

**RESOLUTION NO. 11-977**

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, YAVAPAI COUNTY, ARIZONA, ADOPTING A DRUG AND ALCOHOL POLICY TO COMPLY WITH FEDERAL TRANSIT ADMINISTRATION SECTION 5311 RURAL TRANSPORTATION GRANT GUIDELINES**

**WHEREAS**, the Federal Transportation Administration (FTA) provides funding assistance through the 5311 Rural Transportation Program as which is administered by the Arizona Department of Transportation (ADOT); and

**WHEREAS**, the Town of Chino Valley operates a transit program with grant funding from the FTA;

**WHEREAS**, the Grant Agreement between the Arizona Department of Transportation and the Town requires FTA funding sub-recipients to comply with applicable federal drug and alcohol procedures identified in 49 Code of Federal Regulations (CFR) Part 655, 653, 40, and 29;

**NOW, THEREFORE, BE IT RESOLVED** BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, COUNTY OF YAVAPAI, ARIZONA, TO:

Approve and implement a Transit Program Drug and Alcohol Policy to comply with Federal Transit Administration Section 5311 Rural Transportation Grant Guidelines, attached hereto as "**Exhibit A.**"

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Chino Valley, Arizona this 13<sup>th</sup> day of December, 2011.

\_\_\_\_\_  
Chris Marley, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jami C. Lewis, Town Clerk

\_\_\_\_\_  
Musgrove Drutz & Kack, PC  
Town Attorney

**EXHIBIT A**

**CHINO VALLEY TRANSIT  
DRUG AND ALCOHOL POLICY**



## **DRUG and ALCOHOL POLICY**

(complies with Federal Transit Administration)

**December 13, 2011**

# TABLE OF CONTENTS

Section I	Policy	3
Section II	Purpose	3
Section III	Applicability	4
Section IV	Prohibited Substances	4
Section V	Prohibited Conduct	5
Section VI	Compliance with Testing Requirements	5
Section VII	Treatment	7
Section VIII	Notification of Criminal Drug Conviction	8
Section IX	Proper Application of the Policy	8
Section X	Training for Safety-Sensitive Employees and Supervisors	8
Section XI	Testing Overview	8
Section XII	Types of Drug and Alcohol Testing Events	10
Section XIII	Drug Testing Procedures	13
Section XIV	Contacts	15
	Employee Receipt of Policy	18
Attachment A	Urine Collection and Alcohol Testing Procedures	19
Attachment B	DOT Office Drug and Alcohol Policy and Compliance Notice: Medical Marijuana	23
Attachment C	Copy of Resolution No. 11-977	24

The Town of Chino Valley ("Town") promotes a drug-free community to maintain safe, healthy, and efficient operations, and to protect the safety and security of the employees, facilities, and property of the Town, including the Chino Valley Transit System ("Chino Valley Transit"). Our responsibility is to maintain a safe system.

## I. POLICY

Drugs or alcohol may pose serious risks to the user and all those who work with the user. In addition, the use, possession, sale, transfer, manufacture, distribution, and dispensation of alcohol or illegal drugs in the workplace pose unacceptable risks to the maintenance of a safe and healthy workplace and to the security of Town employees, facilities, and property. Substance abuse, while at work or otherwise, seriously endangers the safety of employees, as well as the general public, and creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and a decline in the quality of products and services provided by the Town. For all those reasons, the Town has established and shall maintain this Drug and Alcohol Policy and shall notify its employees annually.

The Town of Chino Valley is dedicated to providing safe, dependable and economical transportation services to our transit system passengers. The Town's staff is our most valuable resource and it is our goal to provide a safe, satisfying working environment, which promotes personal opportunities for growth. In meeting this goal it is our policy to (1) assure that staff are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; (2) create a workplace environment free from the adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) encourage staff to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

Adherence to this policy is a condition of service although it should not be considered an offer of service.

The Chino Valley Transit Drug and Alcohol Policy ("Transit Policy") was originally approved and adopted by the Town Mayor and Council on **December 13, 2011**. Anytime the Transit Policy is amended or updated due to changes in Federal regulations in the future, the said Policy will contain the date, proof of adoption of the amended Policy by the Chino Valley Mayor and Council and the date the amended Policy, or portion thereof, became effective.

## II. PURPOSE

The purpose of this policy is to assure worker fitness for duty and to protect our staff, passengers, and the public from 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 has published 49 Code of Federal Regulations ("CFR") Part 655, as amended, which mandates urine drug testing and breath alcohol testing for safety-sensitive positions and which prohibit performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (DOT) has also published 49 CFR Part 40, and the Omnibus Act from 1991 as amended, which sets standards for the collection and testing of urine and breath specimens. Copies of the Federal Regulations are available upon request. In addition, the Federal government published 49 CFR Part 29, "The Drug-Free Workplace Act of 1988." This policy incorporates those requirements for safety-sensitive staff and others when so noted.

