

## **Board Policy No. 24 Employee Drug and Alcohol Policy**

### Summary

In light of the fact that this policy applies to all employees of the North County Transit District (NCTD, District), policies that are specific to NCTD employees are identified in *italic* typeface; policies that are specific to U.S. Department of Transportation (DOT) regulations are identified in regular typeface. This policy supersedes the Drug & Alcohol Policy of October 15, 2020 and all other prior-adopted Drug & Alcohol policies.

NCTD is a drug-free workplace in accordance with 41 U.S.C. sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988.

### Purposes

- A. To maintain a safe and efficient public transportation system;
- B. To maintain a safe, healthy working environment for all employees;
- C. To reduce the incidence of accidental injury to person or property;
- D. To reduce absenteeism, tardiness and indifferent job performance;
- E. To maintain a work environment free of alcohol and drug related performance problems, accidents and injuries; and
- F. To comply with the Federal Transit Administration (FTA) regulations on prevention of prohibited drug use and alcohol misuse in transit operations, 49 C.F.R. Parts 655 and 40.

### Application of Policy

This policy applies to applicants and employees of the North County Transit District (NCTD) and to contractor personnel/consultants who are working in NCTD offices on a regular basis, are not otherwise covered and are required to be under a drug and alcohol program per regulatory requirements. The word “employee” as used in this policy includes all such aforementioned individuals. This policy also applies to employees of the North County Transit District who work in the titles listed in Appendix A and/or perform safety-sensitive functions as defined below.

Some of the drug and alcohol testing and procedures required in this policy are mandated by FTA regulations preventing prohibited drug use and alcohol misuse in transit operations, 49 C.F.R. Parts 655 and 40. The drug testing and alcohol testing mandated by FTA is applicable to “safety-sensitive employees” of the District, which includes those who:

- A. Operate revenue service vehicles, including when such vehicles are not in revenue service;
- B. Operate a non-revenue service vehicle, when such vehicle is required to be operated by a holder of a Commercial Driver’s License;
- C. Control dispatch or movement of a revenue service vehicle;

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- D. Maintain a revenue service vehicle or equipment used in revenue service;
- E. Security personnel who carry firearms;
- F. Supervisors of the aforementioned employees since these supervisors may perform safety-sensitive duties.

The District has reviewed the actual duties performed by employees and determined that no current positions require the performance of safety-sensitive duties as defined above.

*The drug and alcohol testing required by this policy for employees who are not safety-sensitive employees as defined above is required by the District, not the FTA. This policy specifies which testing is mandated by FTA and which is required by the District which will be identified by italics. The District has determined under its own authority that the positions listed in Appendix A require the performance of safety-sensitive duties relative to District requirements (not FTA), and as such shall be subject to drug and alcohol testing under this policy.*

*Such testing shall follow the requirements and guidelines mandated by the FTA, but shall not be part of, nor comingled with, the testing performed under FTA guidelines. All information regarding the drug and alcohol testing under District authority shall be maintained separate from that required by the FTA. Non-DOT testing forms shall be utilized for testing done under District authority.*

The District does not employ volunteers to conduct safety-sensitive duties.

Upon implementation, this policy supersedes all previously issued Drug and Alcohol Policies by NCTD.

### Illegal Drugs, Legal Drugs, and Alcohol

#### A. Illegal Drugs

The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited while on District business or on District premises, property or vehicles. Further, no employee shall bring drug paraphernalia onto District premises or property or into District vehicles. All employees must abide by this policy statement as a condition of employment. Violation of these rules will result in disciplinary action, up to and including termination; termination is likely for any violation, even a first offense.

Illegal drug means any drug (a) which is not legally obtainable or (b) which is legally obtainable but has not been legally obtained. The term includes marijuana, cocaine, opiates (codeine, morphine, heroin), phencyclidine (PCP), amphetamines (amphetamine, methamphetamine, MDMA, MDA, and semi-synthetic opioids (hydrocodone, oxycodone, hydromorphone, oxymorphone). Regardless of any State laws protecting the medicinal or recreational use of marijuana, federal regulations forbid its use by safety-sensitive employees, and *District policy forbids its use for all other employees*. Employees are prohibited from using the six listed drugs at all times, and covered employee may be tested for these drugs any time while on duty as discussed below. *The term "illegal drugs" also includes prescribed drugs not legally obtained, or prescribed drugs not being used for prescribed purposes.*

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### B. Legal Drugs

*The use of legal drugs at a level, or in a manner, combination or quantity which impedes an employee's ability to perform his job is prohibited and will lead to disciplinary action, up to and including termination. District policy (not FTA regulations) also deems failure to report the use of legal drugs per the procedure described below as a violation of this policy that will result in discipline up to and including termination of employment.*

*It is the employee's responsibility to ensure that any legal drug(s) they are taking allow them to safely perform their duties. Employees have an affirmative obligation to discuss any potential impact a prescription drug may have upon their ability to perform their job duties with their physician. If the physician feels a potential impact may exist, the employee must report any such prescribed drug or medication, using the "Prescription Drug Notification Form", to the Director of Human Resources, so that a determination can be made as to the ability of the employee to perform his/her particular job safely while using that drug or combination of drugs. If the District has determined that the employee does not pose a threat to his or her own safety, public safety, or the safety of coworkers, and that the employee's job performance will not be significantly affected by the legal drug, the employee may continue to work while taking that particular legal drug. Any employee using a prescription legal drug must provide the prescription to the designated District medical facility as soon as possible (but in any case, within 24 hours) after notification by District management or its physicians.*

