LUMPKIN COUNTY RESOLUTION NO. 2016 – 24

A RESOLUTION TO UPDATE, AMEND, APPROVE AND ADOPT THE LUMPKIN COUNTY TRANSIT SYSTEM SUBSTANCE ABUSE POLICY ALSO SOMETIMES REFERRED TO AS THE LUMPKIN COUNTY TRANSIT SYSTEM DRUG AND ALCOHOL POLICY

Whereas, the Georgia Department of Transportation (GDOT) requires that all transit system or transportation agencies revise any existing Drug & Alcohol policy to comply with the current provisions of the GDOT model policy; and

Whereas, GDOT requires that the document title shall be changed to:

ZERO TOLERANCE
Drug and Alcohol Testing Policy
Lumpkin County Transit

and

Whereas, GDOT further specifies updating the Drug and Alcohol Testing Policy with changes in wording for simplification, and for condensing language and rearranging certain paragraphs to improve clarity and flow of the document.

Whereas, a new section of policy is included which addresses employee self-referral (admission by employee of abuse of alcohol or other substances to a supervisor as provided herein),

Now, therefore, be it resolved that the Lumpkin County Transit System Substance Abuse Policy as set out on the attached Exhibit "A," and which is be reference fully incorporated herein, is adopted for implementation for all Transit System operations as provided therein; and,

Be it further resolved that the existing Lumpkin County Resolutions 2009-61, 2008-28, 2012-48, and as implemented by the Code of Ordinances of Lumpkin County, with specific inclusion of Section 2-641, *et seq.*, relating to employee drug treatment and education, and Section 38-23, *et seq.*, relating to the Lumpkin County Substance Abuse Policy, shall continue in full force and effect; and

Be it further resolved that the existing Lumpkin County Resolution 2014-07 is hereby rescinded:

Resolved, adopted and effective this 19th day of April, 2016.

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Kathleen C. Walker
Clerk, Lumpkin County

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ZERO TOLERANCE
DRUG AND ALCOHOL TESTING POLICY
LUMPKIN COUNTY TRANSIT
Adopted as of 19 April 2016

A. PURPOSE

1) The Lumpkin County Transit provides public transit and paratransit services for the residents of Lumpkin County. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, Lumpkin County Transit declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.

   Under Lumpkin County authority, violation of this drug and alcohol testing policy will result in termination of employment and/or exclusion from hire.

2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

3) Any provisions set forth in this policy that are included under the sole authority of Lumpkin County and are not provided under the authority of the above named Federal regulations are underlined.

   Tests conducted under the sole authority of Lumpkin County will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

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B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full or part-time) when performing safety sensitive duties. Lumpkin County Transit employees that do not perform safety-sensitive functions are also covered under this policy under the sole authority of Lumpkin County Transit. See Attachment A for a list of employees and the authority under which they are included.

A safety-sensitive function is operation of public transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or persons controlling the movement of revenue service vehicles and any transit employee who operates a vehicle that requires a Commercial Drivers License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

C. DEFINITIONS

Accident: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

a. An individual dies;
b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
c. One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

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Adulterated specimen: A specimen that has been altered, as evidence by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

Aliquot: A fractional part of a specimen used for testing, it is taken as a sample representing the whole specimen.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Covered Employee Under FTA Authority: An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

Covered Employee Under Company Authority: An employee, applicant, or transferee that will not perform a safety-sensitive function as defined by FTA but is included under the company's own authority. (See Attachment A).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

Department of Transportation (DOT): For the purposes of Drug and Alcohol regulatory oversight, DOT is the department of the federal government which includes the, Federal Transit Administration, Federal Railroad Administration,

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Federal Highway Administration, Federal Motor Carriers' Safety Administration, Pipeline & Hazardous Materials Safety Administration, United States Coast Guard, and the Office of the Secretary of Transportation.

Dilute specimen: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling damage: Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT): A Device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid

Invalid Result: The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

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Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

Negative result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative test result: A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function): A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive result: The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

Prohibited drug: Identified as marijuana, cocaine, opiates, amphetamines (including ecstasy), or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

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Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service.

