

Meeting Date
02/07/2017



AGENDA	
Section	CONSENT
Item No.	II.B.2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval RE: Board Policy BCC-14, Drug & Alcohol Testing of Space Coast Area Transit Applicants and Employees
DEPT/OFFICE:	Community Services Group / Transit Services Department

Requested Action:

It is requested that the Board of County Commissioners approve the changes and new review dates for Board Policy BCC-14, Drug & Alcohol Testing of Space Coast Area Transit Applicants and Employees

Summary Explanation & Background:

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 required transit agencies to test for prohibited drug use and alcohol misuse. Chapter 49, Code of Federal Regulations Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" mandates urine drug testing and 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 or an employee refuses to submit to DOT required drug or alcohol testing.

As a grantee of Federal Transit Administration, Brevard County is required to maintain a drug-free workplace for all transit related employees and to have an ongoing drug-free awareness program. In addition, Brevard County must have a drug and alcohol testing program in place for the Transit Services Department safety-sensitive employees. Board Policy BCC-14, is the policy that meets the Federal Transit Administration Drug and Alcohol testing requirements.

The Board Policy was updated in August 2016 following our Triennial Review by the Federal Transit Administration. The Federal Transit Administration has taken a second review of our policy and has requested the following additional changes:

1. Update the definition of safety sensitive positions.
2. Update language for reasonable suspicious testing to include documentation for time limits to test.
3. Add language under post-accident testing to include definition of a public transportation vehicle.
4. Update language for post-accident testing to include documentation for time limits to test.
5. Remove the requirement that a safety sensitive employee be tested for receiving a moving vehicle citation.

Once approved by the Board, the revised Policy is distributed to all Safety Sensitive designated employees in the Transit Services Department.

Fiscal Impact Analysis: No fiscal impact.

Contact Name: Jim Liesenfelt, Transit Services Director
Phone: 635-7815 ext. 601

Clerk to the Board Instructions:

Exhibits Attached: Revised Board Policy BCC-14, Strikethrough/Underline Copy BCC-14

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager Stockton Whitten	Deputy County Manager Assistant County Manager Venetta Valdengo	Department Director / Extension James P. Liesenfelt, Transit Services Director
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February 8, 2017

M E M O R A N D U M

TO: Stockton Whitten, County Manager

RE: Item II.B.2., Approval of Board Policy BCC-14, Drug & Alcohol Testing of Space Coast Area Transit (SCAT) Applicants and Employees

The Board of County Commissioners, in regular session on February 7, 2017, approved Board Policy BCC-14, Drug & Alcohol Testing changes and new review dates for SCAT applicants and employees. Enclosed is the original Policy for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encls. (1)

cc: Transit Services Director
Human Resources Office Director
Finance
Budget

POLICY

**TITLE: Drug & Alcohol Testing of
Space Coast Area Transit
Applicants and Employees**

NUMBER: BCC-14
CANCELS: August 9, 2016
APPROVED: February 7, 2017
ORIGINATOR: Transit Services
REVIEW: February 7, 2020

I. Objective

The objective of this Policy is to establish a drug-free workplace, better maintaining reliability and providing a healthier, safer, and more secure work environment for all Brevard County Board of County Commissioners' Space Coast Area Transit (SCAT) employees. The employees recognize that an employee's health affects personal job performance as well as the performance and job safety of other employees and the safety of citizens. Abuse of alcohol and other drugs has been an increasing problem affecting all facets of American society and ranks as one of the major health problems in our country. Brevard County is no exception to that trend. The County has an obligation to its employees and must take the initiative to prevent alcohol and other drug abuse from entering or continuing to exist within its work force.

The objective of this Policy is to assure worker fitness for duty and to protect employees, passengers, and the public from the risks posed by the use of alcohol and prohibited drugs. This Policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs in the transit industry including *49 CFR, Part 40, Procedures for Transportation Workplace Drug & Alcohol Testing Programs*, and *49 CFR, Part 382 Controlled Substances and Alcohol Use and Testing*, enacted by the U.S. Department of Transportation. These Rules mandate drug and alcohol testing for sensitive safety positions and prevent the performance of sensitive safety functions by employees who test positive for drugs and/or alcohol. These Rules also sets standards for the collection and testing of urine specimens. This Policy is also intended to conform with *The Drug-Free Workplace Act of 1988*, enacted by the U.S. Department of Transportation, which requires the establishment of drug-free workplace policies and *Rule 49 CFR, Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations*.

The Risk Manager and his/her designee, the Human Resources Director, Transit Services Director, SCAT Safety and Training Coordinator, and the County Attorney or his/her designated Assistants, are the people designated by Brevard County to answer questions pertaining to this material. These representatives are authorized to receive drug and alcohol test results and to deal with drug and alcohol related issues for the County.

This Policy applies to the Transit Services Department and contains specific language as required by the Federal Transit Administration. If the safety sensitive employee is required to be tested under *BCC-7 Drug & Alcohol Testing of Applicants & Employees*, then the employee shall be notified that the required drug test is a non-DOT test and shall not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of *49 CFR, Part 40*.

II. References

- A. 41 USC § 702: The Drug-Free Workplace Act of 1988

- B. 49 CFR, Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs and 49 CFR, Part 382: Controlled Substances and Alcohol Use and Testing
- C. 49 CFR, Part 655: Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations
- D. 75 Federal Register (FR) 49850: Mandatory Guidelines for Federal Workplace Drug Testing Programs
- E. Department of Transportation (FDOT) Implementation Guidelines for Alcohol and Drug Rehabilitation in Highway Transportation, Chapter 9, Section 2
- F. Department of Health and Human Services (DHHS) and Substance Abuse Mental Health Services Administration (SAMHSA) NLCP Program Document (PD) #035
- G. DOT Medical Review Officer (MRO) Guidelines for Interpreting Specimen Validity Test Results

III. Definitions

- A. **Illegally Used Controlled Substances or Drugs** – Any illegal drug or any substance identified in *Schedules I and II of 21 U.S.C. 812 and Section 202 of the Controlled Substances Act*, and as further defined by *21 CFR Subparts 1308.11 and 1308.12*. This includes, but is not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.
- B. **Legal Drugs** – 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 that 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.
- C. **Alcohol** – Means ethanol alcohol or any beverage containing more than ½ of 1% of alcohol by volume which is capable of use for beverage purposes either when alone or when diluted or medicines containing alcohol are classified as “alcohol” for the purposes of this Policy.
- D. **Administrative Hearing** – An oral proceeding before an administrative agency consisting of argument or trial or both. Procedural rules are more relaxed at such hearings as contrasted with civil or criminal trials; e.g. rules governing admissibility of evidence are usually quite liberal.

IV. Directives

A. Applicability

This Policy applies to Space Coast Area Transit (SCAT) employees and applicants. The drug and alcohol testing procedures in *49 CFR, Part 40* apply to Transit Services Department covered by this Part, and must be read together with part, unless expressly provided otherwise in the part. A copy of *49 CFR, Part 40* will be available for employees to review at the Transit Services Department terminals.

Safety-Sensitive Employees and Applicants for Safety-Sensitive Positions covered by this Policy include those who:

1. Operate a revenue service vehicle, including when not in revenue service.
2. Operate a non-revenue service vehicle when such is required to be operated by a holder of a commercial driver's license.

3. Control the movement/dispatch of a revenue service vehicle.
4. Perform maintenance on a revenue service vehicle or equipment used in revenue service.
5. Carry a firearm for security purposes.
6. May perform any of the above safety sensitive functions in a supervisory or training role.

The following SCAT employees shall be subject to post-accident, reasonable suspicion, return-to-duty, and follow-up testing under this Policy: all Vehicle Operators, SCAT Radio Operators, SCAT Dispatchers, SCAT Scheduler, SCAT Customer Service Supervisors, SCAT Program Supervisors, SCAT Operation Managers, SCAT Manager of Operations, SCAT Safety and Training Coordinator and Transit Services Director.