### C. Alcohol

No employee shall consume alcoholic beverages in District vehicles, within four hours before performing safety-sensitive functions, or while in uniform. An employee shall not allow an open container of alcohol or an illegal drug to be placed or carried in an NCTD vehicle or in any vehicle over which an employee has control while conducting NCTD business. NCTD prohibits the consumption of alcohol by employees while conducting NCTD business, whether or not such consumption will cause the employee to be considered under the influence of alcohol. Violation of these rules will result in disciplinary action, up to and including termination, even for a first offense.

No employee who is on-call and therefore subject to being called in to work shall consume alcohol within four hours of or during those on-call hours. In the event such an employee is called and must report for duty, the employee has the opportunity to acknowledge that he/she has used alcohol and therefore is not able to perform his/her safety-sensitive function. *In such a case, that employee shall not be required to perform work, but may be disciplined for the use of alcohol during on-call hours based on District policy (not FTA regulations).* FTA regulations mandate that employees with a breath-alcohol concentration between 0.02 percent and 0.039 percent not be allowed to perform any safety-sensitive function until the start of the employee's next regularly scheduled duty period that is at least eight hours following the administration of the alcohol test. FTA regulations also mandate that employees with a breath-alcohol concentration of 0.04 or greater not be allowed to perform any safety-sensitive function and follow additional steps before a return to duty as described below for a positive test. *The District policy is that any employee who is tested for alcohol and has a breath-alcohol content of 0.02 percent or greater will be terminated, even for a first offense.*

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### Prohibition Against Employees Having Illegal Drugs or Alcohol in their Bodies During Working Time

All employees must report for work with no illegal drugs or their metabolites or alcohol in their bodies. *Employees must not have illegal drugs or their metabolites or alcohol in their bodies at any time while on the job and employees may be tested for the presence of drugs and/or alcohol at any time while on duty or at a District facility, under the circumstances described below.* Alcohol tests on safety-sensitive employees who are performing, are about to perform or who have just completed performing safety-sensitive duties are FTA-mandated tests when they are based on reasonable suspicion, post-accident or random (as described below); *all other alcohol tests are required by NCTD policy.* Drug tests on safety-sensitive employees are FTA-mandated tests when they are pre-employment (including assuming safety-sensitive duties), based on reasonable suspicion, post-accident, follow-up or random (as described below); all other drug tests are required by NCTD policy. *All drug and alcohol tests on non-safety-sensitive employees are required by NCTD policy, not FTA regulations.* FTA regulations prohibit safety-sensitive employees from using alcohol within four hours prior to their shift or while on call, and from having a breath-alcohol concentration of 0.02 or higher while performing safety-sensitive duties. *District policy likewise prohibits employees from having a breath-alcohol concentration while on duty of 0.02 percent or higher. Any employee with a breath-alcohol concentration of 0.02 percent or higher will be terminated. **Compliance with these rules is considered an essential job qualification for all employees. Termination of employment will occur for a violation of any of these rules, even for a first offense. This is a zero-tolerance policy. No employee who violates this policy will be given a second chance.***

### Enforcement of Rule Prohibiting Employees from Having Illegal Drugs or Alcohol in their Bodies During Working Time

#### A. Pre-employment Drug Testing

*All District applicants are subject to pre-employment drug testing.* Those who are applying for safety-sensitive positions are subject to an FTA pre-employment drug test. Those who are not applying for a safety-sensitive position are subject to a District pre-employment drug test. All drug tests will be administered by a medical facility designated by the District. If the drug test is cancelled by the Medical Review Officer (MRO), the applicant must retake and pass the drug test before being hired. The District extends conditional offers of employment to successful candidate's contingent on their passing a pre-employment drug test; any prospective employee refusing to submit to the drug test will not be hired by the District. A covered employee or applicant, who has not performed a safety-sensitive function for ninety (90) consecutive calendar days regardless of the reason and has not been in the District's random selection pool, shall take a pre-employment drug test with a verified negative result before being permitted to perform any safety-sensitive duties.

Any prospective employee with a positive drug test will be rejected from further consideration for employment with the District. Further, any applicant or employee who has previously failed or refused a drug test must provide proof to the District, prior to being considered for employment, that he/she has successfully completed a referral, evaluation and substance abuse treatment plan compliant with the requirements in 49 CFR Parts 40 and 655. The District will provide each applicant or employee who fails a drug test with a list of names, addresses and telephone numbers of locally available Substance Abuse Professionals (SAPs) qualified under 49 CFR Part 40 requirements. *District policy, not FTA regulations, requires that all fees, other than the cost of the drug test itself, including but not limited to referral, counseling and treatment fees will be paid by the candidate/employee.*

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### B. Reasonable Suspicion Alcohol and Drug Testing

