

To: Board of Directors

Date: May 2, 2017

From: Lisa Rettig
Senior Manager of Human Resources

Subject: Updated Drug and Alcohol Free
Workplace Policy

Approved By:

SUMMARY OF ISSUES:

CCCTA is required by the FTA to have a Drug and Alcohol Free Workplace Policy. This policy is contained in Section 209 of CCCTA's Employee handbook. Staff, with the assistance of a representative of the FTA, has updated the policy to ensure that it is compliant with the FTA rules and regulations. An updated Drug and Alcohol-Free Workplace Policy, Section 209 is attached.

The changes included in the updated policy include the following:

- A covered employee 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 (prior language stated employee shall only be tested while on duty)
- For an observed collection, failure to follow an observer's instructions to raise or lower clothing and turn around during a directly-observed test is a refusal
- Wearing a prosthetic or other device used to tamper with the testing process is a refusal
- Admitting to the collector or MRO that a specimen has been adulterated or substituted is a refusal
- Non-safety sensitive employees who violate the policy will be referred to the Employee Assistance Program
- Section 9.0 (page 6) lists up to date cutoff levels for DOT drug testing
- An SAP may be a state-licensed marriage and family counselor Section 5.0 (page 4)
- The term "mass transit" has been changed to "public transit" throughout the policy

FINANCIAL IMPLICATIONS:

There is no additional cost anticipated with these updates.

COMMITTEE RECOMMENDATION:

The A&F Committee recommends approval and adoption of Resolution 2017-017

ACTION REQUESTED:

Adopt Resolution 2017-017

Section 209

CENTRAL CONTRA COSTA TRANSIT AUTHORITY DRUG- AND ALCOHOL-FREE WORKPLACE POLICY

1.0 POLICY STATEMENT

The Central Contra Costa Transit Authority (or the Authority) is dedicated to providing safe, dependable and efficient transportation services to our passengers and the citizens of Central Contra Costa County. CCCTA employees are our most valuable resource, and it is our goal to provide a healthy, satisfying, working environment that promotes personal opportunities for growth. We also recognize that our employees' use of illegal drugs and misuse of alcohol poses a significant risk to public safety, reduces productivity in the workplace, and negatively affects the employee's health and well being. In view of this, the Authority has adopted this policy that is designed to:

1. Create a work environment free from the adverse effects of drug abuse and alcohol misuse;
2. Deter and detect employees' use of illegal drugs and misuse of alcohol;
3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;
4. Encourage employees to seek professional assistance anytime personal problems, including drug or alcohol dependency, adversely affect their ability to safely perform their assigned duties; and
5. Discipline employees who violate the Policy, up to and including termination.

2.0 PURPOSE

The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the safety and health risks posed by the misuse of alcohol and use of prohibited drugs. This policy is intended to comply with all applicable State and Federal regulations governing workplace anti-drug use and alcohol misuse programs in the transportation industry. They include DOT 49 CFR Part 40, as amended ("Procedures for Transportation Workplace Drug and Alcohol Testing Programs"); FTA 49 CFR Part 655 ("Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"); DOT 49 CFR Part 29 ("Drug-Free Workplace Act of 1988"); and CA Govt. Code Section 8350 et seq. ("Drug-Free Workplace Act of 1990"). This policy incorporates the requirements of above regulations for safety-sensitive employees and others when so noted.

NOTE: Additional requirements and/or disciplinary actions established under the Authority's authority are entered in **bold-faced type**.

3.0 APPLICABILITY

Unless otherwise noted in specific provisions, this policy applies to **all** employees (including contract employees) regardless of their functions. **The application of this policy to nonsafety-sensitive employees comes under the Authority's own authority. Visitors, invitees, and vendors also are prohibited from entering the premises and/or from conducting any work on behalf of the Authority when illegal**

substances are present in their system, or the odor of alcohol is present on their breath. This policy applies to off-site lunch periods or other authorized breaks when an employee is scheduled to return to work or is on-call.

