



BOARD OF DIRECTORS OF THE EASTERN SIERRA TRANSIT AUTHORITY

Special Meeting

Monday, May 14, 2018
3:00 p.m.

Meeting Location:
ESTA Mammoth Lakes Operations Office
210 Commerce Drive
Mammoth Lakes, California

Teleconference Location:
ESTA Bishop Administrative and Operations Office
703 Airport Road, Bishop, California

Board Members may participate from the teleconference location. Note: Members of the public may attend the open-session portion of the meeting from a teleconference location, and may address the board during any one of the public comment opportunities provided on the agenda.

Note: In compliance with the Americans with Disabilities Act, if an individual requires special assistance to participate in this meeting, please contact Eastern Sierra Transit at (760) 872-1901 ext. 15 or 800-922-1930. Notification 48 hours prior to the meeting will enable the Authority to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 13.102-35.104 ADA Title II)

DISPOSITION

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC COMMENT

INFORMATION

5. APPROVAL OF MINUTES: Special meeting of May 7, 2018

ACTION

6. CONSENT AGENDA

ACTION

(All matters on the consent agenda are to be approved on one motion unless a board member requests separate action on a specific item.)

- a. Approve Addendum to ESTA Drug and Alcohol Policy
- b. Authorization of representatives to the California Joint Powers Insurance Authority (CJPIA)
- c. Cost by Route update. Receive and file the report updating the cost by route analysis for the FY 2016/17 period.

7. AUTHORIZATION FOR ADMINISTRATION MANAGER ACTION

Staff recommendation: The Board is requested to provide sufficient authority to the Administration Manager to insure the successful functioning of ESTA while the hiring of a permanent Executive Director is finalized.

8. REPORTS INFORMATION

- a. Board Members
- b. Executive Director

9. FUTURE AGENDA ITEMS

10. CLOSED SESSION DISCUSSION/POSSIBLE ACTION

- a. Public employment, employee recruitment. (Pursuant to Government Code Section 54957(b)(1)). Position: Executive Director.

11. REPORT ON CLOSED SESSION AS REQUIRED BY LAW

12. ADJOURNMENT ACTION

The next regular meeting is scheduled for May 18th in Bishop at 8:30am.

EASTERN SIERRA TRANSIT AUTHORITY

Minutes of Monday, May 7, 2018 Special Meeting

The special meeting of the Board of Directors of the Eastern Sierra Transit Authority was called to order at 11:55 p.m. on Monday, April 23, 2018 at the City of Bishop Executive Conference Room, in Bishop, California. The following members were present: Bob Gardner, Karen Schwartz, Jeff Griffiths, Kirk Stapp, Cleland Hoff, Jim Ellis and Bill Sauser. Director Kingsley was absent. Director Sauser led the pledge of allegiance.

Public Comment	None.
Approval of Minutes	Moved by Director Gardner and seconded by Director Hoff to approve the minutes of the special meeting of April 23, 2018. Motion carried 7-0, with Director Kingsley absent.
Board Member Reports	<p>Director Hoff mentioned that at a recent Town of Mammoth Lakes Council Meeting that concerns were raised about the possible bus turn-around at Old Mammoth Road and Woodman; and another individual mentioned that they would like to see the frequency of the Purple Line increased to 20-minutes from the current 30-minutes.</p> <p>Director Gardner indicated that he is continuing to elicit support for the June Lake Summer Shuttle and that the required \$2,500 in local funding is nearly complete.</p>
Executive Director Report	None .
Future Agenda Items	Director Sauser requested that a report be provided describing the efforts that have been undertaken to provide for an effective transition following the retirement of the current Executive Director.
Closed Secession	<p>Open session was recessed at 12:07 p.m. to convene in closed session with Director Kingsley absent, to consider Agenda item #8:</p> <p>Public employment, employee recruitment. (Pursuant to Government Code Section 54957(b)(1)). Position: Executive Director</p>
Report on Closed Session	Closed session was recessed at 12:40 p.m. Chairperson Stapp indicated that the Board authorized John Helm to make an offer of employment to a candidate for the position of Executive Director.