*All District employees are subject to reasonable suspicion alcohol testing and drug testing. Those who work in safety-sensitive positions are subject to an FTA alcohol test and drug test. Those who do not work in a safety-sensitive position are subject to a District alcohol test and drug test. When the District has reasonable suspicion to believe that an employee has violated the prohibitions set forth in this policy, the employee will be required to submit to an alcohol test and/or a drug test immediately upon demand by the District. Reasonable suspicion testing will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of an employee. One or more supervisors or District officials trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations. For FTA reasonable suspicion alcohol tests, the alcohol testing authorized in this section (and the observations required by the supervisors or District officials referred to above) must occur during, just before or just after the performance of safety sensitive job functions. Observations leading to District alcohol tests will likewise be made during, just before or just after the performance of safety sensitive job functions. Observations leading to FTA drug tests may occur any time a safety-sensitive employee is on duty. Observations leading to NCTD drug tests may occur any time a non-safety-sensitive employee is on duty.*

FTA regulations require that any employee with a positive drug test or an alcohol concentration measure of 0.02 percent or higher be immediately removed from service, and that an employee with an alcohol concentration measure of 0.02 to 0.039 percent will, at a minimum, not be allowed to perform a safety-sensitive function until the start of the employee's next regularly scheduled duty period that is at least eight hours following the administration of the alcohol test.

*District policy, not FTA regulations, requires that all employees who are required to submit to a reasonable suspicion drug and alcohol test (District or FTA) be removed from working until the results of both tests are known. Further, any employee with a positive drug test or having a breath alcohol concentration measure of 0.02 percent or higher will be terminated from employment with the District. Any employee who has a positive FTA drug test or an alcohol concentration measure of 0.04 percent or higher on an FTA-mandated alcohol test will be referred to the SAP for evaluation in accordance with 49 CFR Part 40. District policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to, referral, counseling and treatment fees will be paid by the candidate/employee.*

*Refusal to submit to any testing required by this section will be sufficient grounds for termination and will result in the employee being relieved of his or her duties immediately.*

### C. Post-Accident Alcohol and Drug Testing

FTA regulations require drug and alcohol testing following certain accidents. In addition, the District requires post-accident testing for accidents in circumstances when such testing is not required by the FTA. The following guidelines describe when a test is required by the FTA versus when the test is required by District policy. Employees will be informed whether the test is an FTA test or a District test. District tests will not be conducted using FTA testing forms.

1. FTA Definition of "Accident": An accident, as defined by the FTA, is an occurrence associated with the operation of a vehicle, if as a result:
  - a) An individual dies; or
  - b) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or

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- c) With respect to an occurrence in which the public transportation vehicle involved is a bus, van or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as a result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle.
  - d) Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. Disabling damage includes damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven. Disabling damage does not include damage that can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available or damage to headlights, tail lights, turn signals, horns, or windshield wipers that makes the vehicle inoperative.
2. Fatal Accidents. As soon as practicable following an accident involving the loss of human life, each surviving employee operating the public transportation vehicle at the time of the accident shall submit to an alcohol test and a drug test. Further, any other employee whose performance could have contributed to the accident (e.g., a mechanic in the case of brake failure causing the accident), as determined by the District using the best information available at the time of the decision, shall also be required to submit to an alcohol test and a drug-screen test.
  3. Non-fatal Accidents. As soon as practicable following an accident not involving the loss of human life, each employee operating the public transportation vehicle (as defined above in item 4.F.1. – FTA Definition of “Accident”) at the time of the accident shall submit to an alcohol test and a drug-screen test, unless District management determines, using the best information available at the time of the decision, that the employee’s performance can be completely discounted as a contributing factor to the accident. In addition, any employee whose performance could have contributed to the accident, as determined by the District, using the best information available at the time of the decision, will be required to submit to an alcohol test and a drug-screen test.
  4. District Definition of “Accident”. *The District adheres to the same definition of an accident as the FTA definition above at 4.F.1., which extends application to any District vehicle, including non-revenue vehicles. All employees involved in an accident in as defined in 4.F.1 will be subject to a post-accident drug and alcohol test. The procedures and rules outlined in this section apply uniformly regardless of whether the test is a District test or an FTA test; however, the District sets the procedures for its own testing based on its own authority, not FTA authority.*
  5. Post-Accident Testing Procedures.
    - a) Any employee involved in an accident is prohibited from using alcohol for eight (8) hours following the accident or until he or she undergoes a post-accident alcohol test and drug test. Any employee involved in an accident who fails to remain readily available for the testing required by this section, including notifying District officials of his or her location if he or she leaves the scene of the accident prior to submission to such tests, will be deemed to have refused to submit to testing.
    - b) Post-accident testing will occur after the employee assists in resolution of the accident or receives medical attention following the accident. The District will complete the post-accident drug testing as soon as possible, and such testing will occur no later than thirty-two (32) hours after the accident. The District will

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attempt to complete the post-accident alcohol testing within two (2) hours of the accident. If the testing is not completed within two (2) hours, the District will continue to attempt to complete the test and will prepare a report explaining why the breath specimen was not collected within two (2) hours. If the alcohol test is not completed within eight (8) hours of the accident, the District shall cease attempts to complete the test and update the report as to why the test was not completed.

