

**SUBSTANCE ABUSE POLICY FOR
MOUNTAIN MOBILITY**

Policy Adopted: 11/21/1995, Resolution 95-11-11
Amendment 1: 12/15/1998, Resolution 98-12-5
Amendment 2: 08/01/2001, Resolution 01-12-08
Amendment 3: 03/01/2010, Resolution 10-08-02
Amendment 4: 11/1/2011, Resolution 11-11-01
Amendment 5: 8/1/2017, Resolution 17-08-07
Amendment 6: 1/2/2018, Resolution 18-01-03
Amendment 7: 10/6/2020, Resolution 20-
 (Note: Addendum 1: 10/1/2010, Resolution 10-19-10 incorporated herein)

**Amendment Adopted by the
Buncombe County Board of Commissioners**

Chairman, Board of Commissioners

1.0 POLICY

The County of Buncombe is entrusted with the health and safety of its citizens and is dedicated to providing safe, effective transportation services for citizens through Mountain Mobility. In keeping with this obligation and as a recipient of federal and state funds under the Federal Transit Act, as amended, it is the policy of the County of Buncombe to: (1) assure that safety-sensitive duties and responsibilities associated with the operation of Mountain Mobility are performed in a safe, productive, and healthy manner; (2) assure that workplace environments are free from the adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances or alcohol in the workplace, or reporting to work under the influence of any controlled substance or alcohol; and (4) encourage professional assistance anytime that personal problems, including alcohol or drug dependence, adversely affect the performance of assigned duties.

2.0 PURPOSE

The purpose of this policy is to assure worker fitness and to protect employees and the public from the risks posed by the use of prohibited drugs and the misuse of alcohol. This policy is intended to comply with all applicable federal regulations governing and requiring anti-drug and alcohol misuse programs in the workplace, including the following regulations:

Federal Agency	Regulations	Requirements
USDOT/Federal Transit Administration	49 CFR Part 655 - "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"	Mandates breath alcohol testing and urine drug testing for employees performing safety-sensitive functions and prohibits performance of those functions if results are positive.
USDOT	49 CFR Part 40 - "Procedures for Transportation Workplace Drug and Alcohol Testing Programs"	Sets standards for the collection and testing of urine and breath specimens.
Federal Government	49 CFR Part 29 - "The Drug-Free Workplace Act of 1988"	Requires the establishment of drug-free workplace policies and the reporting of violations.

Note: Other than identifying titles, all provisions set forth in **bold face print** are consistent with the requirements specifically set forth in 49 CFR Part 655, or Part 40, as amended. Provisions set forth in the Drug-Free Workplace Act are delineated in *italics*. All other provisions are set forth under the authority of the Board of Commissioners for the County of Buncombe as a recipient of FTA or other federal funds and shall establish minimum requirements for anti-drug and alcohol misuse programs affected by this policy statement.

3.0 APPLICABILITY

3.1 Safety-Sensitive Functions and Employees

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties. A safety-sensitive function is any duty related to (1) the operation of a public transit revenue service vehicle (whether or not the vehicle is in revenue service); (2) the operation of a nonrevenue service vehicle that requires a Commercial Driver's license to operate; (3) the control, dispatch, and/or movement of a revenue service vehicle; (4) the maintenance of a revenue service vehicle or equipment used in revenue service, unless such maintenance service is contracted out; and/or (5) security personnel who carry firearms in connection with their transportation duties.

A list of positions with duties related to Mountain Mobility and any safety-sensitive functions applicable to those positions is included as Attachment A to this policy. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense. All employees of the County of Buncombe and/or of any agency or contractor who perform safety-sensitive functions shall be hereinafter collectively referred to as "safety-sensitive employees."

