

**ACTION MEMO**

**AC TRANSIT DISTRICT**

**Board of Directors**

Executive Summary

**GM Memo No. 05-247**

**Meeting Date:** November 9, 2005

**Committees:**

Planning Committee

☐

Finance Committee

☐

External Affairs Committee

☐

Operations Committee

☐

**Board of Directors**

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**Financing Corporation**

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**SUBJECT:    ADOPT       RESOLUTION       NO.    05-042       APPROVING       THE**  
**ALCOHOL/SUBSTANCE ABUSE POLICY REVISION**

**RECOMMENDED ACTION:**

☐ **Information Only**    ☐ **Briefing Item**    ☒ **Recommended Motion**

Adopt Resolution No. 05-042

**Fiscal Impact:**

N/A

**Background/Discussion:**

The District and ATU Local 192 have been in negotiations since 1999 as to revisions of this Policy. Agreement has been reached as to the proposed Policy attached (except that a minor drafting issue, as to Appendixes 3 and 4, remains as of preparation of this memo and is expected to be resolved shortly), AFSCME Local 3916 has also indicated its agreement to be the proposed Policy. Still pending as of preparation of this memo, but anticipated, is approval of IBEW Local 1245. ATU desires to submit the Policy for membership approval at a special meeting.

**BOARD ACTION:**       **Approved as Recommended    [ ]**       **Other                    [ ]**  
                                 **Approved with Modification(s) [ ]**

[To be filled in by District Secretary after Board/Committee Meeting]

The above order was passed on \_\_\_\_\_, 2005.

Rose Martinez, District Secretary

By \_\_\_\_\_

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**Subject: Adopt Resolution No. 05-042 Approving the Alcohol/Substance Abuse Policy Revision**

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For operational reasons, it is important that this Policy be approved and implemented promptly. There are numerous expedited arbitrations contemplated by the parties (all involving ATU) which should not be delayed; also, it is also important to bring the District into compliance with FTA regulations. Accordingly, Board approval is requested at this juncture. Staff will update the Board at the hearing as to these few remaining "loose ends," which hopefully will be resolved by November 9. If issues remain outstanding the Board of Directors will be requested to approve the Policy subject to such outstanding approvals as may remain.

There is no substantive difference between the proposed Policy and the draft discussed in closed session on October 19, 2005. Numerous technical wording issues have been resolved.

Highlights of the proposed Policy are as follows:

- Disciplinary consequences up to and including discharge will arise on a third, rather than a second, positive test.
- A "clean slate" will be given to employees who remain free of positive tests under the Policy for 3 years following a first positive, 4 years after a second, and (if not terminated) 5 years after a third positive test.
- An expedited arbitration procedure for most substance abuse cases will be implemented.
- Employees will have the option of documenting reasons why they cannot work past the end of their shift and receiving an exemption from testing for the last 3 hours of their shift.
- Technical revisions will bring the Policy into compliance with FTA requirements.

**Prior Relevant Board Actions/Policies:**

The last Policy agreed to by all parties was adopted effective January 1, 1995. The Board made revisions to the Policy on December 15, 1999, subject to ongoing negotiations with ATU. The Board has considered these negotiations in Closed Session and approved in principal the present agreement on October 19, 2005.

**Attachments:**

Proposed Alcohol/Substance Abuse Policy with Appendixes

**GM Memo No. 05-247**

**Subject:        Adopt Resolution No. 05-042 Approving the Alcohol/Substance  
                     Abuse Policy Revision**

**Date:            November 9, 2005**

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**Approved by:     Rick Fernandez, General Manager  
                     Kenneth C. Scheidig, General Counsel**

**Prepared by:     Paul Sluis, Attorney III**

**Date Prepared:   November 2, 2005**

## **I. INTRODUCTION**

In compliance with regulations governing anti-drug and alcohol programs in the transit industry, including 49 CFR Parts 40 and 655 and the Drug-Free Workplace Act of 1988, the Alameda-Contra Costa Transit District (District) and the Amalgamated Transit Union Local 192; the International Brotherhood of Electrical Workers, Local 1245; and the American Federation of State, County and Municipal Employees, Local 3916 (Unions), agree that District employees must be able to work in a drug and alcohol-free environment. In furtherance of this Policy, the District and the Unions are committed to the following principles: Respect for an employee's dignity and right to privacy; safety of the public, our passengers and District employees; providing assistance to employees when needed; and the recognition that alcohol and/or drug dependency are potential health problems which are treatable.

## **II. ALCOHOL AND SUBSTANCE ABUSE POLICY STATEMENT**

All District employees are covered by this Policy statement.

It is the policy of the Alameda-Contra Costa Transit District to provide a drug and alcohol-free workplace and environment for all employees and patrons. A drug and alcohol-free workplace protects this agency's most valuable resources – its employees – as well as the health and safety of the public.

No employee may perform a safety-sensitive function when that employee has any prohibited drug and/or alcohol in his or her system. The FTA defines "safety-sensitive" as those functions critical to the safety of the traveling public, including operators of revenue vehicles and operators of non-revenue vehicles who are required to maintain a Commercial Driver's License (CDL), dispatchers, employees maintaining revenue service vehicles or equipment used in revenue service, and first line supervisors whose responsibilities include the performance of a safety-sensitive function. Contractors and volunteers who perform one of these safety-sensitive functions, and security personnel who carry a firearm are also covered by this Policy. (See footnote 1, V.A.16.f, below)

The unlawful manufacture, sale, distribution or possession of any prohibited drug or alcohol by an employee, whether or not the employee performs a safety-sensitive function, will result in disciplinary action as provided in District rules and regulations and the applicable labor agreement.

The use or presence in the body of any prohibited drug or alcohol by an employee, whether or not the employee performs a safety sensitive function, may result in disciplinary action as provided in this Policy.

- A. The following tests will be administered under FTA guidelines for **all safety-sensitive employees**, and under this Policy, for **all non safety-sensitive employees**:

	Safety-Sensitive	Non-Safety-Sensitive
(1) Pre-employment	x	x
(2) Transfer to safety-sensitive position	--	x
(3) Reasonable suspicion	x	x
(4) Return to Duty	x	x
(5) Post accident	x	--
(6) Follow-up	x	x
(7) Random	x	--
(8) DOT Biennial	x	--

B. The **following substances** will be tested for:

	Drug	Alcohol	Drugs and/or Alcohol
(1) Pre-employment	x	x	—
(2) Transfer to safety-sensitive position	x	x	—
(3) Reasonable suspicion	x	x	—
(4) Return to Duty	—	—	x
(5) Post accident	x	x	—
(6) Follow-up	—	—	x
(7) Random	—	—	x
(8) DOT Biennial	x	--	--

All employees will be subject to urine drug testing and breath alcohol testing. Any employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution, or refuses to sign a consent form, will be subject to the consequences identified in Section V.F.2. of this Policy. Refusal to cooperate may include an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal refusal, obstructive

behavior, or voluntary absence resulting in the inability to conduct a test pursuant to FTA collection procedures.

The Omnibus Transportation Employee Testing Act of 1991 and the Drug Free Workplace Act of 1988 require AC Transit to notify the Federal Transportation Administration (FTA) within 10 days after receiving notice of an employee's criminal conviction for a workplace drug violation. Within 30 days of receiving such notice, the District is also required to take appropriate personnel action, up to and including termination, against any employee who is so convicted, or to require the employee's satisfactory participation in an alcohol/drug abuse rehabilitation program.

All employees are required to notify their immediate supervisor or the supervisor's representative of any criminal conviction for a workplace drug conviction no later than five (5) days after such conviction. Failure to comply with this regulation will be subject to the consequences identified in Section V.F.2. of this Policy.

Employees are encouraged to voluntarily utilize the services of the District's Employee Assistance Program (EAP) to deal with any alcohol/drug use or dependency before it affects on-the-job performance. Voluntary referral to EAP does not eliminate the requirement to take any scheduled test. Once an employee is notified of any test under this Policy or has an accident, he/she is no longer eligible to voluntarily refer him/herself to the District's EAP until the employee tests negative for that particular test (below .04 for alcohol). If the employee tests positive, he/she will be subject to the consequences for a positive test under this Policy.

Questions regarding this Policy and/or the District's EAP services should be directed to the District's Alcohol/Substance Abuse Program Administrator or the appropriate Union. The current name and phone number of the District's Alcohol/Substance Abuse Program Administrator is attached to this Policy in Appendix 1.