- c) *Refusal to submit to a test required by this section will be sufficient grounds for termination and will result in the employee being relieved of his or her duties immediately. Based on FTA regulations, any employee with a positive drug test or having an alcohol concentration measure of 0.02 percent or higher will be immediately removed from service. Based on District policy, any employee with a positive drug test and/or an alcohol concentration measure of 0.02 percent or higher will be terminated from employment with the District.*
- d) Any employee who has a positive FTA drug test or an alcohol concentration measure of 0.04 percent or higher on an FTA-mandated alcohol test will be referred to the SAP for evaluation in accordance with 49 C.F.R. Part 40. *District policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to referral, counseling and treatment fees will be paid by the employee/former employee.*

### D. Random Alcohol Testing and Drug Testing

**(The testing in this section applies only to safety-sensitive employees as defined above, to include those who work in positions designated by NCTD as safety-sensitive under its authority and so identified in Appendix A.)** All safety-sensitive employees will be subject to unannounced, random alcohol testing and random drug testing in accordance with 49 CFR Part 655. The selection of employees for random alcohol testing and random drug testing shall be made randomly by the District. The selection of employees for random alcohol testing and random drug testing shall be by a scientifically valid method, such as a random number table or a computer-based random number generator. Each employee will have an equal chance of being tested each time selections are made. These tests will not be announced in advance and will be administered on all days and at during all work hours throughout the year. The minimum testing requirement effective January 1, 2019 is to annually perform drug tests on fifty (50) percent and alcohol tests on ten (10) percent of the safety-sensitive employees. The District's Drug and Alcohol Program Manager (DAPM) will adjust the number of tests as needed to ensure the District conducts no fewer than the FTA-mandated number of tests.

Each employee selected for random alcohol testing and/or random drug testing must proceed to the test site immediately. *Refusal to submit to such testing will be deemed a positive and be sufficient grounds for termination and will result in the employee being relieved of his or her duties immediately. Based on FTA regulations, any employee failing a drug test or having an alcohol concentration measure of 0.02 percent or higher will be immediately removed from service. Based on District policy, any employee with a positive drug test and/or an alcohol concentration measure of 0.02 percent or higher will be terminated from employment with the District.* Any employee who has a positive FTA drug test or a finding of an alcohol concentration measure of 0.04 percent or higher on an FTA-mandated alcohol test will be referred to the SAP for evaluation in accordance with 49 CFR Part 40. *District policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to referral, counseling and treatment fees will be paid by the employee/former employee.*

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Random alcohol testing is only permissible just before an employee performs safety-sensitive duties, during that performance, and just after an employee has performed covered duties.

### E. Drug Testing for Employees Assuming Safety-Sensitive Duties

Any employee who accepts a position with the District involving safety-sensitive duties, who has previously been engaged in non-safety-sensitive duties, will be required to submit to and pass a pre-employment drug test prior to assumption of the safety-sensitive duties. In addition, any employee who has not performed a safety-sensitive function for ninety (90) consecutive calendar days regardless of the reason, and where that employee has not been in the District's random drug testing selection pool during that time, shall be required to take a pre-employment drug test in accordance with Section A (Pre-Employment Drug Testing) above, with a verified negative result before returning to duty.

If the drug test is cancelled by the MRO, the employee must retake and pass the test before assuming safety-sensitive duties. *Refusal to submit to such testing will be deemed a positive and are sufficient grounds for termination of employment.* Any employee failing a drug test will be immediately removed from service. Further, failure of a drug test will subject the employee to termination from employment with the District. Any employee who has a positive FTA drug test will be referred to the SAP for evaluation in accordance with 49 CFR Part 40. *District policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to referral, counseling and treatment fees will be paid by the employee/former employee.*

### F. Return to Duty and Follow-Up Alcohol Testing and Drug Testing

*District policy, not FTA regulations, requires that any employee who is allowed to return to duty following leave for substance abuse rehabilitation must first provide a negative drug or alcohol (or both) test result. Employees returning to duty following leave for substance abuse rehabilitation will be required by District policy to undergo unannounced follow-up alcohol and/or drug testing as determined by an EAP Counselor. The number and frequency of such follow-up testing shall be directed by the EAP Counselor. The employee will be subject to follow-up testing for as long as prescribed by the DAPM, but such testing shall not continue beyond five years from the date the employee returns to their duties. The follow-up testing following a leave of absence specified in this paragraph is required by District policy, not FTA regulations.*

*Based on District policy, any employee with a positive drug test and/or an alcohol concentration measure of 0.02 percent or higher will be terminated from employment with the District. District policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to referral, counseling and treatment fees will be paid by the employee/former employer.*

### G. Alcohol Testing and Drug Testing Following Injuries

*The alcohol testing and drug testing required in this section is required by the District; these are not FTA-mandated tests. Any employee who sustains an injury on the job may be required to submit to an alcohol test and a drug test as part of the physician's examination of the employee for the injury, at Management's discretion. Refusal to submit to such alcohol tests or drug tests will result in the employee being relieved of his or her duties immediately and will subject the employee to termination of employment. Any employee with a positive drug test or an alcohol concentration measure of 0.02 percent or higher will be terminated by the District.*

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### Falsification, Failure to Timely Arrive for Testing, and Failure to Notify