Contractors that provide safety-sensitive work for the Authority (e.g. paratransit service) are not covered by this policy; but they are required to have a drug and alcohol testing program that complies with the minimum requirements of Part 40 and Part 655.

4.0 PRE-EMPTION OF STATE AND LOCAL LAWS

If any conflict occurs between State and local laws and any requirement of the above-mentioned Federal regulations, the Federal regulations prevail. However, Federal regulations do not pre-empt provisions of State criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse, whether the provisions apply specifically to transportation employees, employers, or the public in general.

5.0 DEFINITIONS

Adulterated Specimen: A urine specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol Use: The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication) containing alcohol. For purposes of this policy, alcohol is alcohol regardless of source.

Breath Alcohol Technician (BAT): An individual who instructs and assists employees or applicants in the alcohol testing process and operates an Evidential Breath Testing (EBT) device.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which Part 40 requires to be canceled. A canceled test is neither a positive nor a negative test.

Collection Site: A place designated by the Authority where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs, and/or measure for alcohol by an evidential breath testing device.

Collector: A person who instructs and assists individuals at a collection site, who receives and makes an initial inspection of the specimen provided by the individual, and who initiates and completes the Custody and Control Form (CCF).

Covered Employee: A person, including a volunteer, applicant/transferee, or contract employee, who performs or is required to perform a safety-sensitive function for the Authority.

Designated Employer Representative: An employee or employees authorized by the company to take immediate action(s) to remove employees from safety-sensitive duties,

or cause employees to be removed from these covered duties, following a positive test, test refusal, or other policy violations.

DHHS: Department of Health and Human Services.

Disabling Damage: Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. "Disabling damage" does not include:

- Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- Tire disablement without other damage even if no spare tire is available.
- Headlamp or taillight damage.
- Damage to turn signals, horn, or windshield wipers which makes them inoperative.

DOT: Department of Transportation.

Drugs: The drugs for which tests are required under DOT and FTA regulations. They are marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

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.

Evidential Breath Testing (EBT) Device: A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath under DOT Part 40 and placed on the NHTSA's Conforming Products List.

FTA: Federal Transit Administration.

Invalid Drug Test: The result of a urine drug test that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Public Transit Vehicles: Vehicles used for public transportation or ancillary services. They include buses, vans, automobiles, and non-revenue commercial motor vehicles.

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

Positive Alcohol Test: The presence of alcohol in the body at a blood alcohol concentration (BAC) of **0.04** or greater as measured by an EBT device.

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 Test: Includes circumstances or behaviors such as:

- Failure to appear for any test (except a pre-employment test for new hires) at the collection site in the time allotted.
- Failure to remain at the testing site until the testing process is completed, except in pre-employment testing for new hires where leaving the site before the testing process begins is not deemed to be a test refusal.
- Failure to provide a urine, breath, or saliva specimen as required by DOT Part 40.
- Failure to permit the observation or monitoring of specimen collection when it is required.
- For an observed collection, fail to follow the observers instructions to raise your clothing above the waist, lower clothing and underpants to mid-thigh, 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.
- Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process
- Admitting to the collector or MRO that you adulterated or substituted the specimen
- Failure to provide a sufficient amount of urine or breath specimen without a valid medical explanation.
- Failure or refusal to take a second test when required.
- Failure to undergo a medical evaluation when required. In the case of a pre-employment test, the individual is deemed to have refused to test only if the pre-employment test is conducted following a contingent offer of employment.
- Failure to cooperate with the testing process. (Examples: refusal to empty pockets when requested, or behaving in a confrontational manner that disrupts the collection process)
- In alcohol testing, refusal to sign Step 2 of the Alcohol Test Form.
- Leaving the scene of the accident without just cause prior to submitting to a test.
- If the MRO reports a verified adulterated or substituted test result.

Note: A refusal to test is equivalent to a positive test result.

