

# Broward County Transit (BCT)

Drug and Alcohol Testing

Policy and Procedures

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January 2022

Transportation Department



## **DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES**

Approved by: \_\_\_\_\_  
Chris Walton  
Transportation Department Director

\_\_\_\_\_ Date

**Broward County Transit  
Drug-Free Workplace Policy  
January 2022**

It is policy that Broward County Transit is a Drug-Free Workplace. All Broward County Transit employees are subject to this policy.

1. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the workplace is prohibited.
2. It is a violation of Broward County Transit policy for anyone to report to work, be on the premises, or conduct Broward County Transit business while under the influence of prohibited substances.
3. All Broward County Transit employees must abide by the terms of this policy statement as a condition of employment.
4. Any Broward County Transit employee convicted of a drug statute violation that occurred in the workplace must report it to the Broward County Transit Human Resources Officer in writing no later than five calendar days after conviction

Approved by: \_\_\_\_\_  
Chris Walton  
Transportation Department Director

\_\_\_\_\_  
Date

# BROWARD COUNTY TRANSIT

## DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES

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## 1. INTRODUCTION

On April 30, 2001, the Federal Transit Administration (FTA) introduced a new regulation on drug and alcohol testing. This regulation effectively superseded and combined into a single instruction its drug and alcohol testing rules which were previously published in two separate directives. At the same time, some of the included provisions were rewritten to be more consistent with similar requirements imposed by other U.S. Department of Transportation (DOT) agencies.

The new regulation, published as 49 CFR Part 655, "Prevention of Prohibited Drug Use and Alcohol Misuse in Transit Operations," requires each employer receiving FTA funding assistance, or who performs certain functions for or on behalf of such a recipient, to establish and implement an anti-drug and alcohol testing program that must include the following elements:

- A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including consequences associated with prohibited drug use and alcohol misuse.
- An educational and training program, which includes the display and distribution of informational materials and a community service hotline telephone number, if available.
- A testing program that meets the requirements outlined in 49 CFR Part 655 and DOT regulation 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Procedures."
- Procedures for referring a covered employee who has a verified positive drug or alcohol test result to a Substance Abuse Professional.

This drug and alcohol testing policy and procedures guide is provided to help employees and their representatives better understand the requirements. A copy of this policy shall be distributed to all current safety-sensitive transit employees, posted on office bulletin boards, available on-line via request, and issued to each new safety-sensitive employee as part of a general orientation procedure.

The policy and testing program described was updated to include all FTA and DOT rule changes, interpretations, clarifications published through June 25, 2013, and amendments to FTA and DOT Regulations. On November 13, 2017, the DOT revised the Rules and Regulations for 49 CFR Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments, effective January 1, 2018.

The Federal Transit Administration mandates the following elements:

- Proof of policy adoption by the appropriate governing body with effective date indicated.
- A contact person who can answer employee questions about the Broward County's anti-drug and alcohol misuse program.
- Categories of employees who are subject to testing.
- Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs.
- Testing circumstances under which a covered employee will be tested for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing).
- Drug and alcohol testing procedures consistent with 49 CFR Part 40, as amended.
- Requirement that covered employees must submit to drug and alcohol testing administered in accordance with FTA regulations.
- A description of the behavior and circumstances that constitutes a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result and a violation of Broward County policy, and the associated consequences.
- A description of the consequences for a covered employee who has a verified positive drug test result or a confirmed alcohol test with an alcohol concentration of 0.04 or greater.
- A description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- A description of Broward County Transit's Second Chance Policy, along with a description of the evaluation and treatment processes.

## **2. ANTI-DRUG AND ALCOHOL MISUSE POLICY**

It is the policy that Broward County Transit is a Drug-Free Workplace. Broward County Transit is dedicated to providing safe, dependable, and reliable transportation services to its passengers. Each employee has the responsibility to deliver service in a safe and conscientious manner. As employees are our most valuable resource, it is our goal to: (1) provide a healthy, drug and alcohol-free workplace; (2) promote opportunities for growth and well-being; (3) assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner; (4) create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse; and, (5) encourage employees to seek professional assistance at any time for personal problems, including alcohol or drug dependency, that adversely affects their ability to perform assigned duties.

Any use of alcohol or a prohibited drug by an employee creates the potential for degradation of job performance. Broward County Transit is fully committed to maintaining a workplace which protects the health and safety of its employees and the general public. All Broward County Transit employees, including safety sensitive employees, are subject to the following policy: (1) The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited. (2) It is a violation to report to work, be on the premises, or conduct Broward County business while under the influence of prohibited substances. (3) Any conviction of a drug statute violation that occurred in the workplace must be reported to the Broward County Transit Human Resources Officer in writing not later than five calendar days after conviction. (4) All employees must abide by the terms of this policy as a condition of employment.