*Any employee who provides false information in connection with an alcohol test or drug test administered under this policy, or who attempts to falsify test results through tampering, contamination, adulteration or substitution, shall be terminated by the District. Any employee who fails to appear for a drug test or alcohol test within a reasonable time when required by this policy, or to remain at the testing site until the testing process is completed, or to cooperate fully in the testing process, will be deemed to have refused to be tested, and will be considered to have a positive test.*

Under the federal Drug Free Workplace Act, all employees are required to notify the Human Resources department in writing immediately, but in any event within five (5) calendar days, after they have been convicted of violating a criminal drug statute that occurred in the workplace or while working. *Any employee who fails to provide such notification shall be subject to termination of employment.*

Consistent with NCTD's policy, NCTD is responsible to notify the appropriate Federal agencies if an employee in a safety-sensitive position who is engaged in the performance of an award informed NCTD about a conviction, or if NCTD otherwise learns of this conviction. "Award" means an award of financial assistance by the DOT or other Federal agency directly to a recipient. NCTD must provide to the Federal agencies in writing the employee's position title and employee identification number(s) of each affected award. This information must be sent within 10 (ten) calendar days after NCTD has learned of a conviction. NCTD is to send to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notice. Within 30 (thirty) calendar days of learning about the employee's conviction NCTD must take appropriate personnel action against the employee, up to and including termination.

### Behavior Constituting a Refusal to Submit to a Test

The behaviors listed in 49 CFR Part 40 apply to all tests administered under this policy regardless of if they are FTA-mandated or required by the District's authority; however, District tests will not be conducted on DOT testing forms. The behaviors that constitute a refusal to submit to a drug and/or alcohol test are identified in 49 CFR Part 40 as amended, and below. Employees can obtain a current list from the DAPM.

#### A. Refusal to Submit to Testing for Alcohol and/or Drug

In accordance with 49 CFR Part 40 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;
3. Fails to provide a urine specimen or adequate amount of breath for any drug or alcohol test required by 49 C.F.R. Part 40 or DOT agency regulations;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of provision of a specimen;

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5. For an observed collection fails to follow the observer's 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;
6. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process;
7. Admitting to the collector or MRO that you adulterated or substituted the specimen;
8. 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;
9. Fails or declines to take a second test the employer or collector has directed you to take;
10. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "Shy Bladder" or "Shy Lung" procedures;
11. Fails to sign the certification at Step 2 of the Alcohol Test Form;
12. Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector);
13. If the MRO confirms that you have a verified adulterated or substituted test result that test is considered a refusal to test.

Any covered employee who refuses to submit to a drug or alcohol test will be immediately removed from performing any safety-sensitive function and in accordance with 49 C.F.R., Part 40.285, and Subpart O will be referred to the District's SAP.

### Procedures for Alcohol and Drug Testing

#### A. Procedure for Alcohol Tests

All FTA-mandated alcohol testing called for in this policy shall be conducted in accordance with 49 CFR Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended. All District-mandated breath alcohol testing will follow the same procedures, but District-mandated tests are not required or governed by 49 C.F.R. Part 40. However, the results of FTA-mandated breath alcohol testing will be compiled on a DOT Alcohol Testing Form (ATF). *The results of breath alcohol testing required by the District (and not FTA) will be on non-DOT testing forms.* District management will inform the collection facility whether the test is an FTA or a District test. The alcohol testing in this policy applies regardless of whether the alcohol was ingested as beverage alcohol or in a medicinal or other preparation.

The alcohol tests will be administered by a breath alcohol technician (BAT), using an evidential breath testing device (EBT). The BAT will be trained to proficiency in the operation of the EBT. The EBTs are subject to a quality assurance plan developed by the manufacturers of EBTs. In order to ensure that the test results are attributed to the correct employee, the BAT will require the employee to provide photo identification before tests are conducted. If the result of the alcohol screening test is an alcohol concentration of less than 0.02 percent, the employee will be deemed to have passed the FTA and District alcohol test. If the initial result of an FTA screening test is a breath alcohol concentration of 0.02 percent or higher, a confirmation test shall be performed

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under the FTA's authority. *If the initial result of a District screening test is a breath alcohol concentration of 0.02 percent or higher, a confirmation test shall be performed under the District's authority.* All alcohol confirmation tests shall be conducted within thirty (30) minutes of the completion of the screening test.

### B. Procedure for Drug Tests

All FTA-mandated drug tests called for in this policy shall be conducted in accordance with 49 C.F.R. Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended. All District-mandated drug tests will follow the same procedures, but District-mandated tests are not required or governed by 49 CFR Part 40. The DOT drug testing custody and control form will be used in connection with all FTA-mandated drug tests administered pursuant to this policy. *The results of drug testing required by the District (and not FTA) will be on non-DOT testing forms.* District management will inform the collection facility whether the test is an FTA or a District test.

The drugs tested for will be marijuana metabolites, cocaine metabolites, opioids, phencyclidine, and amphetamines (amphetamine, methamphetamine, MDMA, MDA). When an employee arrives at the collection site, the collection site person shall positively identify the employee through the presentation of photo identification. Collection personnel will be trained to ensure employee privacy in providing the urine specimen.

