



Board of Governors Rule

Talent and Culture
Drug and Alcohol Testing for FTA & FMCSA
Covered Positions
Responsible Unit: Talent and Culture
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BOG TALENT AND CULTURE RULE 3.4 DRUG AND ALCOHOL TESTING FOR FEDERAL TRANSIT ADMINISTRATION (FTA) & FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) COVERED POSITIONS

SECTION 1: PURPOSE & SCOPE.

- 1.1 To outline the rules to be followed in the administration of the drug and alcohol testing program for FTA and FMCSA covered positions.
- 1.2 This Rule applies to Covered Employees of the West Virginia University Board of Governors, as defined by section 2.2 of this Rule, as well as any contractors who stand in the shoes of FTA Covered Employees as defined in section 2.3 of this Rule.
- 1.3 This Rule does not apply to other employees not covered by either FTA or FMCSA. The Board delegates to the President the responsibility of identifying and implementing a procedure for the drug and alcohol testing of other safety sensitive positions not covered by the FTA or FMCSA.

SECTION 2: POLICY.

2.1 General

- 2.1.1 West Virginia University is committed to maintaining a safe and efficient working environment for all of its employees. To that end, as set forth in the University's Drug-Free Schools and Communities Act notification, which is circulated each year to students and employees, the University prohibits the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance on its property or as part of any of its programs or activities. Further, reporting to work or any University function under the influence of an illicit controlled substance is prohibited. Additionally, the University will not tolerate any risk to safety, quality or productivity that may be caused by a Covered Employee who uses drugs or alcohol. This policy complies with 49 C.F.R §§ 40.

2.1.2 Independent Authority

The United States Department of Transportation (DOT) allows the University to make several decisions under its independent authority that go beyond Federal laws, as long as the decisions specific to the University are identified. Therefore, where this Rule goes beyond the requirements of the DOT, the text below is highlighted in bold print.

2.1.3 **Compliance with the Drug & Alcohol Testing Program.** Participation and compliance with the University's DOT Drug & Alcohol Testing Program is a requirement for all Covered Employees, and therefore, is a condition of employment. **Failure to participate and comply with the requirements of the DOT Drug & Alcohol Testing Program may be grounds for disciplinary action, up to and including termination of employment.**

2.1.4 **Designated Employer Representative/Contact.** The designated employer representative (DER) is the employee authorized by the University to take immediate action(s) to remove Covered Employees from safety-sensitive duties, or cause Covered Employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the University, consistent with the requirements of Federal law. Anyone who has questions regarding this policy or the University's DOT drug and alcohol testing program should contact the University's DER. Contact information can be found by clicking on the link below or by calling the following telephone number.

[WVU Risk Management](https://riskmanagement.wvu.edu/)
(304) 293-2241
<https://riskmanagement.wvu.edu/>

2.1.5 Information Disclosure.

2.1.5.1 To be considered for employment, all applicants for covered positions shall be asked to give consent to conduct a background check of their previous DOT covered employers, as required by applicable DOT regulations. Refusal to do so will result in removal from consideration for employment in the covered position.

2.1.5.2 In addition, to be considered for employment, all applicants will also be asked to verify whether or not they have tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the applicant applied for a position in safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two (2) years, but did not obtain.

If the applicant admits that he/she had a positive test or a refusal to test, the University will not further consider the applicant for employment in a covered position, until the applicant documents successful completion of the return-to-duty process, as outlined by DOT regulations.

- 2.1.53 **If it is determined that a Covered Employee provided inaccurate or untruthful information regarding his/her previous DOT drug & alcohol testing history, it will be considered a falsification of application information and shall result in denial for consideration of employment, and/or disciplinary action, up to and including termination of employment.**

2.2 Covered Employees

- 2.2.1 This Rule applies to every employee whose position requires the possession of a commercial driver's license (CDL); every employee performing a "safety-sensitive function" as defined under the FMCSA or FTA, and any person applying for or volunteering in such positions.