Safety-sensitive functions: Employee duties identified as:

(1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.
(2) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
(3) Maintaining a revenue service vehicle or equipment used in revenue service.
(4) Controlling the movement of a revenue service vehicle and
(5) Carrying a firearm for security purposes.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed marriage and family therapist, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse(ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC)) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Substituted specimen: A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Test Refusal: The following are considered a refusal to test if the employee:

(1) Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
(2) Fails to remain at the testing site until the testing process is complete
(3) Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations
(4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen

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(5) Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure

(6) Fails or declines to take a second test the employer or collector has directed you to take

(7) 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 as part of the ``shy bladder" or "shy lung" procedures

(8) Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)

(9) If the MRO reports that there is verified adulterated or substituted test result

(10) Failure or refusal to sign Step 2 of the alcohol testing form

(11) Failure to follow the observer's instructions during an observed collection including 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.

(12) Possess or wear a prosthetic or other device that could be used to interfere with the collection process

(13) Admit to the collector or MRO that you adulterated or substituted the specimen.

Vehicle: A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit vehicle is a vehicle used for public transportation or for ancillary services.

Verified negative test: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified positive test: A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity testing: The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

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D. EDUCATION AND TRAINING

1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

E. PROHIBITED SUBSTANCES

1) Prohibited substances addressed by this policy include the following.

   a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines (including methamphetamine and ecstasy), opiates (including heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy

   Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines (including methamphetamine and ecstasy), opiates (including heroin), and phencyclidine as described in Section H of this policy. Employees covered under

company authority will also be tested for these same substances. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Lumpkin County Transit supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

   Lumpkin County, under its own authority, strongly encourages employees to inform their prescribing physician of the safety-sensitive job functions that they perform in order to ensure that appropriate medications are prescribed.

c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. A random or reasonable suspicion alcohol test can only be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions.

   Under Lumpkin County authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

   Under Lumpkin County authority, violation of this drug and alcohol testing policy will result in termination of employment and/or exclusion from hire.

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F. PROHIBITED CONDUCT

1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.

2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.

3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol

4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

7) *Lumpkin County, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.*

8) Consistent with the Drug-free Workplace Act of 1988, all Lumpkin County Transit employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

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G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998. All employees are required to notify the Lumpkin County Transit management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

Per Lumpkin County authority – Consistent with the Federal Drug-Free Workplace Act of 1988, employees shall report to his or her department head within five (5) working days any arrest or conviction made under a criminal drug or alcohol law and any charge made under a drug or alcohol law for which conviction could cause the loss of driving privileges. The department head shall then investigate and make appropriate recommendations to the Director of Community and Employee Services.

H. TESTING REQUIREMENTS

1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49CFR part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.

   All employees covered under Lumpkin County authority will also be subject to testing for reasonable suspicion, post-accident, random and return to duty/follow-up using non-DOT testing forms.

2) A drug test can be performed any time a covered employee is on duty. A reasonable suspicion and random alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function.

   Under Lumpkin County authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

3) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with Lumpkin County Transit. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

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I. DRUG TESTING PROCEDURES

1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

2) The drugs that will be tested for include marijuana, cocaine, opiates (including heroin), amphetamines (including methamphetamine and ecstasy), and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Lumpkin County Transit Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM.

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4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.

5) Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Lumpkin County Transit will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however Lumpkin County Transit will seek reimbursement for the split sample test from the employee.

6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled. If the split specimen is not available to analyze the MRO will direct Lumpkin County Transit to retest the employee under direct observation.

7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

8) Observed collections

    a. Consistent with 49 CFR part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Lumpkin County Transit that there was not an adequate medical explanation for the result;

ii. The MRO reports to Lumpkin County Transit that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;

iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;

v. The temperature on the original specimen was out of range;

vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.

vii. All follow-up-tests; or

viii. All return-to-duty tests

J. ALCOHOL TESTING PROCEDURES

1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a

unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

2) An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

   Under Lumpkin County authority, violation of this drug and alcohol testing policy will result in termination of employment and/or exclusion from hire.

