



**COLORADO**

Department of Transportation

# DIVISION OF TRANSIT AND RAIL STATE MANAGEMENT PLAN

## CHAPTER 6 Program Management

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## 6 PROGRAM MANAGEMENT

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### 6.1 Continuing Control

The Federal Transit Administration (FTA) has specific requirements related to assets purchased with FTA funds, such as real property, facilities, equipment, and rolling stock vehicles. The requirements are outlined in FTA Circular 5010.1E

([https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Grant%20Management%20Requirements%20Circular\\_5010-1E.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Grant%20Management%20Requirements%20Circular_5010-1E.pdf)).

Project property means any real property, equipment, supplies, or improvements included in the costs of an FTA-assisted project, regardless of whether such property was acquired using FTA assistance, was provided as the nonfederal share, donated by a third party, or acquired in some other way.

The Division of Transit and Rail (DTR) is responsible for monitoring **a subrecipient's processes** and procedures related to the assets, as well as the condition and eventual disposal of the **asset. DTR's oversight of the assets occurs through monitoring of the asset inventory** maintained by subrecipient in Colorado Transit & Rail Awards Management System (COTRAMS), at scheduled Site Reviews (Chapter 4), and through coordination of the disposition of the assets.

#### 6.1.1 Insurance Coverage

A subrecipient must provide adequate insurance coverage and documentation of the coverage for real property and equipment acquired or improved with federal and state funds. The Colorado Department of Transportation (CDOT) must be listed as the loss payee for the property and equipment. Insurance requirements are specified in the subaward agreement.

In the event of damage or loss, a subrecipient must notify DTR staff and enter the incident into the inventory in COTRAMS.

#### 6.1.2 Safety & Security

A subrecipient is required to have procedures in place to securely store federal- and state-funded assets.

During a scheduled **Site Visit, DTR staff review the subrecipient's procedures. DTR staff** check to see if there are proper controls in place to safeguard property against loss, damage, or theft through the use of locked fences or garages, lighting, security systems, etc. DTR staff may also check to see how and where keys are secured.

### 6.1.3 Real Property/Facilities/Equipment/Supplies

#### 6.1.3.1 Title

If a subrecipient uses federal or state funding to purchase real property or facilities valued at \$5,000 or more, the subrecipient must list CDOT as the first lienholder on the title.

If a title is available for equipment and supplies that exceeds \$5,000 in value, the title stays with the subrecipient, and CDOT is not listed as a lienholder.

#### 6.1.3.2 Real Property

As defined in 2 Code of Federal Regulation (CFR) Part 200.85, real property means land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment. It includes anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings that, if removed, would deface the structure or integrality of the building, such as plumbing, heating fixtures, etc.

Except as otherwise provided by federal or state statutes or by DTR, real property must be used for the originally authorized purpose as long as needed for that purpose, during which time the subrecipient must not dispose of or encumber its title or other interests. When real property is no longer needed for the originally authorized purpose, the subrecipient must obtain disposition instructions from DTR.

When the subrecipient is directed to sell the property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

DTR requires a subrecipient to submit reports at least annually on the status of real property in which the FTA retains an interest, unless the federal interest in the real property extends 15 years or longer. A subrecipient is required to update inventory on a yearly basis, including facilities, in COTRAMS.

Additional information about Transit Asset Management Plans is included in Chapter 2.

#### 6.1.3.3 Facilities

Facilities mean all or any portion of a building or structure that is used in providing public transportation, including related roads, walks, parking lots, and parking facilities. Facilities could include the following capital assets:

- Passenger shelters
- Signs
- Amenities, such as passenger benches and bicycle lockers
- Bus barns and storage sheds
- Bus parking areas

- Bus maintenance facilities
- Transit infrastructure such as transfer facilities
- Park and ride lots, facility parking lots, sidewalk improvements
- Transit administration facilities

#### 6.1.3.4 Equipment and Supplies

Equipment means an article of nonexpendable, tangible personal property (including information technology systems) used in the provision of public transit service having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or \$5,000. Supplies mean all tangible personal property, other than equipment, with a unit value of less than \$5,000.

Equipment could include the following:

- Vehicle equipment (e.g., fare boxes and bike racks)
- Shop equipment for vehicle maintenance
- Computer equipment and software required to put the equipment into service (e.g., servers, computers, printers)
- Computer software systems of \$5,000 or more (e.g., scheduling software, maintenance/fleet management software)
- Communications equipment (e.g., telephone systems, radio systems, and security systems with an aggregate cost of \$5,000 or more)
- Security and surveillance equipment (e.g., lighting, video surveillance systems)
- Light-duty sedans, cargo vans, and trucks that are not used for passenger transportation (e.g., maintenance vehicles, staff vehicles)

Designated assets below the capitalization threshold, such as software or electronics, should be inventoried according to CDOT guidelines. For a listing of such assets, consult the CDOT Finance Department.

#### 6.1.3.5 Incidental Use

If a subrecipient has an incidental use for a property or facility, the incidental use must be submitted to and approved by DTR according to the process shown in Flowchart 6-1 Facility Incidental Use. Incidental use must be compatible with the approved purposes of the project award and may not interfere with either the intended uses of the property or the **subrecipient's** ability to maintain satisfactory continuing control. Additional requirements about incidental use are in FTA Circular 5010.1E.

Examples of incidental use include:

- Temporary use of transit property as a staging area for nearby construction.
- Allowing nearby theaters and restaurants to use transit parking spaces during the transit **system's off-hours**.
- Leasing of space in a station for a newspaper stand or coffee shop when the additional use does not interfere with the original purpose authorized in the award.
- The lease of air rights over transit facilities or utilities associated with transit facilities (such as spare capacity in general utilities and fiber optics communications utilities) that do not impact the structural configuration of the transit facility.

### 6.1.3.6 Facility and Equipment Inventory Requirements

A subrecipient is responsible for including inventory data on all facilities and equipment used to support transit services in the COTRAMS Inventory module, including, and in addition to, **those purchased with federal or state funds. DTR consolidates the data in DTR's Statewide Asset Inventory.**

This is in addition to the other requirements of use, management, and disposal of special purpose equipment and supplies acquired under a project in accordance with 2 CFR § 200.313 and 2 CFR § 200.314, respectively.

Facility inventory fields in the COTRAMS Inventory module include, but are not limited to:

- Descriptive name of facility
- Property location
- Total square footage
- Transit dedicated square footage
- Original cost
- Date purchased/constructed
- Minimum useful life (as set forth in FTA Circular 5010.1E for facilities)
- Condition of the facility
- Date removed from revenue service (if applicable)
- Disposal method (if applicable)
- Method to determine fair market value
- Sale price

Equipment inventory valued at over \$5,000 should include the following data elements, among others, and should be updated as new equipment is acquired or old equipment is replaced:

- Equipment type
- Equipment description
- Date purchased
- Minimum useful life (DTR provides)
- The funding source and percentage of federal/state participation in the cost
- Date removed from revenue service (if applicable)
- Disposal method (if applicable)
- Method to determine fair market value
- Sale price

#### **6.1.3.7 Facility Insurance**

All major structures and facilities funded under state or federal programs must have adequate insurance throughout the life of the facility. The level of insurance coverage should be commensurate with the cost and risk potential for replacing the facility. Agencies must immediately contact the DTR in the event a program-funded facility is severely damaged or destroyed from vandalism, fire, accident, or other causes.

If the subrecipient has or plans to construct facilities in an area identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the subrecipient must acknowledge this during the Subrecipient Information Request (SIR) and Site Review Process (Chapter 4).

#### **6.1.3.8 Facility and Equipment Maintenance**

All program-funded facilities must have a written facility and equipment maintenance plan and develop and implement adequate maintenance procedures that keep the property in good condition. Facility and equipment maintenance plans are collected in COTRAMS and reviewed during the SIR and Site Review Process. The plan should describe a system of periodic inspections and preventative measures to be performed at certain defined intervals.

As a best practice, a facility and equipment maintenance plan could include the following:

- A form or checklist, a schedule and dates of periodic inspection (typical inspection areas would include roof, flooring, plumbing and electrical panels).
- A maintenance schedule for installed equipment, appliances, and furnishings, based on manufacturer recommendations for each item or system (for example, heating, ventilation, and air conditioning [HVAC] equipment).
- A process for managing and monitoring any facility related warranties, including installed equipment.