Broward County Transit is dedicated to assuring equitable application of this policy. Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements or is found to deliberately misuse the policy in regard to employees, will be subject to disciplinary action, up to and including termination.

### **Employee and Supervisor Training**

The FTA regulation requires each employer to give each employee subject to this policy at least 60 minutes of training on the effects and consequences of prohibited drug use on his or her personal health, safety, and the work environment, and the signs and symptoms that may indicate prohibited drug use.

Additionally, each employer must provide to every supervisor who may make reasonable suspicion determinations at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indications of alcohol misuse.

### **3. PURPOSE**

The purpose of this policy is to assure worker fitness for duty and to protect our employees and passengers from the risk posed by use of alcohol and prohibited drugs. This policy complies with applicable law, including the Drug Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, and associated U.S. Department of Transportation and Federal Transit Administration regulations. This policy considers the following health, safety, and workplace-related issues:

#### **A. Signs and Symptoms of Use**

- Dulled mental processes.
- Lack of coordination.
- Odor of alcohol on breath.
- Slurred speech.
- Possible constricted pupils.
- Slowed reaction time.
- Sleepy or stuporous condition.

(NOTE: Except for the odor, the above are the general signs and symptoms of any depressant substance.)

#### **B. Alcohol Use and Health**

According to the Center for Disease Control Prevention's Fact Sheet on Alcohol Use and Health (updated as of September 21, 2020):

- There are approximately 95,000 deaths attributable to excessive alcohol use each year in the United States.
- This makes excessive alcohol use the 3<sup>rd</sup> leading lifestyle-related cause of death for the nation.

#### **C. Immediate Health Risks**

Excessive alcohol use has immediate effects that increase the risk of many harmful health conditions. These immediate effects are most often the result of binge drinking and include the following:

- Unintentional injuries, including traffic injuries, falls, drownings, burns, and unintentional firearm injuries.
- The World Health Organization (WHO) estimates that roughly 55% of domestic abuse perpetrators were drinking alcohol prior to assault. Alcohol use is also associated with 2 out of 3 incidents of intimate partner violence. Studies have also shown that alcohol



is a leading factor in child maltreatment and neglect cases, and is the most frequent substance abused among these parents.

- Risky sexual behaviors, including unprotected sex, sex with multiple partners, and increased risk of sexual assault. These behaviors can result in unintended pregnancy or sexually transmitted diseases.
- Miscarriage and stillbirth among pregnant women, and a combination of physical and mental birth defects among children that last throughout life.
- Alcohol poisoning, a medical emergency that results from high blood alcohol levels that suppress the central nervous system and can cause loss of consciousness, low blood pressure and body temperature, coma, respiratory depression, or death.
- Unintentional injuries.

#### **D. Long-term Health Risks**

Over time, excessive alcohol use can lead to the development of chronic diseases, neurological impairments, and social problems. These include but are not limited to:

- Neurological problems, including dementia, stroke, and neuropathy.
- Cardiovascular problems, including myocardial infarction, cardiomyopathy, atrial fibrillation, and hypertension.
- Psychiatric problems, including depression, anxiety, and suicide.
- Social problems, including unemployment, lost productivity, and family problems.
- Cancer of the mouth, throat, esophagus, liver, colon, and breast. In general, the risk of cancer increases with increasing amounts of alcohol.
- Liver diseases, including:
  - Alcoholic hepatitis.
  - Cirrhosis, which is among the 15 leading causes of all deaths in the United States.
  - Among persons with Hepatitis C virus, worsening of liver function and interference with medications used to treat this condition.
- Other gastrointestinal problems, including pancreatitis and gastritis.

If you suspect a problem involving alcohol or drugs you may request confidential, professional help by calling the Broward County Employee Assistance Program (EAP) office at 954-357-5600, or by visiting the EAP office, located at 540 NE 4<sup>th</sup> St., Suite 100, Fort Lauderdale, Florida 33301. For additional information, visit EAP's website at: <http://www.broward.org/HumanResources/EAP/Pages/Default.aspx>.

You may also call a substance abuse "hotline" number, such as the American Council on Alcoholism, 800-527-5344; National Institute on Drug Abuse, 800-662-HELP; National Council on Alcoholism and Drug Dependence, 800-NCA-CALL; Alcoholics Anonymous, 954-462-0265; United Way of Broward County, 954-462-4850; or any state or local substance abuse clearinghouse.

#### **4. APPLICABILITY: SAFETY-SENSITIVE EMPLOYEES**

This policy applies to all safety-sensitive transit system employees, volunteers and contractors, and other employees when they are on transit property or performing transit-related business. This policy applies to off-site lunch periods or breaks when the employee is scheduled to return to duty. Safety sensitive function is defined in Part 655.4, as any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

- Operating a revenue service vehicle, including when not in revenue service.
- Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License.
- Controlling dispatch or movement of a revenue service vehicle.
- Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service.
- Carrying a firearm for security purposes.