3) Lumpkin County Transit affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

   Under Lumpkin County authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

K. PRE-EMPLOYMENT TESTING

1) All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

   a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not

be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.

b. An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.

c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be referred to a Substance Abuse Professional. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

d. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA authority or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.

   Under Lumpkin County authority, violation of this drug and alcohol testing policy will result in termination of employment and/or exclusion from hire.

e. If a pre-employment test is canceled, Lumpkin County Transit will require the applicant to take and pass another pre-employment drug test.

f. In instances where a FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.

g. Following a negative dilute the employee will be required to undergo another test. 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.

h. Applicants are required (even if ultimately not hired) to provide Lumpkin County Transit with signed written releases requesting FTA drug and alcohol records from all previous, DOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. Lumpkin County Transit is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a DOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the applicant must provide Lumpkin County Transit proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

L. REASONABLE SUSPICION TESTING

1) All Lumpkin County Transit FTA covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

   However, under Lumpkin County authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty.

   All employees covered under the sole authority of Lumpkin County Transit will also be subject to reasonable suspicion testing procedures using non-DOT forms and is modeled after the provisions in 49 CFR Part 40.

2) Lumpkin County Transit shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or

others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

Under Lumpkin County authority, violation of this drug and alcohol testing policy will result in termination of employment and/or exclusion from hire.

Under Lumpkin County authority:

i. In the event a supervisor determines that reasonable suspicion exists that an employee is under the influence of drugs and/or alcohol, the supervisor shall immediately report the incident to her/her immediate supervisor or Department Head and shall complete the form entitled *Observation Checklist.*

ii. Following the determination that reasonable suspicion exists, the facts underlying the determination of reasonable suspicion shall be disclosed to the employee at the time the demand to submit to testing is made. The employee shall be transported to and from the testing site by the employee's supervisor or a designee. Following the testing procedure, the person transporting the employee shall make appropriate arrangements to transport the employee home.

iii. Supervisors shall be required to document in writing, by the next working day, the specific facts, symptoms or observations that formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. All documents created in connection with the determination of reasonable suspicion shall be forwarded to the Director of Community and Employee Services and/or the County Manager.

3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the Lumpkin County Transit management.

4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol

or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section Q of this policy. Lumpkin County Transit shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy.

Testing in this circumstance would be performed under the direct authority of Lumpkin County. Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

M. POST-ACCIDENT TESTING

1) FATAL ACCIDENTS - All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident.

2) NON-FATAL ACCIDENTS - A post-accident test of the operator will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident.

    a. As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

    b. The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not

conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

c. Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

d. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

e. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

f. In the rare event that Lumpkin County Transit is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), Lumpkin County Transit may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

   Under Lumpkin County authority, a post-accident non-DOT drug and/or alcohol test will be performed even if the accident does not meet DOT testing requirements.

N. RANDOM TESTING

1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

   Employees covered under Lumpkin County authority will be selected from a pool of non-DOT covered employees.

2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by FTA equals twenty-five percent of the number of covered employees in the pool and the random testing rate for alcohol established by FTA equals ten percent of the number of covered employees in the pool.

4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under Lumpkin County authority.

6) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. Testing can occur during the beginning, middle, or end of an employee's shift.

   However, under Lumpkin County authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty.

7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

O. RETURN-TO-DUTY TESTING

Lumpkin County Transit will terminate the employment of any employee that tests positive or refuses a test as specified in section Q of this policy. However, in the rare event an employee is reinstated with court order or other action beyond the control of the transit system, the employee must complete the return-to-duty process prior to the performance of safety-sensitive functions. All

covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undo concerns for public safety.

P. FOLLOW-UP TESTING

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

In the instance of a self-referral or a management referral, the employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-USDOT follow-up tests and all paperwork associated with an employee's return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations and will be conducted under Lumpkin County authority and will be performed using non-DOT testing forms.

Q. RESULT OF DRUG/ALCOHOL TEST

1) Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, referred to a Substance Abuse Professional (SAP) for assessment, and will be terminated.

