



PIMA COUNTY, ARIZONA BOARD OF SUPERVISORS POLICY

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1.0 INTRODUCTION

Pima County is dedicated to providing safe, dependable, and economical transportation services to rural transit system passengers. Pima County contracts with private transportation companies for the provision of rural transit services. It is the policy of Pima County to require all rural transit contractors to:

1. assure that employees are not impaired in their ability to perform assigned duties in a safe manner;
2. create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
3. prohibit the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances; and
4. encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

2.0 PURPOSE

The purpose of this policy is to assure worker fitness for duty and to protect Pima County Rural Transit contractors' employees, passengers, and the public from the risks posed by the misuse of alcohol and the use of prohibited drugs. This policy is also intended to ensure that Pima County Rural Transit contractors comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. The Federal Transit Administration (FTA) of the U.S. Department of Transportation (USDOT) has adopted regulations in 49 CFR Part 653 and Part 654, as amended, that mandate urine drug testing and breath alcohol testing for transit employees in safety sensitive positions and prohibit covered employees from performing safety-sensitive functions when they have received a positive test result. The USDOT has also adopted 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath samples for drug and alcohol tests. In addition, the Federal government enacted 49 CFR Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug free workplace policies and reporting of certain drug-related offenses to the FTA. It is the policy of Pima County that all rural transit contractors providing public transit services shall adopt a substance abuse policy and testing program that complies with the aforementioned federal requirements, at a minimum. Each contractor's policy shall clearly distinguish between provisions that are set forth under the contractor's authority, and provisions that are set forth under the FTA regulations.

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3.0 APPLICABILITY

This policy applies to all contractors providing rural transit services in the Ajo, Marana, San Xavier, and Tucson Estates service areas. Each contractor's policy shall list safety-sensitive positions funded by the Pima County Rural Transit contract and shall include the names of the employees occupying those positions. The list shall be maintained current at all times during the term of the contract.

A safety-sensitive function is any duty related to the safe operation of rural transit service. Examples of safety-sensitive duties include but are not limited to: the operation of a revenue service vehicle (whether or not the vehicle is in revenue service); dispatch; maintenance of revenue service vehicle or equipment used in revenue service; security personnel who carry firearms; and supervisors who could perform any of the aforementioned duties.

4.0 MINIMUM POLICY REQUIREMENTS FOR RURAL TRANSIT CONTRACTORS

The following requirements, at a minimum, must be reflected in all rural transit contractors' drug and alcohol policies required pursuant to this policy:

4.1 PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy under FTA regulations are: Marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, use of illegally obtained prescription drugs, and misuse of alcohol.

4.1.1 Illegally Used Controlled Substances or Drugs Defined

Any illegal drug or any substance identified in Schedules 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. This includes, but is not limited to: Marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the US Drug Enforcement Administration or the US Food and Drug Administration.

4.1.2 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 judgement may be adversely affected must be reported to supervisory personnel and medical advice must be sought by the employee, as appropriate, before performing work-related duties. The employee shall make the physician aware that the employee performs safety-sensitive duties and request alternative medication that will not adversely affect his/her skills. If no alternative medication is available, the employee shall be removed from service under the Pima County Rural Transit contract until he/she has completed treatment or discontinued using the medication.

A legally prescribed drug means that the individual has a prescription or other written approval from a physician for the use of a drug appropriate for a medical condition and used in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing transit business is prohibited.

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4.1.3 Alcohol

The use of beverages containing alcohol or substances including medications, mouthwash, food, candy, or any other substance such that alcohol is present in the body while performing transit business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by a certified evidential breath testing device.

4.2 PROHIBITED CONDUCT

4.2.1 Manufacture, Trafficking, Possession, and Use

The contractors' substance abuse policy shall notify covered employees that they are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances on the contractor's premises, in transit vehicles, in uniform, or while on transit business. The policy shall specifically state the consequences for persons who violate this provision, i.e. suspension or termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

4.2.2 Alcohol Use

No safety-sensitive employee shall report for duty or remain on duty when his/her ability to perform assigned safety-sensitive functions is adversely affected by alcohol. Breath alcohol concentration greater than 0.02 is prohibited. Alcohol consumption is prohibited during the following conditions: four (4) hours prior to reporting for duty; while on duty; eight hours after an accident or until tested; or when the employee is scheduled to be on-call.