### III. APPLICABILITY

- A.** This policy applies to all Chino Valley Transit staff (hereinafter “employee”) including paid part-time employees; contract employees and volunteers when performing any transit-related safety-sensitive duties or when they are on transit property. This policy applies to off-site lunch periods or breaks when employee is scheduled to return to work. Visitors, vendors, and contract employees are governed by this policy while on transit premises and will not be permitted to conduct transit business if found to be in violation of this policy.
- B.** A safety-sensitive function is any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), dispatch and maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, and any other employee or volunteer who perform duties requiring a CDL and/or performs a safety sensitive function and receives remuneration in excess of their actual expenses. Supervisors performing any of the above described functions are considered to be safety-sensitive employee. Participation in Chino Valley Transit’s Substance Abuse Program as stated in this Policy is a condition of service.
- C.** All positions at Chino Valley Transit were reviewed for safety-sensitive duties to determine the safety-sensitive positions. Additionally, any new positions created in the future will be reviewed for safety-sensitive duties. The following positions were determined to be safety-sensitive:
- Vehicle Operators
  - Transit Clerk/Dispatch
  - Transit Administrator
  - Mechanics
- D.** Drug and alcohol tests can be performed any time a safety-sensitive employee is on duty. An alcohol test can be performed anytime the covered employee is performing a safety sensitive duty or just before, or just after the performance of a safety sensitive duty. Under the authority of Chino Valley Transit, the use of or influence of drugs & alcohol on a covered employee anytime that employee is on duty is prohibited.

### IV. PROHIBITED SUBSTANCES

“Prohibited substances” addressed by this policy include the following:

**A. Illegally Used Controlled Substances or Drugs**

*Any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to: (i) marijuana, including “medical marijuana” as set forth in Attachment B hereto (DOT Office of Drug and Alcohol Policy and Compliance Notice), (ii) amphetamines, (iii) opiates, (iv) phencyclidine (PCP), (v) cocaine, (vi) MDMA (ecstasy) as of 10/2010, 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.*

**B. Legal Drugs**

1. The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that

indicates the mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and medical advice must be sought by the employee, as appropriate, before performing work-related safety sensitive duties.

2. A legally prescribed drug means that the individual has a prescription or other written approval from a physician for the use of the drug in the course of medical treatment. It 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 transit business is prohibited.

**C. Alcohol**

The use of beverages containing alcohol or substances including any medication, mouthwash, food, candy, or any other substance, which causes alcohol to be present in the body while performing transit business, is prohibited.

**V. PROHIBITED CONDUCT**

**A. Manufacture, Trafficking, Possession, and Use**

Chino Valley Transit employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances on transit authority premises, in transit vehicles, in uniform, or while on transit authority business. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

**B. Intoxication/Under the Influence**

Any safety sensitive employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be suspended from job duties pending an investigation and verification of condition. Employees who fail to pass a drug or alcohol test shall be removed from duty immediately, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) and subject to disciplinary action, up to and including termination. 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 above the minimum thresholds defined in 49 CFR Part 40, as amended.

**C. Alcohol Use**

No 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 or greater. An employee with an alcohol test result of 0.04% or greater is considered to have a positive alcohol test result. No safety sensitive employee shall 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 employee shall use alcohol within four hours of reporting for duty, or during the hours that they are on call. Violation of these provisions is prohibited and punishable by disciplinary action up to and including termination.

**VI. COMPLIANCE WITH TESTING REQUIREMENTS**

All safety-sensitive employees will be subject to urine drug testing anytime while on duty and alcohol testing only just prior, during and just after the performance of safety-sensitive duties. The alcohol testing may be done using breath or saliva for the screening test. All confirmation tests for alcohol must be done using an Evidential Breath Testing Device. Any safety sensitive

employee who refuses to comply with a request for testing shall be removed from duty immediately, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP). Any safety sensitive employee who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection.

A. Refusal to Test

The following behaviors constitute a test refusal:

1. Admission by the employee to the collector or Medical Review Officer (MRO) that said employee adulterated or substituted the specimen
2. Failure 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 collections process
3. verbal or written refusal
4. physical absence
5. an inability to provide a urine specimen or breath sample without valid medical explanation
6. failure to undergo a medical evaluation or an observed collection when required
7. obstructive behavior including tampering with or attempting to adulterate the specimen
8. failure to provide a urine sample
9. not reporting to the collection site in the time allotted (except in the case of pre-service)
10. not remaining at the collection site until the completion of the process
11. failure to sign step 2 of the alcohol test form
12. failure to permit monitoring or direct observation
13. leaving the scene of an accident prior to submitting to a post-accident test when required
14. failure to take a second test as directed by the collector or employer
15. having an adulterated or substituted test result verified by an MRO
16. employee behaves in a confrontational way that disrupts the collection process
17. leaving the scene of an accident without a valid reason before post accident tests have been completed. Failure to remain "readily available"
18. 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.

