

**1. REQUESTED MOTION:**

**ACTION REQUESTED:**

Adopt revision to Lee County Policy 205, Drugs and Alcohol in the Workplace. Adoption of the resolution to amend the Administrative Code 6-1

**WHY ACTION IS NECESSARY:**

Includes reference to the Lee County Transit Substance Abuse Policy, which was established to comply with the Federal Transit Administration drug and alcohol testing requirements to ensure employee fitness for duty, and to protect our employees, passengers and the general public from the risks posed by the use of alcohol and prohibited drugs.

**WHAT ACTION ACCOMPLISHES:**

Updates policy as proposed by BoCC.

<b>2. DEPARTMENTAL CATEGORY:</b> Independent		<b>MEETING DATE:</b>
<b>COMMISSION DISTRICT #:</b> Countywide <b>C6M</b>		<b>06-04-2002</b>
<b>4. AGENDA:</b>  <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> APPEALS <input type="checkbox"/> PUBLIC <input type="checkbox"/> WALK ON <b>TIME REQUIRED:</b>	<b>5. REQUIREMENT/PURPOSE:</b> (Specify)	<b>6. REQUESTOR OF INFORMATION:</b>  A. COMMISSIONER _____ B. DEPARTMENT <u>Human Resources</u> C. DIVISION _____ BY: <u>George A. Williams, Director</u>
	<input type="checkbox"/> STATUTE	
	<input type="checkbox"/> ORDINANCE	
	<input checked="" type="checkbox"/> ADMIN. CODE <u>6-1</u>	
	<input type="checkbox"/> OTHER _____	

**7. BACKGROUND:**

Ongoing process to update, revise, and clarify intent of policies.

**8. MANAGEMENT RECOMMENDATIONS:**

Follow Board's direction.

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services OM Risk GC	G County Manager
<i>George A. Williams</i> 5/13/02				<i>[Signature]</i> 5/17/02 for scheduling RK 5/17	<i>[Signature]</i> 5/20/02 5/20/02	<i>[Signature]</i> 5/20/02

**10. COMMISSION ACTION:**

APPROVED  
 DENIED  
 DEFERRED  
 OTHER

Rec. by CoAtty Date: 5/13/02 Time: 1040 AM Forwarded For Budgets 5/19/02 2:10pm	RECEIVED BY COUNTY ADMIN. 5-17-02 2:14P COUNTY ADMIN. B.H. 5/20 3:00
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**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY:</b> Human Resources/Employees	<b>CODE NUMBER:</b> AC-6-1
<b>TITLE:</b>  Personnel Policies and Procedures Manual (Appendix "A")	<b>ADOPTED:</b> 8/3/88
	<b>AMENDED:</b> 5/11/94; 6/6/00; 6/27/00; 12/12/00; 12/19/00 5/08/01; 7/24/01; 11/13/01; 2/12/02; 6/4/02
	<b>ORIGINATING DEPARTMENT:</b> Human Resources
<b><u>PURPOSE/SCOPE:</u></b>  This manual contains and describes all existing personnel policies, and was developed as a perpetual guideline for consistent interpretation of personnel policies.  This manual is part of this Administrative Code and is under separate cover as Appendix "A", Personnel Policies and Procedures Manual.	
<b><u>POLICY/PROCEDURE:</u></b>	

LEE COUNTY RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS RELATING TO AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE AS ADOPTED BY LEE COUNTY ORDINANCE NO. 97-23; PROVIDING FOR APPROVAL OF CERTAIN AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

**WHEREAS**, the Board of County Commissioners has previously enacted Lee County Ordinance No. 96-01, creating a charter form of government for Lee County pursuant to Section 125.80 and ff., Florida Statutes, and which was approved and ratified by the Electorate of Lee County on November 5, 1996; and,

**WHEREAS**, the Board of County Commissioners has previously enacted Lee County Ordinance No. 97-23, which adopted the Lee County Administrative Code pursuant to Section 2.2.E. of Ordinance No. 96-01, the Lee County Charter; and,

**WHEREAS**, Lee County Ordinance No. 97-23 at Section III allows and provides for amendments to the Lee County Administrative Code to be made by Resolution of the Board of County Commissioners at a regularly scheduled Board of County Commissioners' meeting; and,

**WHEREAS**, certain amendments to the Lee County Administrative Code are now being proposed, and the Board of County Commissioners finds that such proposed amendments are acceptable, serve a public purpose and are consistent with the terms

and conditions of Lee County Ordinance No. 96-01, the Lee County Charter.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY**

**COMMISSIONERS THAT:**

1. The above preamble is hereby accepted and approved as being true and accurate, and is adopted and incorporated herein as if set out further at length.
2. The proposed amendment(s) to the Lee County Administrative Code 6-1 (attached hereto as Exhibit A), is (are) approved, and are hereby directed to be incorporated into the Lee County Administrative Code as indicated in the amendment(s).
3. The provisions of this Resolution are severable, and it is the intention to confer to the whole or any part of this Resolution, the powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions of this Resolution. It is hereby declared to be the Board's legislative intent that this Resolution would have been adopted had such an unconstitutional provision not been included herein.
4. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and,

being put to a vote, the vote was as follows:

ROBERT JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
ANDREW COY	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ATTEST:**  
**CHARLIE GREEN, CLERK**

**BOARD OF COUNTY COMMISSIONERS**  
**OF LEE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Office of the County Attorney