Split specimen: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second DHHS-certified laboratory for testing upon employee request following a verified positive or a verified adulterated or substituted test result from the primary specimen.

Substance Abuse Professional (SAP): A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. In order to be a qualified SAP, the individual must be a licensed physician (medical doctor or doctor of osteopathy); or a licensed or certified psychologist, social worker, employee assistance professional, a state-licensed marriage and family counselor or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse), and has knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

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

6.0 EDUCATION AND TRAINING

The education and ongoing awareness component of this policy will include display of posters, distribution to all covered employees and representatives of employee organizations of the drug and alcohol policy and other informational materials, and periodic information seminars. Each employee will be required to sign an acknowledgment form.

As required by FTA regulations, the Authority will provide to all safety-sensitive employees a minimum of 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

Supervisors or company officials who may make reasonable suspicion referrals shall receive an additional 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use, and at least 60 minutes on the physical, behavioral, speech and performance indicators of probable alcohol misuse.

7.0 CONTACT PERSON

Any questions about this policy or any aspect of the Authority's drug- and alcohol-free program should be referred to the following Designated Employer Representative:

Title: Senior Manager of Human Resources
Address: 2477 Arnold Industrial Way, Concord, CA 94520
Telephone Number: (925) 676-1976

8.0 COVERED EMPLOYEES

As a condition of employment, **all** employees are required to submit to drug and alcohol tests administered in accordance with 49 CFR Parts 40 and 655. (**Nonsafety-sensitive employees are covered under the Authority's own authority.**) A refusal to submit to a test as directed will be considered to be a positive test result and the employee will be subject to all the attending consequences as stated in this policy. (Please refer to Section 5.0 - DEFINITIONS for specific circumstances or behaviors that are considered refusal to test.)

As defined by the FTA, safety-sensitive employees include those who perform, or may be called upon to perform, any of the following safety-sensitive functions.

1. Operating a revenue service vehicle, even when it is not in revenue service;
2. Operating a non-revenue service vehicle which is required to be operated by a Commercial Driver's License (CDL) holder;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service.

Supervisors are considered safety-sensitive only if they perform, or may be called upon to perform any of the above safety-sensitive functions.

The Authority has analyzed actual job duties performed, or may be called upon to perform, by all of its employees and has determined that the job classifications listed below are considered safety-sensitive for the purposes of this policy.

- Manager of Safety and Training
- Training Coordinator
- Transportation Supervisor
- Senior Manager of Maintenance
- Transit Operator
- Mechanic I, II, III, IV, V, VI
- Service Worker
- Contracted maintenance personnel who maintain revenue service vehicles or equipment used in revenue service
- Contracted transit services personnel

9.0 DRUGS (OR THEIR METABOLITES) TESTED FOR AND CONFIRMATORY CUT-OFF LEVELS

| | <u>Confirmatory Cut-Off (ng/ml)</u> |
|-----------------------|-------------------------------------|
| • Marijuana | 15 |
| • Cocaine | 100 |
| • Opiate metabolites | |
| • Codeine/Morphine | 2000 |
| • Amphetamines | |
| AMP/MAMP | 250 |
| • Phencyclidine (PCP) | 25 |
| • 6-Acetylmorphine | 10 |
| • MDMA | 250 |

10.0 PROHIBITED CONDUCT/BEHAVIORS

Any employee engaging in the manufacture, distribution, sale, dispensing, possession, or use of prohibited substances on Authority premises, in transit vehicles, in uniform on/off duty, or while on transit Authority business is a violation of this Policy and will subject the employee to disciplinary process, up to and including termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

Employees also are required to notify the Authority within five (5) days of any criminal drug statute conviction which occurs as the result of an incident which happened in the workplace or while on duty. Failure to notify the Authority of such shall subject the employee to disciplinary action, up to and including termination.