19. employee possesses or wears a prosthetic or other device that could be used to interfere with the collection process
20. employee refuses to wash his or her hands after being directed to do so

A refusal to test will be treated the same as a positive test result.

#### B. Observed Collections

The observation will be done by a person of the same gender in the following circumstances:

1. All return to duty tests (second chance policy)
2. All follow up tests (second chance policy)
3. Any time the specimen collected is out of temperature range (90°F-100°)
4. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with
5. Anytime a collector observes materials brought to the collection site or employee's conduct clearly indicates an attempt to tamper with a specimen
6. Anytime the employee is directed to provide another specimen because the Laboratory reported to the MRO that the original specimen was invalid without a valid medical reason
7. Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed
8. The employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collector, by turning around that said employee does not have a prosthetic device

#### VII. TREATMENT

All employees are encouraged to make use of the available resources for treatment for alcohol misuse and illegal drug use problems. See Section XIV: System Contacts. The cost of any treatment or rehabilitation services for paid employees will be covered by the Town's insurance program. The cost of any treatment or rehabilitation services for non-paid employees (volunteers) will be paid for directly by the non-paid employee. Eligible employees will be allowed to take accumulated sick leave and/or vacation leave to participate in a treatment or rehabilitation program. Any employee who refuses or fails to comply with Chino Valley Transit's requirements for return-to-duty shall be subject to disciplinary action, up to and including termination.

#### VIII. NOTIFICATION OF CRIMINAL DRUG CONVICTION

All employees are required to notify the transit system of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

IX. PROPER APPLICATION OF THE POLICY

Chino Valley Transit is dedicated to ensuring fair and equitable application of this Drug and Alcohol Policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including dismissal.

X. TRAINING FOR SAFETY-SENSITIVE EMPLOYEES AND SUPERVISORS

- A. All safety-sensitive employees shall receive a minimum of 60 minutes of training on the effects and consequences of prohibited drug and alcohol use on personal health, safety, and the work environment and indicators of prohibited drug use.
- B. Supervisors responsible for making the decision to generate a reasonable suspicion test must receive a minimum of 60 minutes of training on drug and 60 minutes of training on alcohol information regarding the physical, behavioral, speech and performance indicators of probable drug and alcohol use.

XI. TESTING OVERVIEW

- A. Analytical urine drug testing and breath testing for alcohol may be conducted when circumstances warrant and as required by Federal regulations. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability, using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted according to the procedures put forth in 49 CFR Part 40, as amended, including, picture identification of the employee, Federal Drug Custody and Control Form with unique specimen identification number completed by a trained collection site person who insures that the Custody and Control Form is completed correctly and signed and certified by the donor, collection of Split Sample specimens that are sealed and initialed by the donor. (See Attachment A for more detailed procedures)
- B. The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, phencyclidine and MDMA (ecstasy). An initial drug screen, called an immunoassay test, will be conducted on each urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40, as amended.
- C. In instances where there is a reason to believe an employee is abusing a substance other than the six drugs listed above, Chino Valley Transit reserves the right to request a separate sample and to test for additional drugs under Chino Valley Transit's own authority using standard laboratory testing protocols. Chino Valley Transit also reserves the right to require a fitness-for-duty examination by a licensed physician when an employee's observable behavior and actions are considered to be inconsistent with a safe workplace.
- D. The integrity of the alcohol testing process is insured by picture identification of the employee, use of a National Highway Traffic Safety Administration (NHTSA) approved Evidential Breath Testing Device (EBT) that displays and prints unique sequential numbers and is capable of producing 3 copies of the test result. The test is administered by a certified Breath Alcohol Technician (BAT) who is "trained to proficiency" in the operation of the EBT being used. The BAT completes a Federal Breath Alcohol Testing form and insures that it is signed by the donor. The employee shall be provided with written instructions prior to specimen collection for drug testing. If the initial test indicates an

alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. A safety-sensitive employee who has a confirmed alcohol concentration of 0.02 or greater, but less than 0.04 will immediately be removed from his/her safety-sensitive duties for a minimum the start of the employee's next regularly scheduled duty period, but not less than 8 hours or until a retest results in a concentration measure of less than 0.02. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy and a violation of the requirements set forth in 49 CFR Part 655 for safety-sensitive employee. Alcohol testing will only be done just prior to, during, or just after a safety-sensitive employee's shift.