### **III. CONFIDENTIALITY**

All test results are confidential and may only be forwarded to the MRO, SAP, and Alcohol/Substance Abuse Program staff responsible for administering this Policy. Except as required by law, or FTA regulations, the District shall not release any information from the records it is required to maintain under the regulations. Any other release of this information except during the District's initiation of an action under this Policy and/or the grievance or arbitration process is prohibited without the written permission of the employee tested. The employee is entitled, upon written request, to copies of all records pertaining to his/her test. Test results and records will normally be mailed within twenty-four hours of the request (excluding Saturdays, Sundays and Holidays).

Every reasonable effort will be made to protect and respect an employee's privacy when administering this Policy. Notification of the employee's absence from work as a result of a referral to the EAP or Mandatory EAP shall be made in such a way as to maintain the confidentiality of the employee. In addition, any District representative or other employee who is found to have breached confidentiality shall be disciplined up to and including discharge.

#### **IV. ALCOHOL/SUBSTANCE ABUSE JOINT LABOR MANAGEMENT SUBCOMMITTEE**

- A. A Subcommittee of the existing Joint Labor Management Councils between ATU, Local 192; IBEW Local 1245; and AFSCME, Local 3916 and the District will be established. The Subcommittee will be comprised of an equal number of members appointed by Management and the Unions. The Subcommittee shall:
1. Compose the Alcohol/Substance Abuse Policy procurement review panel, together with the appropriate technical advisers, to review and recommend to the District's General Manager the appointment of the following:
    - a. the MRO;
    - b. the SAP;
    - c. the collection and analytical laboratory, the quality assurance laboratory (all laboratories shall be DHHS certified), and other applicable medical facilities; and,
    - d. contracted BAT services, if applicable.
  2. Review and Monitor the Alcohol/Substance Abuse Program, and address issues raised by the parties concerning the Program.
  3. Review the current literature and research on all facets of this program including the latest alcohol and drug testing technology, the latest procedures and techniques for successful rehabilitation, and the latest legal opinions and rulings that impact on the subject. Joint recommendations on changes and improvements in the project should be developed for future inclusion in this Policy.
  4. Develop and administer an employee education and training program for all employees who perform safety sensitive functions.

#### **V. GENERAL INFORMATION**

This Policy is based, in part, on FTA's Drug and Alcohol Regulations found at 49 CFR Parts 40 and 655, as enacted under the Omnibus Transportation Employee Testing Act of 1991, and as later amended. A description of the parts of this Policy not mandated by the FTA is attached as Appendix 6. Following are the definitions of key terms used both in this Policy and relevant FTA regulations. These definitions are for purposes of this Policy and do not affect any other definitions included in other District policies, rules or regulations.

##### **A. Definitions**

1. **"Accident"** is an event associated with the operation of a vehicle if, as a result:
  - a. An individual dies;

- b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
  - c. With respect to an event in which the mass transit vehicle involved is a bus, van, or automobile, or any non-revenue service vehicle, *and* one or more vehicles incurs disabling damage as the result of the event and is transported away from the scene by tow truck or other vehicle. For purposes of this definition, “disabling damage” means damage that precludes departure of any vehicle from the scene of the event in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage that can be remedied temporarily at the scene of the event without special tools or parts; tire disablement without other damage even if no spare is available; or damage to headlights, taillights, turn signals, horn or windshield wipers that makes them inoperative.
- 2. **“Alcohol”** means beverage alcohol, ethyl-alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.
  - 3. **“Breath Alcohol Technician” (BAT)** is an individual trained to proficiency in operation of the EBT he or she is using and in the alcohol testing procedures of 49 CFR Part 40. The BAT who operates an EBT shall instruct and assist employees in the alcohol testing process.
  - 4. **“Chain-of-custody procedures”** are those procedures contained in 49 CFR Part 40 that account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition.
  - 5. **“Collection site”** is a place designed by the employer where individuals present themselves for the purpose of: (1) providing a specimen of their urine to be analyzed for the presence of drugs or (2) providing a specimen of their breath to be analyzed for the presence of alcohol. This includes the District’s mobile collection site (van).
  - 6. **“Evidential breath testing device” (EBT)** is a breath alcohol testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and which is on the NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices” (CPL).
  - 7. **“FTA”** means the Federal Transit Administration, an agency of the U.S. Department of Transportation.
  - 8. **“Mandatory EAP Referral”** occurs when an employee tests positive on any test under this Policy. (NOTE: The first return-to-duty positive under the Voluntary EAP results in a return to the Voluntary EAP).



9. **“Medical Review Officer” (MRO)** is a licensed physician (Medical Doctor or Doctor of Osteopathy) responsible for receiving laboratory results generated by an employer’s alcohol/drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result, together with his or her biomedical information.
10. **“Monitoring”** is the process used by the Substance Abuse Professional (SAP) to ensure an employee follows the prescribed treatment/aftercare program agreed to by the SAP and the employee.
11. **“Over-the-counter drugs”** are drugs sold lawfully without prescription.
12. **“Pass a drug test”** means that a Medical Review Officer has determined, in accordance with FTA regulations, that the results of a drug test:
  - a. Indicated the presence of a prohibited drug or drug metabolite, but determines there is a legitimate medical explanation for the result;
  - b. Indicated no evidence or insufficient evidence of a prohibited drug or drug metabolite;
  - c. Were scientifically insufficient to warrant further action; or,
  - d. Were suspect because of irregularities in the administration of the test or observation of chain-of-custody procedures.
13. **“Prescription medication”** is a drug that can be obtained only by means of a physician’s written direction for a therapeutic or corrective agent.
14. **“Prohibited drug”** is defined and limited to the following substances:
  - a. Marijuana
  - b. Cocaine
  - c. Opiates
  - d. Phencyclidine (PCP)
  - e. Amphetamines

Urine specimens will not be used to conduct any other analysis or test unless the Union and the District agree.
15. **“Return-to-duty evaluation”** will consist of the passing of an alcohol and/or drug test and may include a physical examination as determined by the MRO.
16. **“Safety-sensitive”** employees are defined as those employees who perform the following functions:

- a. Operate a revenue service vehicle, including when not in revenue service;
  - b. Operate a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
  - c. Control dispatch or movement of a revenue service vehicle;
  - d. Maintain a revenue service vehicle or equipment used in revenue service;
  - e. Carry a firearm for security purposes; and
  - f. Any supervisor, contractor, or volunteer<sup>1</sup> that performs any of these safety-sensitive functions.
17. **"Split sample"** is the procedure whereby a urine sample is separated into two specimen bottles. This provides an employee with the option of having an analysis of the split sample performed at a separate laboratory (at the employee's own expense) should the primary specimen test result be verified positive.
18. **"Substance Abuse Professional" (SAP)** is a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of, and clinical experience in, the diagnosis and treatment of drug and alcohol-related disorders.
19. **"Testing notification process"** is the verbal or written notification to the employee by a District Representative of his or her selection for any alcohol and/or drug test.
20. **"Voluntary EAP Referral"** occurs when an employee notifies the District that he/she has an alcohol or drug dependency problem prior to an accident or the testing notification process.

## **B. Substance Testing**

### **1. Types of tests to be given:**

All safety-sensitive and non-safety-sensitive employees will be subject to urine drug testing and breath alcohol testing.

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<sup>1</sup>"Volunteer," as used in this paragraph only, does not refer to any District employee but only to an individual who voluntarily performs a safety-sensitive function for the District, for which a commercial driver's license is required, or for compensation in excess of actual expenses incurred while engaged in the volunteer activity.

Testing of urine for prohibited drug use or a breath sample by EBT to detect alcohol misuse shall be conducted as provided by this policy, and/or as required by applicable law or regulations. Testing procedures for all employees, as contained in 49 CFR Part 40, include collection of all specimens/samples, chain of custody procedures, laboratory procedures and qualifications, interpretation of test results by the Medical Review Officer, retesting procedures, record keeping and reporting procedures.

a. Alcohol:

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- i. **Initial** EBT screen: to detect the presence of alcohol;
  - ii. **Second** EBT screen: to confirm initial test.

b. Drugs:

- 
- i. **Initial** screen (General Urinalysis): to detect the presence of controlled substances using an Enzyme Multiplied Immunoassay Test (EMIT).
  - i. **Confirmatory** analysis: Positive results from the initial screen will be confirmed using Gas Chromatography/Mass Spectrometry (GC/MS).

- 2. The testing laboratory site must be certified by the Department of Health and Human Services. Alcohol testing will be performed by qualified BATs.
- 3. The employee has the right to Union representation at any time, including when he/she is notified of a requirement to submit to any test under this Policy. If he/she requests such representation, a reasonable amount of time will be provided for a Union representative to arrive prior to any questioning of the represented employee. The testing collection process will continue without undue delay while questioning is deferred.

The process will be conducted with respect for the employee's dignity and right to privacy.