Listed below are the Broward County Transit positions determined to be safety sensitive. The Transportation Department Director may modify the list as required under federal, state, or local regulation, or as needed to ensure continued vitality of a comprehensive drug and alcohol testing program.

Bus Operator, and others who operate revenue service vehicles.

Bus Mechanic, Storekeeper, Coach Service Attendant, and others who repair or maintain revenue service vehicles or equipment used in revenue service.

Superintendent of Transportation (Operations), Assistant Superintendent Transportation (Operations), Transit Maintenance Superintendent, Assistant Transit Maintenance Superintendent, Transit Maintenance Supervisors, Transit Supervisor, Transit Operator Trainer, Bus Traffic Controllers, Skilled Trades Supervisor, Vehicle Mechanic Trainer, and others who may dispatch or control the movement of a revenue service vehicle.

Employees included in the above-listed labor classification must participate in a drug and alcohol testing program as a condition of employment.

## **5. PROHIBITED SUBSTANCES**

### **A. Illegally Used Controlled Substances or Drugs**

Controlled substances are any illegal drug or substance identified in Schedules I through V of section 202 of the Controlled Substance Act (21 USC 812) and as further defined in 21 CFR 1300. These substances include, but are not limited to, marijuana, amphetamines, opiates, phencyclidine, and cocaine, as well as any drug not approved for medical use by the Drug Enforcement Administration or the Food and Drug Administration. Illegal use also includes use of illegally-obtained prescription drugs.

### **B. Legal Drugs**

The use of legally-prescribed drugs and/or nonprescription medications is not prohibited. A legally-prescribed drug means that the individual has a prescription or other written approval from a physician for the use of the drug in the course of medical treatment. It must include the patient's name, the substance, quantity/amount to be taken, and the period of authorized use. However, the use of any substance that carries a warning label that mental functioning, motor skill, or judgment may be affected adversely should be reported to supervisory personnel, and medical advice should be sought, as applicable, before performing work-related duties. The misuse or abuse of legal drugs while performing transit business is prohibited; this includes the use of medication that is prescribed to another individual as well as illegally-obtained prescription drugs.

*In addition, according to the FTA Drug and Alcohol Regulations, some prescription and over-the-counter medications, including anti-hypertensives, diuretics, antihistamines, antidepressants, and bronchodilators, are known to have side effects that can impair driving ability. Therefore, it is imperative that safety-sensitive employees disclose all medications taken to their health care professionals to ensure that each medication, when viewed on its own and in combination with others, will not impact the employee's ability to perform safety-sensitive functions.*

### **C. Alcohol**

The use of products containing alcohol or substances including any medication, mouthwash, food, candy, or any other substance such that alcohol is present in the body while performing transit business is prohibited.

## **6. PROHIBITED BEHAVIORS**

### **A. Engaging in Criminal Activities**

No person covered by this policy shall engage in the manufacture, distribution, dispensing, possession, or use prohibited substances on transit property, in transit vehicles, in uniform, or while on transit business. Law enforcement officials shall be notified when criminal activity is suspected.

### **B. Positive Test for Prohibited Drug or Alcohol Misuse**

Employees found to be under the influence of a prohibited substance, or who test positive for a prohibited drug or alcohol concentration, shall be immediately removed from duty. Any safety-sensitive employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be removed from duty pending verification of condition.

A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above minimum thresholds defined in 49 CFR Part 40.

### **C. Reporting for Duty – Consumption of Alcohol**

No safety-sensitive employee should report for duty or remain on duty when his or her ability to function could be adversely affected by alcohol. No employee shall be permitted to perform assigned safety-sensitive duties when his or her breath alcohol concentration is 0.02 or greater.

No safety-sensitive employee shall use alcohol within four hours of reporting for duty, while on call, or while on duty.

### **D. Refusal to Test/Removal from Duty**

All safety-sensitive employees will be subject to urine drug testing and breath alcohol testing at any time while on duty. Any safety-sensitive employee who refuses to comply with a request for 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 immediately removed from duty.

Refusal can include an inability to provide a urine specimen or breath sample without valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in an inability to conduct a test. Such refusal constitutes a positive result.

### **E. Notification of Criminal Drug Statute Conviction**

Pursuant to the Drug-Free Workplace Act of 1988, employees must notify the transit system not less than five calendar days after a criminal drug statute conviction. Failure to comply constitutes a violation of this policy.