- E. Screening Test Technicians (STT) may be used to perform alcohol screening tests (saliva or breath); however, an EBT operated by a BAT must be used for confirmation of an alcohol test. Neither the STT nor BAT may act as a collector if they are a direct supervisor of the employee.
- F. Any safety-sensitive employee that has a confirmed positive drug or alcohol test will be immediately removed from their duties, informed of educational and rehabilitation programs available and referred to a Substance Abuse Professional (SAP) for an evaluation and assessment. A positive drug and/or alcohol test will result in disciplinary action, up to and including termination.

**G. Negative Dilute Drug Test Result**

Following a negative dilute test the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required *unless directed to do so by the MRO*.

**H. Employee Requested Testing**

Any safety-sensitive employee who questions the results of a required drug test may request that an additional test be conducted. This test must be conducted at a different DHHS certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the original sample. The employee is responsible for all costs for such testing unless the result of the split sample test invalidates the result of the original test. However, if the employee is unable or refuses to pay for the testing, Chino Valley Transit will pay and ensure that the testing is done in a timely manner. Chino Valley Transit may require reimbursement for the cost from the employee. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for split sample testing must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. The MRO must direct the laboratory in writing to send the split sample with appropriate copies of the chain of custody form and a copy of the MRO's request for testing to another DHHS certified laboratory. Requests after 72 hours will only be accepted if the delay was due to documented facts that were beyond the control of the employee.

**XII. TYPES OF DRUG AND ALCOHOL TESTING EVENTS**

Drug tests can be performed any time a safety-sensitive employee is on duty. An alcohol test can be performed anytime the covered employee is performing a safety sensitive duty or just before, or just after the performance of a safety sensitive duty. Under the authority of Chino Valley Transit, the use or influence of drugs and alcohol on a covered employee anytime that employee is on duty is prohibited.

A. Pre-Service Testing

1. All safety-sensitive position applicants shall undergo urine drug testing immediately following the offer of service into a safety-sensitive position or before transferring into a safety-sensitive position. Receipt by Chino Valley Transit of a negative drug test result is required prior to performing safety-sensitive duties. If the test is cancelled the applicant must retake and pass a drug test before performing safety-sensitive duties.
2. If a safety-sensitive employee returns to work and has been off for 90 days or more and has not remained in the random pool, he/she must pass a Pre-Service test before resuming safety sensitive duties.
3. When a covered employee or applicant has previously failed a pre-service drug test, (or any other drug or alcohol test or refused to be tested in the prior 2 years), the employee must present to the employer proof of having completed an evaluation by an SAP to be considered for the hiring process.
4. If otherwise qualified, an individual with permanent or long term disabilities that directly render them unable to provide an adequate urine specimen will be able to perform safety-sensitive duties despite their inability to provide urine during a pre-service test. The MRO will determine long term inability to provide urine by medical examination and consultation with the employee's physician.

B. Reasonable Suspicion Testing

1. All safety-sensitive employees may be subject to fitness for duty evaluation and urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral must be made by a supervisor, trained in the signs and symptoms of drug and alcohol use, who has personally observed and documented objective facts and circumstances which are consistent with the short-term effects of substance abuse. The criteria for a reasonable suspicion test must be based on contemporaneous, articulable, observations concerning the appearance, behavior, speech, or body odor of the safety-sensitive employee. A supervisor making the decision to reasonable suspicion test must have had the appropriate training as defined in the regulations and may not act as the STT or BAT for that test.
2. Once the decision to reasonable suspicion test is made, the employee will be removed from safety-sensitive duties until the test results are received. The employee will be escorted to the collection site by the supervisor or another transit employee.

C. Post Accident Testing

1. Post-accident testing of safety-sensitive employees involved in an accident/incident with Chino Valley Transit's vehicle (regardless of whether or not the vehicle is in revenue service) will be subject to post accident drug and alcohol testing. Post-Accident testing is mandatory for accidents where there is loss of life. Testing is also required for nonfatal accidents if, 1) any individuals involved in the accident are transported and receives medical treatment away from the scene of the accident, or 2) one or more vehicles involved in the accident incurs disabling damage (damage which precludes the departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repair) requiring transportation from the scene by tow truck or other vehicle; or if the transit vehicle is a rail vehicle or vessel that is removed from revenue service.