**Policy:**

Lee County recognizes that our employees are our most valuable resource. It is our goal to provide a healthy, safe and efficient working environment in which to provide our diverse services to the citizens of the County. It also recognizes that substance/alcohol abuse and/or addiction can pose serious risks to an employee's health and safety and can have detrimental effects on co-workers. The County acknowledges its responsibility to provide appropriate assistance to its employees to the extent possible. Therefore, it is the policy of the County to:

- a) Assure that employees are not impaired in their ability to perform assigned duties in a safe, healthy and productive manner;
- b) Create a workplace environment free from the adverse effects of substance abuse or dependency;
- c) Prohibit the unlawful manufacture, distribution, dispensing, possession, selling, using, buying or transferring of controlled substances and/or alcohol; and
- d) Provide an employee assistance program available to employees whose personal problems, including drug or alcohol abuse or dependency, adversely affect their ability to perform their duties.

**Comments/Procedures:**

**205:1 SUBSTANCE ABUSE**

1. Abuse of alcoholic beverages or controlled substances, or the consumption of illegal substances by employees and potential employees is a significant problem both for the safety of the employee and the liability of the County.
2. Lee County has a responsibility to provide quality services to its citizens in a timely and cost effective manner. Employees at any and all levels in the organization who have drugs or alcohol in their systems may impair their ability to perform their duties at full, efficient capacity. Impaired judgement on their part may have serious consequences for the County through increased safety risks, potential accident liabilities, increased worker's compensation liabilities, and potential faulty decision making.
3. Employees who may be involved in the abuse of controlled substances or the use of illegal drugs, whether on or off the job, or who abuse alcohol off the job to such an extent that work performance is affected, have an adverse impact on the County's ability to maintain a safe work environment and to provide the services expected by its citizens.
4. Lee County, recognizing that drug and alcohol abuse is a growing problem within our nations' workforce, urges self-referral to the employee assistance program for any employee who is concerned that he or she may have a problem with substance abuse, and mandates managerial referral to the employee assistance program when job performance is affected.
5. Employee education and training programs shall provide information about the effects of drug and alcohol use and the detection of drugs and alcohol.

**205:2 SUBSTANCE TESTING**

1. Employees on or off duty are strictly prohibited from engaging in the manufacture, distribution, dispensing, possession, using, buying, selling or transferring of prohibited substances (controlled substances, illegal drugs) on or off County Property and during both

# DRUGS AND ALCOHOL IN THE WORKPLACE

Policy Number 205

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- working and non-working hours. The use, possession, purchase, sale or transfer of alcohol during regular work hours, including breaks or meal periods, on County property is strictly prohibited. This includes in County vehicles or while in County uniform, working under the influence of drugs or alcohol or using drugs or alcohol on their own time in a way which causes them to report for work under the influence of drugs or alcohol.
2. Employees are required to report to work substance free and in a state of mind and physical condition so as to be able to perform their assigned duties safely and competently. Employees whose behavior or performance suggests the influence of alcohol, drugs, or controlled substances may be required to submit to a drug or alcohol test, if approved by the Human Resources Director, or designee. Refusal to submit to such test shall be considered insubordination.
  3. An employee shall be subject to substance or alcohol tests if there is reasonable suspicion that he or she is impaired while on duty. Impairment is defined as being unable to perform duties safely and competently due to the use of alcohol or controlled or illegal substances. Reasonable suspicion is a belief based on objective facts sufficient to lead a reasonably prudent person to suspect that the employee's ability to perform the functions of the job is impaired or such that the employee's ability to perform the job safely is reduced.
  4. Employees in safety sensitive positions, as determined by regulations of the Urban Mass Transportation Administration in 49 CFR Part 653, shall be subject to the following drug screening:
    - a) Pre-employment;
    - b) Reasonable cause;
    - c) Post-accident;
    - d) Return to duty; and
    - e) Random.
  5. All applicants offered employment with the County will be required to take a drug test before being employed. A qualified laboratory chosen by the County will perform the test. Any applicant who refuses to take the test, or whose test results are positive, will be denied employment at that time. Applicants testing positive may be offered the opportunity for a retest at their own expense. If the retest is negative, the County will reimburse the cost of the test.
  6. Failure of an employee to notify Employee Health Services before beginning work when taking medications or drugs which may interfere with the safe and effective performance of duties may result in disciplinary action. Employees may be required to provide a doctor's statement if the employee indicates that there is a need to use the prescription drug for an extended period.

## **205:3 LEE COUNTY TRANSIT (LEE TRAN) SUBSTANCE ABUSE POLICY**

1. The Lee County Transit Substance Abuse Policy is included by reference herein and is available at the Lee Tran office for inspection.

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**LEE COUNTY TRANSIT**  
(Lee Tran)

**Substance Abuse Policy**  
**FTA - Safety Sensitive Employees**  
**2002**

**1.0 Executive Director/General Manager Statement**

1.1 Lee County Transit is dedicated to providing safe, dependable and economical transportation services to its patrons. Lee County Transit employees are a valuable resource and it is also our goal to provide a safe, healthy and satisfying working environment for employees. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; (2) create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) encourage employees to seek professional assistance anytime work related or personal problems, including alcohol or drug dependency, adversely affects their ability to perform their assigned duties. This Substance Abuse Policy implements a drug and alcohol testing program for all safety-sensitive employees. Each employee shall sign a "Confirmation of Receipt" form acknowledging receipt of a copy of the adopted policy.