## 7. TESTING FOR PROHIBITED SUBSTANCES

### A. Prohibited Substances

As of January 1, 2018, the 'Opiates' category was renamed 'Opioids'. In accordance with US DOT 49 CFR Parts 655 and 40, the following are prohibited substances:

- Cocaine
- Opioids
  1. Codeine
  2. Morphine
  3. 6-AM (heroin)Semi-Synthetic Opioids:
  4. Hydrocodone  
(Sample name brands include: Vicodin®, Lortab®, Norco®, Hydrocet®, Lorcet®, Vicoprofen®, Zydone®)
  5. Hydromorphone  
(Sample name brands include: Dilaudid®, Exalgo®)
  6. Oxycodone  
(Sample name brands include: Percocet®, Percodan®, OxyContin®, Roxicodone®, Endocet®, Tylox®, Xolox®)
  7. Oxymorphone  
(Sample name brands include: Opana®, Numporphan®),
- Phencyclidine (PCP),
- Cannabinoids (Marijuana – “THC”), \*
- Amphetamines
  1. Amphetamine
  2. Methamphetamine
  3. MDA
- Alcohol Misuse
- Medical Marijuana

(\* NOTE: Although some states allow the use of “medical marijuana,” the US DOT’s Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize medical marijuana under a state law to be a valid medical explanation for a “safety-sensitive” employee’s positive drug test result.)

## **B. Testing Techniques/Procedures**

An initial drug screen using immunoassay techniques will be conducted on each specimen. For those specimens which indicate one or more prohibited substances present, a **confirmatory gas chromatography/mass spectrometry (GC/MS)** test will be performed. The test will be considered positive if the amount present is equal to or above the minimum threshold established in 49 CFR Part 40.

Alcohol testing will be conducted using a National Highway Traffic Safety Administration (NHTSA)-approved **evidential breath testing (EBT)** device operated by a trained **breath alcohol technician (BAT)**. **Breath alcohol concentration (BAC)** is expressed in terms of grams of alcohol per 210 liters of breath. If any initial test indicates a BAC of 0.02 or greater, a second test will be performed to confirm the result.

It is Broward County Transit's policy that any employee whose BAC is confirmed at 0.02 or greater (but less than 0.04) will be suspended from duty for the remainder of his or her shift, which period shall be not less than eight hours. A BAC of 0.04 or greater will be considered a positive alcohol test result.

To avoid delays in the collection process, collectors should perform an alcohol test first.

The testing described in this policy will be independent and separate from all other testing performed on behalf of Broward County and/or prevailing federal, state, and local requirements.

## **C. Circumstances for Drugs and/or Alcohol Testing**

All covered employees are subject to testing for prohibited drug use and misuse of alcohol in the following situations and/or circumstances:

### **1. Pre-Employment**

All applicants for employment must first pass a pre-employment drug test before being permitted to perform any safety-sensitive job function. Pursuant to FTA regulations an employee absent 90 consecutive days or longer, regardless of reason, must undergo a Pre-Employment drug test before being permitted to perform any safety-sensitive job function.

Employees or applicants must undergo pre-employment drug testing before assignment to any position which requires the performance of safety-sensitive duties. Only urine drug testing is required, and the result of pre-employment drug testing must be a verified negative. Failure of a pre-employment drug test will disqualify the applicant for employment or transfer.

Pursuant to Section 655.41(a)(2), when a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee

must provide Broward County Transit proof of having successfully completed a referral, evaluation and treatment plan as described in Section 655.62.

In addition, applicants to safety-sensitive positions will be asked if they have failed or refused to submit to pre-employment testing at any other DOT-regulated employer in the past two years (regardless of hiring action) and will be required to authorize the release of information regarding past drug and alcohol testing during the past two years.

## **2. Random**

All safety-sensitive employees are subject to random drug and/or alcohol testing at any time they are on duty and during all time periods that safety-sensitive functions are being performed. This includes testing immediately preceding or after the period of the workday that a covered employee is required to be in compliance with Section 655.45(i).

Random drug and/or alcohol testing must be unannounced and unpredictable. Once notified of a random testing requirement, the employee must report immediately to the testing site.

At least 50 percent of the total number of covered employees must be tested each year for the use of prohibited drugs, and at least 10 percent tested for alcohol, or at the FTA annual minimum random testing rates as may be amended and set forth in 49 CFR Part 655.45(b). To satisfy this quota, all Broward County Transit safety-sensitive employees are enrolled in a random testing pool, which may include contracted employees who perform safety-sensitive functions for or on behalf of Broward County Transit.

The frequency of testing is based upon the number of employees in the pool and spread throughout the year. The odds of being selected in any given selection cycle for a random drug and/or alcohol test are equal to the number of employees enrolled in the pool at the time.

A computer configured with a random number generator selects employees for testing. It is possible that an employee could be selected more than once during the year or even in consecutive selection cycles.



### **3. Reasonable Suspicion**

All safety-sensitive employees are subject to drug and/or alcohol testing when there is reason to believe that drug or alcohol use is adversely affecting job performance. In accordance with 49 CFR Part 655.43(b), such determination will be made on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of a covered employee. The referral determination will be made by a supervisor trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that the employee may be adversely affected or impaired in his or her work performance due to prohibited drug use or alcohol misuse.

Alcohol testing is authorized under 49 CFR Part 655.43(c) only if observations required by paragraph (b) of this section are made during, just preceding or just after the period of the workday that a covered employee is required to be in compliance with this part.

