Maryland Substance Abuse Policy.

15.8 Section 2-103 Transportation Article, Annotated Code of Maryland. (General Authority to Promulgate Rules and Regulations)

15.9 Sections 6-201 and 6-201.2 Transportation Article, Annotated Code of Maryland. (Authority of the Maryland Port Commission to adopt regulations governing MPA and its personnel)

15.10 Code of Maryland Regulations, 11.02.08, Disciplinary Action

15.11 Code of Maryland Regulations, 11.02.11, Testing for Drugs and Alcohol

\_\_\_ Indicates change since last revision