- A procedure for follow-up repairs arising from building inspections, as well as for unplanned equipment breakdowns of installed equipment and documentation, such as a form (example: work order) or online system for recording the repairs.

#### 6.1.3.9 Facility and Equipment Disposition

Federal- or state-funded facilities and equipment must meet or exceed established minimum useful life standards to qualify for disposition. Minimum useful life standards are outlined in FTA Circular 5010.1E. Prior to initiating disposal, a subrecipient must contact DTR to confirm that the asset is eligible for disposition and to confirm the process and requirements for disposal of facilities and equipment.

#### 6.1.3.10 Facility Leasing

A subrecipient can use federal or state funds for leasing a facility with written authorization from DTR. DTR may review the lease documents during the Site Review Process. Lease agreements should be submitted to DTR prior to executing any contract with service **providers. It is the subrecipient's responsibility to ensure that contractors comply** with all federal and state requirements.

### 6.1.4 Vehicles

#### 6.1.4.1 Vehicle Title

CDOT (written out as Colorado Department of Transportation) must be named as first lienholder on the title of the vehicle.

Refer to Procurement flowchart.

#### 6.1.4.2 Vehicle Maintenance

CDOT requires that a subrecipient receiving funds to purchase vehicles have a vehicle maintenance plan. This plan outlines how to maintain the rolling stock assets. FTA allows subrecipients discretion in determining the appropriate intervals for preventative maintenance inspections to accommodate manufacturer recommendations, current conditions, etc. However, whatever is outlined in the preventative maintenance plan for vehicles should be followed.

A subrecipient must submit its vehicle maintenance plan in COTRAMS. DTR reviews the plans during the SIR and Site Review Process. DTR also collects a sampling of oil change records to check for a 10% deviation or lower from the determined interval during the Site Visit.

As a best practice, a vehicle maintenance plan could include the following:

- Maintenance procedures for wheelchair lifts and other accessibility features.
- System of periodic inspections policy.



- Reference to the manufacturer's minimum maintenance requirements.
- Preventative maintenance performed at certain intervals.

### 6.1.4.3 Vehicle Minimum Useful Life

The useful life of a vehicle begins on the date the vehicle is placed in revenue service (In-service date) and continues until it is removed from revenue service. The minimum useful life in years refers to total time in transit revenue service, not time spent stockpiled or otherwise unavailable for regular transit use. A subrecipient is required to notify DTR if a vehicle has been out of service for 30 consecutive calendar days as this may affect its useful life.

Refurbished vehicles that are now at the end of their second useful life (after a refurbishment extension) are eligible for replacement again. A life-extending overhaul is an eligible capital expense, and is not considered a replacement. The "beyond useful life" determination on an overhauled vehicle is based on upon the original expected life plus the additional years added by the overhaul.

DTR follows minimum useful life standards for rolling stock purchased with state or federal funds set forth in FTA Circular 5010.1E, and summarized as **CDOT's standards** in Table 6.1.

**Table 6.1. FTA/CDOT Vehicle Minimum Useful Life Standards**

CDOT Category	Length (feet)	Approximate Weight (lbs)	FTA Minimum Useful Life (yrs)	FTA Minimum Useful Life (miles)
Large Heavy-Duty Bus; articulated buses	35-40+	26,000-40,000	12	500,000
Small Heavy-Duty Bus	30	26,000-33,000	10	350,000
Medium medium-duty bus Purpose-built bus Sprinter bus	25-35	16,000-26,000	7	200,000
Medium light-duty bus Body on chassis vehicle (>19 seats) Expansion van	25-35		5	150,000
Light-duty vehicle (van, sedan, light-duty bus) Support vehicle Body on chassis vehicle (15-19 passengers)	< 30		4	100,000

#### 6.1.4.4 Vehicle Inventory Requirements

All agencies with vehicles purchased with federal or state funds must enter the entire inventory of vehicles **in DTR's COTRAMS system, regardless of how the vehicle was acquired.** The **subrecipient's** vehicle inventory should include the following elements:

- Vehicle type
- Year of manufacture
- Vehicle manufacturer (body manufacturer for cutaway vehicles)
- Vehicle model
- Vehicle length
- Seating and accessibility
- Fuel type
- Vehicle Identification Number, license plate, and title number
- The original cost of the asset
- Date placed into service
- Minimum useful life (as set forth in FTA Circular 5010.1E for vehicles)
- **The vehicle's Expected Life (per agency policy)**
- The funding sources and percentage of federal/state/local participation in the cost
- Current mileage (annual update required)
- Vehicle condition (annual update required)
- Modes of usage (regular update required)
- Date of disposal (if applicable)
- Disposal method (if applicable)
- Method to determine fair market value (if applicable)
- Sale price (if applicable)

#### 6.1.4.5 Vehicle Disposition

A subrecipient cannot dispose or otherwise release capital assets to any other party while there is federal or state interest in the capital asset without approval from DTR.

There are four justifications for vehicle disposition:

- Accident, insurance (use casualty loss): insurance settlement will be used toward the replacement.
- End of useful life: agencies may choose to refurbish, donate, or sell.
- Transfer before end of useful life: a pro-rata share of the local investment based on the fair market value of the vehicle will be used.
- Agency goes out of business: vehicles will be redistributed.

Prior to the disposal of any program-funded vehicle, the subrecipient must contact DTR with a request to release the lien. The request must be made through COTRAMS in a timely manner with the appropriate documentation for CDOT to process the release of the lien. CDOT and the subrecipient then work in conjunction with the Colorado Department of Revenue to assure the lien is released according to state rules.

After the lien is released, the subrecipient disposing of a vehicle with a fair market value of more than \$5,000 is required to invest all proceeds back into its transit program.

The process for vehicle disposition is illustrated in Flowchart 6-2 Vehicle Disposition.

#### 6.1.4.6 Vehicle Casualty Loss

If a vehicle is withdrawn from service due to damage from an accident, theft, or vandalism, a subrecipient must immediately notify DTR. The following actions will be taken:

- If the damaged vehicle can be repaired, the subrecipient is responsible to make necessary repairs to restore the vehicle to its original working condition. The cost of such repairs shall be borne by the agency, from local funds, and/or insurance proceeds.
- If the vehicle cannot be adequately repaired, is stolen, or otherwise unrecoverable, the following steps must be taken:
  - An insurance adjustor determines the Fair Market Value of the vehicle at the time it was removed from service. The transit agency will need to provide the last mileage reading and condition.
  - The subrecipient must promptly file an insurance claim for damage or loss of vehicle and provide DTR a copy of the insurance claim and subsequent correspondence with the insurance carrier or agent.
  - The subrecipient is required to use the entire insurance settlement to purchase a replacement vehicle.

#### 6.1.4.7 Vehicle Leasing

A subrecipient may lease vehicles with state or federal funds only under special circumstances, for example as an emergency or to fill a service gap to maintain service levels. Long-term leases are not allowed.

If a subrecipient must lease a vehicle, the subrecipient must contact DTR to review the lease. DTR must approve the lease agreement prior to the subrecipient entering into that agreement. **It is a subrecipient's responsibility to ensure that the contracted service provider** complies with all of the requirements that the subrecipient must meet. DTR informs the FTA of the lease agreement through the Program of Projects.

In general, DTR and the FTA check the lease to ensure that the following clauses are incorporated:

- Contractor responsibility to maintain the vehicle in good operating condition
- **Contractor adherence to manufacturer's standards for preventative maintenance**
- **Contractor's use of warranty** when possible
- **Contractor's responsibility for maintaining maintenance records**
- **Contractor's responsibility to provide maintenance reports as scheduled or needed**
- **Contractor's responsibility for ensuring staff are trained on the maintenance of the vehicle(s) leased**
- Performance standards for contractor with liability held by contractor
- Requirement for insurance coverage (must meet FTA/CDOT minimums)

## 6.2 Intangible Property

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications, and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property at issue is tangible or intangible).

Intangible property may be funded through FTA Section 5312 and Section 5304 programs. Additional information regarding intangible property is included in the specific FTA program requirements in SMP Appendix A (FTA Programs).