Adjournment	The Chairperson adjourned the meeting at 12:45 p.m. The next regular meeting of the Eastern Sierra Transit Authority Board of Directors is scheduled for May 18, 2018, at The City of Bishop.
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Recorded & Prepared by:

John Helm
Acting - Board Clerk
Eastern Sierra Transit Authority

Minutes approved:

STAFF REPORT

Subject: Drug and Alcohol Testing Policy Revision

Initiated by: Karie Bentley, Administration Manager

BACKGROUND:

In January of 2018, the ESTA Board of Directors most recently approved an amended the Department of Transportation mandated Drug and Alcohol policy for Eastern Sierra Transit Authority. The ESTA Drug and Alcohol policy is modeled on a template prepared by the Federal Transit Administration and distributed in California by the California Department of Transportation (Caltrans) and the California Association of Coordinated Transportation (CalACT).

ANALYSIS/DISCUSSION:

In April 2018, ESTA received correspondence indicating that an addendum to the agency's approved drug and alcohol policy was required by the Federal Transit Administration (FTA). The language of the addendum has been approved by a qualified subcontractor hired by the California Association for Coordinated Transportation (CalACT) under the direction of the Caltrans Division of Rail and Mass Transportation (DRMT), Federal Transit Grants Office, and the California Rural Transit Assistance Program (RTAP).

The addendum summarizes changes that went into effect on January 1, 2018 and is intended to be distributed to staff as an acknowledgement of the policy change and to also become part of ESTA's policy.

Also, due to ESTA's recent organizational restructure, job titles of safety sensitive positions and non-safety sensitive positions have been updated, as well as updates to the ESTA Drug and Alcohol Program Manager information.

The directives from the FTA require a further update to ESTA's Drug and Alcohol Testing Policy. The complete, revised ESTA Drug and Alcohol Testing Policy, showing the modifications with "track changes," will be available for review at the board meeting.

FINANCIAL CONSIDERATIONS

None.

RECOMMENDATION

The Board is requested to pass and approve Resolution 2018-05, ratifying and adopting the revised Eastern Sierra Transit Authority Drug and Alcohol Testing Policy.

DRUG AND ALCOHOL TESTING POLICY
Eastern Sierra Transit Authority
Adopted as of ~~January 19~~ May 14, 2018

A. PURPOSE

- 1) The Eastern Sierra Transit Authority provides public transit and paratransit services for the residents of *Inyo and Mono Counties*. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, Eastern Sierra Transit Authority declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.
- 2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result, or a refusal to test. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.
- 3) Any provisions set forth in this policy that are included under the sole authority of Eastern Sierra Transit Authority and are not provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of Eastern Sierra Transit Authority will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties Eastern Sierra Transit Authority employees that do not perform safety-sensitive functions are also

covered under this policy under the sole authority of Eastern Sierra Transit Authority. See Attachment A for a list of employees and the authority under which they are included.

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

C. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

DOT, The Department, DOT Agency: These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of

Homeland Security, is considered to be a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.

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

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

Evidentiary Breath Testing Device (EBT): A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

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

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

Invalid Result: The result reported by a Department of Health & Human Services (HHS)-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted results cannot be established for a specific drug or specimen validity test.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Safety-sensitive functions: Employee duties identified as:

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

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

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

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

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

- (1) Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
- (2) Fails to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.

- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
- (5) Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- (6) Fails or declines to take a second test the employer or collector has directed you to take
- (7) Fails to undergo a medical examination or evaluation, as directed by the MRO, or as directed by the DER
- (8) Fails to cooperate with any part of the testing process
- (9) If the MRO reports that there is verified adulterated or substituted test result
- (10) Failure or refusal to sign Step 2 of the alcohol testing form
- (11) Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- (12) Possess or wear a prosthetic or other device that could be used to interfere with the collection process
- (13) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (14) Fail to remain readily available for testing following involvement in an accident.

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

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

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

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

D. EDUCATION AND TRAINING

- 1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.
- 2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

E. PROHIBITED SUBSTANCES

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

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA Authority be tested

for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in Section H of this policy. Employees covered under company authority will also be tested for these same substances. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

- b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Eastern Sierra Transit Authority supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.
- c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. A random or reasonable suspicion alcohol test can only be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions. Under Eastern Sierra Transit Authority authority, a non-DOT alcohol test can be performed any time an employee is on duty.