10.1 Illegal Drugs

The prohibited drugs listed on Section 9.0 are illegal under federal law and employees are prohibited from consuming any of them at all times, on or off duty. Employees may be tested for illegal drugs anytime they are on duty or subject to duty. Note: While the use of marijuana has been legalized under state law, it remains an illegal drug under federal law and its use as it impacts the workplace is prohibited by the Authority's policy.

10.2 Prescription or Over-the-Counter Medications

Under the Authority policy, the appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, safety-sensitive employees must notify their manager and may not perform any safety-sensitive function if their medication carries a warning label that mental functioning, motor skills or judgment may be adversely affected, unless the medication is being used in accordance with the instructions of a physician who has provided a written determination that the substance will not adversely affect the employee's ability to safely perform safety-sensitive duties. It is the employee's responsibility to determine from his or her physician or practitioner whether or not the substance may impair job performance. Failure to immediately report the use of impairing drugs or failure to provide a valid evidence of medical authorization will result in disciplinary action, up to and including termination.

A prescription is considered valid only if it is in writing and indicates the employee's name, date, the name of the substance, quantity or amount to be taken, and the period of authorization. Controlled substances obtained illegally outside the United States are not considered valid medical prescriptions under this policy. It is a violation of this policy to use any controlled substance in a manner that is inconsistent with the prescription.

10.3 Alcohol

Safety-sensitive employees are prohibited from consuming alcohol in any form under the following circumstances:

- While performing safety-sensitive functions;
- Within four (4) hours prior to performing safety-sensitive functions;
- While they are on call; or
- Within eight (8) hours following an accident requiring a post-accident alcohol test, unless the test was completed within 8 hours.

If an employee on call discloses alcohol consumption when called for duty, the Authority may require the employee to report to the collection site for alcohol testing to determine ability to perform a safety-sensitive function. If the employee tests below 0.02, he or she may be required to report to work.

An alcohol test is considered positive if the employee's alcohol concentration rate, as measured by an evidential breath testing device, is at 0.04 or greater. A covered employee having an alcohol concentration of 0.04 or greater is prohibited from performing or continuing to perform safety-sensitive functions. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be

performed after 15 minutes, but no more than 30 minutes later to confirm the results of the initial test. The confirmation test will be at CCCTA's expense. An employee who has a confirmed alcohol concentration of greater than or equal to 0.02 but less than 0.04 will be removed from duty for eight hours unless subsequent retests result in a concentration of less than 0.02.

TYPES OF TESTING

11.1 PRE-EMPLOYMENT TESTING

All candidates for employment, or any employee transferring from a non-safety-sensitive to a safety-sensitive position will be required to undergo pre-employment drug tests at a time and place designated by the Authority. A verified negative drug test result must be received by the Authority before an employee or candidate can be allowed to perform any safety-sensitive function for the first time. If a pre-employment test is canceled, the individual will be required to undergo another test and successfully pass the test with a verified negative result.

Subject to the candidate's written consent, the Authority will check on the substance abuse testing background of candidates and employees being considered for final selection into any safety-sensitive position within the agency. If the individual refuses to provide the written consent, he or she will not be hired into the safety-sensitive position.

If the information obtained from the previous employer(s) indicates a violation of a DOT or FTA substance abuse testing rule, the employee may not be allowed to perform any safety-sensitive function unless he or she has successfully complied with the return-to-duty requirements. If the individual has had a positive pre-employment substance abuse test, or has refused such a test, he or she will not be hired until and unless the individual has provided a documentation of successful completion of the return-to-duty process, which includes a SAP referral, evaluation and treatment plan.

In addition, an employee who has not performed any safety-sensitive function for at least 90 consecutive calendar days (regardless of the reason), and has been out of the random pool during that period, must pass a pre-employment drug test before he or she is allowed to return to safety-sensitive work.

11.2 REASONABLE SUSPICION TESTING

It is the responsibility of any employee who observes or has knowledge of another employee in a condition which may impair his or her ability to safely and effectively perform his or her duties, or may pose a safety hazard to self or others, to promptly report the incident to his or her supervisor, or any supervisor if the immediate supervisor is not available.