Under FMCSA, a Covered Employee is any employee who operates a commercial motor vehicle and performs safety-sensitive functions. Safety-sensitive functions shall include:

- all time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the Covered Employee has been relieved from duty by the University;
- all time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- all time spent at the driving controls of a commercial motor vehicle in operation;
- all time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

- 2.2.2 Under FTA, a Covered Employee is performing a safety-sensitive function if they are responsible for:

- operation of a revenue service vehicle, including when not in revenue service;
- operation of a non-revenue vehicle requiring a CDL;

- controlling movement or dispatch of a revenue service vehicle;
- maintenance (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used on revenue service.
- security personnel who carry firearms (**this does not include the University Police Department who are subject to departmental policies adopted in accordance with Section 1.3**).

223 A volunteer is a Covered Employee if:

- he/she is required to hold a commercial driver's license to operate the vehicle; or
- he/she performs a safety-sensitive function for the University and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

224 Talent and Culture shall post a list of covered job titles on its website.

225 **Covered Employees are expected to be immediately available to perform safety sensitive functions, anytime that they are at work.**

2.3 **Contractors Hired by the University**

231 Contractors hired by the University that fall under 49 C.F.R. Part 655 (FTA) shall be required to submit a copy of their DOT Drug Testing Program to Talent and Culture, and may also be required to submit quarterly reports that state for that period:

- number of Covered Employees tested;
- type of test;
- number of positive drug tests and resulting action for those that tested positive;
- number of alcohol tests that indicated an alcohol concentration of 0.04 or greater and the resulting action;
- number of alcohol tests that indicated an alcohol concentration of 0.02 or greater, but less than 0.04 and the resulting action.

232 Contractors shall allow access to their property and records by a University representative or any DOT agency with regulatory authority over the contractor for the purpose of monitoring the contractor's compliance with the requirements of DOT drug and alcohol testing requirements.

2.4 **Prohibited Conduct & Substances**

- 24.1 **Conduct.** Covered Employees shall not perform safety-sensitive functions while impaired by drugs or alcohol. Supervisors shall immediately remove any Covered Employee from the performance of safety-sensitive functions if the Covered Employee is perceived to be impaired and shall request a reasonable suspicion test as set forth in section 2.5.3. In addition, it is also the responsibility of the Covered Employee voluntarily to remove himself/herself from the performance of safety sensitive functions if he/she is impaired. **A supervisor or Covered Employee who fails to perform these responsibilities may be subject to disciplinary action.**
- 24.2 **Drugs.**¹ Covered Employees are prohibited by the DOT from using the following controlled substances at any time, and the University is required to test for these drugs and associated metabolites:
- Marijuana/THC;
 - Cocaine;
 - Phencyclidine (PCP);
 - Amphetamines;
 - Methamphetamine;
 - Methylenedioxymethamphetamine (MDMA); and
 - Opioids [including but not limited to Codeine, Morphine, Heroin, Hydrocodone, Hydromorphone, Oxycodone, and Oxymorphone].

If the University receives a verified positive, adulterated, or substituted drug test result, the Covered Employee will be immediately removed from performing safety-sensitive functions.

- 24.3 **Alcohol.** A Covered Employee will be removed from performing safety-sensitive functions:
- if the Covered Employee's test results indicate an alcohol concentration of 0.04 or greater;
 - if the Covered Employee has used alcohol within four (4) hours prior to performing safety sensitive functions;
 - if the Covered Employee uses alcohol on the job;
 - if during the eight (8) hours following an accident the Covered Employee's involvement has not been discounted as a contributing factor in the accident or until the Covered Employee is tested;

¹ Note that this list is based on the current version of 40 C.F.R. Part 40 (2020). Consistent with Section 4.2 of this Rule, to the extent 40 C.F.R. Part 40 is amended in the future, the University will test consistent with those amendments and may either add or remove drugs. Employees will be put on notice of such changes.

