



BEFORE THE BOARD OF DIRECTORS OF THE
SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Resolution No. 19-03-02
On the Motion of Director: Mike Rotkin
Duly Seconded by Director: Bruce McPherson
The Following Resolution is Adopted:

**ADOPTION OF SANTA CRUZ METROPOLITAN TRANSIT DISTRICT'S AMENDED
DRUG AND ALCOHOL TESTING POLICY**

WHEREAS, *49 CFR Part 40* describes required procedures for conducting workplace drug and alcohol testing for the federally regulated transportation industry; and

WHEREAS, on January 1, 1996, the Santa Cruz Metropolitan Transit District (METRO) adopted its Drug and Alcohol Testing Policy, which was last amended on June 22, 2018; and

WHEREAS, the Department of Transportation (DOT) recently amended *49 CFR Part 40*; and

WHEREAS, the Federal Transit Administration (FTA) conducted an audit of the Policy and made several findings in need of correction; and

WHEREAS, METRO's General Counsel has reviewed the amended Drug and Alcohol Testing Policy and has determined that the policy changes are consistent with the recommendations presented in the Final Audit Report from FTA; and

WHEREAS, Staff recommends that the Board of Directors approve the amended Drug and Alcohol Testing Policy to comply with the DOT regulations and the FTA audit recommendations.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SANTA CRUZ METROPOLITAN TRANSIT DISTRICT, that it hereby resolves, determines and orders as follows:

1. The Drug and Alcohol Testing Policy previously adopted on June 22, 2018, is hereby rescinded.
2. The amended Drug and Alcohol Testing Policy attached and labeled "Exhibit A", including "Appendix 1", List of Safety Sensitive Job Classifications by Title, is hereby adopted.

3. The CEO/General Manager, or designee, is authorized to take such actions as may be necessary to give effect to this Resolution.

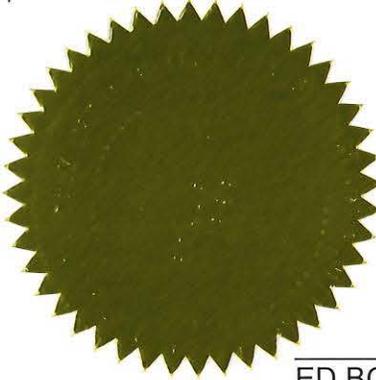
PASSED AND ADOPTED by the Board of Directors of the Santa Cruz Metropolitan Transit District on March 22, 2019, by the following vote:

AYES: Directors Bottorff, Coffman-Gomez, Gonzalez, Leopold, Lind, Mathews, McPherson, Meyers, Rothwell and Rotkin

NOES: None

ABSTAIN: None

ABSENT: None



ED BOTTORFF
Chairperson

ATTEST:

ALEX CLIFFORD
CEO/General Manager

APPROVED AS TO FORM:

JULIE A. SHERMAN
General Counsel

**EXHIBIT A, SANTA CRUZ METROPOLITAN TRANSIT DISTRICT
RESOLUTION NO. 19-03-02**

DRUG AND ALCOHOL TESTING POLICY (AR-3013)

(Attached)




Ed Bottorff / Board Chair


CEO

Drug & Alcohol Testing Policy

Policy #: AR-3013 **Origination Date:** 1/1/1996 **Revised Date:** 3/22/19

I. PURPOSE

- 1.01 It is the policy of the Santa Cruz Metropolitan Transit District (METRO) that its workplace is free from the effects of drug and alcohol abuse. This policy is enforced in order to insure the safe and efficient operation and maintenance of its transportation system for its passengers, and to provide a safe work environment for its employees. This policy is also to avoid the dangers arising from substance abuse in the work place. These dangers include death and injury to the employee, co-workers, and the public resulting from accidents, dereliction of duty, poor judgment and carelessness. Substance abuse also results in lost productivity, reduced efficiency, and increased absenteeism by the substance abuser and interferes with the job performance of employees who do not use illegal or unauthorized substances.
- 1.02 No METRO employee shall: (1) use, possess, or be under the influence of drugs or other mind-altering substances; or (2) use or possess a container of alcohol or be under the influence to any extent that would impede the employee's ability to perform his or her duties safely and effectively. Furthermore, employees shall not perform duties, which because of drugs or medication taken under a legal prescription or non-prescription, cannot be performed without posing a threat to the health or safety of the employee or others.
- 1.03 METRO is committed to providing safe, reliable, and efficient transportation services to the public, and a safe, healthy and productive work environment for its employees. In order to meet these goals, the Policy of METRO is to:
- a. Create a work environment free from the adverse effects of drug and alcohol misuse;



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- b. Encourage employees to seek professional assistance when personal problems, including alcohol or drug dependency adversely affect their ability to perform their duties in a safe, productive and courteous manner;
 - c. Ensure that employees do not report to work or work with alcohol or drugs in their systems;
 - d. Prohibit the illegal use, possession, manufacture, sale or distribution of controlled substances by its employees;
 - e. Ensure that the reputation of METRO and its employees is as responsible citizens worthy of public trust;
 - f. Provide guidelines and outline responsibilities for the testing of employees and employment candidates to determine drug abuse and alcohol misuse; and
 - g. Implement programs that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of drugs by employees who perform safety sensitive functions.
- 1.04 METRO safety-sensitive employees will be subject to urine drug testing and breath alcohol testing in accordance with applicable federal law.
- 1.05 This Policy complies with the Federal Transit Administration (FTA) Regulations (*49 CFR Parts 40 and 655* with applicable amendments) that mandate urine drug testing and breath-alcohol testing for safety- sensitive employees and the U.S. Department of Transportation (DOT) standards for the collection and testing of urine and breath specimens. All drug and alcohol testing as required by this policy is mandated by the FTA Regulations. **A second drug test is required if the results of a first test are determined by the MRO to be a negative dilute drug test. The second test shall be conducted in accordance with all Federal and State laws and regulations, and Section 10.10 of this policy.**
- 1.06 Attachment 1 lists job classifications considered to be safety-sensitive.