All Space Coast Area Transit employees shall be subject to the Drug-Free Workplace Act of 1988 requirements. All SCAT employees must abide by the terms of the Drug-Free Workplace Act of 1988 as a condition of employment.

SCAT Volunteers In Motion volunteer drivers are not covered under this Policy due to the fact Volunteers In Motion volunteer drivers are not required to hold a commercial driver's license nor do the Volunteers In Motion volunteer drivers receive remuneration in excess of his or her actual expenses while engaged in the volunteer activity.

This Policy also applies to off-site lunch periods or breaks when an employee is scheduled to return to work.

B. Confidentiality

All information from an employee or applicant's alcohol or other drug test is confidential and only the Risk Manager and his/her designee, Human Resources Director, County Attorney or designee, Transit Services Director, or SCAT Safety and Training Coordinator are to be informed of test results. In the case when an employee's test results warrant pre-disciplinary and/or termination proceedings, the test results will be provided to the employee's supervisor or designee, as determined by the Transit Services Director.

All records relating to the taking of, or the order to take, an alcohol or other drug test shall be deemed confidential unless written authorization has been obtained from the employee or the records become the subject of an administrative or judicial proceeding. All records relating to the taking or ordering of an alcohol or other drug test and the final test results shall be kept by the County's Risk Management Office or Transit Services Department in a separate secured medical file. Negative test results are to be kept for one (1) year and positive test results are to be kept for five (5) years, or in accordance with the most current federal rules, regulations, and guidelines.

The County shall make available copies of all results of drug and/or alcohol testing and any other records pertaining to testing programs when requested by DOT or any DOT agency with regulatory authority over the County or its employees pursuant to *Department of Transportation Implementation Guidelines, Chapter 9, Section 2*.

C. Prohibited Conduct

1. The unlawful manufacture, distribution, dispensation, possession, or use of alcohol, drugs, controlled, and illegal substances on County premises or while conducting County business off County premises is absolutely prohibited by all Space Coast Area Transit employees.
2. Any employee reasonably suspected to be under the influence of alcohol or other drugs shall be prevented from engaging in further work of any sort and will have given the

County cause to subject them to immediate testing, in accordance with the procedures set forth in this Policy.

Brevard County employees must NOT consume alcohol while on duty, four (4) hours before performing a safety sensitive function or as specified by department policy and up to eight (8) hours following an accident or until the employee undergoes a post-accident test, whichever occurs first. Alcohol testing shall be conducted by an Evidential Breath Testing Device (EBT).

3. In an effort to maintain a drug and alcohol-free workplace, all SCAT employees will be subject to urine drug and breath alcohol testing in accordance with this Policy. Any employee who refuses to comply with a request for drug or alcohol testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be subject to disciplinary action, up to and including termination for insubordination. Failure to provide adequate breath or urine for testing within a reasonable time (consistent with the most current federal rules, regulations, and guidelines) without a valid medical explanation from a doctor shall constitute refusal to submit.
4. All employees are encouraged to make use of the available resources for treatment for substance abuse problems. Under certain circumstances an employee may be required to undergo treatment for substance abuse. Any employee who refuses or fails to comply with Brevard County requirements for treatment, after care, or return-to-duty, or follow-up testing shall be subject to disciplinary action, up to and including termination.
5. All employees must, as a condition of employment, abide by the terms of this Policy and must report any arrest made under a criminal drug and/or DUI statute to his/her supervisor within twenty-four (24) hours of the arrest, or as soon as practical. A report of a conviction must be made to the Office of Human Resources within five (5) days of the conviction. Failure to comply with this Policy will result in appropriate disciplinary action up to, and including, termination. Employees that are covered under the Drug-Free Workplace Act of 1988 must report a conviction of a drug statute violation occurring in the workplace to the Director of Space Coast Area Transit and the Director of the Office of Human Resources, in writing, no later than five (5) calendar days after such a conviction.
6. Brevard County is dedicated to assuring fair and equitable application of this Policy. Therefore, supervisors and managers are expected to use and apply all aspects of this Policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this Policy, or who is found to deliberately misuse the Policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

D. Drug Testing Procedures

1. All drug testing of employees and applicants shall be conducted at laboratories certified by the Department of Health and Human Services (DHHS) and the Substance Abuse Mental Health Services Administration (SAMHSA) and approved by the Agency for Health Care Administration. Only collection sites approved by Brevard County will be used for obtaining specimens for drug testing.
2. Upon random selection of a safety sensitive employee's Personnel Id, either the Transit Services Director or SCAT Safety and Training Coordinator, will call the employee's departmental contact person (designated by the appointing authority) to notify him/her that the employee was selected for a random drug and/or alcohol test. The contact

person will be told at that time whether the employee is to go for a urine drug test and breath alcohol test or just a urine drug test.

3. Upon notification of the departmental contact person the safety sensitive employee is to be notified immediately of his/her random selection for drug and/or alcohol testing. This notification must be done confidentially and in person. Once the safety sensitive employee has been notified of the required testing, the contact person must fill out the appropriate authorization forms and the safety sensitive employee **MUST** sign the *Custody and Control Form*. This form **MUST** be signed by the safety sensitive employee, regardless of whether he/she agrees to drug and/or alcohol testing or not. If the safety sensitive employee refuses to take a drug and/or alcohol test, he/she must sign the appropriate section on the consent form indicating his/her refusal to take the test. It is important that the contact person inform the safety sensitive employee at this time that refusal to take the test and/or sign the form constitutes insubordination and may result in disciplinary action, up to and including termination. If the safety sensitive employee refuses to take the test, it is treated as a positive result and handled accordingly.
4. **Chain of Custody** – Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an approved chain of custody form be used from time of collection, to receipt by the laboratory, and that upon receipt by the laboratory, an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.
5. Positive test results showing prohibited drug or drug metabolite shall be reported as negative where the Medical Resource Officer (MRO) determines there is a legitimate medical explanation for the result.

When confirmed positive tests are reported from the laboratory, it is the responsibility of the MRO to:

- a. Review the individual's medical history, including any medical records and biomedical information provided;
- b. Afford the individual an opportunity to discuss the test results with the MRO; and
- c. Determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. The employee must furnish a medical statement from a physician specifying the drug being taken or physical proof of the prescription.

An MRO may request the laboratory to analyze the original specimen again in order to verify the accuracy of the test result reported.

6. One (1) split specimen shall be collected sufficient for two (2) drug tests as determined by the DHHS and SAMHSA.

Procedure:

Initial Drug Test: If negative, reported negative. If positive, a confirmation test shall be conducted.

Confirmation Test: If negative, reported negative. If positive, reported positive.

Standard for Drug Testing – When drug screening is required under the provisions of this Policy, the following standards, or the most current established SAMHSA standard, shall be used to determine what levels of detected substances shall be considered positive:

Drug Group	Screening Test	Confirmatory Test
Amphetamines	500 ng/mL	250 ng/mL
Cocaine Metabolites	150 ng/mL	100 ng/mL
Opiate Metabolites	2,000 ng/mL	2,000 ng/mL
Phencyclidine	25 ng/mL	25 ng/mL
Marijuana Metabolites	50 ng/mL	15 ng/mL

In the event that an employee voluntarily admits to the use of any drugs not included in the 7-Panel DOT test, a 10-Panel non-DOT test with extended opiates, including an Oxycontin panel will be used in accordance with County Policy BCC-07, IV.D. Any follow-up testing or treatment involving the employee's 10-Panel test shall follow the guidelines set forth in Policy BCC-07.

7. An MRO must be provided by the drug and alcohol testing services contractor, or the County must contract with an MRO for the purpose of interpreting lab results.

The MRO must be a qualified and licensed physician with knowledge of substance abuse issues. The role of the MRO is to review and interpret confirmed positive test results and rule out other medical explanations for positive results. Positive test results showing prohibited drug or drug metabolite shall be reported as negative where the MRO determines there is a legitimate medical explanation for results.

Results must be interpreted and signed by the MRO before notification to the Risk Manager and his/her designee, Transit Services Director, SCAT Safety and Training Coordinator or Human Resources Director.