- 4. All alcohol or drug tests shall be administered at the test site by trained personnel as defined in the FTA regulations. The employee will be required to sign the District's Alcohol/Drug Testing Consent form.
- 5. An employee's pay status shall be reconfirmed (paid run or shift pay until test results are known) and the employee will be informed that a District representative will contact him/her as soon as the examination test(s) results are known.
- 6. As required by the FTA, random testing will be evenly distributed throughout the year, and will be scheduled throughout all employee shifts and among all operating Divisions. Testing will commence at any time

within the employee's shift. If completion of the test requires more time than remains in the shift, the test must be completed but the additional time will be paid as work time or overtime, as determined by the applicable collective bargaining agreement and laws. In keeping with FTA requirements, the District will not schedule disproportionate numbers of tests near the end of employees' shifts to avoid associated costs. The parties understand that random testing often incurs fill-behind costs to the District, and the District will not use end-of-shift testing for purposes of avoiding or reducing these costs.

7. Random tests shall be commenced at least three (3) hours before the end of the employee's shift for employees who provide advance, verifiable notice of a scheduled medical or childcare commitment occurring immediately following the end of that shift. This notice must be received by the Alcohol/Substance Abuse Program Administrator in writing at least three (3) work days prior to the medical or childcare commitment, unless "exceptional circumstances" apply as defined below. The District may provide and require completion of a form for this notice, including the name, address and phone number of the medical or childcare provider, the date(s) and time(s) of the commitment, an authorization to verify the commitment, and in the case of a childcare commitment, the name(s) and age(s) of the child(ren) and their relationship to the employee. A childcare commitment under this section must pertain to a minor child of sufficient relation to the employee to be eligible for AC Transit benefits. Notices of recurring commitments shall be updated at least annually and when a material change in the commitment occurs. Notices that do not comply with this section, or that unreasonably interfere with the availability of the employee for random testing, may be rejected by the District.

"Exceptional circumstances" for purposes of this paragraph arise when the employee must attend a medical appointment, pertaining to a serious health condition, which could not reasonably have been scheduled in time to allow 3 days' notice. The appointment may be for the employee or a member of the employee's immediate family (as defined in the Bereavement Leave provisions of the Collective Bargaining Agreement) who requires the employee's assistance in attending the appointment. When these circumstances apply, the employee shall give the required notice to the Alcohol/Substance Abuse Program Administrator as soon as practicable, not more than 24 hours after learning of the appointment, and in any event prior to selection for random testing. The District may require documentation substantiating the presence of exceptional circumstances, but will allow the employee 72 hours following the appointment to obtain the documentation.

### **C. Required Tests**

Under FTA guidelines, **all safety-sensitive employees**, and under the authority of this Policy, **all non safety-sensitive employees**, will be required to submit to testing for the presence of alcohol and/or drugs under the following circumstances:

1. **Pre-employment** – All applicants will be subject to alcohol and drug testing. The District will not hire any applicant who fails an alcohol or drug test. Any applicant that receives a canceled, invalid or no test result will not be hired until he/she has retaken his/her test and receives a negative test result. As required by FTA regulations, a pre-employment drug and alcohol test will also be administered before an employee returns to performing safety-sensitive work after being out of the random-testing pool for 90 days or more. When an employee is removed from the random-testing pool by reason of absence, a notification letter shall be sent to the employee, advising the employee that this requirement must be met prior to return to work in a safety-sensitive position and giving the employee contact information to arrange testing. A sample of the form of this letter is attached as Appendix 2.
2. **Transfer to a safety-sensitive position** – Any employee who wishes to transfer to a safety-sensitive function from a non-safety-sensitive function is subject to alcohol and drug testing. An employee with a confirmed positive drug test as certified by the MRO or an alcohol test result of .04 or greater will be disqualified from transfer or promotion on the pending application, but shall not be barred from reapplying at a later date for subsequent openings.
3. **Reasonable suspicion** – All employees, including all levels of management, shall be subject to reasonable suspicion testing for drugs or alcohol when there is reasonable suspicion to believe the employee has engaged in drug use or alcohol misuse. No retaliation will be permitted for reporting that any employee is reasonably suspected of being under the influence of drugs and/or alcohol. The employee under reasonable suspicion must be independently observed by two supervisors trained in the detection of drug abuse and alcohol misuse. The supervisors' determination that reasonable suspicion exists shall be based solely on specific behavioral, performance or contemporaneous physical indicators of probable drug use or alcohol misuse.
4. **Return-to-Duty** – This test is administered after an employee has been referred to EAP and before return to duty. The SAP will determine when each employee is ready to return to work. Prior to returning to work, an employee must take and pass an alcohol and/or drug test as determined by the MRO *in consultation with the SAP*.
5. **Post-accident testing -**
  - a. **Fatal Accidents:**

In the event of an accident as defined in this Policy involving the **loss of human life**, an alcohol and drug test will be administered to safety sensitive employees operating the mass transit vehicle at the time of the accident (whether or not the vehicle is/was in revenue service).

The District will also test any other safety-sensitive employee whose performance could have contributed to the accident, using the best information available at the time the decision to test is made.

**b. Non-Fatal Accidents:**

Pursuant to this Policy, in those accidents as defined in Section V.A.1, b and c, where there is **no loss of human life**, an alcohol and drug test will be administered to safety sensitive employees on duty in the vehicle at the time of the accident if the employee's performance was a contributing factor to the accident as determined by the District using the best information available at the time of the decision to test.

**c. Testing:**

**i. Alcohol:**

The specimen/sample collection will be done as soon as possible. If a test required by this section is not administered within **two (2) hours** following the accident, the District shall prepare and maintain on file a record stating the reasons why the test was not promptly administered. A test will be conducted no later than **eight (8) hours** after the accident. (In most cases, the decision regarding alcohol testing can be made at the accident site because the threshold events are obvious, e.g., someone is taken to a medical treatment facility.)

**ii. Drugs:**

The specimen/sample collection will be completed as soon as possible, but not later than **thirty-two (32) hours** after the accident (as with post accident alcohol testing, in most cases, the decision regarding drug testing can be made at the accident site).

Any employee who leaves the scene of an accident without authorization prior to submission to drug and alcohol testing may be deemed by the District to have refused to submit to a test. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered 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.

**6. Follow-up Testing –** These tests are administered on an unannounced basis after return to duty from the District's EAP.

- a. **Voluntary EAP** – The following-up testing period after a Voluntary referral will be two (2) years. During that period, there will be up to five (5) unannounced tests.
- b. **Mandatory EAP** – The SAP will determine the frequency and duration of follow-up testing. Such employees will be required to take **a minimum of six (6) follow-up drug and/or alcohol tests during the first twelve (12) months after returning to work.** After that period of time, the SAP will determine the frequency and duration of continued follow-up drug testing, provided that the follow-up testing period ends no later than **sixty (60) months** after the employee returns to duty.
- c. In the event an employee who is subject to follow-up testing has an absence of thirty (30) days or more due to industrial injury, illness, or leave of absence, the District may refer the employee to the SAP who will determine whether the follow-up testing period should be extended.

- 7. **Random testing for Safety-Sensitive Employees** – All **safety-sensitive** employees will be subject to random drug and/or alcohol tests and will be assigned an identifying number or symbol other than name that will be placed in a pool and selected for testing using a scientifically valid random selection method.

The number of random drug tests administered annually shall equal at least fifty percent (50%) of the number of safety sensitive District employees, and the number of random alcohol tests administered annually shall equal at least ten percent (10%) of the number of safety sensitive District employees, except that if these percentages are changed by the FTA, the new percentages issued by the FTA shall apply.

Before obtaining a specimen, the District shall provide oral and written notice to an employee selected for random testing that termination is the consequence of adulteration or substitution or otherwise falsifying the testing process or results. See Appendix 3.

- 8. **DOT (DMV) biennial physical** – Under this Policy and not FTA regulations, the District requires a drug screen as part of the DOT biennial physical.
- 9. **Observed Collection under Direct Observation** – As required by the FTA, under each of the following circumstances, employees will be required to provide a urine sample under the direct observation of trained collection personnel:
  - a. When the laboratory has reported to the MRO that a specimen was invalid, and the MRO reports to the District that there is no adequate medical explanation for that result.
  - b. When the MRO reports to the District that a test result was cancelled because the secondary specimen from the split sample

could not be tested, and that the primary specimen indicated a positive test result or that the sample had been adulterated or substituted.