2. When there is loss of human life, each surviving safety-sensitive employee on duty in the mass transit vehicle at the time of the accident must be tested. Safety-sensitive employees not in the vehicle (e.g. maintenance personnel), whose performance could have contributed to the accident (as determined by Chino Valley Transit using the best information available at the time of the accident) must be tested.
3. Safety-sensitive employees on duty in the transit vehicle at the time of a nonfatal accident (fitting the criteria above) must be tested unless their behavior can be completely discounted as a contributing factor in the accident. Other safety-sensitive employees whose performance could have contributed to the accident, as determined by Chino Valley Transit using the best information available at the time of the accident shall also be tested after a non-fatal accident.
4. Following an accident safety-sensitive employee will be tested as soon as possible, but not to exceed 32 hours for drug testing. If alcohol testing is not done within 2 hours of the accident, the reason for not testing should be documented in a report and attempts to alcohol test must continue for up to 8 hours after the accident. If alcohol testing is not done within 8 hours or drug testing is not done within 32 hours following the accident, the reasons for not testing must also be updated on the written report. Any safety-sensitive employee involved in an accident must refrain from alcohol use for eight hours following an accident or until they undergo a post-accident alcohol test.
5. The results of a blood, urine, or breath test conducted by Federal, State, or local officials shall be considered to meet the requirements of this section, provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results can be obtained by the employer
6. The requirements to test for drugs and alcohol following an accident should in no way delay necessary medical attention for injured people or prohibit a safety-sensitive employee from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care. However, the safety-sensitive employee must remain readily available, which means Chino Valley Transit knows the location of the safety-sensitive employee. Any safety-sensitive employees who leaves the scene of the accident, without a justifiable explanation, prior to submission to drug and alcohol testing will be considered to have refused the test and shall face disciplinary action up to and including termination.

#### D. Random Testing

1. All safety-sensitive employees shall be subject to random, unannounced testing. The required percentage of employees that is subject to Federal Transit Authority's (FTA) original random testing rate was: 50% for drugs and 25% for alcohol. These percentages are subject to annual review by the FTA. The current FTA rates for random testing are a minimum of 25% for drugs and 10% for alcohol. The selection of safety-sensitive employees for random drug and alcohol testing shall be made using a scientifically valid method such as a random number table or a computer-based random number generator that ensures each safety-sensitive employee that they will have an equal chance of being selected each time selections are made. Random tests will be unannounced and spread throughout all days and all hours of all shifts that Chino Valley Transit is in operation during the year. The employee is to proceed to the testing site immediately upon notification of a random test.
2. There is no discretion on the part of management or operations in the selection and notification of individuals for testing.

E. Return To Duty Testing

Before any safety-sensitive employee is allowed to return to duty performing safety-sensitive duties following a verified positive drug or alcohol test they must be evaluated by a SAP and provide a negative return to duty test. Return to duty testing is done after the recommendation of the SAP and decided upon by the Designated Employer Representative (DER) and may be for drugs and/or alcohol.

F. Follow-up Testing

Once a safety-sensitive employee is allowed to return to duty, they shall be subjected to unannounced random follow-up testing for at least 12 months, but not more than 60 months with a minimum of 6 tests being done during the first 12 months. The SAP will determine the frequency and duration of the follow-up testing. Follow-up testing is separate from and in addition to the regular random testing program. Employees subject to follow-up testing must also remain in the standard random pool and must be tested whenever their name comes up for random testing, even if this means being tested twice in the same day, week, or month.

1. Second Chance Policy

Chino Valley Transit allows safety sensitive employees who have a verified positive drug and alcohol test a second chance to return to duty following adherence to Terms for Re-entry to Service

2. Terms of Re-Entry to services

Employees who re-enter the workforce must agree to terms for re-entry into the transit program prior to performing duties. The terms may include (but is not limited to):

- A release to work statement from the Substance Abuse Professional.
- A negative test for drugs and/or alcohol.
- An arrangement to unannounced frequent follow-up testing for a period of one to five years with at least six tests performed the first year.
- A statement of expected work-related behaviors.
- An agreement to follow specified after-care requirements with the understanding that violation of the re-entry contract is grounds for discharge

G. Employee Access to Records

1. Testing records must be kept in a secure location with controlled access. Drug and alcohol test results may be released only under the following circumstances:
  - a. Employer shall release information or copies of records regarding a employee's test results to a third party only as directed by specific, written instruction of the employee.
  - b. Employer may disclose information related to a test result to the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee tested.
  - c. Upon written request, employer must promptly provide any employee with any records relating to his/her test, including calibration records and laboratory certification records.

- d. Employer must release information to the National Transportation Safety Board (NTSB) about any post-accident test performed for an accident under NTSB investigation.
- e. Employer shall make available copies of all results of employer testing programs, and any other records pertaining to testing programs when requested by DOT or any DOT agency with regulatory authority over the employer or any of its employee, or to a State oversight agency authorized to oversee rail fixed guideway systems.