II. APPLICABILITY

- 2.01 This policy applies to all full-time and part-time safety-sensitive employees.
- 2.02 Participation in the testing program as described in this policy is a condition of METRO employment for all safety-sensitive employees, but no employee-authorization is required.
- 2.03 An employee violating this policy is subject to disciplinary action up to and including discharge. See also Articles XI Employees' Responsibilities, and XII Actions After a Positive Test for specific disciplinary actions. Any disciplinary actions taken as a result of a violation of this policy is pursuant to METRO's own authority.
- 2.04 Compliance with this policy does not relieve an employee of compliance with applicable Federal and State laws and regulations.

III. CONTRACTOR APPLICABILITY

- 3.01 METRO's contractors and subcontractors, as required, shall comply with *49 Code of Federal Regulations (CFR) Parts 40 and 655* to the extent required by Federal law.
- 3.02 The Human Resources **(HR) Director** shall insure that all applicable METRO's contractors and subcontractors, who are required to comply with the FTA drug and alcohol testing requirements, are in actual compliance.

IV. DEFINITIONS

- 4.01 Accident - Accident means an occurrence associated with the operation of a vehicle, including the operation of the lift or ramp, if as a result: 1) an individual dies; or 2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or 3) one or more vehicles (including non-FTA funded vehicles) incurs disabling



damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle.

- 4.02 Breath Alcohol Technician (BAT) - Alcohol breath tests must be performed by a BAT who is trained in proficiency in the operation of the EBT he/she is using and in the alcohol procedures specified in the regulations.
- 4.03 Collection Site - A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.
- 4.04 Contractor – a person or organization that provides a safety-sensitive service for METRO consistent with a specific understanding or arrangement. The understanding can be a written contract or informal arrangement that reflects an ongoing relationship between the parties.
- 4.05 Controlled Substances - Any drugs that are classified by the Drug Enforcement Administration (DEA) into the five schedules or classes on the basis of their potential for abuse, accepted medical use and accepted safety for use under medical supervision. A drug in any of these schedules identifies that it is a controlled substance and determines the nature of supervisory control that must be exercised. Medications containing any controlled substances must be prescribed by a physician having a valid DEA license number.
- 4.06 DHHS - Department of Health and Human Services
- 4.07 Dilute specimen: A specimen with creatinine and specific gravity values that are lower than expected for human urine.
- 4.08 DOT - United States Department of Transportation.
- 4.09 Drug Abuse - Use of any illegal drug or controlled substance without a valid prescription, misuse of legally prescribed drugs, or use of illegally obtained prescription drugs. This includes use of prescription drugs legally prescribed to another individual other than one's self.
- 4.10 Employee - See Section 4.22 "Safety-Sensitive Employee".



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- 4.11 Evidential Breath Testing (EBT) Device - A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.
 - 4.12 Follow-Up Testing - Unannounced drug and alcohol testing given to employees who have returned to duty after evaluation by the SAP. This type of test may be done up to a total of five years from the date the employee returns to duty, and may be extended for any performance breaks in safety-sensitive duties. A minimum of six tests during the first twelve months is required.
 - 4.13 FTA - Federal Transit Administration, an agency of the U.S. Department of Transportation.
 - 4.14 Illegal Use - Use of any illegal drug, misuse of legally prescribed drugs and use of illegally obtained prescription drugs.
 - 4.15 Incident - A single event or occurrence, which triggers drug and alcohol tests, as defined in this policy.
 - 4.16 Public Transportation Vehicle - Bus, van or automobile.
 - 4.17 Medical Review Officer (MRO) - A METRO authorized licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory drug test results, who has knowledge of substance abuse disorders but who has been trained to interpret and evaluate laboratory test results in conjunction with an employee's medical history. A MRO verifies a positive test result by reviewing a laboratory report and an employee's unique medical history to determine whether the result was caused by the use of prohibited drugs or by an employee's medical condition. MROs are required to subscribe to ODAPC's list-serve.
 - 4.18 Metabolite - A modified form of a drug that has been chemically altered by the body's metabolic system.
 - 4.19 On-Call - See Section 4.24 "Subject to Duty".



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- 4.20 Positive Alcohol Test - The presence of alcohol in the body at a concentration of **0.04** or greater as measured by an Evidential Breath Testing (EBT) Device. Refusal to take a breath test without a valid medical explanation also constitutes a positive alcohol test.
- 4.21 Positive Drug Test - Any urine that is chemically tested (screened and confirmed), shows the presence of controlled substances and is verified by the MRO. Refusal to take a drug test without a valid medical explanation also constitutes a positive drug test. The District tests for all drugs listed in *49 CFR Part 40 (as amended)*, and complies with the initial and confirmatory cut-off levels listed in those regulations. See *49 CFR §§ 40.85 to 40.87*.
- 4.22 Safety-Sensitive Employee - An employee whose job functions are, or whose job description includes the performance of functions, related to the safe operation of public transportation service. Performing a safety sensitive function is defined as any time the employee is actually performing, ready to perform, or immediately available to perform such functions. Safety-sensitive means any of the following types of duties:
- a. operating a revenue service vehicle, including when not in revenue service;
 - b. operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License (CDL);
 - c. maintaining (including repairs, overhauls and rebuilding) revenue service vehicles or equipment used in revenue service; and
 - d. controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service.