- c. When the MRO reports to the District that the employee has provided a negative dilute specimen, as defined by FTA regulations, and directs that a new sample be taken under direct observation. However, if the MRO does not direct the District to take a second specimen under direct observation, the second specimen will be taken **without** direct observation, as allowed by FTA regulations.
- d. When personnel collecting a urine sample determine that the temperature of the sample is outside the acceptable range (90 - 100 degrees Fahrenheit or 32 - 38 degrees Celsius), or that observation of physical characteristics of the sample such as its color or odor indicates that tampering with the sample appears to have occurred.
- e. When collection-site personnel determine in the course of preparing to obtain a sample that the person to be tested has any material that appears to be brought to the collection site with the intent to alter the specimen, or the employee's conduct clearly indicates an attempt to tamper with a specimen.

**D. Exam/Test Results**

**1. The cutoff levels for Drug testing shall be:**

	Initial Test Level
(a) Initial Screening Test (EMIT)	(ng/ml)
▪ Marijuana <sup>2</sup>	50
▪ Cocaine Metabolites <sup>3</sup>	300
▪ Opiate metabolites <sup>4</sup>	2,000
▪ Phencyclidine	25
▪ Amphetamines	1,000

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<sup>2</sup>Delta-9-tetrahydrocannabinol-9-carboxylic acid.

<sup>3</sup>Benzoyllecgonine.

<sup>4</sup>25 ng/ml if immunoassay specific for free morphine.



	Confirmatory Test Level
(b) Confirmatory Test (GC/MS)	(ng/ml)
▪ Marijuana metabolite	15
▪ Cocaine metabolite	150
▪ Opiates: ♦ Morphine ♦ Codeine	2000 2000
▪ Phencyclidine	25
▪ Amphetamines: ♦ Amphetamine ♦ Methamphetamine	500 500

The laboratory shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test.

**2. The cutoff levels for Alcohol testing will be:**

- (a) **.02 - .039:** Removal from the safety-sensitive position in accordance with Section V.F.5(a) of this Policy.
- (b) **.04 and above:** This constitutes a positive alcohol test. An employee is removed from his/her safety sensitive position and treated in accordance with Section V.F.5.(b) of this Policy.

**3. Role of the Medical Review Officer (MRO):**

AC Transit will have available the services of a designated MRO who will be a licensed physician with knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's positive test result(s) in conjunction with his or her relevant medical history.

The MRO will receive the results of all drug tests from the laboratory, verify those results, determine whether an individual has passed a particular test as defined above, and report each test that does not pass to the Alcohol/Substance Abuse Program staff responsible for receiving such results. The MRO will also report to the District's Representative invalid specimens, cancelled test results, negative dilute specimens, and any drug test results and medical information that the MRO, using reasonable medical judgment, determines is likely to result in the employee being determined to be medically unqualified under an

applicable DOT agency regulation, or that indicates that continued performance of the employee's safety-sensitive function is likely to pose a significant safety risk (see V.C.9, above). When reviewing each confirmed positive test result under this section, the MRO may review the individual's relevant medical history and records to determine whether there is a legitimate medical explanation for the positive result, including the use of a legally prescribed medication. The MRO may request the laboratory to re-analyze the original sample in order to verify the accuracy of the initial test result reported to the MRO. Test results and records will normally be mailed within twenty-four hours of receipt of a written request from the employee (excluding Saturdays, Sundays, and holidays).

The MRO shall notify each employee who has a confirmed test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the analysis of the split specimen is reconfirmed by the second laboratory for the presence of drug(s) or drug metabolite(s), the MRO will notify the employee and the District of the results of the test.

The name and phone number of the current MRO are listed in Appendix 1.

#### **4. Role of the Substance Abuse Professional (SAP)**

A substance abuse professional (SAP) is neither a counselor nor a treating professional. A SAP evaluates an employee who either has a verified positive alcohol or drug test result to determine whether the employee needs help resolving an alcohol or drug problem. The SAP then makes certain recommendations to the employee which the employee must follow. Before returning to duty, the employee is re-evaluated by a SAP to determine whether the employee has followed the SAP's recommendations. The SAP will provide written notification to the District that an employee is unavailable for work and will subsequently provide written notification when the employee is ready to return to work.

The SAP also determines the number of follow-up tests the employee will be subjected to:

- (a) **Voluntary** EAP — After Voluntary EAP, the employee will be required to undergo up to five (5) follow-up tests during a two year period.
- (b) **Mandatory** EAP — After Mandatory EAP, the employee will be required to undergo a minimum of six (6) Mandatory follow-up tests in the first twelve (12) months after the employee's return to duty. After the first year, the SAP will determine the frequency and duration of additional follow-up testing, if appropriate. The maximum duration of testing is sixty (60) months after the employee returns to duty.

As required by FTA regulations, the SAP will also evaluate any employee who refuses to submit to a required test to determine if the employee needs help in resolving an alcohol or drug problem. A referral to the SAP after the employee refused to submit to a required test does not in any manner guarantee continued employment with the District.

The name and phone number of the current SAP are listed in Appendix 1.

**5. Split Samples:**

An employee who does not pass a drug test may request that his or her split urine sample be analyzed. An employee requesting an analysis of a split sample must submit a written request to the MRO within seventy-two (72) hours of the employee's receipt of the test results. The employee may request that the MRO send the split sample to a second laboratory site that is certified by the Department of Health and Human Services. The original laboratory must follow chain-of-custody procedures when transferring the sample.

An employee requesting a split sample test will be required to advance the cost of the additional analysis (in the form of cash, a money order, personal check or cashier's check), and any other costs associated with the transfer of the specimen to another laboratory, including shipping and handling. If payment is not made within seventy-two (72) hours, the split sample will not be processed. If the split sample result is negative, AC Transit will reimburse any costs collected in advance within two weeks, and will convert any suspension based on the positive initial result to paid administrative leave.

An employee may obtain test results and records upon written request to the Alcohol/Substance Abuse Program Administrator or the MRO.

**6. Laboratory:**

The laboratory shall store the sample securely in compliance with the requirements of 49 C.F.R. Part 40. See 49 C.F.R. section 40.99.

**E. Use of Prescription Medication and/or Over-the-Counter Drugs**

**1. Reporting the Use of Prescription and/or Over-the-Counter Drugs:**

The legitimate use of controlled substances prescribed by a licensed physician is not prohibited. It is the employee's responsibility to determine from the physician whether or not a prescribed drug would impair his/her job performance. Employees performing safety sensitive functions shall notify their immediate supervisor or his/her designee of the use of prescription medications which would adversely affect job performance. These actions shall be taken prior to the commencement of the employee's work shift.

An employee who is absent due to the use of a prescribed medication that may impair his/her ability to perform a safety-sensitive function will not be considered to have had an "absence" under the applicable District Attendance Program, provided the employee submits the following information:

- a. Written verification that the prescribed drug will or may impair work performance or safety; and
- b. A written statement of the specific duration of the prescription use and/or impairment.

The above information must be provided to the employee's immediate supervisor upon return to work. Failure to provide the above information upon return to work will result in the time off being considered an absence subject to the provisions of the applicable District Attendance Program.

If the prescription is extended, the employee must present additional verification from the medical provider who issued the original prescription stating the need for continuation of the prescription and the continued duration.

If the District believes there is abuse of this provision, the case will be referred to a Joint Labor/Management Team for investigation and resolution satisfactory to both parties. By agreeing to this provision, neither the District nor the Union waive any other provision in this Policy, the appropriate collective bargaining agreement, or other District rules and regulations.

If the District believes that this provision is unworkable, it reserves the right to reopen negotiations of this provision with thirty (30) days notice to the Unions.

Employees are also expected to understand the effects of all over-the-counter drugs and must read all warning labels and consult a physician if necessary. However, no excused absences will be granted for the use of over-the-counter medications.

#### **F. Consequences for Violating Policy/Employee Status**

1. Employees who are referred to the Voluntary EAP in an effort to seek treatment and rehabilitation will not be disciplined for their participation.
2. Violation of any of the following Sections of this Policy will result in immediate suspension, and being subject to discipline up to and including termination:

Section II (refusal or failure to comply or cooperate);

Section V.F.3. (refusal to cooperate or take a required drug or alcohol test)

Section V.F.6. (a positive test after a second Mandatory EAP);

Section VI.C.2.c. (a positive test on a second return to duty test following a second Mandatory EAP);

Section VI.C.2.e. (a positive test following return to duty after a second Mandatory EAP).

“Being subject to discipline up to and including termination” shall not mean automatic discharge. Prior to the issuance of any notice of intent to terminate under this Policy, the District shall advise the Union that a notice of intent to terminate is pending and shall provide the opportunity to raise mitigating circumstances for consideration on a case-by-case basis by the District in determining the level of discipline.