3.2 Agencies and Contractors

Any agency or contractor whose employees perform safety-sensitive functions shall establish and implement an anti-drug and alcohol misuse program and policy statement consistent with federal regulations and requirements of this policy statement. All program and policy statements developed relative to Mountain Mobility shall be subject to review and approval by the County of Buncombe and any other state and/or federal agency or department that may have purview over such policy statements. The provisions of this policy shall incorporate all rules and regulations that are required by the FTA on the prevention of alcohol misuse and prohibited drug use in transit operations, including those presently in effect or as is or may be amended and become effective in the future, whether or not said rules and regulations are expressly set forth in this policy. The agency or contractor shall certify that its anti-drug and alcohol misuse program complies with FTA regulations and this policy and that the program and applicable training has been implemented by January 1, 1996, or by subsequent dates applicable for amended rules and regulations.

The agency or contractor shall comply with all applicable regulations and shall notify its safety-sensitive employees of the requirement for alcohol and drug testing under federal regulations. The agency or contractor shall provide applicable education and training to its safety-sensitive employees, shall maintain required records, and shall submit, in a timely manner and as specified by the County of Buncombe, all training reports, management reports summarizing the results of its anti-drug and alcohol misuse program, and other applicable reports and information to the County of Buncombe as required under the regulations and/or other applicable contractual agreements. The agency or contractor shall be monitored by the County of Buncombe for compliance with the regulations and with this policy statement. Unless otherwise provided, the agency or contractor shall bear implementation, training, testing, and any other costs incurred in order to comply with applicable federal regulations and this policy statement.

The agency or contractor shall inform each safety-sensitive employee if it implements an anti-drug and alcohol misuse program and testing that is not required by FTA regulations. The agency or contractor shall not impose requirements that are inconsistent with, contrary to, or otherwise conflict with the provisions of applicable federal regulations. If the agency or contractor prohibits other behaviors or conducts any testing under its own authority, the agency or contractor shall clearly identify such provisions in its policy.

The agency or contractor also shall cooperate to the fullest extent possible in providing to any federal, state, or local agency documentation on or information about its compliance with this policy and/or drug and alcohol testing requirements and regulations.

3.3 Dissemination of Policy

A copy of applicable regulatory requirements and this policy statement shall be provided to any agency or contractor whose employees are responsible for performing safety-sensitive functions associated with the administration, operation, or management of Mountain Mobility. An authorized representative for the agency or contractor shall sign a "Confirmation of Receipt" form acknowledging receipt of the regulations and this policy statement. **The agency or contractor shall distribute a copy of this policy and/or its policy as applicable to every safety-sensitive employee and their employee organizations as applicable.** Each safety-sensitive employee shall be requested to sign a statement confirming his/her receipt of the policy.

3.4 Proper Application of Policy Requirements

The County of Buncombe is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, all aspects of this policy shall be used and applied in an unbiased and impartial manner. Any employee who knowingly applies the requirements of this policy in an improper manner, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

4.0 ILLEGAL USE OF PROHIBITED SUBSTANCES

"Illegal use" includes the use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. "Prohibited substances" addressed by this policy include the following:

4.1 Controlled Substances or Illegal Drugs

Prohibited substances shall include *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: **marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine**, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical/recreational use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy. **Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.**

4.2 Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. However, prior to performing any safety-sensitive duties, a safety-sensitive employee shall supply a written statement from their physician or pharmacist indicating that their use of a prescribed drug or non-prescription medication will not affect their performance of safety-sensitive functions, if the drug or medication carries a warning label that indicates that mental functioning, motor skills, or judgement may be adversely affected.

4.3 Alcohol

The use of beverages ~~or substances~~ containing alcohol (including ~~any~~ medication, mouthwash, food, candy), or any other substance) containing alcohol in a manner which violates the conduct listed in this policy is prohibited. ~~to the degree that alcohol is present in the body while performing safety sensitive duties.~~ The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an indicated by a breath test under 49 CFR Part 40.

5.0 PROHIBITED CONDUCT

5.1 Manufacture, Distribution, Possession, and/or Use

All employees, regardless of whether safety-sensitive functions are performed, are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, and/or use of prohibited substances in any building, premise, or vehicle that is owned, leased, or otherwise used while performing work. The use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs is prohibited at all times. Any employee who violates this provision shall be subject to disciplinary action up to and including termination.