Urine specimens collected for drug testing will be split into two (2) containers at the collection site. Collection site personnel will be trained to maintain the integrity of the specimen collection and transfer process. In order to maintain the integrity of the urine specimen, the specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer to the laboratory conducting the testing on the urine specimen. A tamper-proof sealing system will be utilized to ensure against undetected opening. The specimen bottle shall be identified with a unique identifying number identical to that appearing on the urine custody and control form.

Transfer of urine specimens will be accomplished through appropriate chain of custody procedures. The forms accompanying the specimens will have unique preprinted specimen ID numbers and the employee will sign or initial certifying that the specimen was taken from that employee. All drug tests that are positive will be retested in a confirmation test prior to the laboratory specifying a positive result on a drug test. All drug testing done under this policy will be done by a laboratory that has been certified by the federal Department of Health and Human Services (DHHS). The District's current DHHS-certified laboratory is Pacific Toxicology and Quest Diagnostics, Inc. for out-of-town testing. All confirmatory tests will be performed using CC/MS techniques.

There are federally mandated cut-off limits for the minimum quantity of drug that must be detected for a positive test on the initial and confirming test. The current cut-off limits expressed in nanograms per milliliter (ng/ml) are as follows:

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Cutoff Concentrations for Drug Tests

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) <sup>2</sup>	50 ng/mL <sup>3</sup>	THCA	15 ng/mL.
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL <sup>3</sup>	Benzoyllecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA <sup>4</sup> /MDA <sup>5</sup>	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

<sup>1</sup>For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

**Immunoassay:** The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

**Alternate technology:** Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

<sup>2</sup>An immunoassay must be calibrated with the target analyte, Δ-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

<sup>3</sup>**Alternate technology (THCA and Benzoyllecgonine):** When using an alternate technology initial test for the specific target analytes of THCA and Benzoyllecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoyllecgonine).

<sup>4</sup>Methylenedioxyamphetamine (MDMA).

<sup>5</sup>Methylenedioxyamphetamine (MDA).

In order to protect the District's employees and the integrity of the drug screen testing process, the District has retained the services of an MRO. The District's MRO is Terri Hellings, M.D., of University Services. Dr. Hellings' phone number is 800-624-3784. The MRO is a licensed physician with knowledge of drug abuse disorders. If the laboratory results are confirmed positive, the MRO will interview the employee and review all information provided by the employee to determine whether the results are indicative of illegal or illicit drug use. If the employee provides an adequate explanation, the MRO will verify the test results as negative with the Drug and Alcohol Program Manager and take no further action. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the second split specimen be tested in a different DHHS laboratory. *District policy requires that employees bear all expenses related to verification tests they request.*

The MRO shall honor such request if it is made within seventy-two (72) hours of the employee having been notified of a verified positive test. If an employee has not contacted the MRO within seventy-two (72) hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within seventy-two (72) hours, the MRO shall direct that analysis of the split specimen be performed. The results of the test at the second DHHS-approved laboratory will be forwarded to the MRO. If the results of the second test fail to confirm the presence of the drugs or drug metabolites found in the primary specimen, the MRO shall cancel the test.

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If the MRO advises the District that the result of the drug test was negative, but that the test was diluted because the specimen contained a creatinine concentration greater than or equal to two (2) mg/dL, but less than or equal to five (5) mg/dL, the employee will be required to take another drug screen test immediately; the new test will be an observed collection. In this circumstance, the employee will be given as little advance notice as possible that he or she must return to the collection site. The test result from this test will be used to determine if the employee passes the drug test.

If the MRO advises the District that the result of the drug test was negative, but that the test was diluted and the specimen contained a creatinine concentration greater than five (5) mg/dL, the employee will be required to take another drug screen test immediately; the new test will not be an observed collection. In this circumstance, the employee will be given as little advance notice as possible that he or she must return to the collection site. The test result from this test will be used to determine if the employee passes the drug test.

The drug testing laboratory shall report test results to the MRO in writing, identifying the results of the test. The MRO will report to the DAPM whether the test is positive or negative, and will report the drug for which there was a positive test, but shall not disclose the quantitation of the test results (except in the case of a grievance, lawsuit, or other proceeding or inquiry initiated by the employee arising out of the verified positive drug test). All records pertaining to urine specimens shall be retained by the drug testing laboratory for a minimum of two (2) years. The drug testing laboratory shall retain all urine specimens confirmed as positive and place them into properly secured long-term frozen storage for a minimum of one (1) year.

*NCTD policy, not FTA regulations, requires that employees who are waiting to provide a breath or urine sample refrain from using electronic devices such as laptops, cell phones, iPads, and PDAs. Employees violating this rule will be suspended without pay for a minimum of one day.*

### Policy Regarding Treatment for Drug or Alcohol Addiction

- A. *The following policy on treatment for drug and alcohol addiction, follow-up testing and the associated consequences is a District policy, not an FTA policy. Any employee, who feels that he or she has developed an addiction to, dependence upon or problem with alcohol or drugs, legal or illegal, is encouraged to seek assistance. No disciplinary action will be issued against any employee who (1) comes forward to management with their problem prior to being requested to submit to an alcohol test or a drug screen test and before the District learns of a violation of the drug and alcohol policy, and (2) provided the employee has not violated the policy before coming to management. If an employee comes forward to management regarding a drug or alcohol problem seeking assistance, but management learns that the employee violated this policy before coming forward, the District will discipline the employee for violating the policy, up to and including termination of employment. Further, if the District learns of a violation of this policy before the employee comes forward, or if the employee comes forward with the problem only after being requested to submit to an alcohol test or a drug screen test, the employee will be subject to termination.*
- B. *How to Seek Assistance. To seek assistance for a problem with drugs or alcohol, you may contact NCTD'S Director of Human Resources at 760-966-6576 or District's Employee Assistance Program (EAP) as noted in Appendix A. Information concerning the EAP is available in the Human Resources Department and posted on the intranet. All requests for assistance will be kept confidential.*