### **4. Post-Accident Testing**

The operator of a transit vehicle is required to undergo drug and alcohol testing if involved in any "occurrence" associated with the operation of the vehicle (whether or not the vehicle is in revenue service) that results in the loss of human life. Testing shall also be required for other safety-sensitive employees on duty in the vehicle at the time as well as any other employee whose performance of duty could have contributed to the accident.

Post-accident testing also must be conducted if any non-fatal accident results in injuries requiring a person or persons to be transported to a medical treatment facility, or if one or more vehicles incur disabling damage that requires towing from the site, unless the employee's performance can be completely discounted as a contributing factor to the accident. Employees tested under this provision include not only the vehicle operator, but any other covered employee whose performance could be a contributing factor.

Post-accident testing must be conducted as soon as possible for alcohol (within two hours of the time of accident, not to exceed eight hours), and within 32 hours for drugs.

Any safety-sensitive employee involved in an accident must refrain from alcohol use for eight hours following the accident or until completion of a post-accident test or upon release by a supervisor.

A safety-sensitive employee who leaves the scene of an accident without justifiable explanation prior to submitting to drug and alcohol testing, or who fails to report to the collection facility within a reasonable time frame, will be considered to have refused to test.

## 5. Return-to-Duty and Follow-up Tests

Following a verified positive drug test result and/or an alcohol result of 0.04 or greater, an employee is not permitted to “return to duty” to perform safety-sensitive functions until the following actions have been taken:

- a. Employee has been evaluated by a Substance Abuse Professional (SAP) who is qualified in accordance with 49 CFR Part 40 Subpart O.
- b. Employee has adhered to the course of treatment as prescribed by the SAP.
- c. Employee has submitted to a return-to-duty urine test and/or breath alcohol test and Broward County Transit is in receipt of a negative result(s).
  - i. Pursuant to Article 43, Drug and Alcohol Testing, Section 8, Employee Assessment, paragraph C of Broward County’s Collective Bargaining Agreement with the Amalgamated Transit Union, Local 1267 (“ATU”), should the employee be unavailable for follow-up testing due to approved leave of absence, seasonal layoff, out or reassigned for workers’ compensation, any temporary assignment to non-safety-sensitive duties (including light duty) or combination thereof, for a period of 30 consecutive days or longer, the employee shall be reevaluated by the SAP to determine whether the requirement for and term of treatment and/or the Return to Work Agreement shall be extended accordingly. The cost of any treatment or rehabilitation services will be paid directly by the employee or his/her insurance provider.
  - ii. All return-to-duty drug tests will be conducted under direct observation, in accordance with 49 CFR Part 40.67, as amended.
  - iii. Upon completing the above, the employee will be subjected to unannounced follow-up testing for at least 12 but no more than 60 months, in addition to other testing requirements a covered employee must submit to, as outlined in 49 CFR Part(s) 655 and 40. The frequency and duration of the follow-up testing will be prescribed by the Substance Abuse Professional. All follow-up urine drug tests will be conducted under direct observation in accordance with 40 CFR Part 40.67, as amended.

## 8. DILUTED TEST RESULTS RETESTING

Upon receipt of a negative-dilute urine collections (drug test) result, verified by the Medical Review Officer (MRO), with creatinine levels greater than 5 mg/dL and less than 20 mg/dL, Broward County Transit will exercise the option to require the applicant/employee to submit to a secondary urine collection immediately as required by 49 CFR 40.197. The collection of the second specimen will not be conducted under direct observation. The result of the second urine drug test will be accepted as the final result. Broward County Transit will exercise this option uniformly for all pre-employment and random tests.

Upon receipt of a **negative-dilute** drug test result, verified by the MRO, with creatinine levels greater than or equal to 2 mg/dL, but less than or equal to 5 mg/dL, the applicant/employee will be required to submit to a secondary urine collection under direct observation.

Upon receipt of a **positive-dilute** urine drug test result, Broward County Transit will immediately remove the employee from safety-sensitive duty and provide the employee with a referral to a DOT qualified Substance Abuse Professional. A positive dilute result will be deemed as a final positive result.

## **9. SAFEGUARDS AND ASSURANCES**

### **A. Testing and Test Results**

Testing shall be conducted in such a manner to assure the highest degree of accuracy and reliability, and using techniques, equipment, and laboratory facilities certified by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures set forth in DOT regulation 49 CFR Part 40.

Federal regulations impose strict procedural controls and accounting mechanisms upon the collection site, processing laboratory, the MRO, and the transit system with respect to testing for prohibited drugs and alcohol. These procedures require the use of tamper-proof specimen containers for urine samples, employee certification of "ownership," use of chain-of-custody documentation, regimented quality control standards, including blank-air testing (for EBT devices) and blind samples (for urine testing), equipment calibration testing, and specific certification and training standards.