This policy was approved by the Board of County Commissioners on \_\_\_\_\_, 2002, and is effective \_\_\_\_\_, 2002.

Name: Steven L. Myers Title: Transit Director

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

**2.0 Background**

2.1 Pursuant to the Omnibus Transportation Employee Testing Act of 1991, the Federal Transit Administration (FTA) published regulations prohibiting drug use and alcohol misuse by transit employees and requiring transit agencies to test for prohibited drug use and alcohol misuse. Federal Regulations 49 CFR Part 655, "Prevention of Prohibited Drug Use in Transit Operations" mandates urine drug testing and "Prevention of Alcohol Misuse in Transit Operations" mandates breath alcohol testing for all employees in safety-sensitive positions. These regulations

prohibit the performance of safety-sensitive functions when there is a positive drug or positive alcohol test result. In addition, the U.S. Department of Transportation (DOT) issued 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" providing for uniform procedures and standards for conducting drug and alcohol testing programs.

### **3.0 Purpose**

3.1 This policy is established to comply with FTA drug and alcohol testing requirements to ensure employee fitness for duty, and to protect our employees, passengers and the general public from the risks posed by the use of alcohol and prohibited drugs. This policy is also intended to comply with and incorporate Federal Regulation 49 CFR Part 29, The Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA, including the reporting of employees convicted of criminal drug offenses that occur in the workplace.

### **4.0 Policy Applicability**

4.1 This policy applies to all safety-sensitive transit system employees as identified and described herein. Paid part-time employees and contractors when acting on the behalf of the transit system are also covered by this policy when performing any transit-related business. This policy applies to off-site lunch periods or breaks when an employee is scheduled to return to work. Visitors, vendors and contractor's employees are covered by this policy while on transit premises and acting on behalf of the transit system and shall not be permitted to conduct business if found to be in violation of this policy. This written policy shall be distributed to all employees in safety-sensitive positions. Each employee shall sign a "Confirmation of Receipt" form acknowledging receipt of a copy of the adopted policy and the regulation summary and shall be responsible for reading and understanding its contents. All safety-sensitive position applicants shall undergo urine drug testing prior to employment or prior to the first performance assignment of safety sensitive functions. Failure to pass the drug test will disqualify an applicant from employment or will result in immediate termination.

In addition, an employee who returns from an extended leave period of 90 days or more must take and pass a pre-employment drug test prior to resuming safety-sensitive functions.

4.2 Employees who perform safety sensitive functions shall be subject to drug and alcohol testing. A safety-sensitive function is any duty or function related to the safe operation of transportation service including the operation, dispatch and maintenance of revenue service vehicle (whether or not the vehicle is in revenue service) and the operation of a vehicle requiring a Commercial Drivers License. A list of safety-sensitive positions is attached to this policy. Participation in the drug and alcohol testing program is required and considered a condition of employment.

**5.0 Covered Employees**

5.1 Safety-sensitive employees and applicants for safety-sensitive positions covered by this policy include those:

5.1.1 Operating a revenue service vehicle, including when not in revenue service;

5.1.2 Operating a non-revenue service vehicle when such is required to be operated by a holder of a commercial driver's license;

5.1.3 Controlling dispatch or movement of a revenue service vehicle;

5.1.4 Maintaining a revenue service vehicle or equipment used in revenue service;

5.1.5 Authorized by  N/A  to carry a firearm for security purposes; and/or

5.1.6 Direct supervisors of employees described above who may perform any of the above safety-sensitive functions.

5.2 The duties performed by employees have been reviewed by Lee County Transit to ensure that they fall within the safety-sensitive categories indicated in 49 CFR Part 655. Employee functions and positions covered under this Policy include the job categories listed below. This list is subject to amendment at any time:

5.2.1 Revenue Vehicle Operation.

5.2.2 Revenue Vehicle & Equipment Maintenance, if an employee of the Transit System.

5.2.3 Revenue Vehicle Control/Dispatch.

- 5.2.4 CDL/Non-Revenue Vehicle.
- 5.2.5 Armed Security Personnel.
- 5.2.6 Any Supervisory Personnel, or other employee acting in any of the above categories or functions.

**6.0 Prohibited Substances**

6.1 Prohibited substances addressed by this policy include the following:

- 6.1.1 Cocaine
- 6.1.2 Opiates (e.g., heroin, codeine)
- 6.1.3 Phencyclidine (PCP)
- 6.1.4 Cannabinoids (Marijuana)
- 6.1.5 Amphetamines, and
- 6.1.6 Alcohol

**7.0 Illegally Used Controlled Substances and Misuse of Prescribed Drugs**

7.1 Lee County Transit shall test for the controlled substances listed above in Section 6.0. Prohibited substances include those identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 USC 812), and as further defined by 21 CFR Parts 1300.11 through 1300.15. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine. The misuse of legally prescribed drugs or the use of illegally obtained prescription drugs is also prohibited and shall be considered prohibited conduct. Use and ingestion of prohibited drugs is prohibited at all times.

**8.0 Legal Drugs**

8.1 The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates mental functioning, motor skills, or judgment may be adversely affected should be reported to supervisory personnel and medical advice should be sought, as appropriate, before performing work-related duties.

8.2 A legally prescribed drug means a prescription or other written approval from a physician for the use of a drug by an individual in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legally prescribed drugs while performing safety-sensitive functions is prohibited.

## 9.0 Alcohol

9.1 Alcohol is a socially acceptable substance that is consumed throughout the world. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical functions and progressively impairs mental functions.