F. PROHIBITED CONDUCT

- 1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.
- 2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline.
- 3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol

- 4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.
 - a. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee hasn't consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, if a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT-FTA regulations require the employee to be removed from the performance of safety-sensitive duties until:
 - i. The employee's alcohol concentration measures less than 0.02; or
 - ii. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.
- 5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- 6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- 7) Eastern Sierra Transit Authority under its own authority also prohibits the consumption of alcohol all times employee is on duty, or anytime the employee is in uniform.
- 8) Consistent with the Drug-free Workplace Act of 1988, all Eastern Sierra Transit Authority employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the Eastern Sierra Transit Authority management of any criminal drug statute conviction for a violation occurring in the workplace within five days after

such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

H. TESTING REQUIREMENTS

- 1) Analytical urine drug testing and breath testing for alcohol will be conducted using the testing methodologies and thresholds defined in 49 CFR Part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up. All employees covered under company authority will also be subject to testing for reasonable suspicion, post-accident, random and return to duty/follow up using non-DOT testing forms
- 2) A drug test can be performed any time a covered employee is on duty. A reasonable suspicion or random alcohol test can only be performed just before, during, or after the performance of a safety-sensitive job function. Under Eastern Sierra Transit Authority authority, a non-DOT alcohol test can be performed any time an employee is on duty.
- 3) All employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with Eastern Sierra Transit Authority. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

I. DRUG TESTING PROCEDURES

- 1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.
- 2) The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using

the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

- 3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Eastern Sierra Transit Authority Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative.
- 4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.
- 5) Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the

MRO if the delay was due to documentable facts that were beyond the control of the employee. Eastern Sierra Transit Authority will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however Eastern Sierra Transit Authority will seek reimbursement for the split sample test from the employee.

- 6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.
- 7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.
- 8) Observed collections
 - a. Consistent with 49 CFR part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:
 - i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Eastern Sierra Transit Authority that there was not an adequate medical explanation for the result;
 - ii. The MRO reports to Eastern Sierra Transit Authority that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
 - iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

- iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- v. The temperature on the original specimen was out of range;
- vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
- vii. All follow-up-tests; or
- viii. All return-to-duty tests

J. ALCOHOL TESTING PROCEDURES

- 1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBTs can be found on ODAPC's Web page for "Approved Evidential Breath Measurement Devices". Alcohol screening tests may be performed using a non-evidential testing device (alcohol screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

- 2) An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q. of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.
- 3) Eastern Sierra Transit Authority affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.
- 4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

K. PRE-EMPLOYMENT TESTING

- 1) All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.
 - a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.
 - b. An employee shall not be placed, transferred or promoted into a position covered under FTA or company authority until the employee takes a drug test with verified negative results.
 - c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be referred to a list of USDOT qualified SAPs. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully

- completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
- d. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.
 - e. If a pre-employment test is canceled, Eastern Sierra Transit Authority will require the applicant to take and pass another pre-employment drug test.
 - f. In instances where a FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
 - g. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
 - h. Applicants are required (even if ultimately not hired) to provide Eastern Sierra Transit Authority with signed written releases requesting USDOT drug and alcohol records from all previous, DOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. Eastern Sierra Transit Authority is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a DOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the applicant must provide Eastern Sierra Transit Authority proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

L. REASONABLE SUSPICION TESTING

- 1) All Eastern Sierra Transit Authority covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under Eastern Sierra Transit Authority's authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.
- 2) Eastern Sierra Transit Authority shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.
- 3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the ESTA Drug and Alcohol Program Manager.
- 4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section Q of this policy. Eastern Sierra Transit Authority shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be

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

M. POST-ACCIDENT TESTING

- 1) FATAL ACCIDENTS – A covered employee will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.
- 2) NON-FATAL ACCIDENTS - A post-accident test of the employee operating the public transportation vehicle will be conducted if an accident occurs and at least one of the following conditions is met:
 - a. The accident results in injuries requiring immediate transportation to a medical treatment facility away from the scene, and the covered employee may have contributed to the accident.
 - b. One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, and the covered employee may have contributed to the accident

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

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

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

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

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

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

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

N. RANDOM TESTING

- 1) All covered employees will be subjected to random, unannounced testing. Employees covered under FTA authority will be selected from a pool of DOT-covered safety-sensitive employees. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of employees.
- 2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.
- 3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA administrator. The current random testing rates can be viewed online at <https://www.transportation.gov/odapc/random-testing-rates>.