- if the Covered Employee refuses to submit to required alcohol tests; or
- if the Covered Employee is in possession of alcohol.

If a Covered Employee is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, or if the Covered Employee is under the influence of or impaired by alcohol, as indicated by behavior, speech, and performance indicators, and a reasonable suspicion alcohol test cannot be obtained, the Covered Employee shall be removed from safety-sensitive duties for a period of twenty-four (24) hours under the FMCSA regulations or for a period of eight (8) hours under FTA regulations.

244 Prescription Drugs and Over-the-Counter Medications

244.1 **The appropriate use of legally prescribed drugs and over-the-counter medication is not prohibited. It is, however, a Covered Employee's responsibility to inform his/her physician of the Covered Employee's job duties and submit a determination from the physician to the DER as to whether or not the prescribed drug/over-the-counter medication may impair the Covered Employee's job performance.**

244.2 According to DOT compliance notices, the use of marijuana for medical or recreational purposes will not be a valid explanation for a positive drug test result, even if the use occurred in a state that has legalized marijuana for such purposes. **Therefore, the University will continue to treat a positive test result for marijuana as a verified positive drug test which shall subject the Covered Employee to the consequences for violations, as outlined in section 2.8 below.**

If a Covered Employee is legally prescribed marijuana for a medical purpose, he/she must notify the DER immediately. The Covered Employee shall be removed from the performance of all safety-sensitive functions. The DER will determine when or if the Covered Employee can return to the performance of safety-sensitive functions.

244.3 **A Covered Employee may be subject to disciplinary action if he/she fails to report the use of drugs/over-the-counter medications, or fails to provide proper medical documentation.**

2.5 **Drug & Alcohol Testing Requirements.** Covered Employees subject to this Rule are required to be tested under the following types of tests:

2.5.1 Pre-Employment

- 2.5.1.1 An offer of employment for an FTA or FMCSA covered position is contingent upon successfully passing a pre-employment drug test. The individual will not be hired, and thus will not be allowed to perform safety-sensitive functions, unless he/she successfully passes the pre-employment drug test.
- 2.5.1.2 A pre-employment drug test will be conducted when an applicant is selected to be hired for an FTA or FMCSA covered position.
- 2.5.1.3 A pre-employment drug test will be conducted when a current employee transfers from a position not covered by FTA or FMCSA into a covered position.
- 2.5.1.4 If a current Covered Employee has been removed from the random testing pool, as per section 2.5.2.6 below, a pre-employment drug test will be required before the Covered Employee will be allowed to resume the performance of safety-sensitive functions.
- 2.5.1.5 If a pre-employment test is canceled, the applicant/current employee is required to submit to and pass another test.

2.5.2 Random

- 2.5.2.1 All Covered Employees working in an FTA or FMCSA covered position are subject to unannounced testing based on random selection. A Covered Employee may be randomly picked more than once or not picked at all during the annual period.
- 2.5.2.2 Random notifications will be conducted as discreetly as possible in order to ensure the confidentiality and integrity of the process.
- 2.5.2.3 All Covered Employees in FTA or FMCSA covered positions will be placed into either an FTA or FMCSA pool, as applicable. Covered Employees will remain in the random testing pools at all times, regardless of whether or not they have been previously selected for testing. **To ensure the integrity of the University's drug and alcohol testing program, Covered Employees will be selected for random testing by a third party administrator.**
- 2.5.2.4 Random testing will be sporadic throughout each quarter of the annual cycle to prevent Covered Employees from matching their drug/alcohol use patterns to the schedule for collection. Selected Covered Employees will not be notified until immediately prior to the time that they are due at the collection site.