5.2 Intoxication/Under the Influence

A 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 performing safety-sensitive functions pending an investigation and verification of condition. **Safety-sensitive employees found to be under the influence of prohibited substances or who fail to pass a drug or alcohol test (including a refusal to test) shall be removed from performing safety-sensitive functions immediately, shall be referred to a list of USDOT qualified SAPs, and shall be 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.**

5.3 Alcohol and Drug Misuse

All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended. Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed. Each covered employee should not report to work or be on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02-0.039. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee has not consumed the alcohol within four (4) hours of performing a safety-sensitive duty. If a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT-FTA regulations require the employee be removed from the performance of safety-sensitive duties until:

- i. The employee's alcohol concentration measures less than 0.02; or**
- ii. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.**

A safety-sensitive employee is prohibited from using alcohol while on duty, while performing safety-sensitive functions, or just before or just after performing a safety-sensitive function. A safety-sensitive employee shall not consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions or while on-call to perform safety-sensitive functions. A safety-sensitive employee shall not consume alcohol within eight (8) hours following involvement in an accident, or until tested, whichever occurs first. Violation of these provisions is prohibited and punishable by disciplinary action up to and including termination.

5.4 Compliance with Testing Requirements

Pursuant to 49 CFR Part 655, all safety-sensitive employees shall be subject to urine drug testing and breath alcohol testing as a condition of employment. Before performing a drug or alcohol test under this part, the safety-sensitive employee shall be notified that the test is being administered under this part. Any safety-sensitive employee who refuses to comply with a request for testing shall be immediately removed from duty, and their employment terminated.

Drug tests can be performed any time a safety-sensitive employee is on duty. An alcohol test can only be performed when the safety-sensitive employee is actually performing a safety-sensitive duty, just before, or just after the

performance of a safety-sensitive duty.

5.5 Treatment Requirements

All safety-sensitive employees are encouraged to make use of the available resources for treatment for alcohol misuse and drug use problems. Unless otherwise provided, the cost of any treatment or rehabilitation services shall be paid for directly by the safety-sensitive employee or their insurance provider.

If a safety-sensitive employee refuses to be evaluated by a substance abuse professional or fails to comply with a treatment or after care program recommended by a substance abuse professional, employment shall be terminated.

5.6 Notification of Criminal Drug Convictions

All employees, regardless of whether safety-sensitive functions are performed, are required to notify supervisory personnel of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Further, such violations shall be reported to the Federal Transit Administration by appropriate supervisory personnel within ten days of notification from the employee. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

6.0 TESTING PROCEDURES

Analytical urine drug testing and breath testing for alcohol shall be conducted when circumstances warrant or as required by 49 CFR Part 40 as amended. . Testing methods shall be consistent with 49 CFR Part 40, as amended. All safety-sensitive employees shall be subjected to testing as follows: (a) prior to employment; (b) on an unannounced, random basis; (c) for reasonable suspicion; (d) following an accident; (e) prior to returning to duty following the refusal to take a required test or prior to returning to duty following a positive drug or alcohol test; and (f) follow-up testing after returning to duty following a positive test.

Drug and alcohol testing shall be conducted in a manner to assure a high degree of accuracy and reliability and shall be conducted using techniques, equipment, and laboratory facilities which have been certified under the U.S. Department of Health and Human Services (DHHS) “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” as amended. All drug and alcohol testing for safety-sensitive employees shall be conducted in accordance with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result. Observed collections shall be required as applicable under 49 CFR Part 40, as amended.