- 4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.
- 5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under Eastern Sierra Transit Authority authority.
- 6) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can only be performed just before, during, or just after the performance of a safety sensitive duty. However, under Eastern Sierra Transit Authority's authority, a non-DOT random alcohol test may be performed any time the employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.
- 7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

O. RETURN-TO-DUTY TESTING

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

P. FOLLOW-UP TESTING

Covered employees will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond

the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

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

Q. RESULT OF DRUG/ALCOHOL TEST

- 1) Any covered employee that has a verified positive drug or alcohol test, or test refusal will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer.
- 2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- 3) Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result and a direct act of insubordination and shall result in termination and referral to a list of USDOT qualified SAPs. A test refusal includes the following circumstances:
 - a. Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
 - b. Fails to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
 - c. Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations. An employee who does not provide a urine or breath specimen because he or

- she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- d. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
 - e. Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
 - f. Fails or declines to take a second test the employer or collector has directed you to take
 - g. Fails to undergo a medical examination or evaluation, as directed by the MRO, or as directed by the DER
 - h. Fails to cooperate with any part of the testing process
 - i. If the MRO reports that there is verified adulterated or substituted test result
 - j. Failure or refusal to sign Step 2 of the alcohol testing form
 - k. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
 - l. Possess or wear a prosthetic or other device that could be used to interfere with the collection process
 - m. Admit to the collector or MRO that you adulterated or substituted the specimen
 - n. Fail to remain readily available following involvement in an accident
- 4) For the first instance of a verified positive test from a sample submitted as the result of a random, drug/alcohol test (≥ 0.04 BAC), disciplinary action against the employee shall include:
- a. Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to duty agreement;
 - b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Eastern Sierra Transit Authority employment.
 - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy.

- c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.
 - d. A periodic unannounced follow-up drug/alcohol test which results in a verified positive shall result in termination from Eastern Sierra Transit Authority employment.
- 5) The first instance of a verified positive post-accident or reasonable suspicion drug and/or alcohol test shall result in termination.
- 6) The second instance of a verified positive drug or alcohol (≥ 0.04 BAC) test result for any category of testing shall result in termination from Eastern Sierra Transit Authority employment.
- 7)
- 8) An alcohol test result of ≥ 0.02 to ≤ 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder of the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to a NON-DOT alcohol test with a result of less than 0.02 BAC.
- 9) The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or administrative leave to participate in the prescribed treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay until the employee has successfully completed the required treatment program and has been released to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.
- 10) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
 - a. Mandatory referral for an assessment by an employer approved counseling professional, formulation of a treatment plan, and execution of a return to work agreement;
 - b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Eastern Sierra Transit Authority employment.
 - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the

employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in Section P of this policy; however, all follow-up testing performed as part of a return-to-work agreement required under section Q of this policy is under the sole authority of the Eastern Sierra Transit Authority and will be performed using non-DOT testing forms.

- c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return to work agreement will be conducted under company authority and will be performed using non-DOT testing forms.**
 - d. A self-referral or management referral to the employer's approved counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.
 - e. Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy.
 - f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Eastern Sierra Transit Authority.
 - g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- 11) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

R. GRIEVANCE AND APPEAL

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

S. PROPER APPLICATION OF THE POLICY

Eastern Sierra Transit Authority is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial

manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

T. INFORMATION DISCLOSURE

- 1) Drug/alcohol testing records shall be maintained by the Eastern Sierra Transit Authority Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.
- 2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.
- 3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.
- 4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- 5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.
- 6) Records will be released to the National Transportation Safety Board during an accident investigation.
- 7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

- 8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- 9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Eastern Sierra Transit Authority or the employee.
- 10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken
- 11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This Policy was adopted by the *Eastern Sierra Transit Authority Board of Directors* on January 19 May 148, 2018.