3. If an employee performing a safety-sensitive function refuses to cooperate or take a required drug or alcohol test, that employee shall be relieved of his or her safety-sensitive duties immediately and shall be subject to the consequences identified in Paragraph 2 above.

**Any employee who adulterates or substitutes a specimen for drug or alcohol testing or otherwise falsifies the testing process or results shall be subject to termination.** AC Transit shall provide a warning of this penalty in the “Steps To Be Completed” form used in the collection process. Scheduling papers pertaining to biennial DOT (DMV) physicals shall be designed to remind employees of this penalty. Examples of these warnings and reminders appear in Appendixes 3, 4, and 5.

No changes are to be made on the consent form by the employee or by the AC Transit representative without authorization. Refusal to cooperate includes the inability to provide a urine specimen or breath sample without a valid medical explanation, or conduct that clearly obstructs the testing process or fails to comply with all aspects of their rehabilitation treatment plans, after-care agreements, and/or return-to-duty agreements.

4. Failure to pass a drug test as defined in the FTA regulations will result in a Mandatory EAP referral, except in those cases where, **before** the testing notification process or an accident, an employee voluntarily admits to a drug or alcohol problem and is immediately referred into the Voluntary EAP. (NOTE: The first return-to-duty under the Voluntary EAP results in a return to the Voluntary EAP)
5. Under FTA regulations, employees are prohibited from consuming alcohol during a **four (4) hour period** immediately prior to performing a safety-sensitive function, and also for an **eight (8) hour period** following an accident as defined in this Policy for employees who are required to

take a post-accident test and have not yet taken such a test. An alcohol test result within the following EBT ranges (as defined in the FTA regulations) will result in the following actions:

**a. For an EBT Level of .02 to .039:**

- i. On a **first** test result within this EBT range, the employee will be removed from his/her duties without pay until the employee's next regularly scheduled shift, but not less than eight (8) hours following administration of the test, or, with the employee's consent, until the employee tests below this EBT range in a test administered at the discretion of the District with justification for allowing an employee to remain on the property for a retest. This removal shall not constitute an absence under the applicable District Attendance Program. Any subsequent removal from duties under steps ii through iv of this provision shall constitute an absence subject to the provisions of the applicable District Attendance Program.
- ii. On a **second** test result within this EBT range during a rolling twelve (12) month period, the employee will be removed from his/her duties without pay until the employee's next regularly scheduled shift, but not less than eight (8) hours following administration of the test, or, with the employee's consent, until the employee tests below this EBT range in a test administered at the discretion of the District with justification for allowing an employee to remain on the property for a retest. In addition, the employee will receive information on alcohol misuse from the District's Alcohol/Substance Abuse Program Administrator.
- iii. On a **third** test result within this EBT range during a rolling twelve (12) month period, the employee will be removed from his/her duties without pay until the employee's next regularly scheduled shift, but not less than eight (8) hours following administration of the test, or, with the employee's consent, until the employee tests below this EBT range in a test administered at the discretion of the District with justification for allowing an employee to remain on the property for a retest. In addition, the employee must be assessed by the SAP. The SAP will determine a treatment and/or aftercare plan, if appropriate, which the employee is required to follow.
- iv. On a **fourth** test result within this EBT range during a rolling twelve (12) month period, the employee will be removed from his/her duties without pay until the employee's next regularly scheduled shift, but not less than eight (8) hours following administration of the test, or,

with the employee's consent, until the employee tests below this EBT range in a test administered at the discretion of the District with justification for allowing an employee to remain on the property for a retest.

In addition, the Union, the District, the SAP, and other interested parties as determined by the SAP, will intervene in an effort to address potential problems with alcohol misuse.

**b. For an EBT level of .04 or higher:**

Employees are placed in the Mandatory EAP (with the exception of the first Return to Duty positive during Voluntary EAP).

6. An employee who has not volunteered for the District's Voluntary EAP **prior** to test notification or an accident, and who fails any test, will be referred to the Mandatory EAP. An employee who has already been referred twice to the District's Mandatory EAP and who subsequently fails any test will be subject to the consequences identified in Section V.F.2. of this Policy.
7. The parties agree that if, out of the facts and circumstances surrounding reasonable suspicion or post-accident testing, the District otherwise has just cause for discipline (e.g., serious preventable accident), the District reserves all rights to pursue appropriate action.
8. An employee's absence from work as a result of anything contained in this Policy shall not be considered an "absence" under the applicable District Attendance Program, with the exception of failure to comply with the prescription drug provision and as set forth in Section V.F.5(a)(ii-iv) during a rolling twelve (12) month period.
9. Pursuant to Section 5.05 of the Collective Bargaining Agreement, the parties stipulate that expedited arbitration will be used for discipline cases arising under the Alcohol/Substance Abuse Policy. Consistent with Section 5.05, expedited arbitration shall not be used for cases involving an issue of contract interpretation, including interpretation of the Alcohol/Substance Abuse Policy. The procedures for expedited arbitration in the Collective Bargaining Agreement shall be followed. The expedited arbitration panel may consider any evidence presented by the parties, subject to the terms of the Collective Bargaining Agreement. The Union and employee may present evidence of mitigating and/or extenuating circumstances. These may include, for example, length of service and commitment to rehabilitation.
10. Employees shall be afforded the opportunity to resign prior to arbitration and have their records sealed. The District will maintain the confidentiality of sealed records after the employee resigns, but may release information as required by law or when the

employee provides a waiver or release in writing that provides for release of the information.

11. In view of the number of cases currently pending, the parties shall immediately schedule a sufficient number of days of expedited arbitration for all pending cases, in addition to scheduling any monthly arbitrations provided for in Section 5.06 (f). The parties will jointly identify all pending disciplinary cases within 30 days of the execution of this Policy, in order to commence the expedited arbitration of pending cases as soon as possible. Notwithstanding any other provision of this Policy, the provisions of the Alcohol/Substance Abuse Policy in effect at the time disciplinary action was initiated by the District shall govern in each case. Nothing in this policy shall be construed as modifying the terms of any Last Chance Agreement.

## **VI. EMPLOYEE ASSISTANCE PROGRAM GUIDELINES**

### **A. Introduction**

1. The District offers an EAP which provides confidential counseling services to help resolve various personal problems. The District encourages employees to take advantage of this assistance. The EAP provides for assistance with problems not necessarily related to alcohol/substance abuse (e.g., domestic problems, stress, etc.). Employees can call the EAP provider directly, 24 hours a day, for counseling in areas of concern. Employees can obtain the telephone number of the EAP provider from their immediate supervisor, the District's Human Resources Department, or the appropriate Union.
2. The District also offers an Alcohol/Substance Abuse EAP to address alcohol and/or drug dependency problems. The parties recognize that denial is an important psychological component of dependency problems. This Policy attempts to address those issues of denial. Employees are strongly encouraged to seek professional assistance through the EAP.
3. There are three (3) ways an employee can receive help under the Alcohol/Substance Abuse EAP:
  - a. Self Referral – Employees can utilize the services of the District's EAP on their own by directly contacting the EAP provider or the employee's own medical provider for information on available benefits to obtain assistance in areas of concern.
  - b. Voluntary EAP Referral – Employees may also seek help for dependency problems by contacting their supervisor or the District's Alcohol/Substance Abuse Program Administrator.



- c. Mandatory EAP Referral – Employees are placed in this program after any positive drug or alcohol test under this Policy. (NOTE: The first return-to-duty positive under the Voluntary EAP results in a return to the Voluntary EAP).

**B. Alcohol and Drug Rehabilitation**

1. Since alcohol and drug dependency are health problems which are treatable, employees suffering from these illnesses will be given the same consideration and offer of assistance presently extended to employees with other illnesses. An employee who comes forward prior to either notification of selection for any alcohol and/or drug problems will not have his/her job security jeopardized by a request for help.
2. An employee's absence from work as a result of a referral to an EAP (Voluntary, Mandatory, or Self Referral) or a treatment program shall not be considered an "absence" under the applicable District Attendance Program.
3. The SAP will determine if the referred employee is in need of an in-patient or out-patient program. The SAP and the District's Alcohol/Substance Abuse Program Administrator will make reasonable efforts to find a treatment facility, and to place employees in treatment, as expeditiously as possible.
4. In every case where an employee is referred to EAP, a confidential memo should immediately go to the employee's department manager/supervisor informing him/her that the employee will be unavailable for work from the effective date that the employee entered the EAP, as well as the estimated length of time the employee is expected to be away from work.
5. Employees are responsible for following the recommended treatment and aftercare plans set up by their counselor and/or SAP (e.g., support programs such as Kaiser's outpatient program, Cocaine Anonymous, Alcoholics Anonymous, Narcotics Anonymous, etc.).
6. Monitoring: The SAP will monitor the employee in the inpatient or outpatient program for two (2) years after the employee's return to duty from Voluntary EAP, and for up to sixty (60) months after his/her return to duty from Mandatory EAP. However, the employee should never be discouraged from continuing an outpatient program. Responsibility for the rehabilitation process rests with the drug and alcohol abuse professionals, responsibility for program rests with the employee.
7. Time Away from Work: Employees will be allowed six (6) months from the date positive results are reported to the District to return to work, absent mitigating circumstances (such as having taken reasonable steps to rehabilitate themselves and, through circumstances beyond their reasonable control, be unable to complete a rehabilitation program within

six (6) months). Inability of an employee to meet his/her financial obligations is not considered a mitigating circumstance.

