



POLICY TITLE: **Transit Department
Alcohol Misuse and Prohibited Drug Use**

POLICY NO.: **PR-5B**

I. PURPOSE AND SCOPE

- A. The Board of County Commissioners has adopted this Policy to satisfy the requirements of the Omnibus Transportation Employee Testing Act of 1991 and regulations promulgated by the U.S. Department of Transportation (DOT), 49 CFR Part 40 (“Procedures for Transportation Workplace Drug and Alcohol Testing Programs”), as amended, and by the Federal Transit Administration (FTA), 49 CFR Part 655 (“Prevention of Alcohol Misuse and Prohibited Drug Use in Transit”), as amended. This Policy applies to all Transit Department employees and applicants for employment in the Transit Department who hold or seek to hold “safety-sensitive” positions as defined in 49 CFR Part 655 and as described by category and position title below. This Policy establishes uniform procedures concerning the testing of covered Transit Department employees or applicants for employment in the Transit Department to detect illegal drugs or alcohol in their systems. The purpose of such testing is to provide, in the interest of the safety of employees, passengers, and the general public, work and service environments that are free from the effects of illegal drug use and alcohol misuse.
- B. This Policy does not exempt covered Transit Department employees from other County rules, regulations, or policies, including prohibitions against and penalties or sanctions for alcohol misuse and prohibited drug use that are stricter or in excess of the requirements of 49 CFR Part 655. Such rules, regulations, or policies are established pursuant to the County’s own authority and not the authority of DOT or FTA. Furthermore, all affected employees are subject to the County’s Policy No. PR-5A, Alcohol-Free and Drug-Free Workplace, implementing the Drug-Free Workplace Act of 1988, which prohibits employees from unlawfully manufacturing, distributing, dispensing, possessing, or using controlled substances in the workplace.
- C. Each covered employee will receive and sign for receipt of a copy of this Policy. Questions regarding the administration of the anti-drug and alcohol misuse program created by this Policy should be directed to the County’s Risk Management Administrator as its Drug and Alcohol Program Manager and Designated Employer Representative (DER) in the Department of Human Resources at 240-313-2350.

II. COVERED PERSONS

- A. This Policy applies to all employees, applicants, or transferees who perform or will perform any safety-sensitive function in the Transit Department as defined below and by FTA in 49 CFR Part 655.
- B. The following duties in the Transit Department constitute safety-sensitive functions:
 - 1. Operating a revenue service vehicle, including when not in revenue service;
 - 2. Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
 - 3. Controlling dispatch or movement of a revenue service vehicle;
 - 4. Maintaining (including repairs, overhaul, and rebuilding) any revenue service vehicle or equipment used in revenue service; and
 - 5. Carrying a firearm for security reasons.
- C. After due analysis, the Transit Department has determined that individuals with the following position titles are safety-sensitive employees because they are or may be required to perform safety-sensitive job functions as part of their job duties:
 - 1. Transit Director;
 - 2. Transit Deputy Director;
 - 3. Fleet Manager;
 - 4. Driver Supervisor;
 - 5. Administrative Assistant;
 - 6. Office Associate;
 - 7. Full-time Bus Operator;
 - 8. Part-time Bus Operator;
 - 9. Bus Mechanic;
 - 10. Bus Attendant; and
 - 11. Van/Shuttle Driver.

III. PROHIBITED BEHAVIOR AND CONDUCT

- A. Prohibited Drug Use – Safety-sensitive employees in the Transit Department are prohibited from consuming marijuana, cocaine, opioids (natural, semi-synthetic, and synthetic), amphetamines, or phencyclidine (PCP) at any time, whether on or off duty. This Policy does not exempt safety-sensitive employees from the County-wide prohibition against the consumption of other illegal drugs not listed above, but the prohibition

against the use of other illegal drugs is established pursuant to the County's own authority and not the authority of DOT or FTA. The consumption of any illegal drugs is grounds for immediate termination of employment and referral to a qualified Substance Abuse Professional (SAP).