4.2.3 Intoxication/Under the Influence

A supervisor who is trained to detect the signs and symptoms of drug and alcohol abuse, who reasonably concludes that an employee may be intoxicated or under the influence of a prohibited substance shall refer the employee for evaluation as specified in Section 4.3.3B of this policy.

A drug or alcohol test is considered positive if the individual is found to have a confirmed, quantifiable presence of a prohibited substance in the body above the minimum threshold defined in 49 CFR Part 40, as amended or if the individual refuses to take a test as defined in section 4.2.4 of this policy.

The contractor shall remove from further service under the Pima County Rural Transit contract, any employee who receives a confirmed positive test result for alcohol, of 0.02 or greater. The contractor's policy shall specify that employees whose alcohol concentration levels are verified to be over 0.02 but under 0.04 shall be immediately removed from their safety-sensitive duties. The policy shall further specify one of the following options: The employee shall not be allowed to perform safety-sensitive duties for a minimum of eight hours; or until they have been retested and the results are under 0.02. However, if the retesting option is chosen, the contractor's policy shall determine and state the number of tests to be conducted and over what span of time, and where the employee will wait during this testing time frame. Test results of 0.04 or greater are considered a violation of the FTA rules, and this policy. The contractor's policy shall identify specific consequences for a positive alcohol test result of 0.04 or greater, i.e. suspension or termination.

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The contractor shall remove from further service under the Pima County Rural Transit contract, any employee who receives a confirmed positive test result for drugs. The contractor's policy shall identify specific consequences for a positive drug test, i.e. termination or suspension.

Any covered employee that has a confirmed positive drug or alcohol test shall be informed of the educational and rehabilitation programs available. The employee will be provided with the name, address, and phone number of a Substance Abuse Professional (SAP) and encouraged to meet with the SAP for an assessment.

4.2.4 Compliance with Testing Requirements - Refusals

All contractors shall notify their safety-sensitive employees providing services for Pima County Rural Transit that they are required to comply with the FTA regulation as a condition of being hired and of continued employment. Employees who refuse to take the tests will be treated as having had a positive alcohol test result of 0.04 or greater and/or a positive drug test. Behavior which constitutes a refusal is as follows:

1. refusal to take a test;
2. failure to appear for a test in the time allotted when sent by the contractor;
3. the inability to provide sufficient volume of urine sample or breath sample without a valid medical explanation. A medical condition can not be used as a continued excuse for the inability to be tested. The contractor's policy shall call for remediation of the medical condition within a specified period of time. Failure to do so, or if remediation is not possible, the individual will be prohibited from performing safety sensitive functions;
4. tampering with or attempting to adulterate the specimen or the collection procedure; or
5. leaving the scene of an accident without a valid reason before the tests have been conducted.

4.2.5 Treatment Requirements

The contractors shall encourage all employees to make use of the available resources for the treatment of alcohol misuse and drug abuse problems. The contractor shall provide the name and phone number of at least one agency providing those types of resources.

The contractor shall state whether or not they have an employee assistance program (EAP), and if so, shall provide information regarding the EAP to the employees.

4.2.6 Notifying the Transit System of a Criminal Drug Conviction

Pima County Rural Transit contractors shall include in their policy the requirement that all covered employees shall notify their employer of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. The contractor shall specify consequences for failure to comply with this provision, i.e. termination of the employee or other disciplinary action.

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4.3 TESTING PROCEDURES

Contractors shall ensure that analytical urine drug testing and breath testing for alcohol are conducted as required by Federal regulations. Testing shall be conducted in a manner to assure the highest degree of accuracy and reliability and using techniques, collection sites, and equipment consistent with the procedures put forth in 49 CFR Part 40, as amended.

4.3.1 Drug Test Procedures

The drugs that will be tested for under FTA requirements are marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). The laboratory facilities evaluating the drug tests must be certified by the U.S. Department of Health and Human Services (DHHS). Contractors shall select a DHHS certified laboratory from the most current list of such laboratories as published in the *Federal Register*.

4.3.2 Alcohol Testing Procedures

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 certified, trained Breath Alcohol Technician (BAT). All procedures shall be conducted in accordance with standards set forth in 49 CFR Part 40.

4.3.3 Conditions for Testing

A. Pre-employment/pre-duty testing

The contractor's policy shall require that all safety-sensitive position applicants shall undergo urine drug testing immediately upon the direction of the personnel department or person authorized to hire. Receipt by the contractor of a negative drug test result is required prior to employment. An offer of employment will be made only if the test is negative. Any employee transferring into a safety-sensitive position must have a drug test prior to performing those duties. The contractor's policy shall also address drug testing for any covered employee who has been off work for more than a specified period of time (e.g. illness, workman's compensation, etc.).