Any supervisor who performs or whose job description includes the performance of any function listed above is considered a safety-sensitive employee.

- 4.23 Subject-to-Duty - The status of an employee who is scheduled to report for work at an assigned time and/or who has not been finally and completely released from the responsibility of performing further work that day. Subject-to-Duty also means any employee who is responsible for being available to perform work on an emergency basis when called to do so, i.e., in an on call status, if said employee is guaranteed extra compensation



because of his/her status as being on call. An employee who is simply responsible for responding if available when said employee is not within either definition above is not considered to be subject-to-duty for the purpose of this Policy.

- 4.24 **Substance Abuse Professional (SAP) - To be permitted to act as an SAP in the DOT drug and alcohol testing program, an individual must have one of the following credentials: a licensed physician (M.D. or D.O.); or a licensed or certified social worker, psychologist, employee assistance professional; or a state-licensed or certified marriage and family therapist; or a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc.sap>.**
- 4.26 **Vehicle - A bus, electric bus, van, automobile, rail car, trolley car, trolley bus or vessel. A public transportation vehicle is a vehicle used for public transportation.**
- 4.27 **Vehicle Disabling Damage - Damage, which precludes departure of the vehicle from the scene of the accident in its usual manner in daylight after simple repairs. It includes damage to vehicles that could have been operated but would have been further damaged if so operated.**
- a. Inclusion: Damage to vehicles that could have been driven but would have been further damaged if so driven.
 - b. Exclusions:
 - i. Damage, which can be remedied temporarily at the scene of the accident without special tools or parts.
 - ii. Tire disablement without damage even if no spare tire is available.
 - iii. Headlamp or tail light damage.
 - iv. Damage to turn signals, horn, or windshield wipers, which make it inoperable.



V. RESPONSIBILITIES OF DESIGNATED EMPLOYER REPRESENTATIVE AND OTHERS

- 5.01 The **HR Director** (or in his/her absence, the Assistant **HR Director**) is designated as METROs Drug and Alcohol Testing Coordinator and Designated Employer Representative (DER), and shall ensure that the administration of all drug and/or alcohol tests comply with applicable laws. The **HR Director** shall be knowledgeable about the DOT and FTA regulations, and METROs policies and procedures for drug and alcohol testing. The **HR Director** shall be immediately accessible to collection site personnel, Breath Alcohol Technicians (BAT), and Medical Review Officers (MRO) and be prepared to address drug and alcohol testing issues, make decisions and provide direction in a timely manner. An employee seeking additional information about the program can contact his or her **Director** and/or the **HR Director**, 110 Vernon Street, Santa Cruz, CA, 95060, (831) 420-2540.
- 5.02 The **HR Director** shall post and distribute METROs Drug & Alcohol Testing Policy to each safety- sensitive employee and to representatives of employee organizations.
- 5.03 The **HR Director** shall maintain all records and reports pertaining to the drug and alcohol-testing program in a confidential manner.
- 5.04 Each safety-sensitive employee shall receive a copy of this Policy and is responsible for reading, understanding and adhering to this Policy.
- 5.05 Managers and supervisors will be held accountable for the consistent application and enforcement of this Policy. Any manager/supervisor who knowingly disregards the requirements of this Policy, or who is found to have deliberately misused the Policy in regard to subordinates shall be subject to disciplinary action, up to and including discharge.
- 5.06 Any employee who has actual knowledge that an employee has used alcohol within four hours of performing a safety-sensitive function or is under the influence of drugs while performing a safety sensitive function shall report such knowledge immediately to either his/her **Director** or the **HR Director**.



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- 5.07 A Manager or Supervisor having actual knowledge that an employee is using alcohol while performing safety-sensitive functions shall not permit the employee to perform or continue to perform safety-sensitive functions.
- 5.08 After obtaining an applicant or employee's written consent who is seeking employment or a transfer to a safety sensitive position, the **HR Director** shall request the following information from DOT-regulated employers who have employed the applicant/employee during any period during the two years before the date of the applicant/employee's application or transfer request:
- a. Alcohol tests with a result of 0.04 or higher alcohol concentration;
 - b. Verified positive drug tests;
 - c. Refusals to be tested, including verified or substituted drug test results;
 - d. Other violations of DOT agency drug and alcohol testing regulations;
 - e. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements, including follow-up tests. If no documentation is forthcoming, the **HR Director** shall seek to obtain the information from the applicant/employee.
- 5.09 If the applicant/employee refuses to provide written consent pursuant to Section 5.08 above, the applicant/employee shall not be permitted to perform safety-sensitive functions.

VI. EDUCATION/TRAINING

- 6.01 The **HR Director** shall be responsible to establish and maintain an education and training program in order to promote the deterrence of the misuse of drugs and alcohol. The education component shall include display and distribution to every safety-sensitive employee informational material and a community service hot-line telephone number for employee assistance, if available. The **HR Director** shall maintain a copy of 49 CFR



Part 40 in her/his office, which shall be made available to employees upon request.

- 6.02 Safety-sensitive employees shall be provided at least 60 minutes of training, which must cover the effects and consequences of prohibited drug use on personal health, safety and the work environment and include information on the signs and symptoms that indicate prohibited drug use.
- 6.03 Managers, Supervisors and/or other METRO officials who are authorized to make reasonable suspicion determinations shall undergo at least one hour of training on the physical, behavioral, and performance indicators of probable drug use and at least one hour of training on the physical, behavioral, speech and performance indicators of probable alcohol misuse.