B. Prohibited Alcohol Use – Safety-sensitive employees in the Transit Department are prohibited from consuming alcohol while performing or within four (4) hours prior to performing any safety-sensitive function. Accordingly, this prohibition against the consumption of alcohol applies to off-site lunch periods or breaks when a safety-sensitive employee is scheduled to return to work to perform any safety-sensitive function. Additional prohibitions against the consumption of alcohol by safety-sensitive employees are as follows:

1. Safety-sensitive employees in the Transit Department who are on-call to substitute for the shift of an employee who may be unable to work are prohibited from consuming alcohol within four (4) hours of the shift for which substitution may be required. However, such employees will be provided the opportunity to acknowledge the use of alcohol at the time they are called upon to report to duty and their inability to perform safety-sensitive functions without being subject to punitive measures. If the employee acknowledges consumption of alcohol within four (4) hours of the shift for which substitution may be required, the employee shall not be allowed to substitute for the shift or perform any safety-sensitive function.
2. Safety-sensitive employees in the Transit Department who are required to take a post-accident alcohol test pursuant to the procedures set forth below are prohibited from consuming alcohol for eight (8) hours following the accident or until after the employee undergoes the post-accident alcohol test, whichever occurs first.
3. Safety-sensitive employees in the Transit Department who are found to have a Blood Alcohol Concentration (BAC) of 0.02 pursuant to the testing procedures set forth below are subject to immediate termination of employment and referral to a qualified SAP. 49 CFR Part 655 does not require termination of employment under these circumstances. Rather, termination of employment under these circumstances is established pursuant to the County's own authority and not the authority of DOT or FTA.

IV. DRUG AND ALCOHOL TESTING

A. Types of Testing

1. As more fully described below, the County requires pre-employment drug tests of all applicants and other persons specified below who will perform any safety-sensitive function in the Transit Department. Prior to testing, such individuals will be advised that they are being tested pursuant to FTA regulations.
2. As more fully described below, all employees who perform any safety-sensitive function in the Transit Department are subject to the following types of drug and alcohol tests: reasonable suspicion testing, post-accident testing, and random testing. Prior to testing, employees will be advised that they are being tested pursuant to FTA regulations.
3. Drug tests are designed to detect the presence of marijuana, cocaine, opioids (natural, semi-synthetic, and synthetic), amphetamines, and phencyclidine (PCP). Urine specimens are used for drug testing under this Policy.
 - a. The drug testing procedures will comply with DOT regulations, 49 CFR Part 40, as amended, and include split sampling which provides that a urine sample be split into two (2) separate containers.
 - b. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, whether the urine was diluted, or whether the specimen was substituted.
 - c. In compliance with 49 CFR Part 40, as amended, observed collections are required in the following circumstances:
 - i. All return-to-duty tests;
 - ii. All follow up tests;
 - iii. Any time an employee is directed to provide another specimen because the temperature on the original specimen was out of the currently accepted

temperature range specified under 49 CFR Part 40, as amended;

- iv. Any time the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
- v. Any time a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- vi. Any time the employee is directed to provide another specimen because the laboratory reported to the Medical Review Officer (MRO) that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
- vii. Any time the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated, or substituted, but had to be cancelled because the test of the split specimen could not be performed.

The method of direct observation will be in compliance with the current requirements of 40 CFR Part 40, as amended, and will consist of actions (i.e., lifting and lowering of clothing) sufficient to demonstrate to the collector that there is no evidence of a prosthetic device.