Regarding "medical marijuana," please note that DOT's Drug and Alcohol Testing regulation, 49 CFR Part 40, at 40.15(e), does not authorize medical marijuana under a state law to be a valid medical explanation for a safety-sensitive employee's positive drug test results. Therefore, MROs will not verify a drug test as negative based upon information that a physician recommended that the employee use medical marijuana. Marijuana remains a drug listed as a prohibited controlled substance. (See Section 7 above, Testing for Prohibited Substances).

All test results are treated as confidential medical information, and are handled only by designated personnel within Broward County who have a specific need to know.

Pursuant to 49 CFR Part 40.321, an employer is prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent. Therefore, test results are not releasable except as authorized by the employee concerned, as required by the National Transportation Safety Board during an accident investigation, as directed by the U.S. Department of Transportation or a DOT agency with regulatory authority over Broward County and its Transit Division, or to the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee.

## **B. Verification by Medical Review Officer (MRO)/Retesting/Split Specimen Testing**

All test results for prohibited drugs must be verified by a MRO. The MRO is a licensed physician functioning independent of Broward County Transit whose qualifications include a demonstrated knowledge of substance abuse disorders and who has appropriate medical training to interpret and evaluate an individual's confirmed positive drug result together with his or her medical history and any other relevant biomedical information. All test results for alcohol must be verified by a qualified Breath Alcohol Technician (BAT).

Only confirmatory test results will be used as evidence of prohibited drug use or alcohol misuse. Testing which does not follow criteria outlined in 49 CFR Part 40 must be invalidated, or canceled, and reported as a negative result. As a matter of policy, any urine specimen reported to the MRO as a negative dilute will necessitate a retest. As a further safeguard, any employee who questions a positive result of a required drug test may request the MRO to perform a second (separate) test of the original specimen. The test must be conducted at a different DHHS-certified laboratory and must utilize a split sample that was provided at the primary certified laboratory. All costs for such testing are paid by the employee unless the second test produces a negative result. Inability to pay the cost of split specimen testing will not, however, deny anyone the right to request such testing.

The employee's request for split specimen testing must be made in writing within 72 hours of notice of the initial test result. Requests after 72 hours will be accepted if the delay was beyond the control of the employee and reason for such delay is acceptable to the MRO.

The MRO must determine if there is a legitimate medical explanation for laboratory confirmed non-negative drug tests. Donor must present a valid, verified prescription prescribed for the donor – not prescribed for a relative or friend - for a controlled substance identified on a DOT drug test. If no legitimate medical explanation for the result is established, then the MRO will report the result to your employer as a POSITIVE.

As of January 1, 2018, the MRO must immediately initially report laboratory confirmed non-negative drug test as a NEGATIVE drug test first, even if there is a safety concern. The MRO must also give the donor up to five days to have the prescribing provider contact the MRO and try to resolve the safety concern **BEFORE** informing the Designated Employer Representative (DER), or the Director of the Safety and Security Section of the safety concern. If necessary, medical information will come later.

Prescription Review (49 CFR Part 40.141):

- The MRO must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides.
- An acceptable prescription must be one defined as legally consistent with the Controlled Substances Act (CSA) (Title 21 United States Code (21 U.S.C., §812; §829)).

- The MRO may contact the employee's physician or other relevant medical personnel (e.g., pharmacist) for further information.

Five Day Pause Rule:

- 49 CFR Part 40.135 – Before informing any third party about any medication the employee is using pursuant to a legally valid prescription consistent with the Controlled Substances Act (Title 21 United States Code (21 U.S.C., §812; §829)), the MRO must allow 5 business days from the date of the report of the verified negative result for the employee to have the prescribing physician contact the MRO to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk.

Consent Procedures:

- MROs need no written authorizations from employees to verify drug test results, to discuss alternative medical explanations with prescribing physicians and issuing pharmacists, to report results to employers, to confer with Substance Abuse Professionals (SAPs) and evaluating physicians, or to report other medical information.
- Evaluating physicians need no written authorizations from employees to report evaluation information and results to MROs or to employers, as appropriate.

Exception to Five Day Pause Rule:

- The donor expressly declines to have his/her prescribing physician speak with the MRO.
- The prescribing physician speaks to the MRO before 5 business days and the significant safety risk remains unresolved.
- If the MRO learns of a medical condition or diagnosis that is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation, the MRO must report that information to the DER under 49 CFR Part 40.327. The five-day pause provision in 49 CFR Part 40.135 is not applicable. (e.g., donor taking methadone or an anticonvulsant for a seizure disorder).

DER Contact Information:

- Donor interviews can occur at night, weekends, holidays.
- MRO must immediately notify DER of a verified non-negative.
- The DER must IMMEDIATELY remove donor from performing safety sensitive duty.