9.2 Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. Alcohol means the consumption of any beverage, mixture or preparation, including any medication containing alcohol. 49 CFR Part 655 authorizes alcohol testing and requires Lee County Transit to take action on the findings, regardless of whether it was ingested as a beverage alcohol, medicinal or other preparation.

9.3 Some of the Health Hazards that may result from the chronic consumption of alcohol include:

9.3.1 Decreased sexual functioning.

9.3.2 Dependency.

9.3.3 Fatal liver diseases, cancers, kidney disease, pancreatitis, ulcers.

9.3.4 Spontaneous abortion, neonatal mortality and birth defects.

9.4 Some of the Social Issues associated with the chronic consumption of alcohol include:

9.4.1 Two-thirds of all homicides are committed by people who drink prior to the crime.

9.4.2 Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on the weekends.

- 9.4.3 Two-thirds of all Americans are involved in an alcohol related vehicle accident during their lifetimes.
- 9.4.5 The rate of separation and divorce in families with alcohol dependency problems is seven times the average.
- 9.4.6 Forty percent of family court cases are alcohol problem related.
- 9.4.7 Alcoholics are 15 times more likely to commit suicide than the other segments of the population.
- 9.4.8 More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents and 76 percent of private aircraft accidents are alcohol related.
- 9.5 Some of the Workplace Issues associated with chronic consumption of alcohol include:
  - 9.5.1 It takes one hour for the average person (150 pounds) to process one service of an alcoholic beverage from the body.
  - 9.5.2 Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
  - 9.5.3 A person who is legally intoxicated is six times more likely to have an accident than a sober person.

## **10.0 Prohibited Conduct**

- 10.1 In compliance with Lee County Transit's Personnel Rules and Regulations, FTA rules, and consistent with the "Drug Free Workplace Act of 1988", employees are prohibited from engaging in the manufacture, distribution, dispensing, possession, or use of prohibited substances on transit property, in transit vehicles, in uniform, or while on transit business. Any of these actions or activities by an employee shall be considered prohibited conduct and the employee will be subject to disciplinary action up to and including termination.
- 10.2 Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

## **11.0 Intoxication/Under the Influence**

- 11.1 Any safety-sensitive employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be

suspended from job duties pending an investigation or verification of condition. Employees found to be under the influence of prohibited substances or found to be misusing alcohol by means of a confirmed positive drug or alcohol test shall be terminated. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

11.2 It is the responsibility of all employees to report to their employer any impairments as a result of substance abuse.

## **12.0 Alcohol Use**

12.1 No safety-sensitive employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If there is actual knowledge that an employee has an alcohol concentration of 0.04 or greater or the employee is using alcohol while performing safety sensitive functions, the employee shall not be permitted to perform or continue to perform safety-sensitive functions. No safety-sensitive employee shall use alcohol while performing safety-sensitive functions, within four hours prior to performing a safety-sensitive function, or during the hours that they are on call or standby for duty. No safety-sensitive employee shall use alcohol within eight (8) hours following an accident or until the employee undergoes a post-accident test, whichever occurs first.

12.2 Violation of these provisions or a breath alcohol test result of 0.04 or greater, is prohibited and will result in termination.

## **13.0 Compliance with Testing Requirements**

13.1 All safety-sensitive employees are subject to urine drug testing and breath alcohol testing. Any safety-sensitive employee who refuses to comply with a request for testing, who provides false information in connection with a test, who does not report to the collection site in the time allotted, or who attempts to falsify test results through tampering, contamination, adulteration or substitution, shall be removed from duty immediately, their test result categorized as a positive and be terminated, equal action that is given for a positive test result. Refusal can include an inability to provide a specimen or breath sample without a valid medical explanation, as well as failure to remain "readily available" for post accident testing, a verbal declaration, obstructive behavior, failure to report to a collection site in a timely fashion without a valid reason, or physical absence resulting in the inability to conduct the test.



## **14.0 Treatment Requirements**

- 14.1 All employees are encouraged to make use of the available resources for treatment for alcohol and substance abuse problems.
- 14.2 Employees who test positive will be provided information and a referral to substance abuse professional that has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## **15.0 Notifying the Transit System of Criminal Drug Conviction**

- 15.1 Any employee who fails to immediately notify the transit system of any criminal drug statute conviction or a finding of guilt whether or not adjudication is withheld, or the entry into a diversionary program in lieu of prosecution, shall be subject to disciplinary action up to and including termination.

## **16.0 Proper Application of the Policy**

- 16.1 Lee County Transit is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner.
- 16.2 Any supervisory/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy regarding subordinates, shall be subject to disciplinary action up to and including termination.

## **17.0 Training**

- 17.1 Supervisors who make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral and performance indicators of probable drug use and 60 minutes on probable alcohol use.
- 17.2 Safety-sensitive employees shall be provided a minimum of 60 minutes of orientation and training on this policy and its implementation and on the adverse effects of drug and alcohol abuse on personal health, safety and the work environment.

## **18.0 Testing for Prohibited Substances**

- 18.1 Analytical urine drug testing and breath testing for alcohol may be conducted when circumstances warrant or as required by Federal regulations. All safety-sensitive employees shall be subject to drug testing prior to employment, drug and alcohol testing for reasonable suspicion, and following an accident. In addition,

safety-sensitive employees shall be subject to drug and alcohol testing on a random, unannounced basis.