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- C. *The District has worked with the EAP to develop a list of resources offering alcohol or drug treatment programs. The EAP will refer employees seeking assistance to a facility covered by their healthcare (if applicable) or another appropriate treatment organization. Any employee failing an alcohol test or drug test required under this policy will be provided the above-referenced list of resources. The referral to the EAP is independent of any disciplinary action that the District may impose, and the employee is responsible for all costs associated with analysis and treatment.*
- D. *Rehabilitation itself is the responsibility of the employee. However, any employee seeking medical attention for alcoholism or drug addiction will be entitled to benefits available under the District's group medical insurance plan applicable to that employee, subject to the restrictions and limits stated in the applicable plan document. Furthermore, rehabilitation leave will be available only to those employees whose employment is not terminated for misconduct prior to coming forward.*

*Rehabilitation leave requests are subject to the leave of absence provisions in the District's Employee Handbook, in accordance with applicable laws. Rehabilitation leave will be available on a one-time-only basis, subject to the conditions for continuing employment in Paragraph E below.*

*The District will not offer rehabilitation leave on a second occasion.*

- E. *To be eligible for continuation of employment following a rehabilitation leave, the employee must:*
- 1. Undergo evaluation by an EAP Counselor, who will recommend a course of rehabilitation. (This is a District-mandated evaluation, not an FTA requirement).*
  - 2. Begin a program of rehabilitation, strictly follow the rules and guidelines of that program, and sign a release of medical information, relating to drug and alcohol treatment, so the District can monitor his or her progress.*
  - 3. Remain continuously enrolled in a treatment program and actively participate in that program.*
  - 4. Not reject treatment or leave the treatment program prior to being properly discharged therefrom.*
  - 5. Agree that the EAP Counselor will determine whether the employee has successfully completed the program.*
  - 6. Not violate the Drug and Alcohol Policy.*
- F. *All employees returning to active employment from rehabilitation will be required to sign a "Return to Work Agreement" requiring:*
- 1. That the employee must pass a non-DOT alcohol test and/or non-DOT drug screen test before returning to work;*
  - 2. That an EAP Counselor must determine that the employee has properly followed an appropriate rehabilitation program and is capable of returning to duty;*
  - 3. That the employee agrees to unannounced alcohol testing and drug testing. The number and frequency of follow-up testing shall be determined by the EAP Counselor (this is required by District policy, not FTA regulations). The employee will be subject to follow-up testing for as long as prescribed by the EAP Counselor, but such tests shall not continue beyond five years from the date of the employee's return to duty;*

## Board Policy No. 24 – Employee Drug and Alcohol Policy

4. *That failure of any drug test or alcohol test or refusal to immediately submit to such testing during this period shall be grounds for immediate termination based on District policy (not FTA regulations);*
5. *That the employee must maintain an acceptable attendance and performance record, not violate the Drug and Alcohol Policy, and comply with all other NCTD rules and policies upon his/her return to work.*

### Miscellaneous Information Regarding this Drug and Alcohol Policy

- A. Contact Person – Drug and Alcohol Program Manager (DAPM). See Appendix A.
- B. Training

The District provides training for all its supervisors in order for them to be able to make a determination of whether reasonable suspicion exists for an employee to be required to submit to reasonable suspicion alcohol testing and drug testing. This training includes a minimum of sixty (60) minutes of supervisor training on the effects of drug use and sixty (60) minutes of supervisor training on the effects of alcohol use and this policy. Training of newly promoted or hired supervisors will occur before they assume supervisory duties (unless they are under the direct supervision of a trained supervisor or manager).

*In addition, the District will also provide a drug-free awareness program for employees, with information outlining the dangers of drug and alcohol abuse in the workplace. The District will provide information regarding available drug and alcohol counseling, rehabilitation, and employee assistance programs.*

- C. Notice of Certain Requirements in Addition to FTA-Mandated Requirements

The policy is designed in part to comply with FTA regulations on prevention of prohibited drug use and alcohol misuse in transit operations, 49 CFR Part 655. However, NCTD has added certain additional requirements to this policy, including the following:

1. *This policy applies to all employees of NCTD, not just safety-sensitive employees as defined by the FTA. As such, District employees who are not safety-sensitive employees are subject to pre-employment drug testing and to reasonable suspicion, post-accident and post-injury drug testing and alcohol testing.*
2. *The District requires post-accident alcohol and drug testing in cases where such testing is not required by the FTA. The FTA regulations limit the circumstances under which post-accident alcohol and drug testing will occur, as set forth in Section 5 (Post-Accident Testing) The District requires post-accident alcohol and drug testing using a much broader definition of accident.*
3. *The District requires alcohol testing and drug testing following work injuries (if deemed necessary) as a result of an incident or unsafe action that had a direct result in causing the injury, which is not required by FTA regulations.*
4. *This policy requires employees using prescription drugs, as defined under Illegal Drugs, Legal Drugs, and Alcohol, Section B in this policy, to report the prescription to Human Resources by using the “Prescription Drug Notification Form”.*
5. *This policy sets forth the disciplinary action for violations of the policy, which is a District decision, and is not part of the FTA regulations.*