- d. The confirmation limits for controlled substances are set forth in terms of nanograms per milliliter of urine at the concentrations determined by DOT regulations. If the laboratory reports a confirmed positive, adulterated, substituted, or invalid test result to the MRO, the MRO or staff under the MRO's personal supervision will make at least three (3) documented attempts to contact the applicant or employee (using the contact information listed on the official DOT Chain of Custody and Control Form (CCF), spaced reasonably over a twenty-four (24) hour period, including day and evening, for the purpose of arranging a discussion between the MRO and the applicant or employee. Any contact by the MRO's staff will be limited to scheduling a discussion between the MRO and the applicant or employee and advising the applicant or employee of the consequences of refusing to speak with the MRO (i.e., that the MRO will verify the test without input from the applicant

- or employee). During the discussion with the MRO, the MRO will determine whether the applicant or employee wants to discuss the test result and explain that, if he or she declines to discuss the test result, the MRO will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable.
- e. If the MRO or the MRO's staff are not able to contact the applicant or employee, the MRO will instruct the DER to contact the applicant or employee, who, in turn, will make immediate attempts to contact the applicant or employee and instruct him or her to contact the MRO. The DER will make at least three (3) documented attempts to contact the applicant or employee (using the contact information listed on the CCF), spaced reasonably over a twenty-four (24) hour period, including day and evening. The DER will inform the applicant or employee that, within seventy-two (72) hours, he or she must immediately contact the MRO, and will explain that, if the applicant or employee refuses to contact the MRO within the next seventy-two (72) hours, the MRO will verify the test result as a positive or refusal to test, as applicable. If neither the MRO nor DER, after making and documenting all reasonable efforts (as described above), is unable to contact the applicant or employee within ten (10) days of the date on which the MRO receives the confirmed test result from the laboratory, the MRO will verify the test result as a positive or refusal to test, as applicable. If the DER is unable to talk directly with the applicant or employee, and leaves a message for the applicant or employee, ten (10) days must pass before the MRO verifies the test results as a no-contact positive.
 - f. Upon the MRO's contact with an applicant or employee for whom the laboratory reports a confirmed positive, adulterated, substituted, or invalid test result, the MRO will make a verification decision consistent with the procedures set forth in 49 CFR Part 40, as amended, including, without limitation, a medical interview with the applicant or employee, a review of the medical history of the applicant or employee, and any other relevant biomedical factors presented to the MRO by the applicant or employee. When the MRO verifies the test result as positive or as a refusal to test because of adulteration or substitution, the MRO will inform the applicant or employee of the verification decision and that he or she has seventy-two (72) hours to request that the MRO direct the second part of the split sample to a second laboratory for testing. The MRO will also inform the

applicant or employee of the other information required by 49 CFR Part 40, as amended. If the second part of the split sample has negative results, the positive results of the first sample will be canceled and another sample will be taken for a new test. However, the employee does not have access to a test of the split specimen following an invalid result.

- g. If the MRO informs the DER that a positive drug test was dilute, the County will treat the test as a verified positive test result. If the MRO informs the DER that a negative drug test was dilute, the County will require the applicant or employee to take another test immediately. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO. Recollections will not be conducted under direct observation unless there is some other basis for direct observation under DOT regulations. All applicants and employees will be treated the same in the case of dilute negatives. The County will ensure that the applicant or employee will be given the minimum advance notice that he or she must go to the collection site. The result of the second test—and not of the first test—will be controlling. If the second test is also a dilute negative, the applicant or employee will not be required to take a third test. If the County directs the applicant or employee to take a second test because the first test was a dilute negative, and if he or she refuses to take the second test, the applicant or employee will be deemed to have refused to take a drug test.
- 4. Alcohol tests are designed to detect the presence of alcohol at the BAC levels of 0.02 or greater. Evidential Breath Tests (EBTs) are conducted with testing devices approved by the National Highway Traffic Safety Administration (NHTSA) and placed on the NHTSA conforming products list.
 - a. The alcohol testing procedures shall comply with DOT regulations, 49 CFR Part 40, as amended.
 - b. The limits for alcohol are expressed in a volume of breath and indicated by the BAC. A BAC of 0.00 to 0.0199 shall be considered negative, and a BAC of 0.02 or greater shall be considered positive.
 - c. FTA in 49 CFR Part 655 differentiates between the consequences for a safety-sensitive employee having a BAC of 0.02 or greater, but less than 0.04, and a BAC of 0.04 or greater. However, pursuant to the County's own authority

and not that of FTA or DOT, the County has decided that a BAC of 0.02 or greater shall be considered a positive test result for all purposes, including the disciplinary consequences accompanying a positive alcohol test result set forth below.