VII. REHABILITATION

- 7.01 Drug users and alcohol abusers are encouraged to make every effort to overcome the abuse and addiction that comes from use. Successful rehabilitation hinges upon users rehabilitating themselves with the assistance of outside professionals. METRO provides an Employee Assistance Program (EAP) to assist employees in dealing with drug and alcohol related problems. Employees of METRO who have a problem with drug or alcohol use are strongly encouraged to seek help voluntarily. In addition, all employees are encouraged to make use of other available resources for treatment for alcohol and substance abuse problems.
- 7.02 An employee may voluntarily seek help through a community based alcohol and/or drug rehabilitation program or through METROs EAP which provides assessment and referral services. A supervisor/manager may refer an employee to EAP for any problem(s) impacting job performance with the exception of an employee testing positive for drugs/alcohol in which case the employee will be referred to a Substance Abuse Professional (SAP).



7.03 An employee will be allowed up to a 30-day leave of absence for rehabilitation purposes. Employees may use their accumulated sick leave or annual leave for such purposes.

VIII. TESTING

8.01 Employees shall submit to a urine test for the detection of drugs under the following circumstances:

- a. Pre-employment/Transfer to a safety sensitive position for the first time/Return to work;
- b. **Post-accident;**
- c. Reasonable suspicion;
- d. Random; and
- e. Return-to-duty/follow-up.

8.02 An employee shall be tested for the following drugs:

- a. Marijuana;¹
- b. Cocaine;
- c. **Opioids;** (codeine, heroin, morphine, 6-AM, hydrocodone, hydromorphone, oxycodone, and oxymorphone)
- d. Amphetamines (MDMA, MDA, MDE); and
- e. Phencyclidine.

8.03 Employees are prohibited from consuming the drugs identified in Section 8.02 at all times.

8.04 Employees shall submit to a breath test for the detection of alcohol in the following circumstances:

- a. Transfer to a safety sensitive position for the first time/Return to work;
- b. **Post-accident;**

¹ Note: While the use of marijuana has been legalized under state law, it remains an illegal drug under federal law. Marijuana use impacts the workplace and is prohibited by the District's policy.



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- c. Reasonable suspicion;
 - d. Random; and
 - e. Return-to-Duty/Follow-Up Testing.

8.05 An employee is prohibited from using alcohol while performing safety-sensitive functions.

IX. TYPES OF TESTING

9.01 Pre-employment/Transfer to a **Safety-Sensitive Position**/ Return to work:

- a. Applicants for METROs employment in safety-sensitive positions and employees transferring into safety-sensitive positions shall undergo urine drug testing with a verified negative result prior to employment or transfer **into a safety-sensitive position**.
- b. No pre-employment drug tests shall be given to an applicant or employee **until a** contingent offer of employment or transfer subject to the applicant /employee passing the test has been made.
- c. **If a pre-employment drug test is canceled, the HR Department will require the covered employee or applicant to take another pre-employment drug test administered under 49CFR Part 40 with a verified negative result.**
- d. The **HR** Department shall inform an applicant and/or an employee seeking a safety sensitive position, prior to testing that drug tests including those for the detection of marijuana, cocaine, amphetamines, opioids, and phencyclidine will be administered. This notification shall be in writing and shall inform the applicant/employee that a positive test result shall be the basis for the decision to refuse to make the appointment, or transfer **the employee to a safety-sensitive position**, as the case may be.
- e. Failure of a drug test will disqualify an applicant for employment to a safety-sensitive position.



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- f. Employees attempting to transfer into a safety-sensitive position who fail a drug test shall not be permitted to transfer into the safety-sensitive position.
 - g. Employees or applicants who have previously failed or refused a pre-employment drug test administered under this part, must provide proof of having successfully completed a referral, evaluation and treatment plan as described in section XII.
 - h. When an employee has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the random selection pool during that time, the employee shall take a pre-employment drug test with a verified negative result before performing safety-sensitive duties. An employee may, at the employee's discretion, take the test while he/she is still on leave as long as the applicable procedures are followed. Whether on leave or not, an employee testing positive shall be subjected to the procedures required by this policy following a positive test including disciplinary action.
 - i. An applicant for METRO employment for a safety sensitive positions and employees transferring into safety sensitive positions shall undergo an alcohol test before employment or transfer.
 - j. The alcohol test shall not be conducted until a contingent offer of employment or transfer subject to the applicant/employee passing the pre-employment alcohol test is made.
 - k. An applicant or an employee wishing to transfer into a safety-sensitive position shall not be allowed to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02.

9.02 Reasonable Suspicion Testing:

- a. An employee shall be subject to drug and alcohol tests when there is a reason to suspect that such employee has used a prohibited



drug or has misused alcohol. A reasonable suspicion referral for testing will be made on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee, by a manager/supervisor trained in detecting signs and symptoms of drug use and alcohol misuse.

- b. A supervisor/manager who has made the required observations may direct an employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.
- c. **If the safety-sensitive employee is found to have an alcohol concentration of 0.02 to 0.039, he/she shall be immediately removed from performing safety-sensitive functions, until (1) the employee's alcohol concentration measures less than 0.02; or (2) the start of the employee's next regularly scheduled shift, but not less than eight (8) hours following administration of the test. In addition, METRO will refer such employee to a Substance Abuse Therapist.**
- d. **Under METRO's authority, employees who are referred to a Substance Abuse Therapist will be required to complete the Return-to-Duty and Follow-up testing, as set forth in this policy.**
- e. If an alcohol test required by this section is not administered within two hours following the determinations to test, the supervisor/manager who made the observations shall prepare a report stating the reasons the alcohol test was not promptly administered. If the alcohol test is not given within eight (8) hours, following the determination to test, efforts to administer the test shall cease and the supervisor/manager shall prepare a report stating the reasons for not administering the test. All reports required by this section shall be forwarded promptly to the HR



Director for review and appropriate action. The **HR Director** shall maintain a file for such reports.