8. **Benefits Available:** Participants in the EAP may use accumulated vacation, sick leave, and/or leave to which an employee is entitled under state or federal law, or under applicable collective bargaining agreements to cover the time off while in EAP. If while in treatment an employee's paid leave is exhausted, he/she will be placed in an unpaid medical leave of absence status. In cases of a Mandatory EAP referral after a positive post accident or reasonable suspicion test, the first thirty (30) days off shall be treated as a suspension.

After that, the employee shall be carried on an unpaid extended leave of absence, unless the employee chooses to use available paid leave.

9. **Medical Benefits:** Rehabilitation programs offered by an employee's medical provider are available to meet prescribed treatment requirements.

**C. How to Seek Help Under this Policy:**

**1. Voluntary Referral to EAP:**

- a. Employees are encouraged to talk to supervisors and/or department managers when alcohol and/or drug problems occur, particularly before the situation interferes with job performance. Supervisors must immediately refer employees who disclose such problems to the District's Alcohol/Substance Abuse Program Administrator. The District's Alcohol/Substance Abuse Program Administrator must then enter the employee into the Voluntary EAP Program.

Once an employee discloses an alcohol and/or drug problem to the District's Alcohol/Substance Abuse Program Administrator, the employee will be subject to all terms and conditions of the District's Voluntary EAP, **including follow-up testing.**

- b. The Voluntary EAP will consist of a meeting with the District's Alcohol/Substance Abuse Program Administrator and compliance with the recommendations of the SAP, a medical provider, treatment facility personnel, and/or EAP provider in conjunction with the employee. The employee will be asked to sign a release with the SAP and/or treatment provider in order that the District's Alcohol/Substance Abuse Program Administrator may receive feedback on the employee's progress from the SAP and/or treatment provider. In the Alcohol/Substance Abuse Program Administrator's continued counseling with the employee, such feedback should be seriously weighed in tracking the employee's continued progress.

- c. Following successful participation in the Voluntary EAP and the passing of a return to duty test, employees will be allowed to return to work. A positive test on the first return to duty test will result in the employee being referred back to the SAP for continued treatment. A positive test on a second return to duty test will result in a mandatory referral.
- d. An employee who has returned to work following participation in the Voluntary EAP will be subject to follow-up testing for **two (2) years**. An employee will be tested up to **five (5) times** during that period. An employee who has a positive test after returning to work from a Voluntary referral will receive a Mandatory referral.

If during the two (2) year follow-up period, an employee has a relapse and discloses that fact to the District prior to the testing notification process or an accident, the employee will be referred back to the Voluntary EAP for the SAP to determine necessary treatment. Following successful completion of additional treatment, the employee shall have a follow-up testing period consisting of the remainder of the original follow-up period and number of tests, plus an additional one (1) year period with up to five (5) follow-up tests during that one-year period.

- e. Employees who seek help through their supervisor or the District's Alcohol/Substance Abuse Program Administrator shall be referred to the Alcohol/Substance Abuse program. Employees may participate in Voluntary EAP at any time.
- f. An employee may receive alcohol/substance abuse assistance and/or treatment through Self Referral at any time.
- g. An employee may receive help under an alcohol/substance abuse EAP through Self Referral at any time, including during the periods identified in Sections VI.C.1.e. and f. above.

## **2. Mandatory Referral to EAP**

- a. An employee will be allowed only two (2) referrals to Mandatory EAP during any employment with the District. However, an employee may receive a "clean slate" and/or additional referrals to Mandatory EAP in accordance with the provisions in the Policy regarding "clean slate" or "consequences" (See Section V.F.2. above and Section VI.C.3.f. below).
- b. An employee who tests positive on any test under this Policy, or is otherwise referred to the Mandatory EAP under this Policy, shall be referred to the District's Alcohol/Substance Abuse Program Administrator and the SAP for a determination of a Mandatory treatment/rehabilitation plan. (NOTE: The first return-to-duty positive under the Voluntary EAP results in a return to the Voluntary EAP.)

- c. Following the successful participation in the Mandatory EAP and the passing of a Return to Duty test, an employee will be allowed to return to work. A positive test on the first Return to Duty test will result in the employee being referred to the SAP for initiation of an Alcohol/Substance Abuse Intervention process. Such a process shall include District and Union representatives, the SAP, the MRO, and other interested parties as determined by the SAP. A positive test on a second return to duty test following a first Mandatory EAP referral will result in a second Mandatory EAP referral; a positive test on a second return to duty test following a second Mandatory EAP referral will result in the consequences identified in Section V.F.2. of this Policy.
- d. An employee who has returned to duty following successful participation in the Mandatory EAP shall **be subject to follow-up testing for up to five (5) years**, including a **minimum of six (6) unannounced, follow-up alcohol and/or drug tests** during the first twelve (12) months after returning to duty. The SAP can direct additional testing during this initial follow-up testing period, or for an additional period up to a maximum of sixty (60) months from the date the employee returns to duty. The SAP can terminate the requirement for additional follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary.
- e. Any positive test under this Policy following an employee's return to duty after a second Mandatory EAP will result in the consequences identified in Section V.F.2. of this Policy (except for the first return-to-duty test under Section VI.C.1.c. if an employee qualifies under Section VI.C.1.f.)

3. **General Provisions Applicable to Both Voluntary and Mandatory EAP:**

- a. In the event an employee who is subject to follow-up testing has an absence of thirty (30) days or more due to industrial injury, illness, or leave of absence, the SAP shall determine whether the follow-up testing period should be extended.
- b. No employee will have his/her job security or promotional opportunities jeopardized by a request for EAP services prior to notification of selection for any alcohol or drug test under this Policy, or an accident. An employee who accepts treatment in a program approved by the District will be considered ill and unable to work. An employee's absence from work as a result of a referral to the EAP or a treatment program will not be considered an "absence" under the applicable District Attendance Program.
- c. The services provided by the District's Alcohol/Substance Abuse EAP are designed to identify and correct alcohol and/or drug

dependency problems. The decision to request EAP services, follow-through with an EAP referral, seek treatment, and comply with the treatment provider's and/or SAP's recommendations is the sole responsibility of the employee.

- d. The District's Alcohol/Substance Abuse Program Administrator will discuss available educational and rehabilitation programs, employment benefits, and financial responsibilities with employees seeking help with problems resulting from the use of alcohol and/or drugs.
- e. All follow-up testing after either Voluntary or Mandatory EAP will include: (1) alcohol testing for employees who initially tested positive for alcohol; and (2) drug testing for employees who initially tested positive for drugs, unless the SAP determines that the employee should be tested for both alcohol and drugs during the follow-up testing period.
- f. "Clean Slate" provisions
  - i. An employee who, after a first positive test under this Policy, does not test positive on any test under this Policy for three (3) years shall automatically receive a "clean slate." An employee who, after a second positive test under this Policy, does not test positive on any test under this Policy for four (4) years, shall automatically receive a "clean slate." An employee who, after a third positive test under this Policy, is not terminated from District employment and does not test positive on any test under this Policy for five (5) years shall automatically receive a "clean slate." When an employee receives a "clean slate" under this paragraph, the next subsequent positive test under this Policy, if any, will be treated as a first positive test, and the next positive test under this Policy thereafter, if any, as a second positive test, for purposes of eligibility for a Mandatory referral under section VI.C.2.a, and no discipline shall issue for any such first or second positive test. This provision shall not preclude discipline based on an employee's refusal or failure to comply or cooperate with an employee's treatment or aftercare plan.
  - ii. If an employee is absent from work for a cumulative period of time exceeding six months (one hundred thirty working days for employees working normal five day weeks), the District may, at its discretion, have these absence periods excluded from the time needed to acquire a "clean slate". Scheduled vacations and holidays will not be considered absence periods.

The District will notify the employee and the Union if absence periods are being excluded and the time needed for a "clean slate" has been extended.