## 6.3 School Bus Service

### 6.3.1 Use of Assets

Subrecipients are prohibited from providing school bus service in competition with private school bus operators unless the service qualifies and is approved by the FTA Administrator under an allowable exemption. Federally funded equipment or facilities cannot be used to provide exclusive school bus service. Contractors, lessees, and subrecipients must also comply with school bus regulations.

DTR is responsible to ensure that exclusive school bus service operated by a subrecipient is provided under one of the statutory exemptions.

### 6.3.2 School Bus Exemptions

Allowable exemptions for operating a school bus service in competition with private school bus operators are defined in 49 CFR Part 605 and include:

- The recipient operates a school system in its urban area and also operates a separate and exclusive school bus program for that school system.
- Existing private school bus operators in the urban area are unable to provide adequate transportation at a reasonable rate and in conformance with applicable safety standards.

- The recipient, a governmental authority, has operated exclusive school bus service.

A recipient wishing to engage in school bus operations under one of these exemptions must provide an opportunity for public comment, including providing written notice to all private school bus operators and publishing notice in the local newspaper.

The FTA Administrator makes the determination of whether to permit a recipient to operate exclusive school bus service under one of the statutory exemptions. Upon notice of approval by the Administrator, the recipient enters into an agreement with the FTA.

### 6.3.3 Tripper Service

Tripper service is regularly scheduled mass transportation service that is open to the public and that is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Tripper service allows a subrecipient to:

- Modify the frequency of service.
- Make *de minimis* route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools.

Buses used in tripper service must:

- Be open and promoted to the public.
- **Not carry designations such as “school bus” or “school special.”**
- Stop at regular bus stops.

DTR is responsible for ensuring that school tripper service operated by subrecipients, contractors, and lessees operates and looks like all other regular service. All routes traveled by tripper buses must be within the regular route service in the published route schedules. Schedules listing tripper routes should be on the subrecipient's regularly published schedules or on separately published schedules that are available to the public with all other schedules, including on a website. Demand responsive service does not qualify for the tripper service exception.

## 6.4 Charter Bus Service

### 6.4.1 Charter Program

Details about the FTA charter service regulations and reporting requirements (49 CFR Part 60) are available at: <https://www.transit.dot.gov/regulations-and-guidance/access/charter-bus-service/charter-bus-service-regulations-0>.

Subrecipients are prohibited from using federally funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the

service. Recipients are allowed to operate community-based charter services excepted under the regulations.

The regulations define charter service as:

- Transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price.
- Transportation provided to the public for events or functions that occur on an irregular basis or for a limited duration. In addition, a premium fare is charged that is greater than the usual or customary fixed-route fare, or the service is paid for in whole or in part by a third party.

**Examples of services that do not meet FTA's definition of charter service and, therefore, are not considered charter services are:**

- Service requested by a third party that is irregular or on a limited basis for an exclusive group of individuals and the recipient does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.
- Shuttle service for a one-time event if the service is open to the public, the itinerary is determined by the recipient, the recipient charges its customary fixed-route fare and there is no third-party involvement.
- When a university pays the recipient a fixed charge to allow all faculty, staff, and students to ride the transit system for free so long as the recipient provides the service on a regular basis along a fixed route and the service is open to the public.
- When the recipient sees a need, and wants to provide service for a limited duration at the customary fixed-route fare.

The charter regulations do not apply to equipment that is fully funded with local funds, is stored in a locally funded facility, and is maintained only with local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

#### 6.4.1.1 Charter Service Exemptions

Certain charter services are not considered charter service and require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. These services, which are more fully described in the FTA Comprehensive Review Guide for Triennial and State Management Reviews. The most current Comprehensive Review Guide can be found through a link on FTA's Program Oversight web page (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>):

- Transportation of employees, contractors, and government officials

- Private charter operators
- Emergency preparedness planning and operation
- Section 5310, 5311, 5316 and 5317 recipients
- Emergency response
- Recipients in non-urbanized areas

#### 6.4.1.2 Community-Based Charter Services

Certain community-based charter services are considered exempt from the charter bus regulations. These services have administrative, record-keeping, and reporting requirements, as listed in Table 6.2.

**Table 6.2. Charter Service Exceptions (49 CFR Part 604)**

Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
Government officials on official government business	Yes (if the recipient petitions the Administrator for additional charter service hours)	Yes	Yes	<p>If additional charter service hours are needed (beyond the 80 annual service hours allowed), the recipient must petition the Administrator. The petition must include:</p> <ul style="list-style-type: none"> <li>– Date and description of the official government event and the number of charter service hours requested.</li> <li>– Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances).</li> <li>– Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area.</li> </ul>
Qualified Human Service Organization	No	Yes	Yes	Evidence that the Human Service Organization receives funding, directly or indirectly, from the programs listed in Appendix A of the charter regulation or was registered at least 60 days before the date of the first request.
Leasing FTA-funded	No	Yes	Yes	Evidence that registered charter provider has exhausted all of the available vehicles of all registered

**Table 6.2. Charter Service Exceptions (49 CFR Part 604)**

Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
equipment and drivers				charter providers in the recipient's geographic service area.
When no registered charter provider responds to notice from a recipient	Yes	Yes	Yes	None.
Agreement with registered charter provider	Yes (if a newly registered charter provider joined the Urbanized Area after the initial agreement)	No	No	Properly executed agreements with all registered charter providers in recipient's geographic service area.
Petitions to the Administrator	Yes	No	No	Recipient must demonstrate how it contacted registered charter providers and how the recipient will use the registered charter providers in providing service to the event. Recipient must also certify that it has exhausted available registered <b>charter providers' vehicles in the area.</b>

### 6.4.2 Reporting

All recipients that operate charter service under an authorized exception are required to maintain notices and records for at least 3 years and report to the FTA quarterly. The records must include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

- Government officials (49 CFR Part 604.6)
- Qualified Human Service Organizations (49 CFR Part 604.7)
- Leasing (49 CFR Part 604.8)
- No response from a registered charter provider (49 CFR Part 604.9)

Recipients must post the required records on the FTA charter website within 30 days of the end of each calendar quarter. Charter service hours include time spent transporting **passengers, time spent waiting for passengers, and “deadhead” hours.**



The recipient reports for itself and its subrecipients, contractors, and lessees except subrecipients that are also direct FTA recipients for Section 5307 formula funds. Reports are only required for quarters during which charter service was provided. An FTA Charter Service Quarterly Exceptions Reporting Form and the instructions are available for downloading at <https://www.transit.dot.gov/regulations-and-guidance/access/charter-bus-service/charter-bus-service-regulations-0>.

## 6.5 Lobbying

### 6.5.1 Federal Funds

Recipients and subrecipients are prohibited from using appropriated federal funds to lobby for federal funds. Recipients and subrecipients of federal funds in excess of \$100,000 must file a written certification annually that states that no federal funds have been paid for lobbying.

**CDOT's Office of Financial Management and Budget submits the Office of Management and Budget (OMB) Standard Form LLL (Rev. 7-97), Disclosure of Lobbying Activities, annually through TrAMS (omnibus and apportionments). The required lobbying form is included as Attachment 6-1 Lobbying Disclosure Form.**

A subrecipient certifies through its executed subaward agreement that it shall not use federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation or appropriations pending before Congress or a state legislature. DTR requires all applicants and subrecipients to submit the Standard Form LLL through COTRAMS as part of the annual Certifications and Assurance submittals. CDOT also requires firms that are awarded CDOT personal service/professional service contracts in excess of \$100,000 to submit lobbying certifications with their proposals or bids.

### 6.5.2 Local Funds

If an applicant or subrecipient uses local funds to lobby for transit purposes, the agency must submit the disclosure form OMB Standard Form LLL (Rev. 7-97) as often as once per calendar quarter, depending on whether their lobbying activities change materially. If there are material changes during any given quarter, the agency must file an updated form.

DTR requires applicants to upload the lobbying disclosure form to COTRAMS annually and quarterly if the following material changes occur:

- A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for **influencing or attempting to influence a “covered Federal action.”**
- A change in the person(s) attempting to influence such action.
- A change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action.