8. Results of a urine drug test will be interpreted by the MRO and reported as follows:
 - a. Negative results: If the results of the drug test administered by the County are reported as negative by the MRO, no further action is required.
 - b. Positive results: If the results of the test administered by the County are positive, appropriate disciplinary action shall be imposed after the following procedure has been followed:
 1. Within seventy-two (72) hours of notification of the positive result, if the employee disputes the test results he/she may request that the second urine sample from the original split sample be sent to another certified lab by the MRO for testing at the employee's expense. If the results of the test are negative, the employee will be returned to his/her regular duty assignment.
 2. Upon notification of a positive result, the Risk Manager or his/her designee, Human Resources Director, Transit Services Director, or SCAT Safety and Training Coordinator will contact the employee and notify him/her of the positive test result.
 3. The employee will be relieved from duty immediately and a notice of pre-termination hearing will be given. Employees who fail a drug or alcohol test while employed by Brevard County will be subject to termination for a positive test if supported by the information provided at the pre-termination hearing.

4. The employee will be provided with a list of Substance Abuse Professionals (SAPs). Brevard County is only required to make a referral. Brevard County is not required to provide the referral and not required to provide any subsequent recommended education or treatment. If the employee chooses to make an appointment and follow through with the assessment and subsequent treatment, the employee does so on their own, at their own expense, and without any participation by the County or the Department.

Upon written request, the Transit Services Department shall provide a copy of the test results to the employee.

c. Abnormal Results:

5. Adulterated specimens: A specimen is considered to be adulterated if:
 - a. the nitrite concentration is equal to or greater than 500 mcg/mL;
 - OR,
 - b. if the pH is less than or equal to 3 or greater than or equal to 11;
 - OR,
 - c. if a foreign substance is present; OR,
 - d. a substance normally found in urine is present in a concentration greater than normal physiological concentration.

If a test result is reported as adulterated, this constitutes a refusal to submit and the employee will be subject to disciplinary action, up to and including termination. When evidence of adulteration is reported and the presence of a drug or drug metabolite is confirmed, the MRO is not to report the presence of the drug, only that the specimen is adulterated. Under these circumstances, the employee is NOT PERMITTED to have the second urine sample from the original split specimen retested.

6. Substituted specimens: A specimen is considered to be substituted if the creatinine level is less than 2 mg/dL and has a specific gravity less than or equal to 1.001 or greater than or equal to 1.020 (such specimens do not exhibit clinical signs or characteristics associated with normal human urine).

If a test is reported as substituted, this constitutes a refusal to submit and the employee will be subject to disciplinary action, up to and including termination. Under these circumstances, the employee is NOT PERMITTED to have the second urine sample from the original split specimen retested.

7. *Dilute Negative Tests* – A specimen is considered to be diluted if it has a creatinine concentration greater than or equal to 2 mg/dL level but less than 20 mg/dL and the specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot. If the MRO informs the Department that a negative drug test was diluted, the Department will require the safety sensitive employee to retake the test. The recollection must not be collected under direct observation unless there is another basis for use of direct observation. When an employee is retested, the second test will stand as the test of record. This requirement covers all pre-employment, reasonable suspicions, post-accident, random, return-to-duty and follow-up testing.

- d. Failure to provide an adequate sample: Under a split specimen collection process, a specific volume of urine is required to complete the testing process. If an employee fails to provide an adequate volume of sample, the following needs to occur at the collection site:
1. The collector will instruct the employee to drink fluids up to, but no more than 40 fluid ounces within three (3) hours. The employee is required to remain at the collection site and must be under direct observation of a collection site representative at all times.
 2. After the three (3) hour time period, or any time during that period, the employee may again attempt to provide a sufficient quantity of urine. If the employee is still unable to provide the required volume, the collection site will contact the Transit Services Director or SCAT Safety and Training Officer and notify him/her of the employee's inability to produce an adequate amount of urine.
 3. If the employee claims that his/her inability to produce an adequate sample is due to a medical condition, he/she must produce medical evidence to support this or submit to a medical examination by a County-approved physician.
 4. If there is no medical evidence to support the employee's failure to produce an adequate sample, the result is treated as a refusal to submit and the employee will be subject to disciplinary action, up to and including termination.
 5. If the employee leaves the collection site prior to producing an adequate sample AND without permission from the Risk Manager or his/her designee, Transit Services Director, SCAT Safety and Training Coordinator or Human Resources Director, it is treated as a refusal to submit and the employee will be subject to disciplinary action, up to and including termination.

9. **Refusal to Submit to Urine Drug Testing** – An employee who fails to cooperate with the testing process or attempts to thwart the testing process will be considered to have "refused testing". Refusal to submit to DOT required testing is violation of this substance abuse policy. *Violation of this substance abuse policy will result in termination of employment and/or exclusion from hire.*

The following actions constitute a "refusal to test" in accordance with 49 CFR Part 40, as amended:

- a. Failure to appear for any test within a reasonable time, as determined by Space Coast Area Transit, consistent with applicable DOT agency regulations, after being directed to do so by Space Coast Area Transit (pre-employment testing not applicable).
- b. Failure to remain at the testing site until the testing process is completed (after the process has been started).
- c. Failure to provide a urine specimen for any drug test required by this part or DOT agency regulations.

- d. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen.
- e. Failure to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- f. Failure or decline to take an additional drug test Space Coast Area Transit or collector has directed you to take.
- g. Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by Space Coast Area Transit.
- h. Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
- i. For an observed collection, failure to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- j. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.
- k. Admitting to the collector or MRO that you adulterated or substituted the specimen.
- l. When the MRO verifies your drug test result as adulterated or substituted.

Refusals to test will result in employee's immediate removal from safety sensitive duties and a referral to a Substance Abuse Professional that has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders, and who meets the qualifications outlined in 49 CFR Part 40.281 Subpart O.

E. Alcohol Testing Procedures

1. Only collection sites approved by Brevard County or the Transit Services Department will be used for obtaining specimens for alcohol testing.
2. The breath specimen must be collected through the use of an Evidential Breath Testing Device (EBT) that is approved by the National Highway Traffic Safety Administration (NHTSA). The test must be performed by a Breath Alcohol Technician (BAT) who is trained and qualified in the operation of the EBT.
3. Tests are to be conducted at a site that provides privacy to the individual being tested.
4. If the result of a screening test is in the alcohol concentration of *less than 0.02*, no further testing is required and the test result will be reported as negative.

If the result of a screening test is in the alcohol concentration of *0.02 or greater for safety sensitive employees*, a confirmation test must be performed. The confirmation test must

be conducted at least 15 minutes, but not more than 30 minutes, after completion of the initial test.

If the result of the confirmation test is in the alcohol concentration of *0.02 or greater* for *safety sensitive employees*, the BAT will notify Risk Manager and his/her designee, Human Resources Director, Transit Services Director, or SCAT Safety and Training Coordinator *immediately* in a *confidential*-manner. An employee whose test result is in the range of *0.02 to 0.04* must be relieved from his/her duties in a safety sensitive position for at least eight (8) hours. Safety sensitive employees whose test results are *0.04 or greater* will NOT be permitted to return to duty and shall have given Brevard County grounds to begin pre-termination proceedings for a positive test result.

For any other employee who may be subject to alcohol testing in accordance with this Policy, if the result of the screening test is in the alcohol concentration of *0.08 or greater*, the BAT will notify the Risk Manager and his/her designee, Human Resources Director, Transit Services Director, or SCAT Safety and Training Officer *immediately* in a *confidential*-manner. The employee's supervisor will then be notified and the employee will NOT be permitted to return to duty. The employee will be relieved from duty immediately and a notice of pre-termination action will be given. Employees who fail a drug or alcohol test while employed by Brevard County will be subject to termination for a positive test if supported by the information provided at the pre-termination hearing.