Whenever a supervisor (or other company official) has reason to believe that an employee has used a prohibited drug and/or engaged in alcohol misuse, reasonable testing will be conducted. The individual who makes the referral need not be the employee's own supervisor, as long as he or she has received training in detecting the signs and symptoms of drug use and alcohol misuse. The supervisor's or company official's observations will be documented and such documentation shall be kept in the

employee's confidential drug and alcohol testing file. Such documentation shall describe and document the following:

- a) the date and time observations were made;
- b) specific, contemporaneous and articulable observations concerning the employee's appearance, behavior, speech, body odors and/or performance

FTA rule requires that a reasonable suspicion alcohol test be conducted only if the reasonable suspicion observation is made just before, during, or just after the employee's performance of safety-sensitive function. If the alcohol test is not conducted within two hours, the reason for the delay must be documented and kept in the employee's reasonable suspicion test file. All attempts to complete the alcohol test must cease after eight hours.

11.3 POST-ACCIDENT TESTING

Safety-sensitive employees operating a public transit vehicle at the time of an accident shall be required to submit to drug and alcohol tests as soon as practicable after the accident. For purposes of this policy, "accident" is defined as an accident involving a public transit vehicle where the result is:

- An individual dies;
- An individual suffers a bodily injury and immediately receives medical treatment away from the scene;
- The bus or any other vehicle(s) involved in the accident suffers a disabling damage as a result of the accident and is transported away from the scene by a tow truck or other vehicle.

11.3.1 Fatal Accidents

Whenever there is a loss of human life, any surviving employee operating the Authority vehicle at the time of the accident shall be tested for drugs and alcohol. Any safety-sensitive employee not in the vehicle but whose performance could have contributed to the accident also shall be tested.

11.3.2 Non-fatal Accidents

Following non-fatal accidents, the employee operating the vehicle at the time of the accident shall be tested unless his or her performance can be completely discounted as a contributing factor to the accident. Any other safety-sensitive employee whose performance could have contributed to the accident also shall be tested.

11.3.3 Other Post-Accident Testing Requirements

An employee who is involved in an accident must immediately report the accident to his or her supervisor. Failure to immediately report the accident is ground for discipline, up to and including termination. Employees involved in an accident that requires testing must remain readily available for testing, including notifying the Authority of their location if they leave the scene of the accident before testing to obtain emergency medical care, or to obtain assistance in responding to the accident. They will be considered to have refused to submit to testing if they fail to do so and will be terminated from employment.

Employees are prohibited from using alcohol for eight hours following an accident or until the post-accident testing is completed, whichever occurs first. Every effort will be made to conduct alcohol testing within two hours after the accident. In the event the alcohol test is delayed beyond two hours, the Authority will prepare and maintain a record stating the reason(s) for the delay. If an alcohol test is not administered within eight hours following the accident, the Authority will cease all efforts to administer the test and document the reason for the inability. In the event a drug test is not administered within 32 hours from the time of the accident, the Authority will cease all attempts to administer the drug test. This requirement should not be construed to delay the necessary medical attention for injured people following the accident.

If the Authority is unable to perform post-accident tests within the required period of compliance, the Authority will use the post-accident test results administered by State or local law enforcement personnel under their own authority, provided the test results are obtained by the Authority.

After the accident, the employee will be removed from service, but remain on paid status during the testing period and while awaiting test results, unless the employee is suspended for any additional purposes concurrent with the waiting of the test results. If all test results are negative, the employee will be immediately returned to work. If the alcohol test result is positive or the drug test result is non-negative (positive, adulterated, or substituted), the employee will be terminated.