## 6.6 Litigation, Breaches, and Defaults

DTR is required to promptly notify the FTA Chief Counsel or FTA Regional Counsel for the region in which the recipient is located of any current or prospective legal matters that may affect the federal government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming of the federal government as a party to litigation or a legal disagreement in any forum for any reason.

**At the same time, DTR notifies Colorado Attorney General's Office as CDOT's legal counsel, who handles the legal matter.**

The FTA Master Agreement, Section 39, has details about FTA requirements regarding disputes, breaches, defaults, or other litigation. The Master Agreement is included in SMP Appendix D. DTR provides updates regarding any litigation, breaches, or defaults occurring during its State Management Review with the FTA every 3 years.

## 6.7 DTR Technical Assistance to Subrecipients

DTR provides technical assistance to applicants and subrecipients across all program areas reviewed by FTA. In addition to those in the following sections, DTR and the Civil Rights and Business Resource Center staff support applicants and subrecipients in developing and maintaining Civil Rights programs described in Chapter 5. The staff seek to assist agencies with targeted technical services in traditionally underserved areas.

### 6.7.1 Drug & Alcohol Testing Program

All recipients of FTA Section 5307, 5309, 5311, 5316, or 5339 program funding are required to have and implement a Drug & Alcohol Testing Program for safety-sensitive employees that meets the requirements of 49 CFR Parts 40 and 655. Part 40 describes required procedures for conducting workplace drug and alcohol testing for the federally regulated transportation industry (<https://www.transportation.gov/odapc/part40>). Part 655 addresses Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations (<https://transit-safety.fta.dot.gov/drugandalcohol/regulations/regulations/49cfr655/49cfr655.pdf>. (<https://transit-safety.fta.dot.gov/drugandalcohol/regulations/Regulations/default.aspx> )

**FTA's regulation requires each subrecipient to establish and implement a substance abuse prevention program consisting primarily of a testing program, but with elements requiring training, educating, and evaluating safety-sensitive employees. The regulation requires that a detailed policy statement be distributed to all safety-sensitive employees and employee organizations. In addition, 49 CFR part 655 Subpart D establishes prohibited alcohol concentration levels and behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration.**

### 6.7.1.1 CDOT's Drug & Alcohol Program

CDOT's Drug & Alcohol program is governed by CDOT's Procedural Directive (PD) 81.1 Drug and Alcohol Testing, included as Attachment 6-2 PD 81.1 Drug and Alcohol Testing.

### 6.7.1.2 Subrecipient Monitoring

DTR has contracted with a drug and alcohol program consultant that works directly with subrecipients to comply with the regulations. The consultant is responsible for subrecipient training, compliance monitoring, and technical assistance.

The consultant reviews the subrecipient drug and alcohol testing program at a minimum every 3 years. Through review of the policy and records, the consultant confirms that the program meets federal requirements, that there is a compliant process for conducting random tests, that reports are adequate, secure and complete, that post-accident and pre-employment testing are conducted appropriately, and that collection sites meet federal requirements.

Training is provided to new recipients of Section 5307, 5309, 5311, 5316, or 5339 funds, as well as refresher training at the spring and fall Colorado Association of Transit Agencies (CASTA) conferences. The refresher training centers around determining reasonable suspicion for supervisors, training employees on drug and alcohol programs, and best practices for drug and alcohol programs.

The consultant monitors the subrecipient testing programs throughout the year. Subrecipients are required to **report program testing results in the FTA's Drug & Alcohol Testing Management Information System (DAMIS)** by March 15 for the prior year. DTR and the consultant work with subrecipients to make sure the reports are accurately submitted by the annual deadline.

## 6.7.2 Rural Transportation Assistance Program

As required by FTA Circular 9040.1G, CDOT is responsible for providing technical assistance, support, and training to its rural providers through the Rural Transportation Assistance Program (RTAP). CDOT publishes a Request for Proposals (RFP) every 5 years to identify a company or organization to assist CDOT with this program.

The goal of the RTAP program is to:

- Promote the safe and effective delivery of public transportation in rural areas and to make more efficient use of public and private resources.
- Foster the development of state and local capacity for addressing the training and technical assistance needs of the rural transportation community.
- Improve the quality of information and technical assistance available through the development of training, technology, and technical assistance resource materials.

- Facilitate peer-to-peer self-help through the development of local networks of transit professionals.
- Support the coordination of public, private, specialized, and human service transportation services.
- Build a national database on the rural segment of the public transportation industry.

**To achieve these goals, CDOT's RTAP program provides the following:**

- A statewide transit resources library, housed at the CASTA website (<https://coloradotransit.com/>).
- Training opportunities by providing regional and statewide training courses, including at the CASTA spring and fall conferences.
- Scholarship opportunities for rural providers to attend in- and out-of-state training opportunities.
- Peer-to-peer networking opportunities for sharing best practices, developing mentoring opportunities, and encouraging regional sharing of resources.
- A statewide transit and transportation directory to encourage and facilitate networking opportunities, updated annually.
- Tailored technical assistance provided for specific requests that are made by the rural transit providers, e.g., RFP assistance, technology assistance, coordination assistance.

To assist in ensuring that these efforts meet the needs of its rural transit providers, CDOT has established an RTAP Committee, made up of rural area members, that meets at least 4 times per year to provide guidance on training topics, discuss issues of importance to rural providers, and maintain input on policy decisions relevant to the FTA Section 5311 program.

Each year, DTR works with its RTAP Committee to identify assistance needs of its rural agencies. This training curriculum is then presented to the contractor and negotiations then occur to determine the specific course catalog for the year. This catalog is subject to change based on changes in demand for training, the availability of training through other resources, **and the state's ability to** collaborate with other organizations to provide this assistance.

The RTAP contractor provides regular reports on the status of the program consisting of:

- Lists of trainings provided during the quarter including topics and attendance.
- Scholarships provided to subrecipients.
- Meetings held/attended related to rural transportation.
- Other activities that impact RTAP.

# CHAPTER 6 ATTACHMENTS

## Attachment 6-1. Lobbying Disclosure Form

## DISCLOSURE OF LOBBYING ACTIVITIES

**Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352**

Approved by OMB

0348-0046

<b>1. * Type of Federal Action:</b> <input type="checkbox"/> a. contract <input checked="" type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. * Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input checked="" type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. * Report Type:</b> <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change
--	--	--

**4. Name and Address of Reporting Entity:**  
☒ Prime    ☐ SubAwardee  
  
 \* Name   
 \* Street 1  Street 2   
 \* City  State  Zip   
 Congressional District, if known:

**5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:**

<b>6. * Federal Department/Agency:</b> <div style="border: 1px solid black; height: 1.2em; width: 100%; background-color: yellow;"></div>	<b>7. * Federal Program Name/Description:</b> <div style="border: 1px solid black; height: 1.2em; width: 100%; background-color: yellow;"></div> CFDA Number, if applicable: <span style="border: 1px solid black; display: inline-block; width: 150px; height: 1.2em;"></span>
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<b>8. Federal Action Number, if known:</b> <div style="border: 1px solid black; height: 1.2em; width: 100%; background-color: yellow;"></div>	<b>9. Award Amount, if known:</b> \$ <span style="border: 1px solid black; display: inline-block; width: 150px; height: 1.2em; background-color: yellow;"></span>
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**10. a. Name and Address of Lobbying Registrant:**  
  
 Prefix  \* First Name  Middle Name   
 \* Last Name  Suffix   
 \* Street 1  Street 2   
 \* City  State  Zip

**b. Individual Performing Services** (including address if different from No. 10a)  
  
 Prefix  \* First Name  Middle Name   
 \* Last Name  Suffix   
 \* Street 1  Street 2   
 \* City  State  Zip

**11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**\* Signature:**   
**\*Name:** Prefix  \* First Name  Middle Name   
                   \* Last Name  Suffix   
**Title:**  **Telephone No.:**  **Date:**

**Federal Use Only:**

Authorized for Local Reproduction  
 Standard Form - LLL (Rev. 7-97)

## Attachment 6-2. PD 81.1 Drug and Alcohol Testing





## COLORADO

### Department of Transportation

Office of Policy and Government Relations  
2829 W. Howard Place, Suite 562  
Denver, CO 80204

### RELEASE MEMORANDUM

TO: All CDOT Employees  
FROM: Michael P. Lewis, Executive Director  
RE: Updated Procedural Directive 81.1 "Drug and Alcohol Testing"  
DATE: December 20, 2018

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1. Name of Updated Procedural Directive: "Drug and Alcohol Testing"
2. Rationale for Updated Directive: Procedural Directive 81.1 provides CDOT's requirements regarding drug testing, as well as general requirements on employees' use of drugs and alcohol. Updated PD 81.1 has been revised with language making it clear that the use, possession, manufacturing, selling, trading, transferring, and offering for sale of alcohol or any drug covered under the Federal Controlled Substances Act (including marijuana) on state property is prohibited at all times, regardless of whether it is during or outside of work hours.
3. Individuals/Entities/Projects Impacted by Procedural Directive: All employees
4. PD 81.1 will be implemented by: Office of Transportation Safety and Division of Transit and Rail.