- 2.5.2.5 If a Covered Employee is temporarily unavailable, or it is their day off, the test will be conducted immediately upon his/her return to work within the same testing period.
- 2.5.2.6 If a Covered Employee who is restricted for any reason from performing safety-sensitive functions is selected, the test will be postponed until he/she is released to return to the performance of safety-sensitive functions. If the Covered Employee is expected to be or has been restricted for any reason for greater than ninety (90) days, he/she will be removed from the random testing pool, and another Covered Employee will be selected for random testing. However, a Covered Employee removed from the random testing pool for any reason will be required to submit to a pre-employment drug test prior to being allowed to return to safety-sensitive functions (please see section 2.5.1.4 above.)
- 2.5.2.7 For each pool, the University will test at least fifty percent (50%) of the Covered Employees in an annual period for prohibited drugs. This rate is subject to adjustment by the DOT, as based on the industry's violation rate.
- 2.5.2.8 For each pool, the University will test at least ten percent (10%) of the Covered Employees in an annual period for alcohol use. This rate is subject to adjustment by the DOT based on the industry's violation rate.
- 2.5.2.9 A Covered Employee may be randomly tested for prohibited drug use anytime while on duty.
- 2.5.2.10 A Covered Employee shall only be tested for alcohol while the Covered Employee is performing, just before the Covered Employee is to perform, or just after the Covered Employee has performed safety-sensitive functions (**please see section 2.2.5 above for the University's position on the performance of safety-sensitive functions.**)

2.5.3 Reasonable Suspicion

- 2.5.3.1 When there is reasonable suspicion to believe that a Covered Employee is using prohibited drugs or alcohol while on duty, the Covered Employee will be required to take a drug and/or alcohol test. The required observations for reasonable suspicion testing shall be made by a supervisor or University official who has received training, authorized by Talent and Culture, in drug/alcohol use symptoms.

- 2.5.3.2 A decision to test must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, or odors of the Covered Employee. The observations may include indications of the chronic and withdrawal effects of drugs. Alcohol testing is authorized only if the observations are made during, just preceding, or just after a Covered Employee's work day **(please see section 2.2.5 above for the University's position on the performance of safety-sensitive functions.)**
- 2.5.3.3 The supervisor must record the observable behaviors that support the determination to conduct a reasonable suspicion test. This documentation should be prepared and signed by the supervisor within twenty-four (24) hours of the request for a test or before the results of the tests are released, whichever is earlier, if possible. **A copy of this documentation must be forwarded to the DER. A supervisor who fails to comply with the provisions of this section may be subject to disciplinary action.**
- 2.5.3.4 If an alcohol test is required, but is not administered within two (2) hours following the request for the test, the University shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the request, the University shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.
- 2.5.3.5 Notwithstanding the absence of a reasonable suspicion alcohol and/or drug test under this section, no Covered Employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the Covered Employee is perceived to be under the influence of or impaired by alcohol or drugs, as shown by the behavioral, speech, and performance indicators of alcohol misuse or drug use, nor shall the University permit the Covered Employee to perform or continue to perform safety sensitive functions until:
1. Negative drug test results are reported; and/or
 2. An alcohol test is administered and the Covered Employee's alcohol concentrations measure less than 0.02; or the applicable period of time has elapsed following the determination that there was reasonable suspicion to believe that the Covered Employee had violated the alcohol provisions of this Rule. The applicable

period of time for FMCSA and FTA is twenty-four (24) hours and eight (8) hours, respectively.

2.5.4 **Post Accident.** Covered Employees whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident will be tested as soon as practicable.

2.5.4.1 **FMCSA Qualifying Accident.** An FMCSA qualifying accident is an occurrence involving a commercial motor vehicle operating on a public road in commerce where a Covered Employee was performing safety-sensitive functions, and:

1. the accident involved the loss of human life; or
2. the Covered Employee receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - a. bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - b. one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

2.5.4.2 **FTA Qualifying Accident.** An FTA qualifying accident means an occurrence associated with the operation of a vehicle, and:

1. an individual dies;
2. an individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident;
3. with respect to an occurrence in which the mass transit vehicle is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
4. with respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

2.5.4.3 Time Frame for Testing Covered Employees

2543.1 As soon as practicable following an accident, the University shall perform required post-accident testing for drugs and alcohol.