The drugs that will be tested for shall include marijuana, cocaine, opioids, amphetamines, and phencyclidine (PCP). Urine specimens will be collected using the split specimen collection method described in 49 CFR Part 40. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. An initial drug screen shall be conducted on the primary urine specimen. For those specimens that are not negative, a confirming Gas Chromatography/Mass Spectrometry (GC/MS) or Liquid Chromatography/Mass Spectrometry (LC/MS) test will be performed. The drug test shall be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the laboratory will be reported to a Medical Review Officer (MRO). A MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO also shall be knowledgeable about 49 CFR Part 40, as amended, DOT MRO Guidelines, and other applicable regulations. The MRO also must have received qualification training and continuing education that meet the requirements of 49 CFR Part 40, as amended. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive test result. The MRO will contact the

employee, notify the employee of the positive laboratory result, and provide the employee with an opportunity to explain the confirmed test result. The MRO will subsequently review the employee's medical history/medical records to determine if there is a legitimate medical explanation for a positive laboratory result. If no legitimate medical explanation is found, the test will be verified positive and reported to the project manager. If a legitimate explanation is found, the MRO will report the test result as negative.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

A reasonable suspicion ~~or~~ random, or follow-up alcohol test can only be conducted just before, during, or just after performing a safety-sensitive function. Initial screening tests shall be conducted utilizing either a non-evidential breath testing device or a National Highway Traffic Safety Administration (NHTSA)-approved evidential breath testing device (EBT). If the initial test indicates an alcohol concentration of .02 or greater, a second test shall be performed to confirm the results of the initial test. A NHTSA-approved EBT device shall be utilized to perform confirmation tests. All tests utilizing EBT devices shall be conducted by a trained breath alcohol technician (BAT). The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout along with an approved alcohol testing form will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40 as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

A safety-sensitive employee who has a confirmed alcohol concentration of equal to or greater than 0.02 but less than 0.04 will be removed from his/her position for eight hours unless a retest results in a concentration of less than 0.02. The inability to perform safety-sensitive duties due to an alcohol test result of greater than 0.02 but less than 0.04 will be subject to disciplinary action up to and including termination. 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 employees.

Any safety-sensitive employee that has a confirmed positive drug or alcohol test, or refusal to test, will be removed from his/her position, informed of educational and rehabilitation programs available, and referred to a list of USDOT qualified Substance Abuse Professionals for assessment. A positive drug test or positive alcohol test or non-negative alcohol test will result in disciplinary action up to and including termination.

Individual dignity, privacy, and confidentiality throughout the testing process shall be recognized.

6.1 Employee-Requested Re-Testing

Any safety-sensitive employee who questions the results of a required drug test may request that a test be conducted on the remaining split sample of the urine specimen. The safety-sensitive employee's request must be made to the Medical Review Officer within 72 hours of notice of a verified positive test result of the original sample. Requests after 72 hours shall only be accepted if the delay was due to documentable facts that were beyond the control of the safety-sensitive employee.

Split-specimen testing that is requested by a safety-sensitive employee shall be conducted at a different DHHS-certified laboratory and shall be conducted on the split sample that was provided by the safety-sensitive employee at the same time as the original sample was collected. The method of collecting, storing, and testing the split sample shall be consistent with the procedures set forth in 49 CFR Part 40, as amended. Unless otherwise provided, the cost for testing the split sample shall be borne by the safety-sensitive employee.

6.2 Pre-Employment Testing

All persons applying for employment positions requiring the performance of safety-sensitive functions as a condition of employment shall undergo urine drug testing immediately following the offer of employment or transfer into a position requiring the performance of safety-sensitive functions. A negative drug test result shall be required prior to the performance of any safety-sensitive function. Failure of a pre-employment drug test shall disqualify the applicant for employment for a period of at least 90 days. Prior to further consideration for employment of re-applicants, **the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G and take a drug test with a verified negative result. If a pre-employment test is canceled, the employer will require the applicant to take and pass another pre-employment drug test. A pre-employment drug test under 49 CFR Part 655 with a negative test results will be required anytime an employee does not perform a safety sensitive function for a period of 90 consecutive days or more regardless of reason, and is not in the random testing pool during that time. Applicants are required (even if ultimately not hired) to provide Mountain Mobility with signed written releases requesting USDOT drug and alcohol records from all previous, USDOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. Mountain Mobility is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a USDOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a USDOT covered employer, the applicant must provide Mountain Mobility proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.**