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

ESTA Drug and Alcohol Program Manager

Name: ~~Jill Batchelder~~ Karie Bentley
Title: ~~Administration Manager~~ Transit Analyst
Address: P.O. Box 1357 – Bishop, CA 93515
Telephone Number: (760) 872-1901 ext. 154

Medical Review Officer

Name: Brian Heinen MD
Title: Certified Medical Review Officer
Address: 151 Leon Ave Eunice, LA 70535
Telephone Number: 800-457-0493

Substance Abuse Professional

Human Behavior Associates, Inc.
Name: James Wallace
Address: 1350 Hayes St., Suite B-100, Benicia, CA 94510
Telephone: (707) 747-0117
Fax: (707) 747-6646
<http://www.callhba.com>

HHS Certified Laboratory Primary Specimen

Name: Abbott / Alere Toxicology Services, Inc
Address: 1111 Newton St Gretna, LA 70053
Telephone Number: 800-433-3823

HHS Certified Laboratory Split Specimen

Name:
Address:
Telephone Number:

DRUG AND ALCOHOL POLICY ADDENDUM

EFFECTIVE: JANUARY 1, 2018

The United States Department of Transportation (USDOT) – Office of Drug and Alcohol Policy and Compliance (ODAPC) has issued an update to USDOT’s drug and alcohol testing regulation (49 CFR Part 40). The new regulation has been revised and the changes (summarized below) will become effective on January 1, 2018. Therefore, the Eastern Sierra Transit Authority’s drug and alcohol testing policy is amended as follows:

1. CHANGES TO THE DRUG TESTING PANEL

- a. Four new opioids added to the drug testing panel –
 - i. The USDOT drug test remains a “5-panel” drug test; however, the list of opioids for which are tested will expand from three to seven opioids.
 - ii. The “opioid” category will continue to test for codeine, morphine, and heroin; however, the “opioid” testing panel will now be expanded to include four (4) new semi-synthetic opioids:
 - 1. (1) Hydrocodone, (2) Hydromorphone, (3) Oxycodone, and (4) Oxymorphone.
 - 2. Common brand names for these semi-synthetic opioids include, but may not be limited to: OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.
- b. ‘MDA’ will be tested as an initial test analyte
- c. ‘MDEA’ will no longer be tested for under the “amphetamines” category.

2. BLIND SPECIMEN TESTING

- a. The USDOT no longer requires blind specimens to be submitted to laboratories.

3. ADDITIONS TO THE LIST OF “FATAL FLAWS”

- a. The following three circumstances have been added to the list of “fatal flaws”:
 - i. No CCF received by the laboratory with the urine specimen.
 - ii. In cases where a specimen has been collected, there was no specimen submitted with the CCF to the laboratory.
 - iii. Two separate collections are performed using one CCF.

4. MRO VERIFICATION OF PRESCRIPTIONS

a. When a tested employee is taking a prescribed medication, after verifying the prescription and immediately notifying the employer of a verified negative result, the MRO must then (after notifying the employee) wait five (5) business days to be contacted by the employee's prescribing physician before notifying the employer of a medical qualification issue or significant safety risk.

i. Specifically, in cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO. The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327.

5. DEFINITIONS

a. The term "**DOT, the Department, DOT Agency**"

i. Modified to encompass all DOT agencies, including, but not limited to, FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency.

ii. For the purposes of testing under 49 CFR Part 40, the USCG (in the Department of Homeland Security) is considered to be a DOT agency for drug testing purposes.

b. The term "**Opiate**" is replaced with the term "**Opioid**" in all points of reference.

- c. The definition of “**Alcohol Screening Device (ASD)**” is modified to include reference to the list of approved devices as listed on ODAPC’s website.
- d. The definition of “**Evidential Breath Testing Device (EBT)**” is modified to include reference to the list of approved devices as listed on ODAPC’s website.
- e. The definition of “**Substance Abuse Professional (SAP)**” will be modified to include reference to ODAPC’s website. The fully revised definition includes:
 - i. A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

NOTE: The revisions listed in this addendum include only those revisions to 49 CFR Part 40 which may be referenced in our drug & alcohol testing policy. A list of all the revisions made to 49 CFR Part 40 can be found at <https://www.transportation.gov/odapc>.