B. Pre-employment Drug Testing

1. Before allowing an employee, applicant, or transferee to perform any safety-sensitive function in the Transit Department for the first time, the County requires the individual to take a pre-employment drug test with a verified negative test result.
2. As a condition of being considered for employment, an applicant for a safety-sensitive position in the Transit Department shall be required to cooperate in requesting drug- and alcohol-testing records from any prior employment in which the employee was subject to any DOT drug- and alcohol-testing program. Should such records indicate, or should the applicant voluntarily acknowledge, that the applicant failed or refused a drug or alcohol test in the two (2) year period preceding the date of his or her application, the applicant shall be disqualified from employment that involves the performance of any safety-sensitive function in the Transit Department unless he or she provides the County with proof of the successful completion of a referral, evaluation, and treatment plan as described in 49 CFR Part 655.
3. Before a County employee performing non-safety-sensitive functions in the Transit Department may be transferred to a position in the Transit Department which requires the performance of any safety-sensitive function, the County requires the employee to take a pre-employment drug test with a verified negative test result before performing any safety-sensitive function.
4. Before a County employee from a different department may be transferred to a position in the Transit Department which requires the performance of any safety-sensitive function, the County requires the employee to take a pre-employment drug test with a verified negative test result before performing any safety-sensitive function.
5. When a safety-sensitive employee in the Transit Department has not performed a safety-sensitive function for ninety (90) consecutive calendar days regardless of the reason, and the employee has not been in the Transit Department's random drug testing selection pool during that time, the County requires the employee to take a pre-

employment drug test with a verified negative test result before performing any safety-sensitive function.

6. If a pre-employment drug test is canceled, an applicant or employee who is subject to pre-employment drug testing must take another pre-employment drug test with a verified negative test result before performing any safety-sensitive function.

C. Reasonable Suspicion Testing

1. Safety-sensitive employees in the Transit Department are subject to drug and/or alcohol testing when the County has reasonable suspicion to believe that an employee has used a prohibited drug and/or engaged in alcohol misuse.
2. The determination that reasonable suspicion exists under which an employee has used a prohibited drug and/or engaged in alcohol misuse shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. One or more supervisors or other County officials trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.
3. Alcohol testing based upon reasonable suspicion will be conducted only if the observations described above are made just prior to the employee's performance of safety-sensitive functions, during the employee's performance of safety-sensitive functions, or just after the employee's performance of safety-sensitive functions. Similarly, the County will direct an employee to undergo reasonable suspicion testing for alcohol misuse only while the employee is performing safety-sensitive functions, just prior to the employee performing safety-sensitive functions, or just after the employee has ceased to perform safety-sensitive functions.
4. If an alcohol test is not performed within two (2) hours of the determination that reasonable suspicion exists, the County will prepare and maintain on file written documentation of the reasons the alcohol test was not promptly administered. If an alcohol test is not performed within eight (8) hours of the determination that reasonable suspicion exists, the County will cease efforts to administer an alcohol test and prepare and maintain on file written documentation of the reasons that a test was not administered.