**D. Return to Duty**

Employees in compliance with their rehabilitation program, as confirmed by their medical provider, will be returned to work after completing a return-to-work evaluation when the following conditions are met:

1. Return-to-Work Evaluation: The employee must pass a return to duty evaluation which will include an alcohol and/or drug screen and may include a physical examination as determined by the MRO in consultation with the SAP. The SAP will provide a written release to the District's Alcohol/Substance Abuse Program Administrator allowing the employee to return to duty.
2. Treatment Agreement: Employees will be required to sign a Treatment and/or Aftercare Agreement(s). This certifies that the employee agrees to comply with all terms and/or conditions of his/her prescribed treatment and/or Aftercare plan.
3. Return to Duty Notice: Employees will also be required to sign a "Return to Duty Notice." This notice certifies the employee was notified of the terms and conditions of returning to duty which include the follow-up testing requirements.

**VII. TERM OF POLICY**

This Policy shall take effect on September 1, 2005 and remain in full force and effect during the term of the Collective Bargaining Agreement between the parties, and shall continue without modification unless the party desiring such modification serves a written notice upon the other party of the proposed termination or modification no less than ninety (90) days prior to the expiration date, and offers to meet the other party and confer for the purpose of reaching a new agreement. If one of the parties serves the above-referenced notice, this Policy shall remain in effect until the parties either reach a new agreement or impasse. If neither party gives such notice, this Policy shall continue thereafter in full force and effect, through successive collective bargaining agreements until one party or the other gives the aforementioned notice no less than ninety (90) days prior to the expiration of the applicable collective bargaining agreement.

**VIII. INTERPRETATION OF POLICY**

All disputes arising out of the interpretation or enforcement of this Policy shall be subject to the grievance and formal arbitration provisions of the appropriate collective bargaining agreement between the parties. By entering into this Policy, the parties do not waive any provisions of the appropriate collective bargaining agreement. When interpreting this Policy, the District will follow all relevant FTA Regulations.

## **IX. SAVINGS CLAUSE**

If any article, section, or paragraph of this Policy, or any side letters or Memoranda of Understanding thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section is restrained by such tribunal pending final determination as to its validity, the remainder of this Policy and of any article, section or paragraph to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained, shall not be affected thereby. Any substitute action allowed will be the subject of negotiation between the Employer and the Union(s).

The parties agree that in the event FTA modifies the regulations contained in 49 CFR Parts 40, and 655, they will meet and confer for the purpose of modifying this Policy, if necessary to comply with the revised regulations.

**IN WITNESS WHEREOF** the parties hereto have caused their names to be subscribed by their duly authorized officers and representatives this \_\_\_\_\_ day of November 2005.

### **FOR AC TRANSIT**

\_\_\_\_\_  
Rick Fernandez, General Manager

\_\_\_\_\_  
Kurt De Stigter, Chief Human Resources  
Officer

### **FOR THE UNIONS:**

#### **ATU LOCAL 192**

\_\_\_\_\_  
Christine A. Zook, President and Business  
Agent

\_\_\_\_\_  
Chief Negotiator

#### **AFSCME LOCAL 3916**

\_\_\_\_\_  
Jim Cunradi, President

\_\_\_\_\_  
Lenny McBride, Business Agent

#### **IBEW LOCAL 1275**

\_\_\_\_\_  
Lynne Morel, Business Agent





**APPENDIX 1**

**CONTACT INFORMATION**

The District's current **Alcohol/Substance Abuse Program Administrator** is Ann Malone, (510) 891-7165.

The District's current **MRO** is Dr. Richard Shoop, (510) 351-2416.

The District's current **SAP** is Dr. Tom Faris, (510) 253-5050.

This contact information is subject to updating upon written notice to all parties.



Alameda-Contra Costa Transit District

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## APPENDIX 2

### RANDOM DRUG TESTING POOL

August 22, 2005

John Doe  
Safety Sensitive Employee  
General Office

Dear Mr. Doe:

In keeping with FTA regulations, your name will be removed from the Random Testing Pool if you are absent from work for in excess of ninety days or you work out of your safety sensitive position in excess of ninety days. If you are out of the Random Testing Pool for 90 days or more, you must submit to pre-employment drug and alcohol tests before performing any safety-sensitive work.

Your name was removed from the Random Testing Pool on \_\_\_\_\_.

Therefore, if you return to work later than \_\_\_\_\_, you will have to contact this office at (510) 891-7165 or (510) 891-4808 to schedule an appointment to be given "pre-employment" drug and alcohol screens.

This should be done a week before your expected return date as you will not be permitted to work until the results of these tests have been received by the District.

Sincerely,

Ann Malone  
Alcohol/Substance Abuse Program Administrator



Alameda-Contra Costa Transit District

Start Test Time \_\_\_\_\_

Time Test Ended \_\_\_\_\_

### APPENDIX 3

#### STEPS TO BE COMPLETED OBTAINING DOT URINE SPECIMENS

**Collector's  
Initials**

**Donor's  
Initials**

- |       |     |   |       |
|-------|-----|---|-------|
| _____ | 1.  | Donor identity verified by photo I.D. and time of arrival noted.  | _____ |
| _____ | 2.  | Procedure explained to Donor.   | _____ |
| _____ | 3.  | Collector made sure Donor's Social Security number and badge number were entered on Ply 1. Collector made sure Donor's name and telephone number were entered on Ply 2.   | _____ |
| _____ | 4.  | Donor removed coat, hat, etc., and left in exam room. Donor retained his/her wallet.  | _____ |
| _____ | 5.  | Donor washed his/her hands prior to collection.   | _____ |
| _____ | 6.  | Bluing agent has been placed into toilet bowl & tank and all water sources/potential adulterants secured from Donor access.   | _____ |
| _____ | 7.  | Donor asked to furnish a urine specimen, Collector waited outside restroom door until Donor exited. Donor instructed not to flush the toilet.   | _____ |
| _____ | 8.  | Once Donor handed urine specimen to Collector the urine was in full sight of donor and Collector until completely packaged. The splitting of the sample was done <u>in the presence and full view of the Donor.</u>   | _____ |
| _____ | 9.  | In the presence of the Donor, collector checked specimen for color and odor, signs of contamination, temperature and quantity. All of the above characteristics documented on the chain of custody form. Temperature must be taken within 4 minutes of collection. If temperature was out of range, Collector obtained authorization for an observed re-test. | _____ |
| _____ | 10. | Collector placed lid on container and tightened securely <u>in the presence and full view of Donor.</u>   | _____ |
| _____ | 11. | Container sealed with tamper evident tape in donor's presence and full view: Donor initialed the tape. Collector verified that information on label was identical to information on chain of custody form, and then attached label to specimen bottle. <u>DONOR MUST SIGN NAME THE SAME WAY EACH TIME.</u>  | _____ |
| _____ | 12. | Collector made sure that Donor signed Ply 2. Collector completed the Chain of Custody block. Laboratories copies 2, 3, and 8 (optional) inserted with the specimen into the mailer and sealed per instructions.   | _____ |

Collector's Signature

Date

Donor Signature

Date

Specimen I.D. #

Badge # \_\_\_\_\_



Alameda-Contra Costa Transit District

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### APPENDIX 3

## WARNING!!

*Mobile vehicle personnel must read this warning to each donor when notification regarding selection for random testing is given.*

IF YOU ADD ANYTHING TO YOUR SPECIMEN, OR SUBSTITUTE ANYTHING FOR YOUR SPECIMEN, YOU WILL BE IMMEDIATELY SUSPENDED, PENDING TERMINATION.

IF YOU FOLLOW INSTRUCTIONS AND TEST POSITIVE, YOU WILL BE REFERRED TO A TREATMENT PROGRAM AND IN MOST CASES YOU CAN KEEP YOUR JOB.

IF YOU HAVE ANY QUESTIONS ABOUT THE DRUG POLICY, CALL YOUR UNION REP AT (510) 635-0192 OR ANN MALONE, Alcohol/Substance Abuse Program Administrator at (510) 891-7165.