The employee will be provided with a list of Substance Abuse Professionals (SAPs). Brevard County is only required to make a referral. Brevard County is not required to provide the referral and not required to provide any subsequent recommended education or treatment. If the employee chooses to make an appointment and follow through with the assessment and subsequent treatment, the employee does so on their own, at their own expense and without any participation by the County or the Department.

5. **Refusal to Submit to Alcohol Testing** – The following actions constitute a refusal to submit to Alcohol Testing:
 - a. Fail to appear for any test within a reasonable time, as determined by the Space Coast Area Transit, consistent with applicable DOT agency regulations, after being directed to do so by Space Coast Area Transit.
 - b. Fail to remain at the testing site until the testing process is complete.
 - c. Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations.
 - d. Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
 - e. Fail to undergo a medical examination or evaluation, as directed by Space Coast Area Transit.
 - f. Fail to sign the certification at Step 2 of the Alcohol Testing Form.
 - g. Fail to cooperate with any part of the testing process.

As a safety sensitive employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

F. Types of Testing

1. *Pre-Employment Testing.* Applicants under final consideration for safety sensitive positions shall undergo drug testing and receive a verified negative test result prior to employment. If the applicant's pre-employment drug test is cancelled, the applicant must retake and pass the test before being hired.

When a safety sensitive employee or applicant has previously failed or refused a pre-employment drug test administered under 49 CFR, Part 40, the employee must provide the Department proof of having successfully completed a referral, evaluation and treatment plan as described in 49 CFR *Subpart 655.62*.

Any applicant who has a confirmed positive test result will receive written notification of such positive test results and the consequences of such results from the Transit Services Director, or SCAT Safety and Training Officer. If the applicant disputes these results, he/she must submit information to the MRO as to why the results may not be valid. Failure of a drug test or refusal to submit to a drug test (either by falsification, adulteration, substitution, or failure to provide an adequate sample without a valid medical explanation) will disqualify an applicant for employment with Brevard County for a period of 365 days.

Any applicant who leaves the collection site at any point during the collection process without providing an adequate sample and without permission from the Risk Manager and his/her designee, Human Resources Director, Transit Services Director, or SCAT Safety and Training Coordinator will be considered to have refused to submit a drug test and will be disqualified from employment with Brevard County for a period of 365 days.

When a safety sensitive employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and the employee has not been in Space Coast Area Transit's random selection pool during that time, the Department shall ensure that the employee takes a pre-employment drug test with a verified negative result.

2. *Reasonable Suspicion Testing.* This type of testing means belief that ANY safety sensitive employee is using or has used drugs or alcohol in violation of this Policy.

One or more Department supervisors or County officials trained in detecting the signs and symptoms of drug use and alcohol misuse, who has a reasonable suspicion to believe that an employee has violated this Policy shall require such employee to submit to testing. A reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the safety sensitive employee.

Reasonable suspicion testing for alcohol misuse can only be made when observations leading to that testing occur during, just preceding, or just after the period of the workday that the employee is required to be in compliance with FTA regulations. Reasonable suspicion testing for prohibited drugs may be conducted anytime an employee is on duty.

If an alcohol test required by this section is not administered within two (2) hours following the determination, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight (8) hours following the determination, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Supervisors who suspect an employee has violated this Policy shall complete a *Brevard County Reasonable Suspicion Checklist* for the purpose of providing supporting documentation and submit it to the Risk Manager and his/her designee or Transit Services Director. Any employee who is subject to reasonable suspicion testing shall not report or remain on duty until the result of test are released.

3. *Post-Accident Testing.* Safety sensitive employees will be subject to urine drug and/or breath alcohol testing if they are involved in an accident that results in a fatality, OR injuries requiring medical attention away from the accident scene, OR in which one (1) or more vehicles incurs a disabling damage AND is transported away, OR with respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation.

If the accident results in a fatality, the Department shall conduct drug and alcohol tests on all surviving safety sensitive employees operating the mass transit vehicle at the time of the accident and all other safety sensitive employees (or contractor employees) whose performance could have contributed to the accident, as determined by the Department using the best information available at the time of the decision.

In a non-fatal accident, all safety sensitive employees operating the mass transit vehicle at the time of the accident must be drug and alcohol tested, unless the Department determines that the safety sensitive employee's performance can be completely discounted as contributing factor the accident. The Department shall also drug and alcohol test of any other safety sensitive employee (including contracted employees) whose performance could have contributed to the accident, as determined by the Department using the best information available at the time of the decision.

Post-accident drug and alcohol tests must be performed as soon as possible. Drug tests must be performed within thirty-two (32) hours following an accident. Alcohol tests must be performed within two (2) hours of the time of the accident and no more than eight (8) hours after the accident. If an alcohol test is not administered within two (2) hours following the determination, the employer shall prepare and maintain on file a record stating the reason(s) the alcohol test was not promptly administered. If an alcohol test required by this section is not administered with eight (8) hours following the determination, the employer shall cease attempts to administer an alcohol test and shall state in the record the reason(s) for not administering the test.

A safety sensitive employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the Department or the Departmental representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the County or the Department to have refused to submit to testing.

4. *Random Testing.* Safety sensitive employees will be subjected to random, unannounced urine drug and breath alcohol testing anytime while on duty. Random tests will be spread reasonably throughout the year and testing is conducted on all days and hours during which transit service is in operation.

All safety sensitive employees will have the opportunity to review a copy of this Policy and be required to sign a *Brevard County Acknowledgement Form* verifying knowledge of the Policy prior to being placed in the random pool.

A computer-based scientifically valid random-number selection method will be utilized for implementation of the random testing process; each covered employee shall have an equal chance to being tested each time selections are made. It will be the responsibility

of the Transit Services Department to maintain an updated list of safety sensitive employees.

At least 25% of the total number of safety sensitive employees shall be subject to random drug testing and 10% of those employees will be subject to random alcohol testing per calendar year. The number of safety sensitive employees subject to random testing can be adjusted in accordance with Federal Transit Administration regulations.

Once the employee has been notified that he/she has been selected for random drug and/or alcohol testing, he/she should report to the testing site immediately. If a valid reason exists why the employee cannot report immediately (i.e. annual leave, sick leave, training, etc.) the Transit Services Director or SCAT Safety and Training Coordinator are to be notified and the reason documented.

Employees will be permitted to use their personal vehicle and receive the current allowable mileage reimbursement, or given a County vehicle, or have a supervisor transport them to the test site. The mode of transportation will be at the discretion of the Department.

5. *Return-to-Duty Testing.* Notwithstanding the termination provisions set forth in paragraphs IV.D.8.b.3 and IV.E.4., herein, there may be circumstances under which an employee must submit to return to duty testing (e.g. Voluntary drug and alcohol testing/treatment without previous pre-employment/reasonable suspicion/post-accident/random testing.) All employees who previously test positive on a drug or alcohol test must test negative on a return-to-duty test, be evaluated and released to duty by an approved SAP, and sign a written *Brevard County Rehabilitation and Follow-Up Testing Program Agreement* (Rehabilitation Agreement) before returning to work. Employees will be subject to monitored random drug and alcohol testing during the period of their Rehabilitation Agreement.
6. A safety sensitive employee who has a verified positive drug test result or a confirmed alcohol test result with an alcohol concentration of *0.04 or greater*, or who refuses to submit to a test under this part, shall be removed *immediately* from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by *49 CFR Part 40*.
7. Where a safety-sensitive employee refuses to submit to a test or has a verified positive drug result, and/or has a confirmed alcohol test result of *0.04 or greater*, the department, before returning the employee to duty perform a safety-sensitive function, shall follow the procedures outlined in *49 CFR Part 40*.
8. *Follow-Up Testing.* Upon an employee's return to duty, employee shall be subject to unannounced follow-up testing for at least twelve (12) months and not more than sixty (60) months. A minimum of six (6) tests must be performed during the first twelve (12) months after return to duty. Follow-up testing will be at the discretion of the Transit Services Director, SCAT Safety and Training Coordinator and/or as determined by the SAP.