<b>COLORADO DEPARTMENT OF TRANSPORTATION</b>		<input type="checkbox"/> <b>POLICY DIRECTIVE</b> <input checked="" type="checkbox"/> <b>PROCEDURAL DIRECTIVE</b>
<b>Subject</b> <b>Drug and Alcohol Testing</b>		<b>81.1</b>
<b>Effective</b> 12.20.18	<b>Supersedes</b> 2.9.15	<b>Originating Office</b> <b>Office of Transportation Safety (OTS) (Re: DOT requirements) and Division of Transit and Rail (Re: FTA requirements)</b>

## **I. PURPOSE**

The Colorado Department of Transportation (“CDOT”) seeks to maintain a safe, healthy, efficient work environment for its Employees, volunteers and the public. Employees who are impaired by alcohol and/or drugs during working hours may cause disruption in the workplace and pose safety and health risks not only to themselves, but to others. In order to ensure the safety of all employees, volunteers, and the public, use of alcohol, other drugs or Controlled Substances that adversely impacts the Employee and volunteer’s ability to perform his or her job will not be tolerated. It is CDOT’s intent to balance our respect for individuals with the need to maintain an alcohol and drug free environment by complying with the provisions of the Drug-Free Workplace Acts of 1988 and 1998.

## **II. AUTHORITY**

### Federal Authority

Federal Drug-Free Workplace Act of 1988 and 1998, as amended, and Implementing Regulations, 41 U.S.C. § 8101, *et seq.*

Omnibus Transportation Employee Testing Act of 1991, (FOTETA), 49 U.S.C. 5331, as amended, and Implementing Regulations

The Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C § 801, *et seq.*, including the Federal Controlled Substances Act of 1970, as amended, and Implementing Regulations

42 U.S.C. § 12114, Illegal Use of Drugs and Alcohol

49 C.F.R. Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

49 C.F.R. Part 382, Controlled Substances and Alcohol Use and Testing

49 C.F.R. Part 655 “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations”

State Authority

CDOT Executive Director pursuant to § 43-1-105, C.R.S.

Executive Order D0002 91 Regarding Substance Abuse Policy for Colorado State Employees

State of Colorado Constitution, Article XVIII – Section 14 (10) (b)

State of Colorado Constitution, Article XVIII – Section 16 (6) (a)

§ 42-4-1301, C.R.S.

Colorado Revised Statutes Title 18, Article 18, Part 2, Schedules I-V

State Personnel Board Rules and Personnel Director's Administrative Procedures 4 CCR 801.

Department of Public Safety, Minimum Standards for the Operation of Commercial Vehicles, 8 CCR 1507-1.

**III. APPLICABILITY**

This Procedural Directive applies to all CDOT Employees. Employees who are designated as “safety sensitive” must adhere to all related federal and state laws, regulations and policies as well as CDOT policies and procedures. All CDOT employees are subject to the provisions of this Procedural Directive, and in addition, CDOT employees in the Division of Transit and Rail must also be familiar with and adhere to the Federal Transit Administration requirements in section V. D.

**IV. DEFINITIONS**

“Appointing Authority” refers to the status of a CDOT employee as defined under Colorado Constitution art. XII, Sec. 13 (7) and may also include his/her Designee.

“CDOT Property” means land, buildings, vehicles or other assets owned, leased, borrowed, or otherwise used by CDOT.

“Controlled Substance” means any drug or substance listed in the Federal Controlled Substances Act.

“Employee” means any individual who is an employee or volunteer who conducts business for CDOT, is representing CDOT, or is conducting business in or on CDOT property.

“Impairment” may be present when an Employee's behavior or condition adversely affects job performance, threatens the safety of her or himself or others or property,

and/or exhibits unprofessional conduct detrimental to the public's perception of state personnel as a result of the use of alcohol, Controlled Substances or other drugs.

"Safety-Sensitive" means an Employee who holds a CDL license necessary for conducting business on behalf of CDOT. For FTA funded positions, "Safety Sensitive" also includes any Employee engaged in the direction or maintenance of a passenger vehicle. This includes operators of revenue service vehicles, CDL-holding operators of non-revenue service vehicles, vehicle controllers, revenue service vehicle mechanics, firearm-carrying security personnel. See Appendix "C".

"Trained Supervisor" means a CDOT Employee who supervises other CDOT Employees and who has undergone the required Reasonable Suspicion training to act as a Trained Supervisor for purposes of this Directive.

"Work Hours" mean hours during which an Employee is conducting business on behalf of CDOT, representing CDOT, while in or on CDOT property, and while on-call or paid standby for CDOT. For Safety-Sensitive positions "Work Hours" also means the time when an Employee is required to be in readiness to work until the time he/she is relieved from all responsibility for performing work. See 49 CFR § 395.2.

## **V. PROCEDURE**

### **A. General Requirements**

1. Employees are required to report to work unimpaired, and while at work will remain unimpaired by alcohol, Controlled Substances including marijuana, and other drugs including prescription and non-prescription medications.
2. It is a violation of this Directive for an Employee to use, possess, manufacture, sell, trade, transfer, and/or offer for sale alcohol or any drug covered under the Federal Controlled Substances Act, including marijuana, at any time on CDOT Property except as stated in paragraph 3, below. Any drug covered under the Federal Controlled Substances Act, including marijuana, and drug paraphernalia, is prohibited on CDOT property except as stated in paragraph 3, below.
3. Use and possession of prescription drugs is permissible when possessed by the individual to whom it is prescribed and when used in the stated dosage, according to labeling, and a physician's prescription. The sale, trade, transfer, and/or offer for sale of any prescription drug is prohibited on CDOT property. Marijuana, including medical marijuana, is not a prescribed drug. Over-the-counter drugs are not prohibited when used at the stated dosage according to labeling.
4. Violations of this Directive may be cause for management/supervisor intervention that may result in a referral to mandatory treatment and/or corrective or disciplinary action up to and including termination.

5. It is the responsibility of all management and supervisory personnel to implement and enforce this Directive and ensure compliance by Employees.

6. CDOT will comply with the model collection and drug testing standards issued by the U.S. Department of Health and Human Services.

7. Immediately contact the CDOT Drug and Alcohol Program Manager in the Office of Transportation Safety when there is a question related to testing or training procedures, and if problems are encountered in the testing process. See Appendix "C" for contact information. If unable to reach the Program Manager, contact the Director of Transportation Safety and Risk Management and as a final option the Statewide Safety Manager.

#### **B. Applicable Testing**

1. The following chart provides an overview of the testing pertaining to different stages of the testing process.

<b>Type of Testing</b>	<b>Non-Safety Sensitive Employees</b>	<b>Safety Sensitive Employees</b>
Pre-Employment (Drug)		✓
Reasonable Suspicion	✓	✓
Post-Accident		✓
Random Alcohol/Drug		✓
Return-to-Duty	✓	✓
Follow-Up	✓	✓

2. When directed to participate in a controlled substance test, the Employee must provide the appropriate sample. When an Employee cannot meet this requirement, the responsible supervisor should contact the CDOT Drug and Alcohol Program Manager in the Office of Transportation Safety as soon as possible to be advised of the next required steps in the process. If unable to reach the Program Manager, the responsible supervisor should call the Director of Transportation Safety and Risk Management and then the Statewide Safety Manager. When contacting any or all of the above individuals, detailed messages should be left on voice mail if the individual is not available. See Appendix "C" for contact information.