### XIII. DRUG TESTING PROCEDURES

#### A. Urine Specimen Collection

Urine collections will be performed to the standards set in 49 CFR part 40 as amended. An overview of the procedures is available in Attachment A to this Policy. A copy of 49 CFR Part 40 is available upon request from the Human Resources Department

#### B. Alcohol Testing

All alcohol testing procedures will be done according to the standards set forth in 49 CFR part 40 as amended. An overview to the procedures is available in Attachment A to this Policy.

#### C. Medical Review Officer (MRO)

1. The laboratory results must be reviewed by a qualified MRO. The purpose of this review is to verify and validate test results. The laboratory shall report all results to the MRO in a confidential manner.
2. A qualified MRO is a licensed physician 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 to make a determination on the laboratory test result.
3. The MRO shall meet the requirements and follow all procedures set forth in 49 CFR Part 40 as amended.

#### D. Substance Abuse Professional (SAP)

1. Any individual who has a verified positive drug or alcohol test shall be removed from safety-sensitive duties immediately, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP). A SAP can be a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders or an addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission.
2. The responsibilities of the SAP include:
  - a. Evaluating whether a safety-sensitive employee who has refused to submit to a drug or alcohol test or who has a verified positive drug or alcohol test result is in need of assistance in resolving the problems associated with prohibited drug and alcohol use.

- b. Evaluating whether a safety-sensitive employee who has a verified positive drug or alcohol test result has complied with the SAP's recommendations.
- c. Determine when return-to-duty testing is appropriate and whether it should be for drugs and/or alcohol.
- d. Recommend the number of months the returning safety-sensitive employee will be subject to follow-up testing (after the minimum six tests during the first 12 months) and whether it will be for drugs and/or alcohol.
- e. The SAP who determines that a covered employee requires assistance in resolving problems with substance abuse may not refer the employee to the SAP's private practice from which the SAP receives remuneration or to a person or organization in which the SAP has a financial interest.
- f. The SAP must meet the requirements and follow the procedures and responsibilities set forth in 49 CFR part 40 subpart O.

XIV. CONTACTS

A. Program Manager (DER Designated Employer Representative):

Title: Human Resources  
 Address: PO Box 406, Chino Valley, AZ 86323  
 Telephone: (928) 636-2646

B. DOT Medical Review Officer ( MRO) Services Will Be Provided by:

Name: Neil J Dash MD  
 Address: 546 Franklin Ave, Massapequa NY 11758  
 Telephone: 800-526-9341 Fax: 516-797-1293

C. Non-DOT Medical Review Officer ( MRO) Services Will Be Provided by:

Name: Robert Palmer PhD  
 Address: 624 W. Gurley Street Suite A, PO Box 10760, Prescott, AZ 86304  
 Telephone: 928-778-2170

D. Pre-Employment (Only) DOT Medical Review Officer ( MRO) Services Will Be Provided by:

Name: Dr. Timothy Woehl  
 Address: 1424 W. Elliot Road, Suite 201, Gilbert, AZ 85233  
 Telephone: 480-539-3947

E. Pre-Employment Non-DOT Only Medical Review Officer ( MRO) Services Will Be Provided by:

Name: J.J. Oakley, Bradshaw Lab  
 Address: 990 Willow Creek Road, Prescott, AZ 86301  
 Telephone: 928-778-4510

F. Paid Employee Substance Abuse Professional (SAP):

Name: (EAP) Holman Frazier, LLC  
Address: 7418 E. Helm Drive, Suite 236, Scottsdale, AZ 85260  
Telephone: 822-321-2843  
Email: [www.holmangroup.com/holmanfrazier/](http://www.holmangroup.com/holmanfrazier/)

G. Non-Paid Employee (Volunteer) Substance Abuse Assistance

Telephone: 1-800-662-HELP

H. DHHS Certified Laboratory:

Name: AZ Department of Health Services  
Address: 150 North 18<sup>th</sup> Avenue, Phoenix, AZ 85007  
Telephone: 602-542-1025

I. Collection Site (pre-employment testing only; non-DOT);

Name: Bradshaw Mountain Labs  
Address: 990 Willow Creek Road, Prescott, AZ 86301  
Telephone: 928-778-4510

J. Collection Site for All other testing;

Name: Palmer Investigative Services  
Address: P.O. Box 10760, Prescott, AZ 86304-0760  
Telephone: 928-778-2951  
(800)-280-2951  
928-533-6839 (After Hours only)  
Fax: 928-445-7204

**The Toll-Free  
Number for  
Substance Abuse  
Treatment Referral  
Service  
is  
1-800-662-HELP  
(1-800-662-4357)**

**EMPLOYEE RECEIPT OF  
DRUG AND ALCOHOL POLICY**

**Return this completed form to your immediate supervisor**

Print Employee Name: \_\_\_\_\_

I have received and read The Town's Transit Drug and Alcohol Policy. I understand that I will be held responsible for the content of the policy and I agree to abide by drug and alcohol testing policy. If I need any clarification or if I have any questions regarding the substance of the policy, I will address them with Chino Valley Transit's program administrator.