G. Rehabilitation

Any employee who voluntarily comes forth and requests assistance with a substance abuse problem will be encouraged to obtain assistance through the County's Employee Assistance Program (EAP). The County will make reasonable efforts to assist and encourage an employee to complete any necessary rehabilitation program.

Brevard County may provide the opportunity for employees to enter a County approved/sponsored rehabilitation program as described in Brevard County Policy BCC-07 IVG.

V. Reservation of Authority

The authority to issue and/or revise this Policy is reserved to the Board of County Commissioners.

ATTEST:



Scott Ellis, Clerk of Courts

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Curt Smith, Chairman

As approved by the Board on February 7, 2017

POLICY

**TITLE: Drug & Alcohol Testing of
Space Coast Area Transit
Applicants and Employees**

NUMBER: BCC-14

CANCELS: ~~August 9, 2016 October 12, 2010~~

APPROVED: ~~February 7, 2017 August 9, 2016~~

ORIGINATOR: Transit Services

REVIEW: ~~February 7, 2020 August 9, 2019~~

I. Objective

The objective of this Policy is to establish a drug-free workplace, better maintaining reliability and providing a healthier, safer, and more secure work environment for all Brevard County Board of County Commissioners' Space Coast Area Transit (SCAT) employees. The employees recognize that an **employee's health affects personal job performance as well as the performance and job safety of other employees and the safety of citizens.** Abuse of alcohol and other drugs has been an increasing problem affecting all facets of American society and ranks as one of the major health problems in our country. Brevard County is no exception to that trend. The County has an obligation to its employees and must take the initiative to prevent alcohol and other drug abuse from entering or continuing to exist within its work force.

The objective of this Policy is to assure worker fitness for duty and to protect employees, passengers, and the public from the risks posed by the use of alcohol and prohibited drugs. This Policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs in the transit industry including *49 CFR, Part 40, Procedures for Transportation Workplace Drug & Alcohol Testing Programs*, and *49 CFR, Part 382 Controlled Substances and Alcohol Use and Testing*, enacted by the U.S. Department of Transportation. These Rules mandate drug and alcohol testing for sensitive safety positions and prevent the performance of sensitive safety functions by employees who test positive for drugs and/or alcohol. These Rules also sets standards for the collection and testing of urine specimens. This Policy is also intended to conform with *The Drug-Free Workplace Act of 1988*, enacted by the U.S. Department of Transportation, which requires the establishment of drug-free workplace policies and *Rule 49 CFR, Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations*.

The ~~Safety and Loss Control Specialist~~**Risk Manager or his/her designee**, the Human Resources Director, Transit Services Director, SCAT-Safety and Training Coordinator, and the County Attorney or his/her designated Assistants, are the people design~~ated~~**ated** by Brevard County to answer questions pertaining to this material. These representatives are authorized to receive drug and alcohol test results and to deal with drug and alcohol related issues for the County.

This Policy applies to the Transit Services Department and contains specific language as required by the Federal Transit Administration. If the safety sensitive employee is required to be tested under *BCC-7 Drug & Alcohol Testing of Applicants & Employees*, then the employee shall be notified that the required drug test is a non-DOT test and shall not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of *49 CFR, Part 40*.

II. References

- A. 41 USC § 702: The Drug-Free Workplace Act of 1988

- B. 49 CFR, Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs and 49 CFR, Part 382: Controlled Substances and Alcohol Use and Testing
- C. 49 CFR, Part 655: Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations
- D. 75 Federal Register (FR) 49850: Mandatory Guidelines for Federal Workplace Drug Testing Programs
- E. Department of Transportation (FDOT) Implementation Guidelines for Alcohol and Drug Rehabilitation in Highway Transportation, Chapter 9, Section 2
- F. Department of Health and Human Services (DHHS) and Substance Abuse Mental Health Services Administration (SAMHSA) NLCP Program Document (PD) #035
- G. DOT Medical Review Officer (MRO) Guidelines for Interpreting Specimen Validity Test Results

III. **Definitions**

- A. **Illegally Used Controlled Substances or Drugs** – Any illegal drug or any substance identified in *Schedules I and II of 21 U.S.C. 812 and Section 202 of the Controlled Substances Act*, and as further defined by *21 CFR Subparts 1308.11 and 1308.12*. This includes, but is not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.
- B. **Legal Drugs** – 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 that 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.
- C. **Alcohol** – Means ethanol alcohol or any beverage containing more than ½ of 1% of alcohol by volume which is capable of use for beverage purposes either when alone or when diluted or medicines containing alcohol are classified as “alcohol” for the purposes of this Policy.
- D. **Administrative Hearing** – An oral proceeding before an administrative agency consisting of argument or trial or both. Procedural rules are more relaxed at such hearings as contrasted with civil or criminal trials; e.g. rules governing admissibility of evidence are usually quite liberal.

IV. **Directives**

A. **Applicability**

This Policy applies to Space Coast Area Transit (SCAT) employees and applicants. The drug and alcohol testing procedures in *49 CFR, Part 40* apply to Transit Services Department covered by this Part, and must be read together with part, unless expressly provided otherwise in the part. A copy of *49 CFR, Part 40* will be available for employees to review at the Transit Services Department terminals.

~~Safety sensitive employees under this Policy shall be defined as all applicants, and all full time and part-time employees who are applying for or employed in safety sensitive positions required to (1) operate a revenue service vehicle (including when not in revenue services; dispatch, control, or maintain revenue service vehicles); (2) carry a firearm; (3) hold a Commercial Driver's License (CDL) and operate a motor vehicle in excess of 26,000 pounds GVWR or designed to carry 16 or more passengers or used to transport placardable amounts of hazardous material; (4) perform life-threatening procedures; (5) work with controlled substances, hazardous materials or substances; or~~

~~(6) be in a position in which a momentary lapse in attention could result in injury or death to the employee or another person.~~

Safety-Sensitive Employees and Applicants for Safety-Sensitive Positions covered by this Policy include those who:

1. Operate a revenue service vehicle, including when not in revenue service.
2. Operate a non-revenue service vehicle when such is required to be operated by a holder of a commercial driver's license.
3. Control the movement/dispatch of a revenue service vehicle.
4. Perform maintenance on a revenue service vehicle or equipment used in revenue service.
5. Carry a firearm for security purposes.
- ~~6. May perform any of the above safety sensitive functions in a supervisory or training role.~~

The following SCAT employees shall be subject to post-accident, reasonable suspicion, return-to-duty, and follow-up testing under this Policy: all Vehicle Operators, SCAT Radio Operators, SCAT Dispatchers, SCAT Scheduler, SCAT Customer Service Supervisors, SCAT Program Supervisors, SCAT Operation Managers, SCAT Manager of Operations, SCAT Safety and Training Coordinator and Transit Services Director.

All Space Coast Area Transit employees shall be subject to the Drug-Free Workplace Act of 1988 requirements. All SCAT employees must abide by the terms of the Drug-Free Workplace Act of 1988 as a condition of employment.

SCAT Volunteers In Motion volunteer drivers are not covered under this Policy due to the fact Volunteers In Motion volunteer drivers are not required to hold a commercial driver's license nor do the Volunteers In Motion volunteer drivers receive remuneration in excess of his or her actual expenses while engaged in the volunteer activity.

This Policy also applies to off-site lunch periods or breaks when an employee is scheduled to return to work.

B. Confidentiality

All information from an employee or applicant's alcohol or other drug test is confidential and only the ~~Safety and Loss Control Specialist~~ Risk Manager or his/her designee, Human Resources Director, County Attorney or designee, Transit Services Director, or SCAT Safety and Training Coordinator are to be informed of test results. In the case when an employee's test results warrant pre-disciplinary and/or termination proceedings, the test results will be provided to the employee's supervisor or designee, as determined by the Transit Services Director.