B. Reasonable Suspicion Testing

The contractor's policy shall require that all safety-sensitive employees working under the Pima County Rural Transit contract may be subject to a fitness for duty evaluation consisting of both a drug and alcohol test when there has been specific, observed, articulable evidence by a supervisor trained in detecting drug and alcohol symptoms. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with the short-term symptoms of substance abuse and alcohol misuse. A referral for testing is not an accusation, but rather a means to obtain objective data to determine whether or not the employee is under the influence of a prohibited substance. Examples of signs for a reasonable suspicion referral could include, but are not limited to the following:

1. physical signs and symptoms consistent with prohibited substance use;
2. evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol on transit property or while on duty;

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3. occurrence of a serious or potentially serious non-vehicle accident that may have been caused by prohibited substance abuse or alcohol misuse; and
4. fights (defined as physical contact) and/or assaults or flagrant disregard of others and appropriate operating procedures.

Reasonable suspicion referrals must be made only by a supervisor who is trained to detect the signs and symptoms of drug and alcohol misuse and who reasonably concludes that an employee may be unfit to perform his/her duties. This includes referrals for subordinate employees or other supervisors/managers covered by the contractor's policy.

C. Post-Accident Testing

The contractor's policy shall require that any driver and employee on the vehicle at the time of the accident will be required to undergo drug and alcohol testing if they are involved in a vehicle accident with a contractor's vehicle regardless of whether or not the vehicle is in revenue service under the Pima County Rural Transit contract at the time of the accident . If the contractor maintains its own vehicles, mechanics are also subject to testing after an accident if the vehicle just came out of maintenance and/or it is determined that the mechanic(s) could have contributed to the accident through a failure to perform a procedure or perform a procedure correctly. Testing will be mandatory under the following conditions:

1. accidents that result in a fatality; or
2. non-fatal accidents where the driver is issued a citation for a moving violation
 - a. If the accident produces injuries that require transportation to a medical facility; or
 - b. If the vehicle incurs disabling damage as a result of the accident which requires it to be towed, or if to move the vehicle causes more damage than if towed.

Following an accident, the driver and other appropriate employees in safety-sensitive positions that could have contributed to the accident will be tested within two hours of the accident, but not to exceed eight hours for the alcohol test and 32 hours for the drug testing. Any safety-sensitive employee involved in the accident can not use alcohol for eight hours following the accident or until he/she has undergone a post accident test. Any covered employee who leaves the scene of the accident without justifiable reason prior to submission to drug and alcohol testing will be considered to have refused the test and therefore the tests will be considered positive. The employee is then subject to the consequences of positive tests stated in the contractor's and Pima County Rural Transit's policy. Justifiable reasons are as follows: to be treated for an injury; when directed by law enforcement personnel; or to secure emergency response personnel assistance at the accident scene.

D. Random Testing

The contractor's policy shall require that employees in safety-sensitive positions be subjected to random, unannounced testing. The selection of the safety-sensitive employees for random testing will be made by a computer generated scientifically valid method that only identifies an individual by a number. The random selection method ensures that each covered employee will have an equal chance of being selected each time selections are made. 50% of the average number of employees in the covered random pool will be tested annually for drugs and 25% of the average number of employees in the covered pool will be

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tested annually for alcohol misuse. A covered employee could be selected for only a drug test, an alcohol test, or for both at any selection time. The random tests will be unannounced and spread throughout the year.

The contractor's policy shall describe the random selection process and the responsibilities of the employee if selected. The policy shall also specify that failure or refusal to submit to testing will result in the test being considered positive, and that the employee will be subject to the disciplinary actions of a positive test result.

E. Return - To - Duty and Follow-up Testing

If the contractor's policy allows for the retention of employees who test positive for drugs or alcohol, then the policy shall address the requirements of return-to-duty and follow-up testing. The policy shall establish specific testing procedures in accordance with the recommendations of the Substance Abuse Professional and with the standards specified in the Federal regulations.

RESPONSIBLE DEPARTMENT

1. The County Administrator
2. The Department of Transportation & Flood Control District

SUNSET PROVISION

This policy will be reviewed for continuance by December 31, 2000.

MAY 13 1997