- f. Under no circumstances shall an employee suspected of drug and/or alcohol intoxication be permitted to drive a METRO vehicle. METRO personnel shall transport such employee to the collection test site and offer to transport him/her to his/her residence or other appropriate destination after the test.
- g. The supervisor/manager who determined that there was reasonable suspicion to require a drug and alcohol test shall complete a report on a form provided by the METRO setting forth the behavioral signs and symptoms observed in the employee suspected of being under the influence of drugs and/or alcohol. A copy of the report shall be marked confidential and forwarded to the **HR Director** within twenty-four (24) hours of the determination.

9.03 Post Accident Testing:

- a. As soon as practicable following an accident involving the loss of human life, the METRO shall test for drugs and alcohol each surviving employee operating the public transportation vehicle (regardless of whether or not the vehicle is in revenue service) at the time of the accident. Any other employee whose performance could have contributed to the accident as determined by a manager/supervisor using the best information available at the time of the decision shall also be tested for drugs and alcohol.
- b. As soon as practicable following an accident (see "accident" definition) not involving the loss of human life, in which a public transportation vehicle is involved (regardless of whether or not the vehicle is in revenue service), each employee operating the public transportation vehicle at the time of the accident shall be tested for drugs and alcohol, unless a manager/supervisor determines using the best information available at the time of the decision that the employee's performance can be



completely discounted as a contributing factor to the accident. Such a decision must be documented in detail including the decision making process used to reach the decision not to test.

- c. Other employees whose performance could have contributed to the accident, as determined by a manager/supervisor using the best information available at the time of the decision shall also be tested for drugs and alcohol.
- d. Following an accident, the employee(s) shall be tested as soon as possible but not later than eight (8) hours for alcohol testing and 32 hours for drug testing. An employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until (s)he undergoes a post-accident alcohol test, whichever comes first. Following an accident, an employee must remain readily available for testing. If an employee does not remain readily available, he/she may be deemed to have refused the tests and will be subject to employment discharge.
- e. **If the safety-sensitive employee is found to have an alcohol concentration of 0.02 to 0.039, he/she shall be immediately removed from performing safety-sensitive functions, until (1) the employee's alcohol concentration measures less than 0.02; or (2) the start of the employee's next regularly scheduled shift, but not less than eight (8) hours following administration of the test. In addition, METRO will refer such employee to a Substance Abuse Therapist.**
- f. **Under METRO's authority, employees who are referred to a Substance Abuse Therapist will be required to complete the Return-to-Duty and Follow-up testing, as set forth in this policy.**
- g. An employee who leaves the scene of the accident without appropriate authorization prior to submission to drug and



alcohol testing may be deemed to have refused the tests and will be subject to employment discharge.

- h. Following an accident, field supervisory personnel at the scene shall do an immediate assessment of the condition of the employee to detect possible signs of the presence of drugs or alcohol.
- i. In compliance with FTA requirements alcohol testing shall be administered as soon as practicable after an accident. If the alcohol test is not administered within two (2) hours of the accident, the responsible Manager or Supervisor shall prepare a written report stating the reason why the test was not promptly administered. A copy of such report shall be forwarded to the **HR Director** and shall be available for inspection by the DOT or the FTA. All attempts to administer an alcohol test shall cease after eight (8) hours and all attempts to administer a drug test shall cease after 32 hours following the accident and shall be documented in the same manner with a written report to the **HR Director**.
- j. Following an accident based test, an employee shall not be allowed to perform safety-sensitive functions until the results of the test are known to METRO and the employee.
- k. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a safety-sensitive 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.
- l. The results of a urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State or local officials having independent authority for the test shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State or local



testing requirements and that the test results are obtained by METRO. Such test results shall be used only when METRO is unable to perform a post-accident test within the required period noted above.

9.04 Random Testing:

- a. A safety-sensitive employee will be subject to random, unannounced testing for drugs and alcohol using a computer-based random number selection method at a minimum annual percentage of covered employees as required by the FTA. Each employee in the random pool will have an equal chance of being selected for testing and shall remain in the pool even after being tested.
- b. **The dates for administering random testing are spread reasonably throughout the calendar year.** Random testing will be **conducted at all times of the day/evening when safety-sensitive functions are performed.** Each employee shall be assigned a unique number, which shall be entered into a pool from which the selection **shall** be made.
- c. Once an employee is notified of his/her selection for a random test, he/she must be escorted immediately to the collection test site.
- d. **If the safety-sensitive employee is found to have an alcohol concentration of 0.02 to 0.039, he/she shall be immediately removed from performing safety-sensitive functions, until (1) the employee's alcohol concentration measures less than 0.02; or (2) the start of the employee's next regularly scheduled shift, but not less than eight (8) hours following administration of the test. In addition, METRO will refer such employee to a Substance Abuse Therapist.**
- e. **Under METRO's authority, employees who are referred to a Substance Abuse Therapist will be required to complete the Return-to-Duty and Follow-up testing, as set forth in this policy.**



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- f. A safety-sensitive employee shall be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.
 - g. An employee may be randomly tested for prohibited drug use anytime while on duty.
 - h. Following a positive random drug test, the employee will be given one opportunity to receive treatment and take a return to duty test.
 - i. Following a positive alcohol test of 0.04 or higher the employee will be given the opportunity to receive treatment and take a return-to-duty test..
 - j. An employee who is not on duty because of sickness, vacation, jury duty, leave of absence, worker's compensation, family medical leave or any other purpose shall be removed from the random pool for purposes of random testing if the **HR Director** determines using the best information available at the time that such employee will be absent for at least 90 days.