All records relating to the taking of, or the order to take, an alcohol or other drug test shall be deemed confidential unless written authorization has been obtained from the employee or the records become the subject of an administrative or judicial proceeding. All records relating to the taking or ordering of an alcohol or other drug test and the final test results shall be kept by the County's Risk Management Office or Transit Services Department in a separate secured medical file. Negative test results are to be kept for one (1) year and positive test results are to be kept for five (5) years, or in accordance with the most current federal rules, regulations, and guidelines.

The County shall make available copies of all results of drug and/or alcohol testing and any other records pertaining to testing programs when requested by DOT or any DOT agency with regulatory authority over the County or its employees pursuant to *Department of Transportation Implementation Guidelines, Chapter 9, Section 2.*

C. Prohibited Conduct

1. The unlawful manufacture, distribution, dispensation, possession, or use of alcohol, drugs, controlled, and illegal substances on County premises or while conducting County business off County premises is absolutely prohibited by all Space Coast Area Transit employees.
2. Any employee reasonably suspected to be under the influence of alcohol or other drugs shall be prevented from engaging in further work of any sort and will have given the County cause to subject them to immediate testing, in accordance with the procedures set forth in this Policy.

Brevard County employees must NOT consume alcohol while on duty, four (4) hours before performing a safety sensitive function or as specified by department policy and up to eight (8) hours following an accident or until the employee undergoes a post-accident test, whichever occurs first. Alcohol testing shall be conducted by an Evidential Breath Testing Device (EBT).

3. In an effort to maintain a drug and alcohol-free workplace, all SCAT employees will be subject to urine drug and breath alcohol testing in accordance with this Policy. Any employee who refuses to comply with a request for drug or alcohol testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be subject to disciplinary action, up to and including termination for insubordination. Failure to provide adequate breath or urine for testing within a reasonable time (consistent with the most current federal rules, regulations, and guidelines) without a valid medical explanation from a doctor shall constitute refusal to submit.
4. All employees are encouraged to make use of the available resources for treatment for substance abuse problems. Under certain circumstances an employee may be required to undergo treatment for substance abuse. Any employee who refuses or fails to comply with Brevard County requirements for treatment, after care, or return-to-duty, or follow-up testing shall be subject to disciplinary action, up to and including termination.
5. All employees must, as a condition of employment, abide by the terms of this Policy and must report any arrest made under a criminal drug and/or DUI statute to his/her supervisor within twenty-four (24) hours of the arrest, or as soon as practical. A report of a conviction must be made to the Office of Human Resources within five (5) days of the conviction. Failure to comply with this Policy will result in appropriate disciplinary action up to, and including, termination. Employees that are covered under the Drug-Free Workplace Act of 1988 must report a conviction of a drug statute violation occurring in the workplace to the Director of Space Coast Area Transit and the Director of the Office of Human Resources, in writing, no later than five (5) calendar days after such a conviction.
6. Brevard County is dedicated to assuring fair and equitable application of this Policy. Therefore, supervisors and managers are expected to use and apply all aspects of this Policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this Policy, or who is found to deliberately misuse the Policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

D. Drug Testing Procedures

1. All drug testing of employees and applicants shall be conducted at laboratories certified by the Department of Health and Human Services (DHHS) and the Substance Abuse Mental Health Services Administration (SAMHSA) and approved by the Agency for Health

Care Administration. Only collection sites approved by Brevard County will be used for obtaining specimens for drug testing.

2. Upon random selection of a safety sensitive employee's Personnel Id, either the Transit Services Director or SCAT Safety and Training Coordinator, will call the employee's departmental contact person (designated by the appointing authority) to notify him/her that the employee was selected for a random drug and/or alcohol test. The contact person will be told at that time whether the employee is to go for a urine drug test and breath alcohol test or just a urine drug test.
3. Upon notification of the departmental contact person the safety sensitive employee is to be notified immediately of his/her random selection for drug and/or alcohol testing. This notification must be done confidentially and in person. Once the safety sensitive employee has been notified of the required testing, the contact person must fill out the appropriate authorization forms and the safety sensitive employee **MUST** sign the *Custody and Control Form*. This form **MUST** be signed by the safety sensitive employee, regardless of whether he/she agrees to drug and/or alcohol testing or not. If the safety sensitive employee refuses to take a drug and/or alcohol test, he/she must sign the appropriate section on the consent form indicating his/her refusal to take the test. It is important that the contact person inform the safety sensitive employee at this time that refusal to take the test and/or sign the form constitutes insubordination and may result in disciplinary action, up to and including termination. If the safety sensitive employee refuses to take the test, it is treated as a positive result and handled accordingly.
4. **Chain of Custody** – Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an approved chain of custody form be used from time of collection, to receipt by the laboratory, and that upon receipt by the laboratory, an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.
5. Positive test results showing prohibited drug or drug metabolite shall be reported as negative where the Medical Resource Officer (MRO) determines there is a legitimate medical explanation for the result.

When confirmed positive tests are reported from the laboratory, it is the responsibility of the MRO to:

- a. Review the individual's medical history, including any medical records and biomedical information provided;
- b. Afford the individual an opportunity to discuss the test results with the MRO; and
- c. Determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. The employee must furnish a medical statement from a physician specifying the drug being taken or physical proof of the prescription.

An MRO may request the laboratory to analyze the original specimen again in order to verify the accuracy of the test result reported.

6. One (1) split specimen shall be collected sufficient for two (2) drug tests as determined by the DHHS and SAMHSA.

Procedure:

Initial Drug Test: If negative, reported negative. If positive, a confirmation test shall be conducted.
Confirmation Test: If negative, reported negative. If positive, reported positive.

Standard for Drug Testing – When drug screening is required under the provisions of this Policy, the following standards, or the most current established SAMHSA standard, shall be used to determine what levels of detected substances shall be considered positive:

Drug Group	Screening Test	Confirmatory Test
Amphetamines	500 ng/mL	250 ng/mL
Cocaine Metabolites	150 ng/mL	100 ng/mL
Opiate Metabolites	2,000 ng/mL	2,000 ng/mL
Phencyclidine	25 ng/mL	25 ng/mL
Marijuana Metabolites	50 ng/mL	15 ng/mL

In the event that an employee voluntarily admits to the use of any drugs not included in the 7-Panel DOT test, a 10-Panel non-DOT test with extended opiates, including an Oxycontin panel will be used in accordance with County Policy BCC-07, IV.D. Any follow-up testing or treatment involving the employee's 10-Panel test shall follow the guidelines set forth in Policy BCC-07.

7. An MRO must be provided by the drug and alcohol testing services contractor, or the County must contract with an MRO for the purpose of interpreting lab results.

The MRO must be a qualified and licensed physician with knowledge of substance abuse issues. The role of the MRO is to review and interpret confirmed positive test results and rule out other medical explanations for positive results. Positive test results showing prohibited drug or drug metabolite shall be reported as negative where the MRO determines there is a legitimate medical explanation for results.

Results must be interpreted and signed by the MRO before notification to the ~~Safety and Loss Control Specialist~~ Risk Manager or his/her designee, Transit Services Director, SCAT Safety and Training Coordinator or Human Resources Director.

8. Results of a urine drug test will be interpreted by the MRO and reported as follows:
 - a. Negative results: If the results of the drug test administered by the County are reported as negative by the MRO, no further action is required.
 - b. Positive results: If the results of the test administered by the County are positive, appropriate disciplinary action shall be imposed after the following procedure has been followed:
 1. Within seventy-two (72) hours of notification of the positive result, if the employee disputes the test results he/she may request that the second urine sample from the original split sample be sent to another certified lab by the MRO for testing at the employee's expense. If the results of the test are negative, the employee will be returned to his/her regular duty assignment.
 2. Upon notification of a positive result, the ~~Safety & Loss Control Specialist~~ Risk Manager or his/her designee, Human Resources Director, Transit Services Director, or SCAT Safety and Training Coordinator will contact the employee and notify him/her of the positive test result.