Addendum Authorization Date: May 14~~8~~. 2018

Authorized Official (Printed Name):

Authorized Official (Signature): _____

Employee (Printed Name):

Employee (Signature): _____

Employee Receipt Date: _____

RESOLUTION 2018-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EASTERN SIERRA TRANSIT AUTHORITY (ESTA) ADOPTING ESTA'S REVISED DRUG AND ALCOHOL TESTING POLICY

WHEREAS, the Eastern Sierra Transit Authority ("ESTA"), as an entity providing transit services to the public and operating vehicles in the scope of public business, must comply with safety regulations promulgated by the United States Department of Transportation, specifically, implementing the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991; and

WHEREAS, ESTA must specifically comply with the regulations of the Federal Highway Administration; and

WHEREAS, adoption of a policy to implement a program for alcohol misuse and controlled substance abuse by employees with commercial driver's licenses is one of ESTA's obligations under these regulations; and

WHEREAS, such program is intended to help prevent accidents and injuries resulting from such misuse and use of drugs and alcohol, as well as to reduce ESTA's liabilities for any such accidents and injuries; and

WHEREAS, it has been determined that the Eastern Sierra Transit Authority Drug and Alcohol Testing Policy adopted by the ESTA Board of Directors in April of 2007, and amended in November of 2012, November of 2014, January of 2016, and January of 2018 is in need of clarification and update.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Eastern Sierra Transit Authority as follows:

The revised Eastern Sierra Transit Authority Drug and Alcohol Testing Policy, as mandated by the Department of Transportation, and attached hereto as Exhibit "A", and which is incorporated herein by this reference is hereby ratified and adopted May 14, 2018

APPROVED, RATIFIED AND ADOPTED this 14th day of May, 2018, by the following vote of the Eastern Sierra Transit Authority Board of Directors:

AYES:

NOES:

ABSTAIN:

ABSENT:

Kirk Stapp, Chairperson
Eastern Sierra Transit Authority Board of Directors

Attest: Karie Bentley
Secretary of the Board

By: _____
Karie Bentley

STAFF REPORT

Subject: Authorization of Representatives for the California Joint Powers Insurance Authority

Initiated by: John Helm, Executive Director

BACKGROUND:

ESTA's insurer, the California Joint Powers Insurance Authority (CJPIA) requires an annual certification from its member agencies identifying the persons authorized to represent the agencies to CJPIA.

ANALYSIS/DISCUSSION:

Staff received correspondence from CJPIA requesting that a certification form identifying the ESTA representatives authorized to represent ESTA to CJPIA be completed and approved. This certification is an annual requirement of all of the agencies insured through CJPIA. Historically, ESTA has identified the Chairperson, the Executive Director, and the Transit Analyst to represent the Authority to CJPIA. With ESTA's recent reorganization the Transit Analyst position has been eliminated however; the new Administration Manager is an appropriate representative and should be authorized. When a new Executive Director is hired, this individual should be added as an alternate representative as well.

RECOMMENDATION:

Direct that the following individuals and/or positions be authorized to represent ESTA to CJPIA and that a Minute Order from the May 14, 2018 Board Meeting document the authorization.

Kirk Stapp	Chairperson
Karie Bentley	Administration Manager
To Be Determined	Executive Director

STAFF REPORT

Subject: Cost by Route Analysis Update FY16/17

Initiated by: John Helm, Executive Director

BACKGROUND

A recommendation of ESTA's initial triennial performance audit was to establish a methodology to determine operating costs on a route level. This methodology was established in 2013 and is updated annually.

ANALYSIS

The financial reports for FY 2016/17 were finalized earlier this year. With this information, it is possible to update the analysis of the operating cost per route, as recommended in the Triennial Performance Audit.

The operating cost per route takes into consideration the following operating cost categories and is detailed in the tables on the following pages:

- Vehicle Maintenance
- Fuel
- Operating Salaries & Benefits (drivers)
- Administrative Compensation
- Other Operating Expenses

Expense Category	Methodology
Vehicle Maintenance	Average maintenance cost per mile based on the vehicle type, multiplied times miles per hour for the route (total miles divided by service hours)
Fuel	Average miles per gallon based upon the vehicle type, multiplied times the miles per hour for the route
Administrative Compensation	Total salaries and benefits for management and administrative personnel assigned on a pre-determined basis to ESTA's budget units, divided by the service hours for each route.

Operating Salaries & Benefits	Total salaries and benefits for each of the budget units minus administrative compensation, divided by service hours for each route.
Other Operating Expenses	All other operating expenses assigned to each of the budget units divided by the service hours for the budget unit
Note: Average costs per hour for expenses other than fuel and maintenance are applied to specific routes based on the percentage allocation to each budget unit of the individual routes.	