2) Following a negative dilute the employee will be required to undergo another test. 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.

3) Refusal to submit to a drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall result in termination and referral to an SAP. A test refusal includes the following circumstances:

   a. Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
   b. Fails to remain at the testing site until the testing process is complete
   c. Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations
   d. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
   e. Fails to provide a sufficient amount of urine or breath 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 the employer or collector has directed you to take
   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 as part of the ``shy bladder" or "shy lung" procedures
   h. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
   i. If the MRO reports that there is verified adulterated or substituted test result
   j. Failure or refusal to sign Step 2 of the alcohol testing form
   k. Failure to follow the observer's instructions during an observed collection including 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.
   l. Possess or wear a prosthetic or other device that could be used to interfere with the collection process
   m. Admit to the collector or MRO that you adulterated or substituted the specimen.

Under Lumpkin County authority, violation of this drug and alcohol testing policy will result in termination of employment and/or exclusion from hire.

4) An alcohol test result of ≥0.02 to ≤ 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder or the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC.

5) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:

   a. Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;

   b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Lumpkin County Transit employment.

      Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in Section P of this policy; however, all follow-up testing performed as part of a return-to-work agreement required under section Q of this policy is under the sole authority of Lumpkin County and will be performed using non-DOT testing forms.

   c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.

      All tests conducted as part of the return to work agreement will be conducted under Lumpkin County authority and will be performed using non-DOT testing forms.

   d. A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.

e. Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy.

f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Lumpkin County Transit.

g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

6) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

Per Lumpkin County authority – Consistent with the Federal Drug-Free Workplace Act of 1988, employees shall report to his or her department head within five (5) working days any arrest or conviction made under a criminal drug or alcohol law and any charge made under a drug or alcohol law for which conviction could cause the loss of driving privileges. The department head shall then investigate and make appropriate recommendations to the Director of Community and Employee Services.

R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

Under Lumpkin County authority, any regular or probationary employee who has been dismissed for a positive test or test refusal shall have the right to utilize the grievance and appeal procedures as set forth in the Lumpkin County Employee Handbook and Civil Service Plan.

S. PROPER APPLICATION OF THE POLICY

Lumpkin County Transit is dedicated to assuring fair and equitable application of this drug and alcohol testing policy. Therefore, supervisors/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 of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

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T. INFORMATION DISCLOSURE

1) Drug/alcohol testing records shall be maintained by the Lumpkin County Transit Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.

4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.

5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding.

6) Records will be released to the National Transportation Safety Board during an accident investigation.

7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

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9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Lumpkin County Transit or the employee.

10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken

11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This policy was adopted by the Lumpkin County Board of Commissioners on

19 April, 2016.

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

January 2016

Attachment A

Job Title	Job Duties	Testing Authority
Director	May perform safety-sensitive functions in a supervisory or training role	FTA
Supervisor	May perform safety-sensitive functions in a supervisory or training role	FTA
Driver	Operates a revenue service vehicle	FTA
Mechanic	Performs maintenance and repair of revenue service vehicles	FTA

January 2016

Attachment B Contacts

Any questions regarding this policy or any other aspect of the drug and alcohol policy should be directed to the following individual(s).

Lumpkin County Transit Drug and Alcohol Program Manager
Name: Linda Kirkpatrick
Address: 266 Mechanicsville Rd. Dahlonega, GA 30533
Phone: 706-864-2358
E-mail: linda.kirkpatrick@lumpkincounty.gov

Medical Review Officer
Name: David L. Hocker, MD
Address: 1240 Jesse Jewell Pkwy. Gainesville. GA 30533
Phone: 770-536-1004

Substance Abuse Professional
Name: Daniel Serritella
Address: 89 Hospital Circle Suite 5 Ellijay, GA 30540
Phone: 706-635-2640

HHS Certified Laboratory Primary Specimen
Name: Quest Diagnostics
Address:
Telephone Number:

HHS Certified Laboratory Split Specimen
Name:
Address:
Telephone Number: