



Resolution No. R2023-23

Adopting the Tacoma Link Light Rail Substance Abuse Policy

Meeting:	Date:	Type of action:	Staff contact:
Executive Committee	08/03/2023	Recommend to Board	Moises Gutierrez, Chief System Quality Officer
Board	08/24/2023	Final action	Chris Elwell, Acting Executive Director of Labor Relations

Proposed action

Adopts a Board Policy for the Sound Transit Tacoma Link Light Rail Substance Abuse Program.

Key features summary

- 49 CFR Part 655.15 requires operators to have their anti-drug and alcohol misuse policy statement approved/adopted by their local governing board.
- The Tacoma Link Light Rail Substance Abuse Policy has been in effect since the commencement of Tacoma Link Light Rail service. It has been historically approved by Sound Transit’s Chief Executive Officer (CEO).
- The practice of having the CEO approve the policy was based on Federal Transit Administration (FTA)-posted guidance that says “a responsible individual with appropriate authority” could approve/adopt an antidrug and alcohol misuse policy.
- Most recently, through the FTA Triennial Review completed in April 2023, the FTA has determined that the Sound Transit Tacoma Link Light Rail Substance Abuse Policy should be approved and adopted by the Sound Transit Board.
- The Board’s approval/adoption of the policy will resolve the FTA’s determination noted above.

Background

The Federal Transit Administration (FTA) performed a Triennial Review of the Central Puget Sound Regional Transit Authority that concluded on April 7, 2023. The FTA issued a finding that the Sound Transit Tacoma Link Light Rail Substance Abuse Policy need to be approved and adopted by the Sound Transit Board per regulation 49 CFR Part 655.15. The substance of the Tacoma Link Light Rail Substance Abuse Policy was found to be compliant with FTA requirements as well as the other aspects of the antidrug and alcohol misuse prevention program.

The Tacoma Link Light Rail Substance Abuse Policy was implemented at the commencement of operation of the Tacoma Link Light Rail. This policy ensures that Sound Transit employees who perform safety-sensitive job duties are aware of FTA antidrug and alcohol misuse regulatory requirements. The Tacoma Link Light Rail Substance Abuse Policy has been updated over the years and each time approved by the CEO; most recently on August 3, 2021.

The practice of having the CEO approve the policy instead of going through a Board Motion was based on FTA guidance published on the FTA website that says “an individual with appropriate authority” could approve and adopt an antidrug and alcohol misuse policy. In past Triennial Reviews the CEO-approved

policy was found acceptable. The April 2023 FTA Triennial Review team clarified that the guidance published on the FTA website stating that anti-drug and alcohol misuse policies could be approved and adopted by “a responsible person with appropriate authority” was intended for employers without a governing board. The FTA issued a final report of their findings in early June 2023, which included the need to have a Tacoma Link Light Rail Substance Abuse Policy approved and adopted by the Sound Transit Board. The Board’s approval/adoption of the policy will resolve the finding.

Procurement information

Not applicable to this action.

Fiscal information

Not applicable to this action.

Disadvantaged and small business participation

Not applicable to this action.

Title VI compliance

Not applicable to this action.

Public involvement

Not applicable to this action.

Time constraints

Approval/adoption of the Sound Transit Tacoma Link Substance Abuse Policy by the Sound Transit Board will resolve the FTA’s 2023 Triennial finding.

Environmental review – KH 7/17/23

Legal review – AJP 7/18/23



Resolution No. R2023-23

Tacoma Link Substance Abuse Policy

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority adopting a Tacoma Link Substance Abuse Board Policy.

WHEREAS, the Central Puget Sound Regional Transit Authority, commonly known as Sound Transit, was formed under chapters 81.104 and 81.112 of the Revised Code of Washington (RCW) for the Pierce, King, and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, Sound Transit is authorized to plan, construct, and permanently operate a high-capacity system of transportation infrastructure and services to meet regional public transportation needs in the Central Puget Sound region; and

WHEREAS, in general elections held within the Sound Transit district on November 5, 1996, November 4, 2008, and November 8, 2016, voters approved local funding to implement a regional high-capacity transportation system for the Central Puget Sound region; and

WHEREAS, 49 CFR 655 and 49 CFR 40 address requirements for employees in safety-sensitive functions including protocols for drug and alcohol tests; and

WHEREAS, in 2021 the Sound Transit chief executive officer (CEO) approved an updated Tacoma Link Substance Abuse Policy to comply with 49 CFR 655 and 49 CFR 40; and