9.05 Employee Retest:

- a. After notification by the Medical Review Officer or the **HR Director** of a confirmed verified positive drug test, an employee may, within 72 hours, request that an additional test be conducted at a different DHHS - certified laboratory specified by METRO. The request can only be made by the employee himself/herself but may be made orally. The test shall be conducted on the split sample that was provided at the same time as the original or primary sample.
- b. All costs for the employee requested testing, including the transportation of the split specimen to the second laboratory shall be paid by METRO pursuant to METRO's own authority.



9.06 Return to Duty:

- a. Before any employee is allowed to return to duty to perform a safety-sensitive function following a verified positive random drug test result, an alcohol result of 0.04 or greater, or for any other reason as required by FTA regulations, that employee must first be evaluated by a Substance Abuse Professional (SAP) and pass a return to duty test. The SAP will recommend a course of action for the employee.
- b. The purpose of the return to duty test and the evaluation of an individual's return to duty status by the SAP is to provide assurance that the individual is presently free of alcohol and/or any prohibited drugs and is able to return to work without undue concern about continued substance abuse. An employee must follow the recommendations of the SAP.
- c. Before a return to duty test is performed, the employee must be evaluated by a SAP to determine whether the employee has **successfully complied with the prescribed education and/or treatment**, including participation in a rehabilitation program.
- d. **All employee return-to-duty tests** must have a verified negative drug test result or an alcohol test result of less than 0.02 **before resuming the performance of** safety-sensitive duties. If a drug test result is canceled, the employee shall be required to submit to and pass another drug test **before he/she is returned to performing safety-sensitive functions**.
- e. All employee return-to-duty drug test specimens will be collected under direct observation².

² Direct Observation collections will be made according to the DOT Urine Specimen Collection Guidelines.



9.07 Follow-Up Testing:

- a. Once allowed to return to duty, an employee shall be subject to unannounced follow-up testing for at least 12 months, but not more than 60 months. **This time-frame may be extended for any performance breaks in safety-sensitive duties.** The frequency and duration of the follow-up testing will be recommended by the SAP as long as a minimum of six tests are performed during the first 12 months after the employee has returned to duty. All employee follow-up drug test specimens will be collected under direct observation¹.
- b. Follow-up testing is separate from and in addition to the regular random testing program. Employees subject to follow-up testing must also remain in the standard random pool and must be tested whenever their names come up for random testing even if this means being tested twice in the same day, week or month.
- c. If the employee is subject to drug follow-up tests, the employee may also be required to take one or more follow-up alcohol tests. If the employee is subject to alcohol follow-up tests, the employee may be required to take one or more follow-up drug tests with a verified negative result.
- d. Any safety-sensitive employee with a confirmed positive follow-up drug and/or alcohol test will be terminated from employment with METRO..

X. MEDICAL REVIEW OFFICER (MRO)

10.01 All positive drug testing laboratory results will be reviewed by METROs MRO. The MRO shall verify and validate or invalidate test results.

10.02 The MRO shall conduct an administrative review of the **Custody and Control Form** to ensure its accuracy.



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- 10.03 The MRO shall review and interpret an employee's confirmed positive test by: (1) reviewing the individual's medical history including any medical records and biomedical information provided, (2) affording the individual an opportunity to discuss the test result, and (3) deciding whether there is a legitimate medical explanation for the result, including legally prescribed medication.
- 10.04 The MRO shall attempt to notify each employee who has a verified positive test that the employee has 72 hours in which to request a test of the split specimen. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to ship the split specimen to another DHHS-certified laboratory for analysis. If the retest is determined to be negative, then the first test shall be considered to have a negative result.
- 10.05 If the employee has not contacted the MRO within 72 hours of being notified of a verified positive drug test, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test or other circumstances unavoidably prevented the employee from contacting the MRO in time.
- 10.06 If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the analysis of the split specimen be performed.
- 10.07 If the MRO concludes that there is no legitimate explanation for the employee's failure to contact the MRO within 72 hours, then the MRO is not required to direct the analysis of the split specimen to be performed.
- 10.08 The MRO shall report each verified test result to the **Director**. Reporting of a verified positive result will not be delayed pending the split specimen analysis.



10.09 If the MRO determines that a positive drug test was dilute, the MRO and METRO shall treat the test as a verified positive test. The employee will not be permitted to take another test based on the fact that the specimen was dilute.

10.10 If the MRO informs METRO that a negative test was dilute, the following action will be taken:

- a. If the MRO directs METRO to conduct a recollection under direct observation² (i.e. because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL), METRO will cause the recollection to take place under direct observation immediately.
- b. Otherwise (i.e., if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), the employee is required to take another test immediately pursuant to DOT Regulations. The collection of the specimen shall not be collected under direct observation unless there is another basis for such direct collection. The results of the second test, not that of the original test, will become the test of record on which the METRO will rely for purposes of this policy. If the second test is also negative and dilute, the employee will not be required to take a third test. If an employee is directed to take another test pursuant to this section and the employee declines to do so, the employee has refused the test for purposes of the DOT regulations and this policy and action will be taken in accordance with this policy.

XI. EMPLOYEE RESPONSIBILITIES

11.01 As a condition of employment, an employee must:

- a. Submit immediately to alcohol and/or drug tests at a METRO authorized collection site when ordered by a District Manager, Supervisor or law enforcement personnel.