I understand that violation of this Policy may be grounds for immediate termination of my service.

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

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

# Attachment A

## Urine Collection and Alcohol Testing Procedures

Urine collection for drug testing shall be done at a location that provides:

- a privacy enclosure for urination
- a toilet receptacle large enough to contain a complete void
- a source for washing hands
- a suitable surface for writing

The collection site personnel shall be trained in the proper procedures for preparing the collection site, collecting the urine specimen, sealing and preparing the specimen for shipment and completing the custody and control form as required in 49 CFR Part 40.

A Federal drug testing custody and control form will be used for the collection unless the test is being performed under the authority of Chino Valley Transit and does not meet the FTA guidelines.

The collection room shall be inspected by the collector before and after each specimen collection for removal of any unauthorized persons and materials that could be used to adulterate the specimen. The collection site will be secure to prevent unauthorized access during the collection process.

The collector will verify the employee's identity by photo identification or by a Chino Valley Transit representative. The collection will not proceed if identity is not verified. The collection site will notify the employer if the employee fails to report or arrives more than 30 minutes late for the appointment.

The employee will be requested to check belongings (purses & briefcases) and remove any bulky outerwear (sweaters, jackets, vests, etc.) The employee may retain their wallet.

The employee will be directed to wash their hands.

The collector will remove the wrapping the collection cup or specimen bottle in front of the employee and direct them to the privacy enclosure. The collector remains outside the enclosure. The employee is instructed to provide at least 45 ml (about 2 ounces) of urine.

If the employee is unable to provide at least 45 ml of urine they will be given up to 40 ounces (measured) of fluids and remain at the collection site for up to 3 hours in an attempt to provide the specimen. If the required amount is provided, the specimen is forwarded to the laboratory. If the employee is unable to provide an adequate specimen within 3 hours, the insufficient specimen is discarded, testing discontinued and the employer notified. The MRO/DER shall refer the employee for a medical evaluation to determine whether the employee's inability to provide a specimen is genuine or constitutes a refusal to submit to a drug test. The examining physician shall provide the MRO a brief statement setting forth his/her conclusion and the basis for it. Upon receipt of the statement the MRO shall report his/her conclusions to the employer in writing. If the MRO determines there is no medical explanation for the inability to provide an adequate specimen, this will be considered a refusal to test.

Within four (4) minutes of receiving the specimen from the employee, the collector will record the temperature of the specimen on the custody and control form. The temperature must be between 90.0 and 100.0 F. Any specimen temperature out of that range requires a second specimen to be collected immediately under direct observation by a collector of the same gender. The incident is noted in the remarks section of the custody and control form and both specimens are sent to the laboratory. The collector shall also visually examine the specimen for any unusual color or sediment, and note anything unusual on the custody and control form.

If the employee refuses to cooperate with the collection process the collector notifies the employer immediately and documents the non-cooperation on the custody and control form.

If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen. If a specimen bottle is used as a collection container, the collector shall pour off 30 ml of urine from the specimen bottle into a second specimen bottle, to be used as the primary bottle), and retain the remainder (at least 15 ml) in the collection bottle to be used as the split specimen.

Both bottles must be sealed and labeled in the presence of the donor. The labels must be printed with the same specimen identification number as the custody and control form. The donor initials the seals on the bottles verifying the specimen is his/hers.

The custody and control form is completed. The collector and the donor must sign the appropriate certification statements on the form regarding authenticity of the specimen and information provided and the integrity of the collection process. Each transfer of custody must be noted on the chain of custody portion of the urine custody and control form. Every effort should be made to minimize the number of persons handling the specimen.

The specimen must be stored in a secured location until transport to the laboratory. Both the primary specimen and the split specimen shall be sealed in a single shipping container, together with the appropriate pages of the custody and control form. The tape seal on the container shall bear the initials of the collector and the date of the closure for shipment. Observed Collections

Procedures for collecting urine specimens shall allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided.

In the following circumstances the collector must observe the collection.

- The employee has presented a urine sample that falls outside the normal temperature range (90.0 to 100.0 F)
- The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.)
- Previous sample is invalid and there is no medical reason: the collector is informed by the employer or MRO
- The employee has previously been determined to have used a controlled substance without medical authorization and the particular test is being conducted under the FTA regulations as a return to duty or follow-up test

The direct observation must be by a collector (or observer) of the same gender as the employee being tested. The observed collection procedure must adhere to the requirements of 49CFR part 40 as amended (8-30-09). This includes lowering pants or skirts and raising shirts or blouses and turning around to ensure no prosthetic device is being used.