Temporary Medically Unqualified Status:

- **NOT** the same as a Stand Down (DOT mandatory revocable Waiver granting a transportation agency a medical disqualification policy prohibiting all covered employees in a particular job category from performance of safety-sensitive functions for up to 5 days without written MRO notice that a longer period is needed – usually other than drug and alcohol testing) under 49 CFR Part 40.21.
- Temporary unqualified status can occur no earlier than 48 hours after a non-negative result is received by the MRO (the MRO must try to contact the donor for 24 hours and then the DER must try for another 24 hours).
- DER must continue to make reasonable attempts to contact the donor by telephone or other means.
- Maintain confidentiality when contacting supervisors, etc.; ask only that donor contact you.

Non-Contact Procedure:

- MRO can report results without donor interview (72 hours from DER contact, with no donor contact to the MRO).
- DER must inform the donor of the 72-hour time limit at the time of contact.
- Must be direct verbal DER-to-donor communication.
- DER must document all attempts to contact the donor and inform the MRO.

MRO can release Test Results without contact with the donor:

- DER directly advises donor to contact MRO and more than 72 hours have elapsed without contact.
- The donor specifically declines to discuss drug test results with MRO.
- Neither MRO nor DER can contact the donor after more than 10 days have elapsed since the MRO received non-negative result.

### **C. Employee Rights and Representation**

Any employee may request that a representative be present in certain activities related to the collection of specimens and during administrative review and/or counseling, subject to the conditions imposed by 49 CFR Part 40. The absence of such representation does not, by itself, negate or mitigate the requirement to provide specimens and/or attend such review and counsel in response to required drug and alcohol testing.

The employee has the right to review his/her drug and/or alcohol testing records, provide information to dispute the results, and shall have access to any pertinent records such as equipment calibration records and records of laboratory certifications. Copies of such records shall be made available to the employee upon his or her written request.

The application of this policy with respect to drug and alcohol testing does not abridge anything included in a labor agreement, nor does it infringe upon an employee's right to redress under grievance, administrative, or judicial proceedings.



## **10. EMPLOYEE ASSESSMENT BY SAP/FOLLOW-UP TESTING**

Any safety-sensitive employee who tests positive for the presence of a prohibited drug or alcohol must be evaluated by a SAP before returning to duty. A SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug and/or alcohol-related disorders.

The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving associated problems. Assessment by a SAP does not shield an employee from disciplinary action or guarantee employment or reinstatement with Broward County.

If after a positive test result a safety-sensitive employee is allowed to return to duty, the employee must properly follow the rehabilitation program prescribed by the SAP, pass a return-to-duty drug and alcohol test, and agree to be subject to a minimum of six unannounced follow-up tests for a period of at least 12 months, and up to five years, from the date returned to duty.

If unavailable for follow-up testing due to approved leave of absence, seasonal layoff, out or reassigned for workers' compensation, temporary assignment to non-safety-sensitive duties or combination thereof for 30 consecutive days or longer, the employee shall be reevaluated by the SAP to determine if the requirement/term of treatment and return-to-work agreement shall be extended accordingly. The cost of treatment or rehabilitation services is the responsibility of the employee or insurance provider.

## **11. LAST CHANCE / REHABILITATION AGREEMENT**

No employee who has tested positive may reenter the workforce without agreeing to a last chance/rehabilitation agreement. However, such an agreement is not an entitlement. This agreement may include, but is not limited to, the following:

- A. A release to work statement from the SAP, together with satisfactory evidence of a verified negative test for drugs and/or alcohol.
- B. A statement of agreement to comply with federal and transit system requirements for treatment, aftercare, and specified follow-up testing.
- C. A statement of expected work-related behaviors.
- D. An agreement that any violation of the last chance/rehabilitation agreement will result in separation from employment.

## 12. OBSERVED URINE DRUG COLLECTIONS

During an observed collection, the employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collector, by turning around, that he/she does not have a prosthetic device. The collector/observer must witness the employee's urine leave the body and enter the collection cup. Observed collections are required in the following circumstances:

- A. All return-to-duty tests;
- B. All follow-up tests;
- C. Any time the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90°F - 100°F;
- D. Any time the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
- E. 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;
- F. Any time the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid, and the MRO determined that there was not an adequate medical explanation for the result; or
- G. 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.

### 13. CONSEQUENCES, PENALTIES, AND SANCTIONS

Irrespective of possible criminal and/or civil proceedings which may arise as a result of prohibited drug use or alcohol misuse, Broward County Transit reserves the right to apply administrative penalties and sanctions against an employee who violates any rule encompassed by this policy.