1. Pre-Employment (Drug). Safety-Sensitive candidates for employment with CDOT shall be subject to pre-employment testing and may not be approved for employment if they test positive or refuse to test. *See* CDOT Form 1200, "Pre-Employment Physical/DOT Physical/ All Drug and Alcohol Testing."

a) The candidate must provide written consent to CDOT to contact the candidate's previous employer(s) so that they may provide CDOT with:

(1) Alcohol test results with a concentration of .04 or greater;

(2) Positive controlled substance(s) test results;

(3) Refusals to submit to a required alcohol or controlled substance(s) test; and

(4) Information that the candidate participated in a Return-to-Duty Program in accordance with 49 CFR part 40.

## 2. Reasonable Suspicion

a) All Employees are subject to reasonable suspicion testing. Reasonable suspicion testing is designed to provide management with a tool to identify Employees who may use alcohol, Controlled Substances, or other drugs including prescription and non-prescription medications that result in Impairment on the job.

(1) Reasonable suspicion testing for alcohol should be performed within 2 hours of the reasonable suspicion determination whenever possible, but must be performed within 8 hours following the reasonable suspicion determination.

(2) When alcohol testing is not administered within 2 hours following the reasonable suspicion determination, written documentation must be provided stating the reason for the test delay. When alcohol testing is not performed by the 8 hour time limit, attempts to administer the test shall cease and a written record shall be prepared and maintained by the supervisor indicating why the test could not be performed.

b) Employees have a duty to inform a supervisor or Appointing Authority if he or she observes an Employee who appears impaired on the job.

c) If an Employee who first observes behavior that appears to be indicative of Impairment is not a Trained Supervisor, a Trained Supervisor must be contacted to conduct the reasonable suspicion screening process.

d) When a Trained Supervisor observes that reasonable suspicion may exist to suggest that an Employee is impaired on the job, he or she may request the presence of a second Trained Supervisor. A second Trained Supervisor is recommended but

not required during the reasonable suspicion screening process.

e) Training coordinators in the regions and headquarters have access to their respective training records which is located in SAP in the ZH40 Report. Enter Object ID 50000940. This pulls up the names, the positions, the organizations, and the dates of individuals trained in reasonable suspicion and the date training was completed. The Drug and Alcohol Coordinator can act as a resource if needed to locate CDOT employees trained in reasonable suspicion.

f) Trained Supervisors must:

(1) Meet all training and record keeping requirements of this Procedural Directive.

(2) Complete the Reasonable Suspicion checklist, CDOT Form 946a.

(3) Upon completing Form 946a, contact the Appointing Authority for a reasonable suspicion determination and to get authorization to send the Employee for drug and/or alcohol testing.

g) The Appointing Authority is encouraged to meet with the Employee, either in person or on the telephone to inform him or her of the reason for sending the Employee for testing, and allow the Employee an opportunity to explain the circumstances surrounding the behavior underlying the reasonable suspicion.

h) All Employees shall be temporarily removed from the performance of their duties on the day of the test. The following day, Employees are required to report for regularly scheduled duty and the Appointing Authority will re-evaluate whether the Employee should resume regular duties.

i) The Appointing Authority or designee must arrange for safe transportation of the Employee to and from the testing site. The individual who transports the Employee must remain with him or her until the completion of the testing and the Employee is safely transported back to work or home following testing.

j) The CDOT Drug and Alcohol Coordinator receives the test results along with the Region DER (Designated Employee Representative).

k) If the test result is negative, the Employee may return to normal duty and no further action is required.

l) If the test result is positive, the Appointing Authority must determine the appropriate course of personnel action. The Appointing Authority is encouraged to consult with Employee Relations / Legal Office during this phase of the process.

m) If the Appointing Authority does not take personnel action that results in the Employee's separation from employment, then the following applies:

- (1) If the Employee is Safety-Sensitive, the Appointing Authority must refer the Employee to Drug or Alcohol Counseling with a qualified Substance Abuse Professional ("SAP");
- (2) If the Employee is non-Safety-Sensitive, the Appointing Authority may refer the Employee to Drug or Alcohol Counseling with a qualified SAP.

n) The Employee who is referred to Drug or Alcohol Counseling must contact the SAP Referral Service to find a SAP to provide the counseling. The Employee has ten working days to contact and make an appointment with the (SAP), and inform the Appointing Authority or designee of the scheduled appointment, and name, address, and phone number of SAP.

o) The Employee must successfully complete the Drug or Alcohol Counseling including but not limited to any follow-up or return-to-duty testing prescribed by the SAP and/or Appointing Authority.

### 3. Post-Accident

a) Safety Sensitive Employees who drive a state vehicle are subject to post accident testing. Safety sensitive Employees are subject to immediate drug or alcohol testing following any accident that meets one or more of the following.

b) The Safety Sensitive Employee must be tested for **alcohol** if he or she:

- (1) Was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Receives a citation within 8 hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:
  - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (ii) 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.

c) A Safety Sensitive Employee shall be tested for **Controlled Substances** for if



the Safety Sensitive Employee:

(1) Was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within thirty-two hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) 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.

d) The following table notes when a post-accident test is required to be conducted by paragraphs (a), (b) and (c) above:

<b>Type of Accident Involved</b>	<b>Citation Issued to the Safety Sensitive Employee</b>	<b>Test Must be Performed</b>
Human fatality	YES	YES
	NO	YES
Bodily Injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

e) A Safety sensitive Employee who is involved in an accident must immediately report the accident to the Appointing Authority. The Appointing Authority will:

(1) Consult with law enforcement and/or arrive at the scene of the accident to determine if testing should be completed;

(2) Transport or arrange for transport of the Employee to the appropriate collection site.

- f) A Safety-sensitive Employee who is involved in an accident must refrain from consuming alcohol until after he/she submits to an alcohol test or for 8 hours following the accident or, whichever occurs first.
- g) If an alcohol test could not be administered within 2 hours of the accident, the supervisor must prepare and maintain a record stating the reason a test was not promptly administered.
- h) If an alcohol test could not be administered within 8 hours, efforts to administer the test must cease and the supervisor must prepare and maintain a record stating the reason a test was not promptly administered. Records shall be submitted to the FMCSA upon request.
- i) If a required drug test could not be administered within 32 hours, the supervisor shall cease attempts to administer a controlled substances test, and must prepare and maintain a record stating the reason a test was not promptly administered. Records shall be submitted to the FMCSA upon request.
- j) CDOT may substitute a test administered by law enforcement officials under separate authority.
- k) A Safety Sensitive Employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing.
- l) As stated above, when directed to participate in a controlled substance test, the Employee must provide the appropriate sample. When an Employee cannot meet this requirement, the responsible supervisor should contact the CDOT Drug and Alcohol Program Manager in the Office of Transportation Safety as soon as possible to be advised of the next required steps in the process. If unable to reach the Program Manager, the responsible supervisor should call the Director of Transportation Safety and Risk Management and then the Statewide Safety Manager. When contacting any or all of the above individuals, detailed messages should be left on voice mail if the individual is not available. See Appendix "C" for contact information.
- m) Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a Safety Sensitive 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.

4. Random Testing. Employees who are designated as “Safety Sensitive” due to a CDL license or under FTA regulations are subject to random drug testing following CDOT procedures as implemented in accordance with applicable Federal laws, policies and regulations.

5. Positive Test Results

a) “Positive Alcohol Test” means the result of a test that is administered by a breath alcohol technician (“BAT”) or other SAP in which an Employee’s breath or blood sample tests 0.02 BAC (Blood Alcohol Content) or greater.

b) “Positive Drug Test” means a test in which a drug or metabolite has been confirmed to be over the cutoff limits by the testing facility and verified by the Medical Review Officer.

c) A Safety-Sensitive Employee may be placed off duty for 24 hours from the time the alcohol test results were rendered if the results are between 0.02 and 0.039 BAC. Safety-sensitive Employees with results of 0.04 BAC or greater shall be removed from performing Safety-Sensitive duties, and be referred to a SAP.

d) In conformance with DOT standards, CDOT will require an HHS-certified laboratory to test on a 5-panel drug test regimen, which will include marijuana (THC), Cocaine, Amphetamines, Opiates, and Phencyclidine (PCP). An Appointing Authority has the discretion, pursuant to reasonable suspicion or post-accident testing procedures, to request additional testing which are not included in the 5-panel drug test regimen.

e) Any Employee who tests positive for alcohol or the metabolites of drugs through breath, blood, or urine may be in violation of this directive and subject to corrective and/or disciplinary action up to and including termination.

f) An Employee who refuses to cooperate in the testing process, or who adulterates, tampers with, or otherwise interferes with accurate testing will be treated as if his/her test returned as a positive test result, making the Employee subject to corrective or disciplinary action up to and including termination.

g) Employees who test positive will be given the opportunity through the Medical Review Officer process to provide a legitimate medical explanation, such as a valid physician’s prescription, for the positive result.

h) The Department shall provide a Safety Sensitive Employee with necessary post-accident information, procedures and instructions, prior to the Employee operating a state vehicle, so that the Employee will be able to comply with these requirements.