- 18.2 Testing shall be conducted in a manner to assure a high degree of accuracy and reliability using techniques, equipment and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40, as amended.
- 18.3 The procedures that will be used to test for the presence of alcohol or a controlled substance shall be such that they protect the employee, the validity of the testing process, the validity of the test results and ensure that those results are attributed to the correct employee. During the urine collection process, the urine specimen shall be checked to determine if the specimen may have been altered or substituted. Any urine specimen with a temperature outside of the range specified in 49 CFR Part 40 will result in an observed collection, unless the individual's body temperature is within 1.8 degrees Fahrenheit of the specimen's temperature.
- 18.4 If the MRO reports a negative test as dilute, the employee will be required to take another test immediately. The retest will not be observed unless there is another basis for use of direct observation (CFR Sec. 40.67(b) and (c)). The result of the second test will become the test of record. If the employee is directed to take another test and the employee declines to do so, the employee has refused the test for purpose of this part and DOT agency regulations, and will be terminated.
- 18.5 Urine specimens will be tested for the presence of drugs. The drugs that will be tested for are those that are prohibited by FTA. They are: marijuana, cocaine, opiates, amphetamines and phencyclidine. An initial drug screen will be conducted on each specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 40 CFR Part 40, as amended.
- 18.6 Split specimen procedures will be followed in obtaining specimens. An employee is entitled, upon written request within 72 hours of learning of a verified positive test result, to have a split specimen tested at a different laboratory than that which conducted the test of the primary specimen. If the test result of the split specimen is negative, the primary specimen test result shall be overturned. If the test result of the split specimen is positive, the test results shall be deemed positive and the employee shall be required to pay for the test out of any payments due the employee, including deductions from the termination payments of final paychecks.

- 18.7 Alcohol initial screening tests may be conducted by a National Highway Traffic Safety Administration (NHTSA) approved Evidential Breath Testing Device (EBT) or non-evidential alcohol screening device that has been approved by NHTSA. Confirmatory tests for alcohol concentration will be conducted utilizing a NHTSA approved EBT. Alcohol screening tests shall be conducted by a trained Breath Alcohol Technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. A safety-sensitive employee who has confirmed alcohol concentration of greater than 0.02 but less than 0.04 will result in removal from his/her position for eight hours unless a retest results in a concentration measures of less than 0.02. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy.
- 18.8 Any safety-sensitive employee who has a confirmed positive drug or alcohol test will be removed from his/her position and terminated.
- 18.9 The transit system affirms the need to protect individual dignity, privacy and confidentiality throughout the testing process. Handling of tests and confidentially shall be in conformance with 49 CFR Part 40, and as described below:
- 18.9.1 Except as required by law or expressly authorized in this section, the Anti-Drug Manager shall not release employee information that is contained in records required to be maintained under 49 CFR Part 655.
- 18.9.2 An employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. Up to 10 pages will be provided free of copying charges. Anti-Drug Manager shall promptly provide the records requested by the employee. Access to employee's records shall not be contingent upon payment for records other than those specifically requested.
- 18.9.3 Anti-Drug Manager shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.
- 18.9.4. Records shall be made available to a subsequent employer upon receipt of a written request from an employee.
- 18.9.5 Anti-Drug Manager may disclose information required to be maintained under 49 CFR Part 655 pertaining to an employee/applicant, or the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of such

individuals, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the employee engaged in conduct prohibited by this policy (including, but not limited to, worker's compensation or other proceeding relating to benefit sought by the employee).

18.9.6 Anti-Drug Manager shall make available copies of all results of a requested alcohol and/or controlled substances testing conducted under this policy and any other information pertaining to this alcohol misuse and/or controlled substance use prevention program, when requested by the U.S. Secretary of Transportation, and any DOT agency, and all non-confidential/non-proprietary information, at cost, if requested by the employee/applicant.

1.8.9.7 When requested by the National Transportation Safety Board as part of an accident investigation, Anti-Drug Manager shall disclose information related to its administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

## **19.0 Medical Review Officer's Role, Notifications and Employer Notifications to Employees/Applicants**

19.1 The designated Medical Review Officer (MRO) shall be a licensed physician (doctor of medicine or osteopathy) with knowledge of drug disorders. Lee County Transit shall use the following MRO, however, the MRO is subject to change.

James Barnshaw  
1364 Welsh Road, Suite C-2  
North Wales, PA 19454  
1-800-732-3784

19.2 The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with DOT regulations. Additionally, the MRO cannot accept an assertion of consumption of a hemp food product as a basis for verifying a confirmed marijuana (THC) test result as a negative. Consumption of a hemp food product is not to be considered a legitimate medical explanation for prohibited substance or metabolite in an individual's specimen.