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- b. **Safety-sensitive employees shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.**
 - c. Refrain from alcohol consumption within four (4) hours of reporting to duty or during the hours that (s)he is subject to duty, and while on call.
 - d. **Employees are prohibited from performing or continuing to perform a safety-sensitive function while having an alcohol concentration level of 0.02 or greater.**
 - e. Refrain from alcohol use for eight (8) hours following an accident or until (s)he undergoes a post-accident alcohol test, whichever occurs first.
 - f. Refrain from the use of prohibited drugs.
 - g. Upon arrival at the designated collection test site, he/she shall follow all instructions given by collection site personnel and METRO supervisory personnel in providing a specimen for drug and/or alcohol detection tests.
 - h. Complete a drug and/or alcohol detection test, as applicable, in accordance with federal laws and regulations.
 - i. Comply with the interview examination and/or evaluation as directed by the MRO.
 - j. Comply with METRO requirements for treatment, after care, return to duty testing and follow-up testing.
- 11.02 a. An employee shall be considered to have refused a drug and/or alcohol **test under** the following circumstances:



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- i. Failure 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;
 - ii. Failure to remain at the testing site until the testing process is complete;
 - iii. Failure to provide a urine or breath specimen for any drug or alcohol test required by *Part 40* of DOT agency regulations;
 - iv. In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of the provision of a specimen;
 - v. Failure 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;
 - vi. Failure or refusal to take a second test the employer or collector has directed;
 - vii. Failure 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;
 - viii. 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);
 - ix. If the MRO reports that there is verified adulterated or substituted test result;
 - x. Failure or refusal to sign Step 2 of the alcohol testing form;
 - xi. Failure to follow the observer’s instructions during an observed collection including instructions to raise clothing above the waist, lower clothing and underpants to mid-thigh, and to turn around to permit the observer to determine if there is present any type of prosthetic or other device that could be used to interfere with the collection process;
 - xii. Possession or wearing of a prosthetic or other device that could be used to interfere with the collection process;



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- xiii. Admitting to the collector or MRO that the specimen was adulterated or substituted.
- b. An employee who refuses to submit to a drug and/or alcohol test as described above shall be removed from duty and immediately, referred to a SAP, and under METRO's own authority, the employee shall be discharged from his/her employment with METRO.
 - c. In no event shall an employee who engages in any of the conduct set forth above be permitted to perform any safety-sensitive function.
 - d. An employee/applicant shall be denied transfer/appointment to a safety sensitive position under METRO's own authority.
- 11.03 Any employee/applicant who is being tested for a pre-employment test will not be considered to have refused the test if he/she engages in any of the behaviors set forth in Section 11.02 unless the applicant/employee has actually begun the collection process.
- 11.04 For an on-call employee the following procedure is established should he/she consume alcohol within 4 hours of performing a safety-sensitive function: 1) When notified that he/she must report for duty he/she must advise METRO if he/she has used alcohol, and 2) indicate whether he/she is able to perform his/her safety sensitive function.
- a. If the employee believes he/she is not capable of performing safety sensitive functions, the employee shall be excused from doing so.
 - b. If the employee believes he/she is capable of performing a safety-sensitive function, the employee shall be tested for alcohol and the employee shall be permitted to perform a safety-sensitive function if his/her alcohol concentration level measures less than 0.02. If the employee alcohol concentration level measures at 0.02 or greater, he/she shall not be permitted to work. The standards for disciplinary action set forth in Article XII shall be applicable.



XII. ACTIONS AFTER A POSITIVE TEST

The consequences for a covered employee who has a verified positive drug **test result** or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, , or **an employee** who refuses to submit to a test under this part, including the mandatory requirement that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, (SAP) as required by *49 CFR Part 40*.

Where a covered employee refused to submit to a test, has a verified positive random drug test, and/or has a confirmed random alcohol test of 0.04 or greater, METRO, before returning the employee to perform safety-sensitive functions, shall follow the procedures outlined in *49 CFR Part 40*. **Employees who already have a positive alcohol test, and subsequently have an alcohol test result between 0.02 and 0.039 will be treated the same as a test result of 0.04 of greater, and will be referred to a Substance Abuse Therapist.**

12.01 In the performance of its duties and responsibilities, the SAP shall follow the requirements of federal law and regulations. Neither METRO nor the employee shall seek a second evaluation by a SAP in order to obtain another recommendation. METRO is prohibited from relying on a second SAP evaluation obtained by an employee. The employee shall also be informed by the **HR Director** of educational and rehabilitation programs and resources available to the employee in evaluating and resolving problems associated with prohibited drug and alcohol use. Referral to the SAP does not shield an employee from disciplinary action or guarantee employment or reinstatement with METRO. Within fifteen (15) working days of providing the employee with the list of SAPS, the employee shall provide the **HR Director** with evidence of participation in a SAP's evaluation and/or a SAP's referral. Failure to do so shall result in employment termination **from** METRO. METRO shall pay for all SAP costs resulting from a first positive test. All treatment costs associated with a first positive test shall be the responsibility of the employee who may use his/her medical insurance, if applicable. Any SAP and/or treatment costs for a second positive test are the sole responsibility of the employee.