D. Post-Accident Testing

1. For purposes of this Policy, "accident" means an occurrence associated with the operation of a vehicle, if as a result:

- a. An individual dies; or
 - b. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
 - c. With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
 - d. With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.
2. For purposes of this Policy, “disabling damage” means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, and damage to a motor vehicle where the vehicle could have been driven, but would have been further damaged if so driven. However, disabling damage does not include the following:
- a. Damage that can be remedied temporarily at the scene of the accident without special tools or parts;
 - b. Tire disablement without other damage even if no spare tire is available;
 - c. Headlamp or tail light damage; or
 - d. Damage to turn signals, horn, or windshield wipers, which make the vehicle inoperable.
3. Fatal Accidents – As soon as practicable following an accident involving the loss of human life, the County will conduct drug and alcohol tests on each employee operating the mass transit vehicle at the time of the accident. The County will also conduct drug and alcohol tests on each safety-sensitive employee whose performance could have contributed to the accident, as determined by the County using the best information available at the time of the determination.
4. Non-Fatal Accidents – As soon as practicable following an accident not involving the loss of human life in which a mass transit vehicle is involved, the County will conduct drug and alcohol tests on each employee operating the mass transit vehicle at the time of the accident unless the County determines, using the best information available at the time of the determination, that the employee’s

performance can be completely discounted as a contributing factor to the accident. The County will also conduct drug and alcohol tests on each safety-sensitive employee whose performance could have contributed to the accident, as determined by the County using the best information available at the time of the determination.

5. If an alcohol test is not performed within two (2) hours following the accident, the County shall prepare and maintain on file written documentation of the reasons the alcohol test was not promptly administered. If an alcohol test is not performed within eight (8) hours following the accident, the County shall cease efforts to administer an alcohol test and prepare and maintain on file written documentation of the reasons that a test was not administered.
6. The County shall ensure that an employee required to be drug tested following an accident is tested as soon as practicable but within thirty-two (32) hours of the accident. If a drug test is not performed within thirty-two (32) hours following the accident, the County shall cease efforts to administer a drug test and prepare and maintain on file written documentation of the reasons that a test was not administered.
7. An employee who is subject to post-accident testing but fails to remain readily available for such testing, including notifying the County or the County's representative of his or her location if he or she leaves the scene of the accident prior to submission to such testing, shall be considered by the County to have refused to submit to testing and will be subject to the consequences for a refusal to test set forth below.
8. The decision not to administer post-accident drug and alcohol tests shall be based on the County's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident. Any such decision will be documented in detail, including the decision-making process used to reach the determination not to test the employee.
9. Nothing in this Policy shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit an employee subject to post-accident testing from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
10. The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse conducted by federal, State, or local

officials having independent authority for the test shall be considered to meet the requirements for post-accident testing under this Policy provided that the testing conforms to the applicable federal, State, or local testing requirements, and that the test results are obtained by the County. Such test results will be used only when the County is unable to perform independent post-accident testing within the time periods set forth above.

E. Random Testing

1. All safety-sensitive employees in the Transit Department are subject to random drug and alcohol testing pursuant to the procedures set forth below. The minimum annual (calendar year) percentage rate for all safety sensitive employees in the Transit Department will be in compliance with the current FTA annual percentage levels, as may be published in the Federal Register from time to time.
2. The County will select safety-sensitive employees in the Transit Department for random drug and alcohol testing in accordance with a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers or information. Under the selection process used, each employee in the random pool will have an equal chance of being tested each time selections are made.
3. The County will randomly select a sufficient number of safety-sensitive employees in the Transit Department for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing specified above.
4. The County will ensure that random drug and alcohol tests conducted for safety-sensitive employees in the Transit Department are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day and week when safety-sensitive functions are performed.
5. Each safety-sensitive employee in the Transit Department who is notified of selection for random drug or random alcohol testing must proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the County shall require the employee to cease performing the safety-sensitive function and proceed to the testing site immediately.

6. Safety-sensitive employees in the Transit Department will only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing safety-sensitive functions. Safety-sensitive employees in the Transit Department may be randomly tested for prohibited drug use anytime while on duty.