3. The employee will be relieved from duty immediately and a notice of pre-termination hearing will be given. Employees who fail a drug or alcohol test while employed by Brevard County will be subject to termination for a positive test if supported by the information provided at the pre-termination hearing.
4. The employee will be provided with a list of Substance Abuse Professionals (SAPs). Brevard County is only required to make a referral. Brevard County is not required to provide the referral and not required to provide any subsequent recommended education or treatment. If the employee chooses to make an appointment and follow through with the assessment and subsequent treatment, the employee does so on their own, at their own expense, and without any participation by the County or the Department.

Upon written request, the Transit Services Department shall provide a copy of the test results to the employee.

c. Abnormal Results:

5. Adulterated specimens: A specimen is considered to be adulterated if:
 - a. the nitrite concentration is equal to or greater than 500 mcg/mL;
OR,
 - b. if the pH is less than or equal to 3 or greater than or equal to 11;
OR,
 - c. if a foreign substance is present; OR,
 - d. a substance normally found in urine is present in a concentration greater than normal physiological concentration.

If a test result is reported as adulterated, this constitutes a refusal to submit and the employee will be subject to disciplinary action, up to and including termination. When evidence of adulteration is reported and the presence of a drug or drug metabolite is confirmed, the MRO is not to report the presence of the drug, only that the specimen is adulterated. Under these circumstances, the employee is NOT PERMITTED to have the second urine sample from the original split specimen retested.

6. Substituted specimens: A specimen is considered to be substituted if the creatinine level is less than 2 mg/dL and has a specific gravity less than or equal to 1.001 or greater than or equal to 1.020 (such specimens do not exhibit clinical signs or characteristics associated with normal human urine).

If a test is reported as substituted, this constitutes a refusal to submit and the employee will be subject to disciplinary action, up to and including termination. Under these circumstances, the employee is NOT PERMITTED to have the second urine sample from the original split specimen retested.

7. *Dilute Negative Tests* – A specimen is considered to be diluted if it has a creatinine concentration greater than or equal to 2 mg/dL level but less than 20 mg/dL and the specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot. If the MRO informs the Department that a negative drug test was diluted, the Department will require the safety sensitive employee to retake the test. The recollection must not be collected under direct observation unless there is another basis for use

of direct observation. When an employee is retested, the second test will stand as the test of record. This requirement covers all pre-employment, reasonable suspicions, post-accident, random, return-to-duty and follow-up testing.

- d. Failure to provide an adequate sample: Under a split specimen collection process, a specific volume of urine is required to complete the testing process. If an employee fails to provide an adequate volume of sample, the following needs to occur at the collection site:
 1. The collector will instruct the employee to drink fluids up to, but no more than 40 fluid ounces within three (3) hours. The employee is required to remain at the collection site and must be under direct observation of a collection site representative at all times.
 2. After the three (3) hour time period, or any time during that period, the employee may again attempt to provide a sufficient quantity of urine. If the employee is still unable to provide the required volume, the collection site will contact the Transit Services Director or SCAT Safety and Training Officer and notify him/her of the employee's inability to produce an adequate amount of urine.
 3. If the employee claims that his/her inability to produce an adequate sample is due to a medical condition, he/she must produce medical evidence to support this or submit to a medical examination by a County-approved physician.
 4. If there is no medical evidence to support the employee's failure to produce an adequate sample, the result is treated as a refusal to submit and the employee will be subject to disciplinary action, up to and including termination.
 5. If the employee leaves the collection site prior to producing an adequate sample AND without permission from the ~~Safety & Loss Control Specialist~~ Risk Manager or his/her designee, Transit Services Director, SCAT Safety and Training Coordinator or Human Resources Director, it is treated as a refusal to submit and the employee will be subject to disciplinary action, up to and including termination.

9. **Refusal to Submit to Urine Drug Testing** – An employee who fails to cooperate with the testing process or attempts to thwart the testing process will be considered to have "refused testing". **Refusal to submit to DOT required testing is violation of this substance abuse policy.** *Violation of this substance abuse policy will result in termination of employment and/or exclusion from hire.*

The following actions constitute a "refusal to test" in accordance with 49 CFR Part 40, as amended:

- a. Failure to appear for any test within a reasonable time, as determined by Space Coast Area Transit, consistent with applicable DOT agency regulations, after being directed to do so by Space Coast Area Transit (pre-employment testing not applicable).
- b. Failure to remain at the testing site until the testing process is completed (after the process has been started).

- c. Failure to provide a urine specimen for any drug test required by this part or DOT agency regulations.
- d. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen.
- e. Failure to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- f. Failure or decline to take an additional drug test Space Coast Area Transit or collector has directed you to take.
- g. Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by Space Coast Area Transit.
- h. Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
- i. For an observed collection, failure to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- j. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.
- k. Admitting to the collector or MRO that you adulterated or substituted the specimen.
- l. When the MRO verifies your drug test result as adulterated or substituted.

Refusals to test will result in employee's immediate removal from safety sensitive duties and a referral to a Substance Abuse Professional that has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders, and who meets the qualifications outlined in 49 CFR Part 40.281 Subpart O.

E. Alcohol Testing Procedures

1. Only collection sites approved by Brevard County or the Transit Services Department will be used for obtaining specimens for alcohol testing.
2. The breath specimen must be collected through the use of an Evidential Breath Testing Device (EBT) that is approved by the National Highway Traffic Safety Administration (NHTSA). The test must be performed by a Breath Alcohol Technician (BAT) who is trained and qualified in the operation of the EBT.
3. Tests are to be conducted at a site that provides privacy to the individual being tested.
4. If the result of a screening test is in the alcohol concentration of *less than 0.02*, no further testing is required and the test result will be reported as negative.

If the result of a screening test is in the alcohol concentration of *0.02 or greater* for *safety sensitive employees*, a confirmation test must be performed. The confirmation test must be conducted at least 15 minutes, but not more than 30 minutes, after completion of the initial test.

If the result of the confirmation test is in the alcohol concentration of *0.02 or greater* for *safety sensitive employees*, the BAT will notify ~~Safety and Loss Control Specialist~~Risk Manager or his/her designee, Human Resources Director, Transit Services Director, or SCAT Safety and Training Coordinator *immediately* in a *confidential*-manner. An employee whose test result is in the range of *0.02 to 0.04* must be relieved from his/her duties in a safety sensitive position for at least eight (8) hours. Safety sensitive employees whose test results are *0.04 or greater* will NOT be permitted to return to duty and shall have given Brevard County grounds to begin pre-termination proceedings for a positive test result.

For any other employee who may be subject to alcohol testing in accordance with this Policy, if the result of the screening test is in the alcohol concentration of *0.08 or greater*, the BAT will notify the ~~Safety and Loss Control Specialist~~Risk Manager of his/her designee, Human Resources Director, Transit Services Director, or SCAT Safety and Training Officer *immediately* in a *confidential*-manner. **The employee's supervisor will** then be notified and the employee will NOT be permitted to return to duty. The employee will be relieved from duty immediately and a notice of pre-termination action will be given. Employees who fail a drug or alcohol test while employed by Brevard County will be subject to termination for a positive test if supported by the information provided at the pre-termination hearing.

The employee will be provided with a list of Substance Abuse Professional (SAPs). Brevard County is only required to make a referral. Brevard County is not required to provide the referral and not required to provide any subsequent recommended education or treatment. If the employee chooses to make an appointment and follow through with the assessment and subsequent treatment, the employee does so on their own, at their own expense and without any participation by the County or the Department.

5. **Refusal to Submit to Alcohol Testing** – The following actions constitute a refusal to submit to Alcohol Testing:
- a. Fail to appear for any test within a reasonable time, as determined by the Space Coast Area Transit, consistent with applicable DOT agency regulations, after being directed to do so by Space Coast Area Transit.
 - b. Fail to remain at the testing site until the testing process is complete.
 - c. Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations.
 - d. Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
 - e. Fail to undergo a medical examination or evaluation, as directed by Space Coast Area Transit.
 - f. Fail to sign the certification at Step 2 of the Alcohol Testing Form.
 - g. Fail to cooperate with any part of the testing process.