2016/17 Operating Cost by Route

Route	Total Operating Cost	Total Operating Cost /Svc Hr	Fares	Farebox Recovery Ratio
Benton to Bishop	\$11,036	\$74.24	\$1,316	11.9%
Bishop DAR	\$701,234	\$65.27	\$92,665	13.2%
Bridgeport-Gardnerville	\$20,091	\$62.55	\$3,445	17.1%
June Mtn Shuttle	\$63,767	\$65.97	\$27,976	43.9%
Lancaster	\$195,205	\$117.81	\$80,793	41.4%
Lone Pine/Bishop	\$127,508	\$85.85	\$20,900	16.4%
Lone Pine DAR	\$113,904	\$64.56	\$9,423	8.3%
Mammoth Fixed Rt	\$1,005,870	\$64.92	\$0	0.0%
Mammoth DAR	\$97,855	\$46.88	\$8,882	9.1%
MMSA	\$847,389	\$80.04	\$0	0.0%
Mule Shuttle	\$3,322	\$64.05	\$557	16.8%
Mammoth Express	\$101,880	\$69.47	\$31,103	30.5%
Nite Rider	\$55,976	\$68.25	\$15,781	28.2%
Other	\$3,401	\$36.37	\$310	9.1%
Reds Meadow	\$407,903	\$100.43	\$469,876	115.2%
Reno	\$292,807	\$108.04	\$149,699	51.1%
Tecopa	\$6,724	\$82.33	\$355	5.3%
Walker DAR	\$85,961	\$56.75	\$6,761	7.9%
TOTAL	\$4,141,833	\$73.89	\$919,841	22.2%

EASTERN SIERRA TRANSIT AUTHORITY: FY 2016/17 Operating Cost By Route

ROUTE	Service Hours	Total Miles	MPH	Vehicle Type	Maint. \$/mi.	Maint \$/Svc Hr	Maint \$	MPG	Fuel \$	Fuel \$/mi	Fuel \$/Svc Hr	Admin Comp.	Admin Comp /Svc Hr	Operating Salaries & Benefits	Operating Salaries & Benefits /Svc Hr	Other Operating Expenses	Other Operating Expenses /Svc Hr
Benton to Bishop	149	13,664	91.9	Cutaway	\$0.083	\$7.66	\$1,138	8.4	1,468	0.107	\$9.88	1,765	\$11.88	4,935	\$33.20	1,728	\$11.63
Bishop DAR	10,743	121,841	11.3	Cutaway	\$0.335	\$3.80	\$40,787	6.5	47,901	0.393	\$4.46	126,780	\$11.80	369,670	\$34.41	116,096	\$10.81
Bridgeport-Gardnerville	321	9,844	30.6	Cutaway	\$0.083	\$2.55	\$820	8.5	1,058	0.107	\$3.29	3,815	\$11.88	10,664	\$33.20	3,735	\$11.63
June Mtn Shuttle	967	23,326	24.1	Type E	\$0.252	\$6.08	\$5,879	8.7	4,312	0.185	\$4.46	9,020	\$9.33	33,605	\$34.77	10,952	\$11.33
Lancaster	1,657	78,886	47.6	Type E/Hvy Duty	\$0.235	\$11.17	\$18,510	9	16,410	0.208	\$9.90	68,051	\$41.07	54,539	\$32.92	37,695	\$22.75
Lone Pine/Bishop	1,485	68,116	45.9	Type E	\$0.223	\$10.21	\$15,171	9.5	22,398	0.329	\$15.08	25,964	\$17.48	51,731	\$34.83	12,244	\$8.24
Lone Pine DAR	1,764	17,572	10	Cutaway	\$0.336	\$3.35	\$5,911	7	6,908	0.393	\$3.92	20,922	\$11.86	61,004	\$34.58	19,159	\$10.86
Mammoth Fixed Rt	15,493	217,191	14	Cutaway/Trolley	\$0.700	\$9.82	\$152,122	7	94,808	0.437	\$6.12	95,117	\$6.14	509,177	\$32.86	154,646	\$9.98
Mammoth DAR	2,087	7,253	3.5	Cutaway	\$0.902	\$3.13	\$6,543	5.8	4,078	0.562	\$1.95	10,933	\$5.24	58,526	\$28.04	17,775	\$8.52
MMSA	10,587	132,312	12.5	Hvy Duty	\$0.914	\$11.43	\$120,999	4.1	87,372	0.660	\$8.25	138,531	\$13.09	280,306	\$26.48	220,181	\$20.80
Mule Shuttle	52	480	9.3	Cutaway	\$0.336	\$3.11	\$161	6.5	189	0.393	\$3.64	615	\$11.86	1,794	\$34.58	563	\$10.86
Mammoth Express	1,467	61,227	41.7	Type E	\$0.229	\$9.55	\$14,007	8.5	12,925	0.211	\$8.81	23,319	\$15.90	38,183	\$26.04	13,446	\$9.17
Nite Rider	820	12,314	15	Cutaway	\$0.336	\$5.05	\$4,142	6.5	4,841	0.393	\$5.90	9,726	\$11.86	28,360	\$34.58	8,906	\$10.86
Other	94	2,559	27.4	Cutaway	\$0.078	\$2.14	\$200	6.5	201	0.079	\$2.15	1,000	\$10.70	1,000	\$10.70	1,000	\$10.70
Reds Meadow	4,061	57,637	14.2	Hvy Duty	\$1.060	\$15.04	\$61,071	4.2	35,892	0.623	\$8.84	70,997	\$17.48	110,549	\$27.22	129,394	\$31.86
Reno	2,710	115,925	42.8	Cutaway	\$0.240	\$10.25	\$27,766	9	24,614	0.212	\$9.08	102,077	\$37.67	81,808	\$30.19	56,542	\$20.86
Tecopa	82	2,803	34.3	Cutaway	\$0.336	\$11.55	\$943	7	1,102	0.393	\$13.49	968	\$11.86	2,824	\$34.58	887	\$10.86
Walker DAR	1,515	13,424	8.9	Minivan	\$0.083	\$0.74	\$1,118	12	1,443	0.107	\$0.95	16,991	\$11.22	49,295	\$32.54	17,114	\$11.30
	56,053	956,374					\$477,289		367,919			726,591		1,747,970		822,064	