---

DONOR SIGNATURE

---

DATE

---

BADGE #



Alameda-Contra Costa Transit District

## APPENDIX 4

Start Test Time \_\_\_\_\_

Time Test Ended \_\_\_\_\_

### STEPS TO BE COMPLETED OBTAINING DOT URINE SPECIMENS

**Collector's  
Initials**

**Donor's  
Initials**

- |       |     |   |       |
|-------|-----|---|-------|
| _____ | 1.  | Donor has read the substitution/adulteration warning on the back side of this form.   | _____ |
| _____ | 2.  | Donor identity verified by photo I.D. and time of arrival noted.  | _____ |
| _____ | 3.  | Procedure explained to Donor.   | _____ |
| _____ | 4.  | Collector made sure Donor's Social Security number and badge number were entered on Ply 1. Collector made sure Donor's name and telephone number were entered on Ply 2.   | _____ |
| _____ | 5.  | Donor removed coat, hat, etc., and left in exam room. Donor retained his/her wallet.  | _____ |
| _____ | 6.  | Donor washed his/her hands prior to collection.   | _____ |
| _____ | 7.  | Bluing agent has been placed into toilet bowl & tank and all water sources/potential adulterants secured from Donor access.   | _____ |
| _____ | 8.  | Donor asked to furnish a urine specimen, Collector waited outside restroom door until Donor exited. Donor instructed not to flush the toilet.   | _____ |
| _____ | 9.  | Once Donor handed urine specimen to Collector the urine was in full sight of donor and Collector until completely packaged. The splitting of the sample was done <u>in the presence and full view of the Donor.</u>   | _____ |
| _____ | 10. | In the presence of the Donor, collector checked specimen for color and odor, signs of contamination, temperature and quantity. All of the above characteristics documented on the chain of custody form. Temperature must be taken within 4 minutes of collection. If temperature was out of range, Collector obtained authorization for an observed re-test. | _____ |
| _____ | 11. | Collector placed lid on container and tightened securely <u>in the presence and full view of Donor.</u>   | _____ |
| _____ | 12. | Container sealed with tamper evident tape in donor's presence and full view: Donor initialed the tape. Collector verified that information on label was identical to information on chain of custody form, and then attached label to specimen bottle. <u>DONOR MUST SIGN NAME THE SAME WAY EACH TIME.</u>  | _____ |
| _____ | 13. | Collector made sure that Donor signed Ply 2. Collector completed the Chain of Custody block. Laboratories copies 2, 3, and 8 (optional) inserted with the specimen into the mailer and sealed per instructions.   | _____ |

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Alameda-Contra Costa Transit District

Collector's Signature

Date

Donor Signature

Date

\_\_\_\_\_  
Specimen I.D. #

Badge # \_\_\_\_\_



Alameda-Contra Costa Transit District

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## APPENDIX 4

# WARNING!!

IF YOU ADD ANYTHING TO YOUR SPECIMEN, OR  
SUBSTITUTE ANYTHING FOR YOUR SPECIMEN, YOU  
WILL BE IMMEDIATELY SUSPENDED, PENDING  
TERMINATION.

IF YOU FOLLOW INSTRUCTIONS AND TEST POSITIVE,  
YOU WILL BE REFERRED TO A TREATMENT PROGRAM  
AND IN MOST CASES YOU CAN KEEP YOUR JOB.

IF YOU HAVE ANY QUESTIONS ABOUT THE DRUG  
POLICY, CALL YOUR UNION REP AT (510) 635-0192 OR  
ANN MALONE, Alcohol/Substance Abuse Program  
Administrator at (510) 891-7165.

---

DONOR SIGNATURE

---

DATE

---

BADGE #



Alameda-Contra Costa Transit District

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## APPENDIX 4

# WARNING!!

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SUBSTITUTE ANYTHING FOR YOUR SPECIMEN, YOU  
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ANN MALONE, Alcohol/Substance Abuse Program  
Administrator at (510) 891-7165.

---

DONOR SIGNATURE

---

DATE

---

BADGE #





Alameda-Contra Costa Transit District

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## APPENDIX 5

### **BIANNUAL PHYSICAL NOTIFICATION**

YOUR BIANNUAL PHYSICAL EXAMINATION IS NOW DUE.

#### **APPOINTMENT:**

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

LOCATION \_\_\_\_\_

\_\_\_\_\_

### **WARNING**

**You will be required to take a drug screen as part of your physical examination.**

**IF YOU ADD ANYTHING TO YOUR SPECIMEN, OR SUBSTITUTE ANYTHING FOR YOUR SPECIMEN, YOU WILL BE IMMEDIATELY SUSPENDED, PENDING TERMINATION.**

**IF YOU FOLLOW INSTRUCTIONS AND TEST POSITIVE, YOU WILL BE REFERRED TO A TREATMENT PROGRAM AND IN MOST CASES YOU CAN KEEP YOUR JOB.**

**IF YOU HAVE ANY QUESTIONS ABOUT THE DRUG POLICY,  
CALL YOUR UNION REP AT (510) 635-0192 OR Ann Malone,  
Alcohol/Substance Abuse Program Administrator at (510) 891-1765**

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## **APPENDIX 6**

### **LEGAL REQUIREMENTS AND NEGOTIATED PROVISIONS**

Not all provisions of this Policy are specifically required by the FTA. Many have been negotiated between the District and its Unions. In particular, the FTA requires that positive drug tests, violations of testing procedures and failures to comply with a substance abuse treatment plan must have consequences. However, the specific consequences of a violation of this Policy are not set by law. These are subject to the negotiated provisions of this Agreement and any applicable Collective Bargaining Agreement provisions. Below is a table of particular program elements of this Policy that are not required by the FTA but have been included by agreement. These are provided for descriptive purposes pursuant to FTA regulations only and shall not be considered as evidence in any proceeding between the District and Union.

<u>Section</u>	<u>Provision</u>	<u>Aspects of this provision not required by FTA</u>
II.A.	Tests to be administered	Testing of non-safety-sensitive employees.
III	Confidentiality	
IV	Alcohol/Substance Abuse Joint Labor Management Subcommittee	
V.B.3.	Union representation	Discipline for violating confidentiality.
V.B.5.	Pay status pending test results	This subcommittee is not required by FTA. FTA does require that all laboratories be DHHS certified and that employee education and training programs be conducted.
V.B.7.	Excluding testing of qualifying employees during last 3 hours of shift	The right to union representation.
V.C.1.	Pre-employment tests	Reconfirming pay status.
V.C.8.	DOT (Biennial) Physical tests	Entire provision.
V.C.9.c.	Negative dilute specimens	Alcohol testing under this paragraph.
V.E.	Prescription drug policy	Entire provision.
V.F.	Consequences of Policy violations	Retesting of employees with negative dilute specimens without direct observation.
VI.A.	EAP Guidelines—introduction	Entire provision.
VI.B.	Rehabilitation	Consequences of violating Policy, other than relieving the employee from safety-sensitive functions; Voluntary EAP; warning notices; interventions; arbitrations.
VI.C.1.	Voluntary referral to EAP	Description of nonmandatory EAP referrals.
VI.C.2.	Mandatory referral to EAP	Protections of job security and time off work; benefits available; medical benefits.
		Entire provision.

VI.C.3.	General provisions about EAP	Job security protections (para. b.); “Clean Slate” provisions.
VI.D.	Return to duty	Return to duty following rehabilitation.

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**

**RESOLUTION NO. 05-042**

**A RESOLUTION CONFIRMING THE APPROVAL OF A REVISED ALCOHOL AND  
SUBSTANCE ABUSE POLICY**

WHEREAS, the Alameda-Contra Costa Transit District (the District) and Amalgamated Transit Union, Local 192, the American Federation of State, County and Municipal Employees, Local 3916 and the International Brotherhood of Electrical Engineers, Local 1245 (the Unions) 192 (the Union) engaged in collective bargaining to negotiate a revised Alcohol/Substance Abuse Policy; and

WHEREAS, the parties bargained in good faith and reached a tentative agreement prepared on a proposed revised policy; and

WHEREAS, a tentative policy was considered and approved by the District's Board of Directors at its closed session held on October 19, 2005, subject to ratification by the Unions; and

WHEREAS the Unions have indicated their agreement with the tentative policy;

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT RESOLVES AS FOLLOWS:

**SECTION 1.** Confirms its approval of the tentative Alcohol/Substance Abuse Policy negotiated in good faith between the representatives for the District and the Unions. (Exhibit A attached).

**SECTION 2.** Authorizes technical changes of a non-substantive nature to be made as needed to finalize the Alcohol/Substance Abuse Policy as between the District and AFSCME and IBEW.

**SECTION 3.** This Resolution shall take effect immediately upon its passage by four affirmative votes of the Board of Directors.

RESOLUTION NO. 05-042 WAS PASSED AND ADOPTED this \_\_\_\_ day of November 2005.

\_\_\_\_\_  
Joe Wallace, President

Attest:

\_\_\_\_\_

Rose Martinez, District Secretary

I, Rose Martinez, District Secretary for the Alameda-Contra Costa Transit District, certify that the foregoing Resolution was passed and adopted at a Regular Meeting of the Board of Directors held on the \_\_\_\_ day of November 2005, by the following roll call vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAIN: DIRECTORS:

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Rose Martinez, District Secretary

Approved As To Form:

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Kenneth C. Scheidig, General Counsel