WHEREAS, 49 CFR 655 requires governing boards to adopt an anti-drug and alcohol misuse policy statement; and

WHEREAS, the Federal Transit Administration (FTA) requires that Sound Transit provide proof of adoption of the Tacoma Link Substance Abuse Policy by the Sound Transit governing body per the 2023 triennial review.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority that a Tacoma Link Substance Abuse Policy is hereby adopted as follows:

1.0 Scope

1.1 This policy complies with FTA drug and alcohol rules and applies to Tacoma Link light rail employees, applicants, and transferees who perform or will perform a safety-sensitive function as defined by the FTA.

2.0 Policy

2.1 Sound Transit is committed to preventing accidents, injuries, and fatalities resulting from the misuse of alcohol or prohibited drugs by employees in safety-sensitive functions and requires all covered employees to submit to drug and alcohol testing as a condition of employment.

2.2 **Designated office.** Employees, applicants, or transferees should direct questions about this policy or other requirements to the drug abuse and alcohol misuse prevention program manager.

2.3 **Covered employees.** Covered employees include any Tacoma Link light rail employee, applicant, or transferee who performs any of the following safety-sensitive functions:

2.3.1 Operating a revenue service vehicle, in or out of revenue service;

- 2.3.2 Operating a non-revenue vehicle requiring a commercial driver's license;
- 2.3.3 Controlling movement or dispatch of a revenue service vehicle;
- 2.3.4 Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used for security purposes; and/or
- 2.3.5 Carrying a firearm for security purposes.

2.4 **Prohibited substances and behaviors**

- 2.4.1 Pursuant to 49 CFR 655, the following substances are prohibited and tested for under this policy: marijuana, cocaine, amphetamines, opioids, and phencyclidine. Testing is also conducted for the misuse of alcohol.
- 2.4.2 The following behaviors are strictly prohibited by employees covered by this policy:
 - 2.4.2.a Use of illegal drugs is prohibited at all times.
 - 2.4.2.b Alcohol use is prohibited four hours before performing safety-sensitive functions, while on call, and while performing safety-sensitive functions.
 - 2.4.2.c Alcohol use is prohibited eight hours after an accident or until a post-accident test is performed.
 - 2.4.2.d Employees are prohibited from performing safety-sensitive functions while having an alcohol concentration of 0.02 or greater.

2.5 **Pre-employment requirements.** The following requirements must be met by applicants to work in any of the safety-sensitive functions listed in this policy:

- 2.5.1 The applicant must have a verified negative test before their first safety-sensitive duty. If a pre-employment drug test is cancelled for any reason, the individual will be required to complete a drug test and receive a verified negative result before performing safety-sensitive functions.
- 2.5.2 If a covered employee is out of a safety-sensitive function for 90 or more days, and out of the random testing pool, the employee must complete a pre-employment test and needs a verified negative result before returning to covered duty.
- 2.5.3 An applicant who previously failed or refused a department of transportation (DOT) drug or alcohol test must show evidence of completing a referral, evaluation, and treatment plan as described in 49 CFR 655.62 before taking a pre-employment drug test.

2.6 **Random testing**

- 2.6.1 All covered employees are subject to random testing to meet or exceed the annual percentage rate set each year by the FTA administrator.
- 2.6.2 The drug abuse and alcohol misuse prevention program includes the following random testing parameters:
 - 2.6.2.a The selection of employees for random testing must be made by a scientifically valid method, such as a random number table or computer-based random number generator.
 - 2.6.2.b Under the selection process used, each covered employee must have an equal chance of being tested each time selections are made.
 - 2.6.2.c The selection is not subject to the discretion of any managers or supervisors.

- 2.6.2.d Testing is conducted on all days and hours throughout the year and must be unannounced and immediate.
- 2.6.2.e A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.
- 2.6.2.f A covered employee is subject to random testing for prohibited drug use anytime while on duty.