11.4 RANDOM TESTING

Safety-sensitive employees are required to undergo random drug and alcohol tests to deter use of prohibited drugs and misuse of alcohol. The random selection will be conducted using a scientifically valid method, such as a random number table or a computer-based random number generator, which gives each covered employee an equal chance of being selected every time a selection is made. As is the nature of the random method, it is possible that some employees will be selected several times in one year, and other employees not for several years. Management does not have any discretion on who will be selected.

Every effort will be made by the Authority to spread random testing reasonably throughout the calendar year, the testing period, all days of the week, and all hours

when safety-sensitive functions are performed. The testing dates and times are unannounced and employees are required to immediately and directly proceed to the designated collection site following notification.

The Authority will conduct random drug and alcohol tests at a minimum annual percentage of covered employees as required by the FTA. The rates are subject to change on an annual basis, depending on the industry-wide positive rate determined by the FTA from the annual MIS reports submitted by covered employers.

A covered employee shall only be 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.

11.5 RETURN-TO-DUTY TESTING

An employee who has refused a required test, has a verified positive, adulterated or substituted drug test result, or tests positive for alcohol at **0.04** or greater, shall not be allowed to return to safety-sensitive duties until after he or she has completed the return-to-duty process. This includes evaluation by a SAP, successful completion of the rehabilitation, treatment or education program outlined by the SAP, and obtaining a verified negative return-to-duty drug test and/or alcohol test under 0.02.

11.6 FOLLOW-UP TESTING

In addition to the Return-to Duty test described in Section 11.5, an employee who previously tested positive, or refused to take a required test, shall be subject to follow-up testing for drugs and/or alcohol, as prescribed by the SAP, for a minimum period of 12 months to a maximum of five years. As mandated by the FTA, the employee shall undergo at least six follow-up tests during the first 12 months of his or her return to work. Although they are both unannounced, follow-up testing is apart and separate from random testing. The duration and frequency of testing will be designated by the SAP, but the actual follow-up testing dates will be decided by the employee's manager or supervisor.

12.0 DRUG & ALCOHOL TESTING PROCEDURES

All DOT drug and alcohol tests required under this policy will be administered in accordance with the "Procedures for Transportation Workplace Drug and Alcohol testing Programs (49 CFR Part 40), as amended.

Throughout the testing process, the privacy of the employee will be protected and the integrity and validity of the process will be maintained. The drug testing procedure will include a split specimen collection method and a federal Custody and Control Form with a unique identification number to ensure that the correct test result is attributed to the correct employee. An initial screening test using an immunoassay technique will be performed. If the specimen is positive for one or more of the drugs tested, then a confirmation test will be performed using the state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. If the test is confirmed positive, the MRO will conduct a

verification process, which includes giving the employee an opportunity to provide a valid medical explanation for the positive test result.

Additionally, the laboratory may conduct analyses to determine if a urine specimen has been adulterated, tampered with, or diluted. A “negative-dilute” result, as reported by the MRO shall be considered a negative test result.

If the laboratory reports to the MRO an “Invalid Result” or “Rejected for Testing” (because of a fatal or uncorrectable flaw), a recollection may be required by the MRO, and depending on the circumstances, the recollection may be directly observed.

Tests for alcohol concentration will be conducted using an alcohol screening device and an evidential breath testing (EBT) device if the screen test is at 0.02 BAC or greater. A DOT Alcohol Testing Form will be used and a unique sequential number will be assigned to each test.

Detailed drug and alcohol specimen collection procedures are available upon request from the Contact Person identified in Section 7.0 of this policy.

13.0 DIRECTLY- OBSERVED URINE SPECIMEN COLLECTION

Under the following circumstances, the employee will be directed to undergo an immediate urine specimen collection under direct observation with no advance notice:

- If the laboratory reported to the MRO that a specimen is invalid and there was no adequate medical explanation for the result;
- If the MRO reported that the original positive, adulterated, or substituted test result had to be canceled because the split specimen testing could not be performed;
- If the drug test is a return-to-duty or a follow-up test;
- If the collector observes employee conduct that clearly indicates an attempt to tamper with a specimen;
- If the temperature on the original specimen was out of range; or
- If the original specimen appeared to have been tampered with.