6.3 Reasonable Suspicion Testing

All safety-sensitive employees shall be subject to a reasonable suspicion urine drug test and/or breath alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

The following criterion will allow for a federal reasonable suspicion test to occur:

1. Specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee consistent with possible drug use and/or alcohol misuse.

Reasonable suspicion determinations must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that a safety-sensitive employee may be adversely affected or impaired in his/her work performance due to possible drug use or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation.

6.4 Post-Accident Testing

FATAL ACCIDENTS - A safety-sensitive employee will be required to undergo a urine drug test and breath alcohol test if they are involved in an accident in a transit vehicle that results in a fatality, regardless of whether or not the vehicle is in revenue service. This includes the surviving safety-sensitive employee who was operating the vehicle at the time of the accident and any other safety-sensitive employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

NON-FATAL ACCIDENT - A post-accident test of the employee operating the public transportation vehicle shall be conducted if an accident occurs and at least one of the following occurs:

1. The accident results in injuries requiring immediate medical treatment away from the scene and the covered

employee may have contributed to the accident.

2. One or more vehicles incur disabling damage as a result of the occurrence and must be transported away from the scene, and the covered employee may have contributed to the accident.

Following an accident, the safety-sensitive employees to be tested shall be tested as soon as possible, but not to exceed eight hours for alcohol testing and 32 hours for drug testing. If an alcohol test can not be performed within two hours, documentation shall set forth the reasons for the failure to conduct the test. Any safety-sensitive employee involved in an accident must refrain from alcohol use for eight hours following the accident or until he/she undergoes a post-accident alcohol test. Any safety-sensitive employee who leaves the scene of an accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test. Safety-sensitive employees tested under this provision will include not only the operations personnel, but also any other safety-sensitive employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

6.5 Random Testing

Safety-sensitive employees shall be subject to random, unannounced drug and alcohol testing. The selection of safety-sensitive employees for random testing will be made using a scientifically valid method that ensures each safety-sensitive employee that they will have an equal chance of being selected each time selections are made. The dates for administering random tests will be unannounced and spread throughout the calendar year, day of the week and hours of the day.

The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA. The current year testing rates can be viewed online at <https://www.transportation.gov/odapc/random-testing-rates>. If a given driver is subject to random testing under the rules of more than one DOT agency, the driver will be subject to random drug and alcohol testing at the annual percentage rate established by the DOT agency regulating more than 50% of the driver's function.

Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

Random drug tests can be conducted at any time during an employee's shift (i.e., beginning, middle, or end). Alcohol random tests can only be performed just before, during, or just after the performance of a safety sensitive duty. Employees are required to proceed immediately to the collection site upon notification of their random selection.

6.6 Return-to-Duty Testing

Any safety-sensitive employees who previously refused an alcohol or drug test or who tested positive for a drug or alcohol test must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released to duty by a substance abuse professional before returning to work. ~~For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed.~~ Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety. The SAP will determine whether the employee returning to duty will require a return-to-duty drug test, alcohol test, or both.

6.7 Follow-Up Testing

All safety sensitive employees that have returned to duty following a positive or refused a test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing shall be performed for a period of one to five years, with a minimum of six tests to be performed during the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the qualified substance abuse professional (SAP) reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

6.8 Dilute Negative Testing Results

If the MRO reports that a safety-sensitive employee's negative drug test was dilute, the employee will not be required to take another test immediately. **A negative dilute is a drug test which is negative for the five drug/drug metabolites but has creatinine and a specific gravity values that are lower than expected for human urine.**