2.7 Reasonable suspicion testing

- 2.7.1 All covered employees are subject to drug and/or alcohol testing when Sound Transit has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a supervisor or other agency official trained in detecting the signs and symptoms of drug use and alcohol misuse and will be made on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.
- 2.7.2 Covered employees are subject to reasonable suspicion drug testing any time while on duty. Covered employees are subject to DOT/FTA reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

2.8 Post-accident testing

- 2.8.1 Covered employees are subject to post-accident drug and alcohol testing under the following circumstances:
 - 2.8.1.a Covered employees operating a mass transit vehicle (rail car, trolley car, or bus) will be tested in the following circumstances:
 - Fatal accidents
 - Non-fatal accidents requiring medical treatment away from the scene, unless the covered employee operating the mass transit vehicle can be discounted as a contributing factor to the accident
 - Non-fatal accidents where one or more of the mass transit vehicles must be removed from operation or incurs disabling damage and must be towed away from the scene, unless the covered employee operating the mass transit vehicle can be discounted as a contributing factor to the accident
 - 2.8.1.b Other covered employees involved in fatal and non-fatal accidents where testing is required will be tested when the covered employee's performance could have contributed to the accident as determined by Sound Transit using the best information available at the time of the decision.
- 2.8.2 A covered employee subject to post-accident testing must remain readily available to test, or it is considered a refusal to test. Nothing in this section will be construed to require the delay of necessary medical attention for the injured 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.

2.9 Return to duty and follow-up testing

2.9.1 Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must:

2.9.1.a Complete the return to duty process found in 49 CFR 40, subpart O, which requires that the employee is evaluated by a substance abuse professional (SAP), complete a SAP-required program of education and/or treatment, and provide a negative return-to-duty drug and/or alcohol test result. All tests must be conducted in accordance with 49 CFR 40, subpart O, as amended.

2.9.1.b Undergo unannounced follow-up alcohol and/or drug testing for a period of one to five years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing will be directed by the SAP.

2.9.2 A covered employee is only subject to follow-up alcohol testing just before, during, or after actual performance of safety-sensitive functions. A covered employee may be subject to follow-up drug testing anytime while on duty.

2.9.3 Any return-to-duty or follow-up testing must be directly observed.

2.10 **Testing types and procedures.** The drug abuse and alcohol misuse prevention program includes all FTA-required testing types, and the tests must be conducted in accordance with 49 CFR 40. Sound Transit accepts dilute test results as reported by the medical review officer (MRO), verified negative or positive. Retests after a dilute test result will only be performed if required by the MRO.

2.11 **Test refusal.** The following circumstances constitute refusal of testing by a covered employee in violation of this policy:

2.11.1 Failure to remain until the testing process is complete. For a pre-employment test, it is not considered a refusal of testing when a covered employee leaves the testing site before the testing process commences.

2.11.2 Failure to attempt to provide a breath or urine specimen. For a pre-employment test, it is not considered a refusal of testing when a covered employee leaves the testing site before the testing process commences.

2.11.3 Failure to provide a sufficient quantity of urine or breath without a valid medical explanation.

2.11.4 Failure to undergo a medical evaluation as required by the MRO or designated employer representative.

2.11.5 Failure to cooperate with any part of the testing process.

2.11.6 Failure to permit an observed or monitored collection when required.

2.11.7 Failure to follow an observer's instructions to raise or lower clothing and turn around during an observed test.

2.11.8 Possessing or wearing a prosthetic or other device used to tamper with the testing process.

2.11.9 Failure to take a second test when required.

2.11.10 Admitting the adulteration or substitution of a specimen to the collector or MRO.

2.11.11 MRO verified adulterated/substituted sample.

2.11.12 Refusal to sign step two of alcohol test form.

2.11.13 Failing to appear within a reasonable time (except a pre-employment test).

2.12 Consequences

2.12.1 Following a verified positive drug or alcohol confirmation test, where blood alcohol concentration (BAC) is above 0.04, or a test refusal, the employee is immediately removed from the safety-sensitive position and referred to a substance abuse professional for evaluation.

2.12.2 When BAC is between 0.020 and 0.039, the employee must be removed from safety-sensitive duty for at least eight hours, unless a retest results in the employee's BAC being less than 0.020.

2.12.3 Pursuant to Sound Transit policy, if a covered employee violates any section of this policy, the employee may be subject to corrective action up to and including termination of employment.

2.13 Delegation of authority. The CEO must implement this policy and establish and maintain a drug abuse and alcohol misuse prevention program in an equitable manner and in compliance with all applicable regulations including 49 CFR 655 and 49 CFR 40. In relation to the established program, the CEO publishes and maintains a detailed list of all specific job titles included within the categories listed in the covered employees section of this policy.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on August 24, 2023.



Dow Constantine
Board Chair

Attest:



Kathryn Flores
Board Administrator