The observer shall be the same gender as the employee, but need not be the collector. The observer is responsible for ensuring that the specimen goes from the employee’s body into the collection container. If the employee declines to allow a directly observed collection when required or permitted under this policy, it is considered a refusal to test.

14.0 MONITORED URINE SPECIMEN COLLECTION

Under those circumstances when a multi-stall restroom has to be used for urine specimen collection and the facility cannot be adequately secured, the collector will conduct a monitored collection. The monitor shall be the same gender as the employee, unless the monitor is a medical professional. The monitor will not watch the employee void into the collection container. However, if the monitor hears sounds or observes attempts to tamper with a specimen, an additional collection under direct observation will be ordered. If the employee declines to permit a collection authorized to be monitored, it is considered a refusal to test.

15.0 SPLIT SPECIMEN TESTING

After notification by the MRO of a positive drug test or refusal to test because of adulteration or substitution, the employee has 72 hours to request from the MRO (verbally or in writing) a test of the split specimen. After 72 hours have passed, the request can be considered only if the employee can present to the satisfaction of the MRO information that unavoidably prevented the employee from making a timely request.

Following the employee's timely request, the MRO shall send a written request to the primary laboratory to forward the split specimen to a second DHHS-certified laboratory for testing without regard to the cut-off concentration. If the second laboratory fails to reconfirm the substance detected in the primary specimen or the adulterant identified, or if the split specimen is unavailable for testing, the test shall be canceled. The MRO shall report the cancellation and the reasons for it to the DOT, the company, and the employee. In the case of the split specimen being unavailable, the employee shall be directed, with no advance notice, to submit another specimen under direct observation.

16.0 CONSEQUENCES / DISCIPLINE

Any safety-sensitive employee who has a verified positive drug test result, an alcohol concentration of **0.04** or above, or refuses to submit to a drug or alcohol test (including adulteration or substitution) shall be:

1. Immediately taken out of safety-sensitive duty;
2. Referred to a SAP for evaluation, education or treatment and provided educational materials.

Under the Authority's own authority, non-safety-sensitive employees also may be removed from duty, referred to a EAP, and be subject to discipline.

FTA regulations allow individual employers to determine the discipline to be imposed on employees who violate the DOT/FTA regulations or company policy. **The Authority's discipline policy is as follows:**

Positive test results on Random tests will result in a "Second Chance". The employee will be removed from service and referred to an SAP for evaluation. Upon completion of the SAP program the employee will be subject to Return to Duty and Follow-up testing per the SAP.

Positive test results on Post-Accident, Return to Duty, Follow-Up or Reasonable Suspicion testing will result in immediate termination.

17.0 REFERRAL, EVALUATION AND TREATMENT

If an employee (including an applicant) tests positive for drug(s) or alcohol or refuses to submit to a test when required, the Authority shall advise the individual of the resources

available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse and document such referral. He or she shall be given an EAP referral.

18.0 VOLUNTARY REHABILITATION

CCCTA employees are encouraged to voluntarily seek professional help before any substance use or dependence affects job performance. An employee who has a drug and/or alcohol abuse problem and has not been selected for testing or is not involved in a disciplinary proceeding may voluntarily refer himself or herself to the EAP for evaluation and treatment recommendations. Confidentiality, job security and promotional opportunities will be protected and no disciplinary action will be taken. The employee may be eligible for sick leave, disability benefits, or vacation while undergoing rehabilitation or treatment. The Employee Assistance Program (EAP) is available to assist employees who seek help voluntarily for drug and/or alcohol problems. The EAP will serve as a screening and referral source for employees who have substance abuse problems. The cost of up to three EAP counseling sessions per calendar year will be borne by CCCTA. The cost of additional counseling sessions and/or any rehabilitation program will be borne by the employee. Many medical benefit plans do cover and/or offer some rehabilitation programs.