#### 6. Return-to-Duty and Follow-Up.

- a) An Appointing Authority must implement Return-to-Duty agreements for Safety-Sensitive Employees and may implement for non-Safety Sensitive Employees who violate this Directive but are not separated from employment.
- b) An Appointing Authority shall consult with a SAP, which may include C-SEAP, when developing a Return-to-Duty Agreement.
- c) An Employee who violates a Return-to-Duty agreement may be subject to corrective and/or disciplinary action up to and including termination.

#### C. Education and Training

- 1. All Appointing Authorities, including their Designees, and Employees who are intended to be designated as Trained Supervisors shall receive drug and alcohol training to identify reasonable suspicion. Those who complete the training shall be designated as Trained Supervisors. Supervisors of safety sensitive Employees and any other supervisors who are expected to initiate a reasonable suspicion drug and alcohol testing process must also be trained to identify reasonable suspicion to be used as a Trained Supervisor for purposes of the reasonable suspicion testing process.
- 2. CDOT's Drug and Alcohol Coordinator shall be responsible for overseeing CDOT's training and will comply with all applicable reporting requirements under federal regulations.

#### D. Federal Transit Administration Requirements Regarding CDOT Employees

- 1. CDOT Employees in the Division of Transit and Rail ("DTR") are subject to all applicable requirements in this Directive. In addition, the following requirements in this part E. apply to Employees who are governed by the requirements of the Federal Transit Administration, pursuant to 41 U.S.C. § 8102.
- 2. As the designated recipient of Federal Transit Administration funds, DTR is responsible for the following:
  - a) Publishing a statement informing Employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specify the disciplinary actions for violations of the statement;
  - b) Establishing a drug-free awareness program to inform Employees about:
    - (1) The dangers of drug abuse in the workplace;
    - (2) The policy of maintaining a drug-free workplace;
    - (3) Available drug counseling, rehabilitation, and Employee assistance programs; and

- (4) The penalties that may be imposed on Employees for drug abuse violations.
  - c) Providing all CDOT Division of Transit and Rail Employees with a copy of the Procedural Directive;
- 3. DTR shall notify the Employee in the statement required above that as a condition of employment the Employee will:
  - a) Abide by the terms of the statement; and
  - b) Notify CDOT of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 calendar days after the conviction;
  - c) Have a sanction imposed upon, or be required to satisfactorily participate in a drug abuse assistance or rehabilitation program if convicted, as required by 41 U.S.C. § 8104; and
  - d) Make a good faith effort to continue to maintain a drug-free workplace through implementation of the requirements set forth herein.
- 4. Within 30 days after receiving notice from an employee of a conviction pursuant to 41 U.S.C. 8102 (a)(1)(D)(ii) or 8103(a)(1)(D)(ii), the Appointing Authority shall:
  - a) Take appropriate personnel action against the Employee, up to and including termination; and/or
  - b) Require the Employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for those purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

#### E. Voluntary Disclosure of Alcohol Use or Controlled Substance Use Process

##### 1. Employee Self-Disclosure.

- a) CDOT encourages self-disclosure of alcohol use or Controlled Substance Use as a means of supporting an Employee and maintaining a valued Employee in the workforce. Whenever practicable and with due regard for the safety of the public and CDOT Employees, CDOT encourages the rehabilitation of Employees who

voluntarily seek assistance or self-report alcohol and drug abuse problems. It is CDOT's goal that Employees will take responsibility for their own behavior and be encouraged to voluntarily seek professional assistance.

b) An Employee may self-report an alcohol and/or drug problem to the Appointing Authority. In the absence of a documented job performance problem, an Employee in a non-safety-sensitive position who voluntarily admits to drug or alcohol problems should be strongly encouraged to seek assistance through C-SEAP or another SAP for assessment. Self-reporting by an Employee in a Safety-Sensitive position is governed by the conditions below.

c) Self-disclosure will not alleviate alcohol and drug testing requirements as set forth in this Directive, including random testing and post-accident testing.

d) In the context of a voluntary disclosure, CDOT shall pay for all drug and alcohol testing in connection with evaluating the Employee's compliance to this directive. The Employee shall be responsible to pay for any SAP substance dependency assessments and education and treatment programs the SAP may mandate.

## 2. Appointing Authority Responsibility

a) For all Employees, the Appointing Authority must notify the CDOT Drug and Alcohol Coordinator that the self-disclosure has occurred.

b) An Appointing Authority must immediately remove an Employee from the Safety-Sensitive position.

c) A Safety-Sensitive Employee who voluntarily admits to a drug and/or alcohol problem shall receive a mandatory referral by the Appointing Authority to a SAP and may be subject to return-to-duty testing.

d) For Non-Safety-Sensitive Employees, the Appointing Authority may, within his or her discretion, enter into a Return-to-Duty Agreement with the Employee, which shall be retained by the Coordinator and remain confidential.

e) The Appointing Authority must coordinate a return-to-duty meeting with the Employee and C-SEAP or the SAP and must receive the SAP Return-to-Duty documentation before returning the Employee to duty following self-disclosure-related alcohol or drug treatment.

## 3. Employee Responsibility

a) The Employee may voluntarily disclose alcohol or Controlled Substance use to a supervisor prior to the start of their work shift or during off-duty hours and before being notified of a required test or reasonable suspicion testing.

- b) Upon voluntary disclosure, the Employee must comply with all educational and treatment programs recommended by a SAP or other qualified person.
- c) If the Employee fails to comply with the provisions of the Return-to-Duty Agreement, management/supervision intervention may result in referral to further treatment and/or corrective or disciplinary action up to and including termination.
- d) CDOT shall pay for all drug and alcohol testing in connection with evaluating the Employee's compliance to this directive. The Employee shall be responsible to pay for any SAP substance dependency assessments and education and treatment programs the SAP may mandate.

#### **F. Confidentiality**

1. CDOT respects the privacy of all Employees. Therefore, reasonable precautions will be taken to ensure the privacy and confidentiality of an Employee throughout the testing process and to make certain that procedures are administered fairly, consistently, and in accordance with CDOT's directives. Access to this information is limited to those who have a legitimate "need to know" in compliance with relevant laws and directives. All alcohol and drug testing information will be maintained in confidential records separate from official personnel files.
2. The Drug and Alcohol Coordinator will maintain test results data. Region DERs maintain negative test records for a period of one year and positive test records for a period of five years.
3. CDOT is prohibited from releasing individual test results, or medical information about an Employee to third parties without the Employee or his or her legal representative's written consent, or as required by applicable law.

#### **VI. DOCUMENTS REFERENCED IN THIS PROCEDURAL DIRECTIVE AND OTHER RESOURCES**

Appendix "A" Reasonable Suspicion Guidance

Appendix "B" Requirements Applicable to Safety-Sensitive Positions

CDOT Form 946a (available on the CDOT Forms Library)

CDOT Form 1200, "Pre-Employment Physical/DOT Physical/ All Drug and Alcohol Testing"

DOT Guidance: <http://www.dot.gov/odapc/documents> and <http://www.dot.gov/sites/dot.gov/files/docs/ODAPC%20EmployeeHandbook%20En.pdf>



FTA Guidance: [http://www.fta.dot.gov/13057\\_6124.html](http://www.fta.dot.gov/13057_6124.html)

## **VII. IMPLEMENTATION PLAN**

- A. This Procedural Directive shall be effective upon signature.
- B. This Procedural Directive shall be implemented by the Office of Transportation and Safety regarding DOT requirements, and the Division of Transit and Rail regarding FTA requirements. The Office of Transportation Safety and the Division of Transit and Rail will provide all applicable Employees with a copy of this Procedural Directive.
- C. All Appointing Authorities, designees and direct reports must be trained in the reasonable suspicion process within ninety days of the effective date of this Directive.