As a safety sensitive employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

F. Types of Testing

1. *Pre-Employment Testing.* Applicants under final consideration for safety sensitive positions shall undergo drug testing and receive a verified negative test result prior to employment. If the applicant's pre-employment drug test is cancelled, the applicant must retake and pass the test before being hired.

When a safety sensitive employee or applicant has previously failed or refused a pre-employment drug test administered under 49 CFR, Part 40, the employee must provide the Department proof of having successfully completed a referral, evaluation and treatment plan as described in 49 CFR *Subpart 655.62*.

Any applicant who has a confirmed positive test result will receive written notification of such positive test results and the consequences of such results from the Transit Services Director, or SCAT Safety and Training Officer. If the applicant disputes these results, he/she must submit information to the MRO as to why the results may not be valid. Failure of a drug test or refusal to submit to a drug test (either by falsification, adulteration, substitution, or failure to provide an adequate sample without a valid medical explanation) will disqualify an applicant for employment with Brevard County for a period of 365 days.

Any applicant who leaves the collection site at any point during the collection process without providing an adequate sample and without permission from the ~~Safety and Loss Control Specialist~~ Risk Manager and his/her designee, Human Resources Director, Transit Services Director, or SCAT Safety and Training Coordinator will be considered to have refused to submit a drug test and will be disqualified from employment with Brevard County for a period of 365 days.

When a safety sensitive employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and the employee has not been in Space Coast Area Transit's random selection pool during that time, the Department shall ensure that the employee takes a pre-employment drug test with a verified negative result.

2. *Reasonable Suspicion Testing.* This type of testing means belief that ANY safety sensitive employee is using or has used drugs or alcohol in violation of this Policy.

One or more Department supervisors or County officials trained in detecting the signs and symptoms of drug use and alcohol misuse, who has a reasonable suspicion to believe that an employee has violated this Policy shall require such employee to submit to testing. A reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the safety sensitive employee.

Reasonable suspicion testing for alcohol misuse can only be made when observations leading to that testing occur during, just preceding, or just after the period of the workday that the employee is required to be in compliance with FTA regulations. Reasonable suspicion testing for prohibited drugs may be conducted anytime an employee is on duty.

If an alcohol test required by this section is not administered within two (2) hours following the determination, the employer shall prepare and maintain on file a record

stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight (8) hours following the determination, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Supervisors who suspect an employee has violated this Policy shall complete a *Brevard County Reasonable Suspicion Checklist* for the purpose of providing supporting documentation and submit it to the ~~Safety and Loss Control Specialist~~Risk Manager and his/her designee or Transit Services Director. Any employee who is subject to reasonable suspicion testing shall not report or remain on duty until the result of test are released.

3. *Post-Accident Testing.* Safety sensitive employees will be subject to urine drug and/or breath alcohol testing if they are involved in an accident that results in a fatality, OR injuries requiring medical attention away from the accident scene, OR in which one (1) or more vehicles incurs a disabling damage AND is transported away, OR with respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation. the employee receives a citation for a moving vehicle violation.

If the accident results in a fatality, the Department shall conduct drug and alcohol tests on all surviving safety sensitive employees operating the mass transit vehicle at the time of the accident and all other safety sensitive employees (or contractor employees) whose performance could have contributed to the accident, as determined by the Department using the best information available at the time of the decision.

In a non-fatal accident, all safety sensitive employees operating the mass transit vehicle at the time of the accident must be drug and alcohol tested, unless the Department determines that the safety sensitive employee's performance can be completely discounted as contributing factor the accident. The Department shall also drug and alcohol test of any other safety sensitive employee (including contracted employees) whose performance could have contributed to the accident, as determined by the Department using the best information available at the time of the decision.

Post-accident drug and alcohol tests must be performed as soon as possible. Drug tests must be performed within thirty-two (32) hours following an accident. Alcohol tests must be performed within two (2) hours of the time of the accident and no more than eight (8) hours after the accident. If an alcohol test is not administered within two (2) hours following the ~~accident, the County must administer the test, and determination, the employer shall must also~~ prepare and maintain on file a written record stating the reason(s) the alcohol test was not properly promptly administered. If an alcohol test required by this section is not administered with eight (8) hours following the determination, the employer shall cease attempts to administer an alcohol test and shall state in the record the reason(s) for not administering the test.~~The requirement to do post-accident testing should in no way interfere with necessary medical attention.~~

A safety sensitive employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the Department or the Departmental representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the County or the Department to have refused to submit to testing.

4. *Random Testing.* Safety sensitive employees will be subjected to random, unannounced urine drug and breath alcohol testing anytime while on duty. Random tests will be spread reasonably throughout the year and testing is conducted on all days and hours during which transit service is in operation.

All safety sensitive employees will have the opportunity to review a copy of this Policy and be required to sign a *Brevard County Acknowledgement Form* verifying knowledge of the Policy prior to being placed in the random pool.

A computer-based scientifically valid random-number selection method will be utilized for implementation of the random testing process; each covered employee shall have an equal chance to being tested each time selections are made. It will be the responsibility of the Transit Services Department to maintain an updated list of safety sensitive employees.

At least 25% of the total number of safety sensitive employees shall be subject to random drug testing and 10% of those employees will be subject to random alcohol testing per calendar year. The number of safety sensitive employees subject to random testing can be adjusted in accordance with Federal Transit Administration regulations.

Once the employee has been notified that he/she has been selected for random drug and/or alcohol testing, he/she should report to the testing site immediately. If a valid reason exists why the employee cannot report immediately (i.e. annual leave, sick leave, training, etc.) the Transit Services Director or SCAT Safety and Training Coordinator are to be notified and the reason documented.

Employees will be permitted to use their personal vehicle and receive the current allowable mileage reimbursement, or given a County vehicle, or have a supervisor transport them to the test site. The mode of transportation will be at the discretion of the Department.

5. *Return-to-Duty Testing.* Notwithstanding the termination provisions set forth in paragraphs IV.D.8.b.3 and IV.E.4., herein, there may be circumstances under which an employee must submit to return to duty testing (e.g. Voluntary drug and alcohol testing/treatment without previous pre-employment/reasonable suspicion/post-accident/random testing.) All employees who previously test positive on a drug or alcohol test must test negative on a return-to-duty test, be evaluated and released to duty by an approved SAP, and sign a written *Brevard County Rehabilitation and Follow-Up Testing Program Agreement* (Rehabilitation Agreement), before returning to work. Employees will be subject to monitored random drug and alcohol testing during the period of their Rehabilitation Agreement.
6. A safety sensitive employee who has a verified positive drug test result or a confirmed alcohol test result with an alcohol concentration of *0.04 or greater*, or who refuses to submit to a test under this part, shall be removed *immediately* from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by *49 CFR Part 40*.
7. Where a safety-sensitive employee refuses to submit to a test or has a verified positive drug result, and/or has a confirmed alcohol test result of *0.04 or greater*, the department, before returning the employee to duty perform a safety-sensitive function, shall follow the procedures outlined in *49 CFR Part 40*.
8. *Follow-Up Testing.* Upon an employee's return to duty, employee shall be subject to unannounced follow-up testing for at least twelve (12) months and not more than sixty (60) months. A minimum of six (6) tests must be performed during the first twelve (12) months after return to duty. Follow-up testing will be at the discretion of the Transit Services Director, SCAT Safety and Training Coordinator and/or as determined by the SAP.

G. Rehabilitation

Any employee who voluntarily comes forth and requests assistance with a substance abuse problem will be encouraged to obtain assistance through the County's Employee Assistance Program (EAP). The County will make reasonable efforts to assist and encourage an employee to complete any necessary rehabilitation program.

Brevard County may provide the opportunity for employees to enter a County approved/sponsored rehabilitation program as described in Brevard County Policy BCC-07 IVG.

V. Reservation of Authority

The authority to issue and/or revise this Policy is reserved to the Board of County Commissioners.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk of Courts
2016 February 7, 2017

~~Jim Barfield~~ Curt Smith, Chairman
As approved by the Board on ~~August 9,~~