2543.2 The Covered Employee will be tested for prohibited drugs as soon as possible, but no later than thirty-two (32) hours after the accident. If the required drug test is not performed within thirty-two (32) hours, the University shall cease attempts to administer a drug test, and prepare and maintain on file a record stating the reasons the test was not promptly administered.

2543.3 The Covered Employee will be tested for alcohol use as soon as possible, but not later than eight (8) hours after the accident. If an alcohol test is required, but is not administered within two (2) hours following the accident, the University shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the accident, the University shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

2543.4 The decision not to administer a test shall be based on the University's determination, using the best available information at the time of the determination, that the Covered Employee's performance could not have contributed to the accident.

2543.5 A Covered Employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the University of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the University to have refused to submit to testing. Nothing in this Rule shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a Covered Employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

2543.6 The results of a drug or alcohol test conducted by Federal, State, or local officials having independent authority for the

test, shall be considered to meet the requirements for post accident testing, provided such tests conform to the applicable Federal, State or local drug and alcohol testing requirements, and that the results of the tests are obtained by the University.

2.5.5 Return to Duty/Follow-up Testing.

2.5.5.1 The University has a zero tolerance policy for drug and alcohol use resulting in the termination of employment, as outlined in section 2.8 below. Thus, return to duty and follow-up testing will be limited to the instances outlined below.

2.5.5.2 The University does allow for self-disclosure of drug and alcohol use, as outlined in section 2.10 below, and will conduct return to duty testing and only non-DOT drug/alcohol testing forms will be utilized.

2.5.5.3 Per the provisions of DOT regulations, new hires that have had a positive drug and/or alcohol test at a previous DOT regulated employer and have successfully completed the required return-to work process, will continue the follow-up testing plan as prescribed by the Substance Abuse Professional (SAP) to assure that the requirements of the SAP's follow-up plan "follows the Covered Employee" to subsequent employers or through breaks in service. The previous employer's SAP must present the University's DER with any pertinent information regarding the Covered Employee's rehabilitation compliance and release to return to duty, including a follow-up testing plan outlining the number and frequency of unannounced testing, as required by regulations. The SAP, following the Covered Employee's successful completion of the mandatory testing requirements the first year, may terminate follow-up testing. Follow-up testing is in addition to the other required drug and alcohol testing described in this Rule. Follow-up testing must be performed as recommended by the SAP's testing plan. If testing is not performed as outlined, the Covered Employee will not be permitted to perform safety-sensitive functions, and shall be subject to disciplinary action up to and including termination of employment.

2.6 Drug & Alcohol Testing Procedures.

2.6.1 All testing will be conducted as required by the U.S. Department of Transportation (49 C.F.R. § 40), as well as where applicable the FTA (49 C.F.R § 655), and the FMCSA (49 C.F.R. §382).

- 2.6.2 Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). Testing will be performed in a private, confidential manner and every effort will be made to protect the Covered Employee, the integrity of the testing procedure, and the validity of the test result.
- 2.6.3 A Covered Employee has the right to request and receive from the University a copy of the test result report on any drug or alcohol test for which he/she provided a urine or breath sample. The request, verbal or written, should be addressed to the DER (for alcohol test results), and to the Medical Review Officer (MRO) (for drug test results).
- 2.6.4 **Split Specimen**
- 2.6.4.1 In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, can be transported to a second laboratory in the event that the Covered Employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.
- 2.6.4.2 When an MRO notifies a Covered Employee that he/she has a verified positive drug test and/or refusal to test because of adulteration or substitution, the Covered Employee has seventy-two (72) hours from the time of notification to request a test of the split specimen. The request may be verbal or written. Split specimen testing will not be conducted for an invalid result.
- 2.6.4.3 If the Covered Employee fails to request a test of the split specimen within seventy-two (72) hours, the Covered Employee may inform the MRO of his/her reason(s) for failure to request the test, and the MRO shall have the authority to determine if a legitimate reason exists to allow for testing of the split specimen.
- 2.6.4.4 **The University shall pay for the costs associated with a split specimen test.**
- 2.6.5 **Dilute Specimen.**
- 2.6.5.1 A dilute specimen is a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

2.6.5.2 If the MRO informs the University that a positive drug test was dilute, it will be treated as a verified positive test.