## Board Policy No. 24 – Employee Drug and Alcohol Policy

6. *This policy requires that all costs of drug treatment and/or SAP evaluation be paid by the employee or former employee. This is a District decision, not an FTA requirement.*

### D. Substance Abuse Professional

The District has secured the services of an SAP as noted in Appendix A.

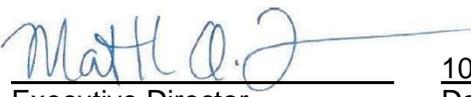
### E. Right to Examine Records

Every employee has the right to review his/her drug and alcohol testing records (except SAP determined DOT follow-up testing plans), provide information to dispute the results of a drug or alcohol test and, upon written request, to obtain copies of any records pertaining to his or her drug and alcohol tests, including records pertaining to equipment calibration and laboratory certifications.

### Approvals

  
\_\_\_\_\_  
Board Chair

10/21/2021  
Date

  
\_\_\_\_\_  
Executive Director

10/21/2021  
Date

  
\_\_\_\_\_  
General Counsel

10/21/2021  
Date

## Board Policy No. 24 – Employee Drug and Alcohol Policy

DATE	REVISION NO.	RESOLUTION NO.	COMMENTS
10/18/2012	ADOPTED	12-10	
10/17/2013	1	13-07	2013 REVISION
10/16/2014	3	14-04	2014 REVISION
11/19/2015	4	15-08	2015 REVISION
10/20/2016	5	16-10	2016 REVISION
01/19/2017	6	17-01	2017 REVISION
10/19/2017	7	17-10	2017 REVISION
12/21/2017	8	17-14	FTA DRUG SCHEDULE UPDATE.
10/18/2018	9	18-09	2018 REVISION; ADDRESSES FTA 49 CFR 655.45 REVISION EFFECTIVE 01/01/2019
10/17/2019	10	19-06	SECTION NO. 1 OF APPENDIX A UPDATED.
6/18/2020	11	20-06	SECTION NO. 1 AND 3 OF APPENDIX A UPDATED
10/15/2020	12	20-08	STRUCTURE OF POLICY UPDATED FOR BETTER FLOW OF INFORMATION.
10/21/2021	13	21-05	2021 REVISION

## Board Policy No. 24 – Employee Drug and Alcohol Policy

### Appendix A

#### 1. NCTD/Non-DOT/Non-FTA Designated Safety-Sensitive Positions:

- *Architect*
- *Chief Development Officer*
- *Chief of Safety*
- *Chief Operations Officer (All)*
- *Chief Technology Officer*
- *Control Center Technician*
- *Director of Bus Operations*
- *Director of Engineering & Maintenance*
- *Director of Rail Operations*
- *Director of Rail Technologies*
- *Engineer – All*
- *Facilities Manager*
- *Information Technology Manager*
- *Maintenance of Way Manager*
- *Manager of Paratransit & Mobility Services*
- *Manager of Security*
- *Mechanical Officer (All)*
- *Quality Control Supervisor (All)*
- *Rail Operations Officer*
- *Rail Technologies Program Manager*
- *Safety Specialist (All)*
- *Signal Manager*
- *System Safety & Compliance Inspector*

#### 2. DAPM Contact Information

Any employees having questions about the District's Drug and Alcohol Policy should contact one of the following individuals:

Natasha Martinez  
Principal Human Resources Generalist  
760-967-2801

Karen Tucholski  
Chief Operations Officer – Support Services  
760-966-6574

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### 3. EAP Provider Information

The current EAP provider, Managed Health Network (MHN), has provided two (2) dedicated SAPs available to NCTD. In the event the below dedicated SAPs are unavailable, the next available SAP will be provided through MHN's toll free number: 1-800-242-6220.

#### MHN Point of Contact:

Primary:

Jainita Downs  
Account Manager  
Managed Health Network  
5525 N. MacArthur Blvd. Suite,800  
Irving, TX 75038  
(469) 639-3392 (direct)  
(469) 418-7850 (mobile)  
[Jainita.K.Downs@mhn.com](mailto:Jainita.K.Downs@mhn.com)

Secondary:

Jaclyn Kuwada  
Senior Account Manager  
Account Management  
Managed Health Network - a Health Net Co.  
2370 Kerner Blvd  
San Rafael, CA 94901  
Phone: (415) 460-8142  
[jaclyn.s.kuwada@mhn.com](mailto:jaclyn.s.kuwada@mhn.com)

#### SAP:

Phillip Ybarra  
32605 Temecula Parkway, Suite 303  
Temecula, CA 92592  
760-443-1397  
<http://compassionatetherapy.com/>

Sabrina Finn Reid  
910 Armorlite Drive  
San Marcos, CA 92069  
760-666-0049  
<http://www.sapsocal.com/>