#### ALCOHOL TESTING PROCEDURES

Alcohol testing shall be done at a location that provides:

- Privacy to the individual being tested
- Security with no unauthorized access at any time to EBT

- BAT conducting only one test at a time who must not leave the testing site while the preparations for testing or the test itself are in progress

Upon arrival at the testing site the employee must provide positive identification in the form of a photo identification or identification by a Chino Valley Transit agency representative.

The BAT will explain the testing procedures to the employee.

The BAT and the employee will complete, date and sign Step #1 and Step #2 of the alcohol testing form indicating the employee is present and providing a breath specimen. Refusal by the employee to sign Step #2 of the alcohol testing form will be noted by the BAT in the remarks section and is considered a refusal to test.

### Screening Test

Employee is informed that testing will begin with a screening test. The BAT will open an individually sealed, disposable mouthpiece in view of the employee and attach it to the EBT.

The employee will be instructed to blow forcefully into the mouthpiece for at least six seconds or until an adequate amount of breath has been obtained. The BAT will show the employee the result displayed on the EBT or the printed result.

If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required. The BAT and the employee will finish filling out the alcohol testing form. The employee may return to their safety sensitive position and the test will be reported to the employer as a negative.

Note: Alcohol screens may be performed by certified Screening Test Technicians (STT) using alternative alcohol screening devices approved by the Department of Transportation. The alternative methods may test either breath or saliva. If the screening test results are 0.02 or greater a confirmation test by a BAT, using an evidential breath testing device, must be performed.

### Confirmation Test

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test must be performed.

The confirmation test must be conducted at least 15 minutes, but not more than 30 minutes, after the completion of the initial test. This delay prevents any accumulation of alcohol in the mouth from leading to an artificially high reading.

The BAT will inform the employee of the need to conduct a confirmation test. The employee will be instructed not to eat, drink, or put any object or substance in his/her mouth. The BAT will also instruct the employee not to belch to the extent possible while awaiting the confirmation test. The BAT will inform the employee that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instructions.

Before the confirmation test is administered, the BAT shall conduct an airblank on the EBT. If the reading is greater than 0.00, the BAT shall conduct one more airblank. If the second airblank reading is greater than 0.00, the EBT must not be used to conduct the test.

The confirmation test is conducted using the same procedures as the screening test. A new mouthpiece will be used.

If the initial and confirmatory test results are not identical, the confirmation test result is deemed to be the final result.

If the result displayed on the EBT is not the same as that on the printed form, the test will be cancelled, and the EBT removed from service.

The BAT will sign and date the form. The employee will sign and date the certification statement, which includes a notice that the employee cannot perform safety-sensitive duties or operate a motor vehicle if the results are 0.02 or greater. Refusal by the employee to sign the certification statement is not considered a "refusal to test", but it will be noted in the remarks section by the BAT.

The BAT will attach the alcohol test result printout directly onto the alcohol collection form with tamperproof tape (unless the EBT prints the results directly on the form).

### Reporting

The BAT will transmit all results to the Designated Employer Representative in a confidential manner. In the event an individual must be removed from safety-sensitive duties as a result of the alcohol test, the BAT will notify the Designated Employer Representative immediately.

# **Attachment B**

## **DOT Office Drug and Alcohol Policy and Compliance Notice**

# **Attachment C**

Copy of Resolution No. 11-977

## DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE



Recently, the Department of Justice (DOJ) issued guidelines for Federal prosecutors in states that have enacted laws authorizing the use of “medical marijuana.”  
<http://www.justice.gov/opa/documents/medical-marijuana.pdf>.

We have had several inquiries about whether the DOJ advice to Federal prosecutors regarding pursuing criminal cases will have an impact upon the Department of Transportation’s longstanding regulation about the use of marijuana by safety-sensitive transportation employees – pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency response personnel, among others.

We want to make it perfectly clear that the DOJ guidelines will have no bearing on the Department of Transportation’s regulated drug testing program. We will not change our regulated drug testing program based upon these guidelines to Federal prosecutors.

The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize “medical marijuana” under a state law to be a valid medical explanation for a transportation employee’s positive drug test result.

That section states:

**§ 40.151 What are MROs prohibited from doing as part of the verification process?**

As an MRO, you are prohibited from doing the following as part of the verification process:

(e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the “medical marijuana” laws that some states have adopted.)

Therefore, Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use “medical marijuana.” Please note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.

We want to assure the traveling public that our transportation system is the safest it can possibly be.

Jim L. Swart  
Director  
Office of the Secretary of Transportation  
Office of Drug and Alcohol  
Policy and Compliance  
Department of Transportation  
October 22, 2009

**ATTACHMENT B TO CHINO VALLEY TRANSIT DRUG & ALCOHOL POLICY**