2.6.5.3 **If the MRO informs the University that a negative test was dilute, the University will require that the Covered Employee undergo a second test, when recollection requires direct observation.**

2.7 **Refusals to Test.** A Covered Employee has refused to test if the Covered Employee:

- fails to appear at a urine/alcohol collection site when directed to report;
- fails to remain at the urine/alcohol collection site as directed by the collector;
- fails to provide a urine specimen or an adequate amount of saliva or breath;
- fails to permit a monitored or observed collection;
- fails to provide a sufficient amount of urine, if the MRO determines that there was no medical reason for the Covered Employee to provide an insufficient amount of urine;
- fails to provide a sufficient breath specimen, if an evaluating physician find that there was no medical reason for the Covered Employee to provide an insufficient amount of breath;
- fails or declines to take an additional drug test the University or collector has directed;
- fails to undergo a medical examination or evaluation, as directed by the MRO or University;
- fails to cooperate with any part of the drug or alcohol testing collection process;
- for an observed collection, fails to follow the instructions to raise and lower clothes and turn around;
- possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
- admits to the collector to having adulterated or substituted the specimen;
- adulterates or substitutes the urine specimen, as determined by the MRO;
- admits to the MRO to having adulterated or substituted the specimen; or
- fails to sign the certification statement at Step 2 of the Alcohol Testing Form.

2.8 **Consequences for Violations**

2.8.1 Engaging in any of the prohibited conduct, as outlined in section 2.4 of this Rule, will result in a Covered Employee being required to immediately ceasing performance of all safety-sensitive functions, **and may subject a Covered Employee to disciplinary action, up to and including termination of employment.**

2.8.2 **The following violations will be considered gross misconduct and shall result in termination of employment of a Covered Employee:**

- **refusing to submit to a test, as outlined in section 2.7 of this Rule;**
- **a verified positive drug test;**
- **a confirmed alcohol test result of 0.04 or greater; or**
- **a negative test result because of a diluted, substituted or adulterated specimen, as verified by the MRO.**

2.8.3 **Any other instances of failure to comply with this Rule, as determined by Talent and Culture, may also subject a Covered Employee to disciplinary action, up to and including termination of employment.**

2.9 Substance Abuse Professional (SAP) Services & Treatment Recommendations.

2.9.1 A Covered Employee, including an applicant, who fails a drug test, alcohol test (0.04 or greater), or refuses to be tested will be referred to a qualified SAP.

2.9.2 Any and all costs associated with substance abuse professional services and treatment recommendations shall be the responsibility of the Covered Employee and shall not be paid by the University.

2.10 Employee Self Disclosure of Drug & Alcohol Use.

2.10.1 Covered Employees who self-disclose to the DER that they may have a problem from the use of drugs and/or alcohol shall be provided a referral to the University's Faculty and Staff Assistance Program (FSAP).

2.10.2 A Covered Employee will be given the opportunity to obtain a chemical use assessment from the FSAP and shall provide the University with a signed authorization for the release of the results of the assessment to the DER, including any subsequent reports related to the assessment.

2.10.3 A Covered Employee's self-disclosure to the DER shall:

- occur prior to the Covered Employee reporting for duty;
- not be made in an attempt to avoid a required drug or alcohol test;
- **require Covered Employee to initiate an assessment through the FSAP within three (3) business days after the self-disclosure; and**
- require the University to remove the Covered Employee who self-discloses from performing any safety-sensitive functions.