6.9 Refusals to Test

In accordance with 49 CFR Part 40, refusal to submit to a drug and/or alcohol test will be considered equivalent to a positive test result and shall result in termination and referral to a list of USDOT qualified SAPs. A test refusal includes any of the following infractions:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by Mountain Mobility, after being directed to do so by Mountain Mobility (i.e. in reference to 49 CFR Part 40.191(a) and 49 CFR Part 40.261(a)(1)). Mountain Mobility considers 30 minutes from the time of notification to the arrival at the testing agency as a reasonable time-frame for drug and alcohol tests to occur.
2. Fail to remain at the testing site until the testing process is complete (i.e. in reference to 49 CFR Part 40.191(a)(2) and 49 CFR Part 40.261(a)(2)). In reference to 49 CFR Part 40.63(c) an employee who leaves the testing site before the testing process commences for a pre-employment test has not refused a test.
3. Fail to attempt to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations (i.e. in reference to 40.191(a)(3)). In reference to 49 CFR Part 40.63(c) an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
4. Fail to attempt to provide a breath specimen for any breath alcohol test required by Part 40 or DOT agency regulations (i.e. in reference to 40.261(a)(3)). In reference to 49 CFR Part 40.63(c) an employee who does not provide a breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
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 (i.e. in reference to 49 CFR Part 40.191(a)(5) and 49 CFR Part 40.193(d)(2)).
6. Fail to provide a sufficient amount of breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (i.e. in reference to 49 CFR Part 40.261(a)(4) and 49 CFR Part 40.193(d)(2)).
7. Fail to undergo a medical examination or evaluation (i.e. in reference to 49 CFR Part 40.191 (a)(7)), as directed by the MRO as part of the drug testing verification process, or directed by the DER as part of the "shy bladder" procedures under 49 CFR Part 40.193(d) of this part. 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.

8. **Fail to undergo a medical examination or evaluation (i.e. in reference to 49 CFR Part 40.261 (a)(5)), as directed by the BAT as part of the breath alcohol testing process, or directed by the DER as part of the “shy lung” procedures under 49 CFR Part 40.193(d) of this part.**
9. **Fail to cooperate with any part of the drug testing process (e.g. in reference to 40 CFR Part 40.191(a)(8) this includes refusing to empty pockets when so directed by the collector; behave in a confrontational way that disrupts the collection process, etc.).**
10. **Fail to cooperate with any part of the breath alcohol testing process (e.g. in reference to 40 CFR Part 40.261(a)(7) this includes refusing to empty pockets when so directed by the collector; behave in a confrontational way that disrupts the collection process, etc.).**
11. **Fail to permit the observation or monitoring of your provision of a specimen when required.**
12. **Fail or declines to take a second test the employer or collector has directed to occur.**
13. **The MRO reports that a test result has been verified as being adulterated or substituted (i.e. in reference to 49 CFR Part 40.191(b)).**
14. **Fail to sign the certification at Step 2 of the ATF (i.e. in reference to 40.261(a)(6), 49 CFR Part 40.241(g), and 40.251(d)).**
15. **Failure to follow the observer’s instructions during an observed collection including 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.**
16. **Possess or wear a prosthetic or other device that could be used to interfere with the collection process.**
17. **In accordance to 49 CFR Part 40.191(e) when an employee refuses to take a non-DOT drug test or to sign a non-DOT form he or she has not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT drug test.**
18. **In accordance to 49 CFR Part 40.261(d) when an employee refuses to take a non-DOT breath alcohol test or to sign a non-DOT form he or she has not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT breath alcohol test.**

7.0 EMPLOYEE ASSESSMENT

Any safety-sensitive employee who refuses a test or who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 CFR Part 40, as amended, or who refuses to test, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, referred to a list of USDOT qualified Substance Abuse Professionals for evaluation. The substance abuse professional shall be a licensed physician (medical doctor or doctor of osteopathy); or a licensed or certified psychologist, social worker, employee assistance professional; a state-licensed marriage and family therapist; or a drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The substance abuse professional also shall be knowledgeable about 49 CFR Part 40, as amended, DOT Guidelines for substance abuse professionals, and other applicable regulations. The substance abuse professional also must have received qualification training and continuing education that meet the requirements of 49 CFR Part 40, as amended. The substance abuse professional shall evaluate each safety-sensitive employee to determine what assistance the safety-sensitive employee needs in resolving problems associated with prohibited drug use or alcohol misuse. The substance abuse professional shall not refer the employee to a private practice from which the substance abuse professional receives remuneration or

in which the substance abuse professional has a financial interest.