Minimum associated consequences of prohibited drug use and/or alcohol misuse are as follows:

- A. **Removal from duty** (remainder of the day or work shift-minimum eight consecutive hours):
  - 1) Reporting for or remaining on duty with a BAC of 0.02 or greater.
  - 2) Consumption of alcohol within four (4) hours of reporting or returning to duty.
- B. **Referral to a SAP**: A positive drug test result for a prohibited drug or a BAC of 0.04 or greater.
- C. **Dismissal**: Violation under one or more of the following circumstances or conditions constitutes a severe affront to the safety and well-being of other employees and the general public, and is punishable as a major infraction of policy under “due cause” proceedings:
  - 1) Engaging in the manufacture, distribution, dispensing, possession, and/or use of a prohibited substance on transit system property, in transit vehicles, in uniform, or while on transit system business.
  - 2) Leaving the scene of an accident without proper authority, resulting in the inability to conduct drug and/or alcohol testing.
  - 3) Obstructive behavior, providing false information in connection with a test, or attempting to falsify test results through tampering, contamination, adulteration, or substitution of specimen samples.
  - 4) Failure to comply with transit system requirement for treatment or with a prescribed aftercare program.
  - 5) Failure to notify Broward County Transit not less than five (5) calendar days after a criminal drug statute conviction.
  - 6) Refusal to take a DOT drug and/or alcohol test.

#### **14. REFUSALS TO TEST FOR DRUGS - DESCRIPTION OF THE BEHAVIOR AND CIRCUMSTANCES**

The following actions constitute a “refusal to test” in accordance with 49 CFR Part 40.191, as amended for urine collections:

- A. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer;
- B. Fail to remain at the testing site until the testing process is complete; provided, that an employee who leaves the testing site before the testing commences for a pre-employment test is not deemed to have refused to test;
- C. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an 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;
- 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. Fail 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. Fail or decline to take an additional drug test the employer or collector has directed you to take;
- G. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer. 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. If there was no contingent offer of employment, the MRO will cancel the test;
- H. Fail 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, fail 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. Possess or wear a prosthetic or other device that could be used to interfere with the collection process;
- K. Admit to the collector or MRO that you adulterated or substituted the specimen; or
- L. When the MRO reports that you have a verified adulterated or substituted drug test result.

## 15. REFUSALS TO TEST FOR ALCOHOL – DESCRIPTION OF THE BEHAVIOR AND CIRCUMSTANCES

The following actions constitute a “refusal to test” in accordance with 49 CFR Part 40.261, as amended, for breath tests.

- A. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.
- B. Fail to remain at the testing site until the testing process is complete; provided, that an employee who leaves the testing site before the testing process commences [see §40.243(a)] for a pre-employment test is not deemed to have refused to test;
- C. Fail to provide an adequate amount of breath for any alcohol test required by this part or DOT agency regulations; provided, that an employee who does not provide an adequate amount of breath because he or she has left the testing site before the testing process commences [see §40.243(a)] for a pre-employment test is not deemed to have refused to test;
- 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 [see §40.265(c)];
- E. Fail to undergo medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at §40.265(c);
- F. Fail to sign the certification at Step 2 of the Alcohol Testing Form (ATF) [see §40.241(g) and 40.251(d)]; or
- G. Fail to cooperate with any part of the testing process.

## **16. CONSEQUENCES FOR REFUSAL TO TEST**

In accordance with Article 43, Drug and Alcohol Testing, Section 5C, Compliance with Testing Requirements, of the ATU Collective Bargaining Agreement, any safety-sensitive employee who refuses to comply with a request for 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 removed from duty immediately, and their employment terminated. In addition, the employee will be referred to a SAP 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.



**DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES  
CONTACT INFORMATION**

Employees who have any questions regarding this policy or any other aspect of Broward County Transit's prohibited drug and alcohol testing program should contact the following staff representative:

Drug and Alcohol Program Manager  
Broward County Transportation Department  
1 North University Drive, Suite 3100A  
Plantation, Florida 33324  
Phone: 954-357-5302  
Fax: 954-357-8468

If you have any questions concerning specimen collection, laboratory analysis, or any other procedural aspect of drug and/or alcohol testing, you should contact the MRO. The designated MRO is:

Ahmed Howeedy, M.D.  
MROCC#17-12152  
Advanced MRO Services  
2004 North Flamingo Road  
Pembroke Pines, FL  
Phone: 954 320 3262  
Fax: 954 320 6082

The Broward County Employee Assistance Program (EAP) provides Substance Abuse Professional (SAP) services for Broward County Transit employees. Please contact EAP and the number below to obtain SAP services:

Broward County Employee Assistance Program  
540 N.E. 4<sup>th</sup> Street, Suite 100  
Fort Lauderdale, Florida 33316  
Phone: 954-357-5600

LABCORP OTS - SOUTHAVEN  
1120 Main Street  
Southaven, MS 38671  
Phone: 800-444-7997 // 866-833-3984

# DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES

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## EMPLOYEE RECEIPT

I acknowledge receipt of a copy of the January 2022 edition (Update to October 2013 edition) of Broward County Transit's Drug and Alcohol Testing Policy and Procedures.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Employee Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Job/Position Title)

\_\_\_\_\_  
(Employee ID#)