2.10.4 A Covered Employee who complies satisfactorily with the FSAP assessment and recommendations for treatment, will be permitted to return to safety-sensitive function if the Covered Employee passes a return to duty test that confirms:

- an alcohol concentration of less than 0.02; and/or
- a verified negative test result for prohibited drugs.

2.10.5 A Covered Employee who self-discloses and fully complies with the assessment and recommendations for treatment from the FSAP will not be subject to disciplinary action. **However, a Covered Employee who self-discloses under this Rule, and who then fails to comply with the recommendations made by the FSAP may be subject to disciplinary action.**

2.11 **Education & Training**. The University will establish and maintain a program to ensure that Covered Employees and their supervisors are properly educated and trained on the requirements of the University's DOT Drugs and Alcohol Testing Program, as well as the effects of drug and alcohol use.

2.11.1 **Education on the Effects of Drugs and Alcohol Use**. Covered Employees and their supervisors will receive information on the effects of alcohol and drug use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a drug problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a drug use problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

2.11.2 **Required Training**

2.11.2.1 Covered Employees

FTA Requirements: Covered Employees must receive at least sixty (60) minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

2.11.2.2 Supervisors

FTA & FMCSA Requirements: All supervisors of Covered Employees shall receive at least sixty (60) minutes of training on alcohol misuse and they shall also receive at least sixty (60) minutes of additional training on drug use. The training will be used by supervisors to determine whether reasonable suspicion exists to require a Covered Employee to undergo drug and/or alcohol testing as required by this Rule. The training shall include

the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs.

2.11.3 Rule & Program Material Distribution

2.11.3.1 Prior to any testing for drugs or alcohol of Covered Employees, the University shall provide educational materials and a copy of this Rule to each current Covered Employee and his/her supervisor and to any applicant for a position which is covered by the provisions of this Rule.

2.11.3.2 The University shall also provide written notice to representatives of employee organizations of the availability of this information.

2.12 **Drug-Free Workplace Act of 1988**. In accordance with the Drug Free Work Place Act of 1988, an employee who is convicted of any criminal drug statute for a violation occurring in the work place shall notify Talent and Culture no later than five (5) days after such conviction.

2.13 **Records**

2.13.1 Records pertaining to the Drug and Alcohol Testing Program shall be maintained in secured and locked confidential files in Talent and Culture. Internal access to these records shall be limited to Talent and Culture and administrative officials on a need-to-know basis.

2.13.2 Except as required by law or expressly authorized or required by FTA or FMCSA rules and regulations, a Covered Employee may have access to his/her own records or the Covered Employee may authorize, in writing, the release of his/her records to a third party.

2.13.3 Records and report data shall be maintained as specified by Federal laws or regulations.

SECTION 3. DEFINITIONS.

3.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.

SECTION 4: DELEGATION.

- 4.1 The Board of Governors delegates to the Vice President of Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.
- 4.2 To the extent federal and state law is inconsistent with this Rule and it is not possible for the University to comply with all, applicable law will govern. Accordingly, Talent and Culture, with advice from the Office of General Counsel, has the discretion to implement any necessary changes in order to comply with legal obligations.
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SECTION 5: AUTHORITY.

- 5.1 41 U.S.C. § 8102 (2017); 49 U.S.C §§ 5331, 31133, 31136, and 31306 (2017); 49 C.F.R §§ Parts 40, 382 and 655 (2016); W. Va. Code §18B-1-6 and §18B-2A-4
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SECTION 6: SUPERSEDING PROVISIONS.

- 6.1 This Rule also repeals and supersedes WVU BOG Policy 56 – Drug and Alcohol Testing for Federal Transit Administration (FTA) & Federal Motor Carrier Safety Administration (FMCSA) Covered Positions, which was adopted on December 11, 2009, and amended on September 25, 2015, and any other human resources policy or procedure which relates to the subject matter contained within this Rule.