If a safety-sensitive employee is allowed to return-to-duty, he/she must properly follow the rehabilitation program prescribed by the substance abuse professional, must have negative return-to-duty drug and/or alcohol tests, and must be subject to unannounced follow-up testing for a period of one to five years.

The cost of any treatment or rehabilitation services shall be paid for directly by the safety-sensitive employee or their insurance provider.

If a safety-sensitive employee refuses to be evaluated by a substance abuse professional or fails to comply with a treatment or after care program recommended by a substance abuse professional, employment shall be terminated.

Assessment by a substance abuse professional or participation in an employee rehabilitation and assistance program shall not shield a safety-sensitive employee from disciplinary action for performance-related infractions.

8.0 INFORMATION DISCLOSURE

All drug and alcohol testing records will be maintained in a secure manner so that disclosure of information to unauthorized persons does not occur. Information will only be released in the following circumstances:

- 1. To a third party only as directed by specific, written instruction of the employee;**
- 2. To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on the behalf of the employee tested;**
- 3. To a subsequent employer upon receipt of a written request from the employee;**
- 4. To the National Transportation Safety Board during an accident investigation;**
- 5. To the DOT or any DOT agency with regulatory authority over the employer or any of its employees, or to a State oversight agency authorized to oversee rail fixed-guideway systems;**
- 6. To a representative of Buncombe County who, on behalf of the grantee, is required to certify FTA compliance with the drug and alcohol testing procedures of 49 CFR Part 40 as amended or Part 655; or**
- 7. To the employee, upon written request; or**
- 8. To a Federal, state or local safety agency with regulatory authority over Mountain Mobility or the employee upon request.**

If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.

In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

9.0 EMPLOYEE AND SUPERVISOR TRAINING REQUIREMENTS

Prior to the performance of safety-sensitive functions and on an annual basis thereafter, appropriate education, training, and informational materials shall be provided to, discussed with, and/or displayed for safety-sensitive employees as required under the federal regulations. Each safety-sensitive employee shall receive at least 60 minutes of education and training on the signs and symptoms of drug use including the effects and consequences of prohibited drug use on personal health, safety, and the work environment, as well as manifestations and behavioral cues that may indicate the use of prohibited drugs. Each safety-sensitive employee also shall be provided with information

concerning the effects of alcohol misuse on an individual's health, work, and personal life, as well as signs and symptoms of an alcohol problem and intervention methods.

Any supervisor who will be determining when it is appropriate to administer reasonable suspicion drug or alcohol tests shall receive at least 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable use of prohibited drugs and shall receive at least 60 additional minutes of education and training on the physical, behavioral, speech, and performance indicators associated with probable alcohol misuse. Supervisors shall receive said training prior to assuming responsibility for making reasonable suspicion determinations.

Education and training requirements for safety-sensitive employees are summarized in Attachment B.

10.0 SYSTEM CONTACTS

Any questions regarding this policy or any other aspect of the County's anti-drug and alcohol misuse program shall be directed to the following person:

Title:	General Manager, Mountain Mobility
Address:	2000 Riverside Drive, Suite 17 Asheville, NC 28804
Telephone Number:	828.250.6750

Any agency or contractor whose employees are responsible for performing safety-sensitive functions associated with the administration, operation, or management of Mountain Mobility shall provide to the County a written certification of the name, address, telephone number, and the fax number for its Medical Review Officer and Substance Abuse Professional, which shall be incorporated into this policy by this reference thereto.