## **VII. REVIEW DATE**

This Directive shall be reviewed on or before December 2023.

  
\_\_\_\_\_  
Michael P. Lewis  
Executive Director

12/20/18  
\_\_\_\_\_  
Date of Approval



## **Appendix “A”**

### **Reasonable Suspicion Guidance**

In making a determination of reasonable suspicion, the factors to be considered may include, but are not limited to, the following:

- Personal observation of specific, current, and articulable observations based on the behavior, odor, appearance and speech (“BOAS”) behavioral indicators of drug or alcohol use, physical withdrawal symptoms, and may include potential job performance issues;
- Occurrence of a serious or potentially serious work-related accident that may have been caused by human error or flagrant violations of safety, security or other operating procedures;
- Evidence of prohibited substance use, including possession, sale, delivery while on duty and/or possession of drug paraphernalia;
- Fighting (physical contact) and assaults, or erratic, aggressive or violent behavior;
- Arrest or conviction for a drug-related offense, or the identification of an Employee as the focus of a criminal investigation into illegal drug use or trafficking;
- Past admissions or statements made by the Employee;
- Information provided either by a reliable and credible source, independently corroborated or having corroborative evidence from a manager or supervisor with training and experience in identifying signs and symptoms of alcohol or drug impairment.

**Appendix “B”****Requirements Applicable to Safety-Sensitive Positions**

This table lists the types of Safety-Sensitive duties subject to DOT drug and alcohol testing relevant to CDOT under FMCSA and FTA:

Transportation Industry	Safety-Sensitive Duties
Commercial Motor Carriers (FMCSA)	Commercial Drivers' License (CDL) holders who operate a Commercial Motor Vehicle.
Public Transportation (FTA)	Operators of revenue service vehicles, CDL-holding operators of non-revenue service vehicles, vehicle controllers, revenue service vehicle mechanics, firearm-carrying security personnel.

1. Safety-Sensitive Employees:

- A. Must not use or possess alcohol or any illicit drug while assigned to perform Safety-Sensitive functions or actually performing Safety-Sensitive functions.
- B. Must not use alcohol or any illicit drug during the 4 hours before performing Safety-Sensitive functions and 8 hours following an accident or until he/she undergoes a post-accident test, whichever occurs earlier.
- C. Must not report for service, or remain on duty if he/she:
  - Is under the influence or impaired by alcohol;
  - Has a blood alcohol concentration .04 or greater; (with a blood alcohol concentration of .02 to .039, CDOT does not permit the Employee to continue working for 24 hours);
  - Has used any illicit drug.
  - Has used alcohol within four hours of reporting for service or after receiving notice to report.
  - Is using any Controlled Substance unless used pursuant to the instructions of an authorized medical practitioner, and then only if the authorized medical practitioner has advised the Employee that the Controlled Substance will not adversely affect the Employee's ability to perform the Safety-Sensitive function.
- D. Must not refuse to submit to any test for alcohol or Controlled Substances.

E. Must not refuse to submit to any test by adulterating or substituting the specimen.

F. Must inform their supervisor of any medication that is being taken that could interfere with performance of safety-sensitive functions.

For further guidance, see:

<http://www.dot.gov/sites/dot.gov/files/docs/ODAPC%20EmployeeHandbook%20En.pdf>

Subject	Number
<b>Drug and Alcohol Testing</b>	<b>81.1</b>

## **Appendix “C”**

### **Contact Information for Questions on Drug and Alcohol PD**

Current as of 12.10.18

Drug and Alcohol Program Manager: Elbert Hunt office (303) 757-9420 / cell (303) 809-9069

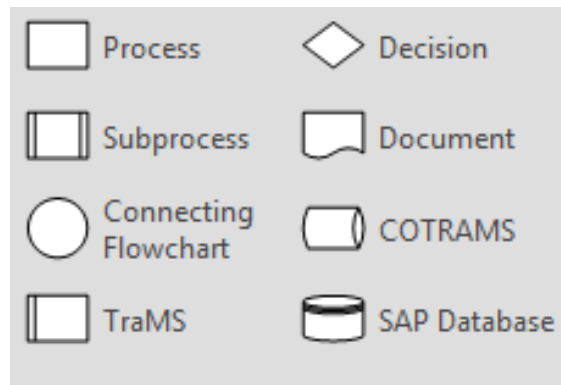
Director of Transportation Safety and Risk Management: Darrell Lingk office (303) 757-9465 / cell 303-257-8486.

Statewide Safety Manager: Steve Gasowski office (303) 757-9463 / cell (303) 515-1655

# CHAPTER 6

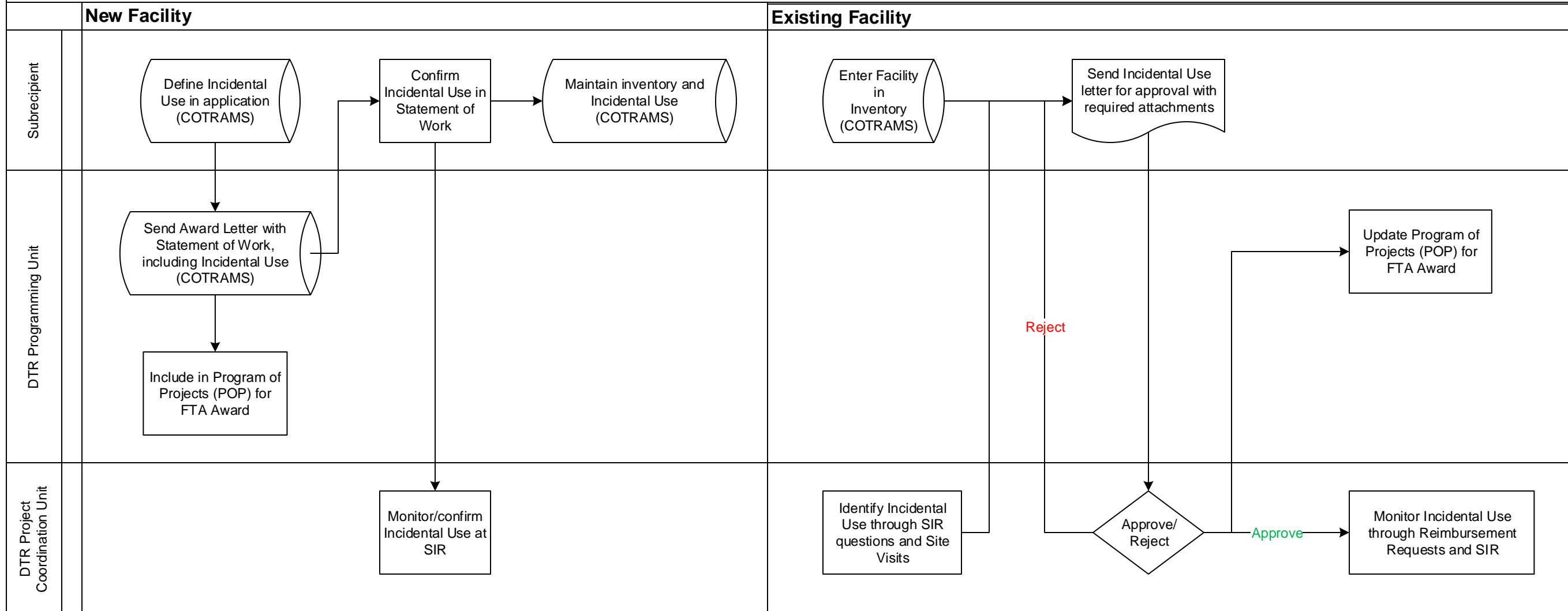
# FLOWCHARTS

## Flowchart Shapes/Key



## Flowchart 6-1. Facility Incidental Use

## 6-1 Facility Incidental Use



## Flowchart 6-2. Vehicle Disposition



6-2 Vehicle Disposition