- 19.3 The MRO may report to the Anti-Drug Manager using any communications device, but in all instances, a signed, written notification must be forwarded to Anti-Drug Manager within three (3) business days of completion of the MRO's review of the test. The MRO's report shall clearly state the following:
- 19.3.1 That the controlled substances test being reported was in accordance with 49 CFR Part 655, as amended.
- 19.3.2 The name of the individual for whom the test results are being reported.
- 19.3.3 The type of test indicated on the custody and control form (i.e., random, post-accident, etc.).
- 19.3.4 The date and location of the test collection.
- 19.3.5 The identities of the persons or entities performing the collection, the laboratory analysis of the specimens and the MRO reviewing the specific test.
- 19.3.6 The verified results of a prohibited substance(s) test, either positive or negative, and if positive, the identify of the prohibited substance(s) for which the test was verified positive.
- 19.4 The MRO shall report to the Anti-Drug Manager that the MRO has made all reasonable efforts to contact the employee/applicant as provided in 49 CFR Section 40.131. Anti-Drug Manager or Drug and Alcohol Program Manager shall, as soon as practical, request the employee/applicant contact the MRO prior to dispatching the employee/applicant or within 24 hours, whichever is earlier. This procedure shall be consistent with 49 CFR Part 40.131.
- 19.5 A designated management official (Anti-Drug Manager or Drug & Alcohol Program Manager) shall make reasonable efforts to contact and request each employee/applicant who submitted a specimen under the employer's program, regardless of the employee's employment status, to contact and discuss the results of the controlled substances test with the MRO who has been unable to contact the employee/applicant. This procedure shall be consistent with 49 CFR Part 40.131.
- 19.6 A designated management official (Anti-Drug Manager or Drug and Alcohol Program Manager) shall immediately notify the MRO that the safety-sensitive employee/applicant has been notified to contact the MRO within 24 hours. This procedure shall be consistent with 49 CFR Part 40.131.
- 19.7 Anti-Drug Manager or Drug and Alcohol Program Manager shall notify a employee/applicant of the results of a pre-employment controlled substance test conducted under this part, if the employee/applicant requests such results within

60 (sixty) calendar days of being notified of the disposition of the employment application. Drug and Alcohol Program Manager shall notify an employee of the results of random reasonable suspicion and post-accident tests for controlled substances or alcohol conducted under this part if the test results are verified positive. Anti-Drug Manager or Drug and Alcohol Program Manager shall inform the individual which controlled substance or substances were verified as positive.

## **20.0 Retention of Records and Release of Information**

20.1 The MRO shall maintain all dated records and notifications identified by individual, for a minimum of five (5) years for verified positive controlled substance test results.

20.2 The MRO shall maintain all dated records and notifications identified by individual, for a minimum of one (1) year for negative controlled substance test results and canceled tests.

20.3 No person may obtain the individual controlled substance test results by Anti-Drug Manager or the MRO, and neither Anti-Drug Manager or the MRO shall release the individual controlled substance test results of any employee to any person except as provided in 18.8.5.

20.4 Anti-Drug Manager shall maintain all dated records and notifications identified by individual, for a minimum of five (5) years for verified positive alcohol test results.

20.5 Anti-Drug Manager shall maintain all dated records and notifications identified by individual, for a minimum of (1) year for negative alcohol test results and any canceled tests.

20.6 No person may obtain the individual alcohol test results retained by Anti-Drug Manager and Anti-Drug Manager shall not release the individual alcohol test results of any employee to any person, except as provided in 18.8.5.

## **21.0 Notification of Alcohol Test Results**

21.1 In accordance with the provisions of 49 CFR Part 40, as amended, the results of both the screening and confirmation of breath alcohol tests, as applicable, shall be displayed to the individual being tested immediately following the test(s).

21.2 The breath alcohol technician shall transmit the results to Anti-Drug Manager in a confidential manner, in writing, in person, by telephone or electronic means in accordance with 49 CFR Part 40, as amended.

## **22.0 Employee Protections**

- 22.1 Lee County Transit will undertake its best efforts to ensure that the foregoing provisions are strictly followed, thus protecting the dignity and privacy of employees/ applicants.
- 22.2 Lee County Transit recognizes that prevention, education and rehabilitation are the primary objectives of this Policy. Thus, Lee County Transit shall not discharge or discipline an employee solely upon the basis of the employee voluntarily seeking treatment, while in the employ of Lee County Transit, for drug or alcohol related problems if the employee has not previously committed a violation of this Policy.
- 22.3 The address and phone number of a Substance Abuse Professional recommended by Lee County Transit is provided at the end of this Policy. This information is provided as information for employees and to assist any employee with drug or alcohol related problems.
- 22.4 Lee County Transit will provide all safety-sensitive employees sixty (60) minutes of training on use of controlled substances and alcohol misuse. This training shall be conducted pursuant to 49 CFR Part 655.
- 22.5 If an employee has tested positive in a controlled substance test, under this Policy, and has made a timely request to the MRO for a test of the split specimen, the employee shall bear the initial cost of the split sample test. If the split sample test is positive, the employee shall be required to pay for the test out of any payments due the employee, including deductions from the termination payments of final paychecks.
- 22.6 A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs, including any records pertaining to his or her drug tests. (Alcohol test results are presented to the employee upon the completion of the test). Anti-Drug Manager shall provide the records requested by the employee. Access to a covered employee's records shall not be contingent upon payment for records other than those specifically requested. This right to records is the employee's unqualified right to review his/her drug and alcohol testing records, to provide information to dispute the results, and to have access to any pertinent records, such as, equipment calibration records and records of laboratory certifications.

## **23.0 Pre-Employment Testing**

- 23.1 Lee County Human Resources will request the below listed information from DOT-Regulated employers for safety sensitive applicants. The information will be requested for the period during the two (2) years before the date of the

employee's application or transfer. If feasible this information will be obtained and reviewed before the employee first performs safety-sensitive functions. If information is obtained that the employee has violated a DOT agency drug and alcohol regulation, the employee will be terminated unless information is obtained that the employee has subsequently complied with the return-to-duty requirements of 49 CFR Part 40 SubPart O.