YEAR OVER YEAR COMPARISON

In total, the average operating cost per service hour for all of the routes increased 2.48% from \$72.10 to \$73.89.

STAFF REPORT

Subject: Delegation of Authority
Initiated by: John Helm, Executive Director

BACKGROUND AND ANALYSIS:

The Board and staff have been working with an executive recruiting firm, CPS HR Consulting, since December in order to fill the Executive Director position after being notified in November by John Helm of his plans to retire in May. On May 7, 2018 an offer was extended to a qualified candidate, however, the offer was declined and the candidate has withdrawn his application. Due to challenges with the recruitment which became evident earlier this spring, the Executive Director has extended his retirement date from May 2nd to May 23rd, however, when doing so also advised the Board that commitments related to his retirement plans meant that he could not continue as Executive Director beyond the May 23rd date.

In light of the fact that a new Executive Director will not be in place on May 23, 2018, it is necessary that certain authorizations be granted to an appropriate individual or individuals in order to continue the routine functioning of the Authority. The Administration Manager is the most appropriate existing staff position to grant the authority required for such ongoing functioning. The necessary authority should address, but not necessarily be limited to such things as approval of funds transfers from the Treasury to ESTA's payroll account to cover bi-weekly payroll expense; approval of payroll; approval of all routine and budgeted payables; approval of grant reimbursements and reporting; approval of grant applications; approval of HR matters including the hiring of new employees (budgeted) and terminations; and approval of secondary support services.

The authorities referenced in the preceding paragraph could be granted to an appropriate individual by approving, on an interim basis, all of the authority granted to the Executive Director as defined in ESTA Joint Powers Agreement. Alternately, individual specific authorities could be defined and granted. Regardless of the specifics of such granting of

authority, it is expected that this authority would end when a new, permanent Executive Director commences his or her employment.

RECOMMENDATION

The Board is requested to approve an action that would grant sufficient authority to an appropriate individual or individuals in order to insure the successful functioning of ESTA while the hiring of a permanent Executive Director is finalized.