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- 12.02 When an employee has a verified positive, adulterated, or substituted test result, or has otherwise violated a DOT agency drug & alcohol regulation, the employee will not be returned to the performance of safety-sensitive functions until or unless the employee successfully completes the return to duty process **and follow-up testing, as set forth in this policy.**
- 12.03 A positive test for drugs or alcohol shall result in disciplinary proceedings being initiated by **METRO.**
- 12.04 The following disciplinary standards shall apply for an employee who **has previously tested positive** for drugs or alcohol:
- a. **If the safety-sensitive employee is found to have an alcohol concentration of 0.02 to 0.039, he/she shall be immediately removed from performing safety-sensitive functions, until (1) the employee's alcohol concentration measures less than 0.02; or (2) the start of the employee's next regularly scheduled shift, but not less than eight (8) hours following administration of the test. In addition, METRO will refer such employee to a Substance Abuse Therapist.**
 - b. When a test (other than random) shows the presence of alcohol, at a concentration level of 0.04 or greater, or drugs the following disciplinary standards shall apply:
 - i. **Illegal Drugs - The safety-sensitive employee will be discharged following a positive test result.**
 - ii. **Alcohol - The safety-sensitive employee will be discharged following a positive test result.**
 - c. When a random test shows the presence of drugs or alcohol in a concentration level of 0.04 or greater the following disciplinary standards shall apply:
 - i. **Such employee shall be allowed to return to duty after compliance with the Return-to-Duty and Follow-Up Testing procedures (See Articles 9.06 and 9.07).**



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- ii. An employee who tests positive on a second test for alcohol, at a concentration level of 0.02 or greater, or drugs shall be discharged from his/her employment.
- 12.05 Nothing contained herein shall prevent METRO from imposing a more severe disciplinary action should the specific facts and circumstances of the situation warrant such action.
- 12.06 Voluntary enrollment in the EAP or the SAP rehabilitation program does not excuse or exempt an employee from discipline if (s)he has alcohol or illegal drugs in his/her system while on duty.
- 12.07 Violations of this Policy shall be grounds for disciplinary action, up to and including discharge. Refusal to submit immediately to drug and alcohol tests at a METRO authorized collection site when ordered by a District Manager, Supervisor or law enforcement personnel shall subject employees to discharge proceedings for insubordination and gross misconduct. Such refusal shall be considered an admission of guilt.
- 12.08 When an employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required, the **HR Director** shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses and telephone number of SAPs and counseling and treatment programs.

XIII. RELEASE OF TESTING RESULTS

- 13.01 METRO is not authorized by federal law to release any testing records to law enforcement.
- 13.02 METRO is allowed to release testing records 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 sought is relevant to the case and issues an order directing METRO to produce the information.



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- 13.03 METRO will provide drug/alcohol-testing information of an employee or former employee to other agencies/companies, or an identified person when authorized in writing by such employee(s).
 - 13.04 METRO will release information pertaining to an employee's drug or alcohol test including the results, without the employee's consent in certain legal proceedings including a lawsuit, grievance (e.g. An arbitration concerning disciplinary action taken by METRO against the employee) or administrative proceeding brought by, or on behalf of, the employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
 - 13.05 In addition to the foregoing, METRO will release drug or alcohol test information only as allowed by federal law or regulations.
 - 13.06 METRO will immediately notify the employee in writing of any information released pursuant to sections 13.02 and 13.04.
 - 13.07 METRO will comply with a request from DOT representatives as follows:
 - a. Access to the facilities used for drug/alcohol program functions;
 - b. Release of all written, printed and computer based drug/alcohol program record, reports, files, materials, data, documents, agreements, contracts, policies and statements that are required by federal laws and regulations relating to drug/alcohol testing.

XIV. RETENTION OF RECORDS

14.01 The **HR Director** shall maintain records of the anti-drug and alcohol misuse programs as required by federal laws and regulations. The records shall be maintained in a secure location with controlled access.

14.02 METRO shall keep the following records for the following periods of time:

Records of alcohol test results with alcohol concentration of 0.02 or greater	5 years
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Exhibit A



Records of verified positive drug test results and refusals	5 years
Documentation of refusals to take required alcohol/drug tests (including substituted or adulterated drug test results)	5 years
Referrals to the SAP, SAP reports, Copies of annual MIS reports submitted to FTA	5 years
All follow-up tests and schedules for follow-up tests	5 years
Information obtained from previous employers concerning drug and alcohol test results of employees	3 years
Records of the inspection, maintenance, and calibration of EBTs, Records related to the collection process and employee training.	2 years
Records of negative drug test results and alcohol test results with a concentration of less than 0.02	1 year

XV. ADMINISTRATION OF POLICY

15.01 Each Department Manager is responsible for administering this policy and procedures within their department in accordance with this policy.

15.02 Santa Cruz METRO will integrate this policy and procedures into the agency's policies and procedures.

XVI. REVISION HISTORY

Date	Action	Approved By
8/21/98	Footnotes added to Page 16	S.A.
10/22/04	Implementation of New Federal Law Requirements & other modifications	E.R.
8/25/08	Changes to Federal Regulations	J.B.
9/24/10	Changes to Federal Regulations	E.P.
1/22/16	Obsolete language removed per Regulation; Job Classifications added	D.B.
6/00/18	Changes to Federal Regulations, 49 CFR Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs	
3/22/19	Changes to correct deficiencies found in the Drug & Alcohol Program by FTA.	



END OF POLICY



ATTACHMENT 1

LIST OF SAFETY SENSITIVE JOB CLASSIFICATIONS BY TITLE

Vehicle Service Worker I/II
Vehicle Service Detailer
Vehicle Service Technician
Upholsterer
Body Repair Mechanic
Mechanic I/II/III
Lead Mechanic
Fleet Maintenance Supervisor
Electronic Technician
Maintenance Manager
Assistant Maintenance Manager

Bus Operator
Transit Supervisor
Safety and Training Coordinator
Operations Manager: Fixed Route
Assistant Safety & Training Coordinator

Operations Manager: Paratransit
Assistant Operations Manager: Paratransit
Paratransit Reservation and Scheduling Coordinator
Paratransit Safety & Road Response Coordinator
Paratransit Dispatch / Scheduler
Paratransit Dispatcher
Paratransit Operator
Paratransit Mechanic I and II
Paratransit Supervisor

NOTE: List is subject to change as classifications are amended or added.