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- (2) Verified positive drug tests;
- (3) Refusals to be tested (including verified adulterated or substituted drug test results(s));
- (4) Other violations of DOT agency drug and alcohol testing regulations; and
- (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

23.2 All safety-sensitive position applicants shall undergo urine drug testing prior to employment or prior to the first performance assignment of safety sensitive functions. Failure to pass the drug test will disqualify an applicant from employment or will result in immediate termination.

23.3 In addition, an employee who returns from an extended leave period, of 90 days or more, must take and pass a pre-employment drug test prior to resuming or returning to a safety sensitive function.

23.4 If an applicant for employment in a safety-sensitive job function is unable to provide sufficient volume during the collection process for a pre-employment test, efforts to complete the test will be stopped after the required three (3) hours and 40 ounces of fluid consumption by the applicant. The applicant will then be referred for a medical evaluation to determine if the applicant has a medical condition that caused him or her from providing the required volume of urine. If the evaluation finds a permanent or long-term medical condition exists, the Medical Review Officer (MRO) will consult with the applicant's physician and/or the physician who made the insufficient volume determination and conduct a medical examination to determine if there is any clinical evidence that indicates the applicant is an illicit drug user. If the MRO is unable to perform the evaluation, the MRO will arrange to have one conducted by a qualified physician suitable to Lee County Transit. At the discretion of the examining physician, a blood test may be conducted on the applicant as a medically-appropriate procedure to determine clinical evidence of drug use. If the medical examination reveals no clinical evidence of drug use, the MRO will report the result to Anti-Drug Manager as



negative with written notations regarding the results of the medical evaluation. A finding that the individual has no evidence of drug use will be accepted by the FTA and Lee County Transit as the equivalent of a negative test result. If the medical examination reveals clinical evidence of drug use, the applicant's test will be canceled and the MRO will note that the signs and symptoms of drug use exist.

- 23.5 Once employed, all individuals, including those that were found to have disability that precluded them from providing the required volume of urine for a pre-employment test, shall still be subject to random, reasonable suspicion, post-accident, return-to-duty, and follow-up testing, as applicable, as a condition of employment. If a disabled employee is unable to provide sufficient volume for the required tests, the employee will still be required to undergo a medical evaluation unless the MRO verifies that the person's medical condition has not changed. In these cases, the test result will be reported as canceled.

## **24.0 Reasonable Suspicion Testing**

- 24.1 All safety-sensitive employees may be subject to fitness for duty evaluation, to include appropriate urine and/or breath testing when there are reasons to believe that there is prohibited drug use or alcohol use that is adversely affecting job performance. A determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. The observations must be recent and a supervisor trained in detecting the signs and symptoms of drug use must be able to express clearly those observations. Examples of reasonable suspicion include, but are not limited to the following:
- 24.1.1 Overt signs and symptoms of impairment.
  - 24.1.2 A pattern of deteriorating job performance.
  - 24.1.3 Physical evidence of drug use, such as possession of drug paraphernalia.
  - 24.1.4 Accidents which may involve human error in judgment.
  - 24.1.5 Fights involving physical contact, assaults and flagrant disregard or violations of established safety, security or other operating procedures.
- 24.2 Reasonable suspicion determinations will be made by a supervisor who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to prohibited substance abuse or alcohol misuse.

## 25.0 Post-Accident Testing

25.1 Fatality Accident: A safety-sensitive employee shall be required to undergo urine drug and breath alcohol testing if involved in an accident with a revenue service vehicle that results in a fatality (regardless of whether the vehicle is in revenue service). Any other employee(s), that are on duty in the vehicle, and any other employee, ie. maintenance personnel, dispatchers, controllers, whose performance could have contributed to the accident, unless the employee's performance can be completely discounted as a contributing factor to the accident, shall also be tested. The decision regarding whether an employee's performance could have contributed to the accident will be made at the sole discretion of Lee County Transit, using the best information available at the time of the accident.

Non-Fatality Accident: A post-accident test shall be conducted if an accident results in injuries requiring transportation to a medical treatment facility, or if one or more vehicles incurs disabling damage that requires towing from a site, unless Lee County Transit determines, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident. Any other safety sensitive employee whose performance could have contributed to the accident shall be tested. The decision regarding whether the employee's performance could have contributed to the accident will be made in the sole discretion of Lee County Transit using the best information available at the time of the decision.

25.2 Following an accident, the employee must be readily available for testing. Post-accident tests will be done as soon as possible, however, in any case, all reasonable efforts shall be made to test the safety sensitive employee within two (2) hours of the accident, but not after eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing. Any safety-sensitive employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until the employee undergoes a post-accident alcohol test. Any safety-sensitive employee who leaves the scene of the accident without a justifiable reason or explanation prior to the requirement for drug and alcohol testing, shall be considered to have refused the test and the employee terminated. Employees tested under this provision might include not only the operations personnel, but any other covered employee whose performance could have contributed to the accident. The post-accident testing requirements shall not delay necessary medical attention for injured person, nor will they prohibit an employee who was performing a safety-sensitive function from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care. Lee County Transit shall document and maintain on file a record as to the reasons any required post-accident drug or alcohol test is not administered promptly according to the above criteria.