F. Return to Duty Testing

Any employee who is allowed to return to duty after voluntarily coming forward to admit to alcohol and/or drug abuse must first be evaluated by an SAP and provide a negative test result for drugs, alcohol, or both.

G. Follow-up Testing

Employees returning to duty following leave for voluntary substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing as directed by the SAP. The number and frequency of such follow-up testing shall be directed by the SAP. The employee will be subject to follow-up testing for a period of one (1) to five (5) years as determined by the SAP. All testing will be conducted in accordance with 49 CFR Part 40, as amended.

V. TESTING PROCEDURES

A. Testing Facilities

1. The County or its Third Party Administrator (TPA) shall identify and select only qualified medical facilities certified to perform DOT drug testing by the U.S. Department of Health and Human Services under the National Laboratory Certification Program. Additionally, the County or its TPA shall identify and select only qualified Screening Test Technicians (STTs) and/or Breath Alcohol Technicians (BATs) who meet each of the requirements set forth in 49 CFR Part 40, as amended, to perform alcohol testing under this Policy. Finally, the County or its TPA shall identify and select only qualified MROs who meet each of the requirements set forth in 49 CFR Part 40, as amended, to review drug test results and perform the other designated duties of MROs set forth in 49 CFR Part 40, as amended. As required by FTA in 49 CFR Part 655, the selected facility, STT(s), BAT(s), and MRO(s) shall be required to follow the drug and alcohol testing procedures set forth in 49 CFR Part 40, as amended, unless expressly provided otherwise by Part 655.
2. The selected facility, STT(s), BAT(s), and MRO(s) shall utilize only the official DOT CCF and/or the official DOT Breath Alcohol Test

Form (ATF) for drug and/or alcohol testing of safety-sensitive applicants or employees in the Transit Department.

3. The Department of Human Resources and the Transit Department will coordinate appointments for urine collection for drug screens and BAC tests. If there is concern about an individual's ability to function safely, that individual will be provided transportation to the collection site and his or her home, after completion of the drug and/or alcohol testing, if so warranted.
4. The selected facility will provide a predetermined amount of random numbers, based on the total number of employees in the pool and current testing requirements, to the County's DER. These numbers will have corresponding employee names; and the DER will notify, in writing, a designated supervisor or manager in the Transit Department. The designated supervisor or manager will arrange for the unannounced notification of the selected employees and provide them with the necessary forms to ensure accurate testing and confidentiality.

B. Refusals to Test

1. Drug Tests – The County will deem safety-sensitive applicants or employees in the Transit Department to have refused to take a drug test if the individual in question engages in any of the following:
 - a. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the County, consistent with DOT regulations, after being directed to do so by the County;
 - b. Fails to remain at the testing site until the testing process is complete, provided that an applicant or employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test under DOT regulations;
 - c. Fails to provide a urine specimen for any drug test required by this Policy, provided that an applicant or employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test under DOT regulations;
 - d. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen;

- e. Fails 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. Fails or declines to take a second test which the County or collector has directed be taken;
- g. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER (in the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment);
- h. Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector or behaves in a confrontational way that disrupts the collection process);
- i. Fails to follow the observer's instructions during an observed collection, including instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process;
- j. Possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
- k. Admits to the collector or MRO that he or she adulterated or substituted the specimen;
- l. Fails to proceed immediately to the testing site in the case of an employee who is notified of selection for random drug testing.

Additionally, if the MRO reports that an applicant or employee has a verified adulterated or substituted test result, the individual will be deemed to have refused to take a drug test.