19.0 CONFIDENTIALITY AND ACCESS TO FACILITIES AND RECORDS

Employees have a right to examine their own drug and alcohol testing records, provide information to dispute the results, and have access to any pertinent data such as EBT calibration or drug testing laboratory certification. They also have a right to obtain a copy of their own drug and/or alcohol testing results by submitting a written request to the Designated Employer Representative identified in Section 7.0 of this policy.

The Authority will do everything possible to safeguard the confidentiality of drug and alcohol testing records and protect the privacy of the individuals tested. Individual test results or medical information will be released to third parties (e.g. previous employers, unions) only with the employee's specific written consent, or to those parties authorized by the DOT or FTA to receive such information without the employee's consent. Specific written consent applies only to a particular piece of information released to a particular person or organization at a particular time. Blanket releases are specifically prohibited by DOT.

The employee's written consent is not required in administrative or legal proceedings such as:

- A lawsuit, grievance, or administrative proceeding brought by, or on behalf of the employee, resulting from a positive drug or alcohol test or a refusal to test; or
- A criminal or civil action resulting from an employee's performance of safety-sensitive duties where the alcohol or drug test information is deemed relevant.

Access to Authority facilities and drug and alcohol program records also must be provided, without the employee's consent, to DOT or FTA agency representatives; the National Transportation Safety Board as part of an accident investigation; a Federal,

state or local safety agency with regulatory authority over the company or the employee;
or State or grantee required to certify to FTA compliance with 49 CFR Parts 40 and 655.

RESOLUTION NO. 2017-017

**CENTRAL CONTRA COSTA TRANSIT AUTHORITY
BOARD OF DIRECTORS**

* * *

ADOPTING AN UPDATED DRUG- AND ALCOHOL-FREE WORKPLACE POLICY

WHEREAS, the County of Contra Costa and the Cities of Clayton, Concord, the Town of Danville, Lafayette, Martinez, the Town of Moraga, Orinda, Pleasant Hill, San Ramon and Walnut Creek (hereinafter "Member Jurisdictions") have formed the Central Contra Costa Transit Authority ("CCCTA"), a joint exercise of powers agency created under California Government Code Section 6500 *et seq.*, for the joint exercise of certain powers to provide coordinated and integrated public transportation services within the area of its Member Jurisdictions; and

WHEREAS, CCCTA, as a recipient of federal grants administered by the U.S. Department of Transportation, is required to adhere to the terms and conditions of such grants, together with implementing regulations issued by the Federal Transit Administration (FTA) as may be revised from time to time;;

WHEREAS, in response to the passage of the Omnibus Transportation Employee Testing Act of 1991, the FTA published two regulations prohibiting drug use and alcohol misuse by transit employees and requiring transit agencies to test for prohibited drug use and alcohol misuse at 49 CFR Parts 653 and 654, which has been replaced by 49 CFR Part 655, and the Department of Transportation has issued procedures for the testing methods to be followed at 49 CFR Part 40 Revised (collectively, the Regulations);

WHEREAS, staff has updated CCCTA's Drug and Alcohol Free Workplace Policy to conform with the Regulations;

WHEREAS, at their May 1, 2017 meeting, the Administration and Finance Committee found that the proposed *Drug- and Alcohol-Free Workplace Policy* to be appropriate and reasonable.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors hereby adopts the *Drug- and Alcohol-Free Workplace Policy*, as presented by staff and attached hereto; and

BE IT FURTHER RESOLVED that the Board of Directors directs the General Manager, or his designee, to submit the *Drug- and Alcohol-Free Workplace Policy* to the U.S. DOT through the Federal Transit Administration as soon as it is adopted so as to assure continued eligibility for the receipt of federal financial assistance.

Regularly passed and adopted this 18th day of May 2017 by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

Laura Hoffmeister, Chair, Board of Directors

ATTEST:

Lathina Hill, Clerk to the Board