26.3 If an employee is administered a post-accident drug or alcohol test by the state or local law enforcement personnel, the test results may be used to satisfy the post-accident testing requirement provided local law enforcement officials have independent authority for the tests and tests are administered and test results are obtained in conformance with State and local law. (Refusal by a safety-sensitive employee to submit to a law enforcement- administered test shall not constitute a "refusal to test" as defined in 49 CFR 655). In the event both a law enforcement agency and the employer both conduct post-accident tests, the test results obtained by the employer FTA administered test shall take precedence for purposes of meeting the FTA regulations. Under no circumstance shall this provision preclude an FTA post-accident test from being administered in accordance with the FTA post-accident testing requirements.

## **27.0 Random Testing**

27.1 Employees in safety-sensitive positions shall be subject to random, unannounced testing. The minimum annual percentage rate for random alcohol testing shall be 10% of the average number of safety-sensitive positions. The minimum annual percentage rate for random controlled substances testing shall be 50% of the average number of safety-sensitive positions.

27.2 The dates for administering unannounced testing of randomly-selected covered employees shall be spread reasonably throughout the calendar year and be spread throughout all days and hours of service. Each covered employee who is notified of selection for random alcohol or drug testing shall immediately proceed to the test site. Alcohol testing shall be conducted only while an employee is performing a safety-sensitive function, just before the employee is to perform a safety-sensitive function or just after the employee has performed a safety-sensitive function. The selection of employees for random alcohol and drug testing shall be made by a scientifically valid method. The selection process shall provide each covered employee an equal chance of being tested each time selections are made. Random testing shall be done quarterly utilizing a computer generated random list. The list shall be derived by a computer based random number generator that is fair and equitable for the covered employees. All employees shall have an equal chance of being selected. Tests shall be conducted throughout each quarter. If a supervisor is in the random selection pool and is responsible for generating or receiving the random list, or responsible for notifying employees selected by the random list, and the supervisor's name appears on the list, then the generated or received random list shall constitute as notification to the supervisor of random selection and that supervisor shall be readily available for testing and immediately proceed to the collection site for random testing.

## **28.0 Return-to-Duty Testing**

- 28.1 All safety-sensitive employees who refused to test, or who engaged in any prohibited conduct as described in this policy, or who previously tested positive on a drug or alcohol test, must undergo a return-to-duty test with a negative test result before returning to duty. In addition, before returning to duty, the employee must be evaluated and released for duty by the Substance Abuse Professional.
- 28.2 Safety-sensitive employees will remain in the random selection pool and be subject to unannounced random urine and breath testing during the period of their reentry contract.

## **29.0 Follow-Up Testing**

- 29.1 Once allowed to return to duty, an employee shall be subject to unannounced follow-up testing for a least twelve (12) but not more than sixty (60) months.
- 29.2 The frequency and duration shall be determined by the substance abuse professional with a minimum of six (6) tests performed during the first twelve (12) months after the employee has returned to duty.

## **30.0 Employee Requested Testing**

- 30.1 Any safety-sensitive employee who questions the results of a required drug test, may request that an additional test be conducted on the split urine sample. The test of the split urine sample shall be conducted by a different DHHS-certified laboratory than that which conducted the analysis of the primary urine specimen. The test must be conducted on the split sample that was provided by the donor at the same time as the original primary sample. The method of collecting, storing and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended.
- 30.2 All costs for split sample testing shall be paid by the donor employee unless the split sample test invalidates the original primary test. If the split sample test is positive, the employee shall be required to pay for the test out of any payments due the employee, including deductions from the termination payments of final paychecks. The employee's request for a split sample test must be made to the MRO within 72 hours after notice by the MRO of the initial test result. Requests after 72 hours will only be accepted if the delay was due to documental facts that were beyond the control of the employee.

**31.0 Canceled or Invalid Test**

- 31.1 A drug test that has been declared invalid by the Medical Review Officer or canceled for other reasons, except when the test is canceled under the criteria provided in Section 23.3 for pre-employment testing, shall be considered neither positive or negative. A sample that has been rejected for testing by a laboratory is treated the same as a canceled test. For alcohol testing, a test that is deemed to be invalid under 49 CFR Part 40.267, shall be considered neither positive or negative.
- 31.2 If a split sample is tested and the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report canceled test and the reasons for it to the Anti-Drug Manager and the employee.

**32.0 System Contact**

- 32.1 Any employee with questions regarding this policy or any other aspect of Lee County Transit’s drug-free and alcohol-free transit program should contact the following representative(s):

Rachelle A. Bock  
Drug & Alcohol Program Manager  
10715 E. Airport Road  
Fort Myers, FL 33907  
(941) 277-5012 ext. 2221

**33.0 Safety-Sensitive Functions**

- 33.1 The following describes the Safety-Sensitive Functions, Job Categories or Classifications at Lee County Transit covered by this policy:

Bus Drivers - Operation of all transit vehicles.

Supervisor, Transit - Supervision and dispatching of bus drivers.

Fleet Mechanics - Maintenance and repair of all transit vehicles.

Supervisor, Fleet Mechanics - Supervision of fleet mechanics and perform maintenance and repair of all transit vehicles.

Maintenance Workers - Complete maintenance of transit vehicles.

Crew Leader - Supervision of maintenance workers and performs complete maintenance of transit vehicles.

### **34.0 Substance Abuse Professional**

Bradman/UniPsych  
7777 Davie Road Extension  
Suite 100A  
Hollywood, Florida 33024  
1-800-272-3626

(Employee will be referred to a Substance Abuse Professional in the Lee County area).

*Note: Revisions to this policy will be initiated and adhered to when necessary. Board approval will occur annually if and when revisions have been made.*