2. Alcohol Tests – The County will deem safety-sensitive employees in the Transit Department to have refused to take an alcohol test if the individual in question engages in any of the following behavior:

- a. Fails to appear for any test within a reasonable time, as determined by the County, consistent with DOT regulations, after being directed to do so by the County;
- b. Fails to remain at the testing site until the testing process is complete;
- c. Fails to provide an adequate amount of breath for any alcohol test required by this Policy;
- d. Fails to provide a sufficient breath specimen and a physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- e. Fails to undergo a medical examination or evaluation, as directed by the County, to determine, in the case of failure to provide a sufficient breath specimen, if there was an adequate medical explanation for the failure;
- f. Fails to cooperate with any part of the testing process;
- g. Fails to sign the certification at Step 2 of the ATF;
- h. Fails to proceed immediately to the testing site in the case of an employee who is notified of selection for random alcohol testing.

C. Consequences of Positive Test Result or Refusal to Test

1. If a safety-sensitive employee in the Transit Department has a verified positive drug test result, or has a confirmed alcohol test with a BAC of 0.02 or greater, or refuses to submit to any drug or alcohol test required by this Policy, the consequence shall be immediate removal from the performance of safety-sensitive functions and termination of employment.
2. If an applicant for employment in a safety-sensitive position in the Transit Department has a verified positive drug test result, or refuses to submit to any drug test required by this Policy, the consequence shall be disqualification from employment in the Transit Department.
3. The consequences for a positive test result or a refusal to test set forth above are not required by 49 CFR Part 655. Rather, these consequences are established pursuant to the County's own authority and not the authority of DOT or FTA.

4. The County shall advise any employee terminated or applicant disqualified from employment in a safety-sensitive position in the Transit Department of resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs.

VI. TRAINING, EDUCATION, AND ASSISTANCE

- A. All supervisory and management level employees who may make reasonable suspicion determinations under this Policy shall receive at least sixty (60) minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least an additional sixty (60) minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
- B. All safety-sensitive employees in the Transit Department must receive at least sixty (60) minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.
- C. The Department of Human Resources will display and provide to every safety-sensitive employee in the Transit Department materials on prohibited drug use and alcohol misuse and a community service hot-line number for employee assistance, if available.
- D. Employee Assistance Program¹
 1. The County provides an Employee Assistance Program (EAP) as part of its employee benefit program. County employees who may have a problem with alcohol misuse or illegal drug use are encouraged to take advantage of the EAP. Referrals may be obtained by contacting the Department of Human Resources.
 2. Any safety-sensitive employee in the Transit Department who voluntarily comes forward to management before he or she is notified or required to be drug or alcohol tested and admits drug or alcohol abuse will be referred to a SAP through the County's EAP on a one-time-basis only. The SAP shall determine the course of action required to resolve the employee's substance abuse. Should the prescribed program include outpatient treatment, the County shall remove the employee from the performance of any safety-sensitive functions until he or she successfully completes the program. The County will attempt, but cannot guarantee, placement of the employee in a non-safety-sensitive position while he or she is

¹ See Policy No. EB-14 Employee Assistance Program (EAP).

undergoing outpatient treatment. The employee will be subject to follow-up drug and/or alcohol testing upon conclusion of the program. Successful completion of any prescribed program will be a condition for continued employment.

VII. MISCELLANEOUS

- A. The County and the Transit Department reserve the right to change the provisions of this Policy at their discretion. All affected employees will be notified prior to instituting the changes. Changes required by federal, State, and/or local law will not require advance notification.
- B. Where conflict may exist between this Policy and federal, State, or local law, including the Americans with Disabilities Act of 1990, as amended, and/or its State counterpart, the County will conform to the applicable law. All other provisions, however, shall remain in full force and effect. To the extent that State or local law conflicts with DOT and/or FTA regulations, including 49 CFR Part 40, as amended, and 49 CFR Part 655, as amended, the DOT and/or FTA regulations shall take precedence.
- C. The testing procedures set forth herein will protect individual privacy, ensure accountability and integrity of the specimens, require confirmation of all positive screening tests, and provide confidentiality for test results and medical histories to the extent and manner specified in 49 CFR Part 40, as amended, and will ensure non-discriminatory testing methods and compliance with the Americans with Disabilities Act of 1990.

