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September 20, 2017

Sonoma-Marin Area Rail Transit Board of Directors
 5401 Old Redwood Highway, Suite 200
 Petaluma, CA 94954

SUBJECT: Approve agreement between the Sonoma-Marin Area Rail Transit District and the SMART Engineers Conductors Association and authorize the Board Chair to execute the agreement.

Dear Board Members:

RECOMMENDATION: Approve the attached two-year collective bargaining agreement reached between the Sonoma-Marin Area Rail Transit District (SMART) and the SMART Engineers Conductors Association (SECA) and authorize the Board Chair to execute the Collective Bargaining Agreement.

SUMMARY: This agreement would be the first collective bargaining agreement between SMART and the SECA which represents the District's Engineer-Conductor and Conductor staff. The total number of staff currently allocated to the Engineer-Conductor and Conductor job classes is twenty-three (23). In the past 15 months, SMART has had four (4) staff in the bargaining unit resign due to cost of living issues, which equals 17.39% of allocated positions. The average wages for passenger Engineers and Conductors in the Bay Area are shown in the charts below.

Engineer	
Agency	Top Hourly
eBART	\$ 42.90
CalTrain(TASI)	\$ 43.96
AMTRAK	\$ 41.90
Average All	\$ 42.92

Conductor	
Agency	Top Hourly
AMTRAK	\$ 36.90
CalTrain(TASI)	\$ 39.64
Average	\$ 38.27

The agreement retains the District’s current policies with modifications to salaries and benefits as indicated below.

The agreed upon terms include:

Term: September 11, 2017 – June 30, 2019

Salaries:

- Effective September 11, 2017, the rate of pay for all represented employees will be as shown in the table below.

Job Classification	Current Hourly Wage	Proposed Hourly Wage	Training Wage (85%)
Engineer-Conductor	\$40.89	\$44.96	\$38.22
Conductor	\$34.40	\$37.40	\$31.79

- This wage represents a 10% increase above the current top hourly rate for each respective job class.
- New employees will receive a training wage equal to 85% of full hourly wage until they have completed the training period and have been certified by SMART.
- There will be no additional salary increases, such as Cost of Living Adjustments, for the life of the agreement, which expires on June 30, 2019.

Benefits:


- Effective the pay period beginning September 11, 2017, the current cap on compensatory time will be increased from 40 hours to 80 hours.
- Effective in the 2018 calendar year beginning on January 1st, the Lincoln’s Birthday Holiday currently observed by the District will be deleted and replaced by a Floating Holiday.

FISCAL IMPACT: The agreement will require a Fiscal Year 2017-18 budget amendment of \$130,821 that will be included in the next agenda item. This represents a budget increase of 0.6% over the approved Operations Salaries and Benefits budget and a 1.1% increase in the overall Operations department budget.

The detailed cost of the agreement is as follows:

Annual number of FTE impacted:	23
Annual Baseline Cost of Employees (current):	\$2,872,659
Increased Annual Cost of Agreement (salaries+ benefits):	\$241,679
Two Year Total Incremental Cost of Agreement:	\$483,358
Amount Budgeted FY 2017-18	\$2,983,517
Amount Needed FY 2017-18	\$3,114,338
Supplemental Budget Needed FY 2017-18	\$130,821

REVIEWED BY: [x] Finance 

[x] Counsel 

Very truly yours,



Lisa Hansley
Human Resources Manager

Attachments:
SECA Collective Bargaining Agreement

AGREEMENT

BETWEEN

SMART ENGINEERS CONDUCTORS ASSOCIATION

(LOCOMOTIVE ENGINEERS AND CONDUCTORS UNIT)

AND

**SONOMA MARIN AREA RAIL TRANSIT
DISTRICT**

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ARTICLE 1 RECOGNITION

- 1.1 The SONOMA MARIN AREA RAIL TRANSIT herein after referred to as (DISTRICT) recognizes the SMART ENGINEERS CONDUCTORS ASSOCIATION herein after referred to as (SECA) as the formally recognized employee organization for the Locomotive Engineers and Conductors (EMPLOYEES) employed in the Sonoma Marin Area Rail Transit System (DISTRICT) as determined by the Public Employment Relations Board on April 14, 2017 pursuant to PERB Regulation 61215 Case No: SF-DP-327-M.

SCOPE AND DEFINITIONS

- 1.2 This Agreement (Agreement) will apply to the work or service of transporting passengers performed by the employees specified herein and governs the rates of pay, hours of service, and working conditions of all such employees engaged in by the Locomotive Engineers and Conductors and/or any other motive power used in performing the work or services provided by EMPLOYEES and all other work generally recognized as the work of EMPLOYEES performed on main lines or branch lines, or within yard facilities, or in road, local, or yard service.
- 1.3 The EMPLOYEES Job duties are service delivery and guaranteeing quality control in the provision of safe, reliable efficient passenger train service to the public. These EMPLOYEES are responsible for the safe and reliable operation of all DISTRICT trains at all times.
- 1.4 If a new type of locomotive and/or conductors equipment is placed in service, EMPLOYEES will be instructed in the operation of the new train and/or equipment. Only employees qualified under 49 CFR Parts 240 and/or 242 will be used to run trains in revenue service.
- 1.5 The DISTRICT may not contract out work normally performed by an employee in a bargaining unit covered by this Agreement between SECA and the DISTRICT without agreement of the SECA

ARTICLE 2 UNION SECURITY

- 2.1 All employees covered by this Agreement who have been so employed for at least ninety (90) days prior to the ratification of this Agreement shall be or become members of the SECA and shall remain members in good standing, or shall pay to the SECA an organizational service fee in equal amount of the regular initiation fee and the regular periodic dues and continue making

payment of the organizational service fee to SECA at the times and in the manner hereinafter prescribed. Employees hired after the effective dates of this Agreement or who were hired prior to the effective date of this Agreement but had less than ninety (90) days of service with the DISTRICT on the effective date shall within ninety (90) days after employment be or become members of SECA and shall remain members in good standing, unless on or prior to said date the employee pays the organizational service fee described herein.

2.2 Membership in SECA or payment of the organizational service fee described in Paragraph 2.1 shall be a condition precedent to continued employment with the DISTRICT, the employee who is obligated to pay an organizational fee shall do so in the following manner:

2.2.1 If the employee payment is by payroll deduction authorization, the appropriate sum shall be deducted by the DISTRICT and paid to SECA in the same manner and times as such payments are deducted and paid by the DISTRICT to SECA in the case of SECA members.

2.2.2 If the employee chooses not to authorize payroll deductions, payments of dues or fees shall be received by the SECA not later than the following:

- (a) For employees who have been employed by the DISTRICT for more than ninety (90) days upon the effective date of this Agreement, an appropriate initiation fee shall be paid to SECA no later than ten (10) days after notification of this provision by SECA. For employees with less than ninety (90) days of employment with the DISTRICT upon the effective date of this Agreement, an appropriate initiation fee shall be paid to SECA by the ninetieth (90th) day following the commencement of employment;
- (b) Thereafter, dues and/or fees shall be paid to SECA in full on or before the first day of each calendar month; and General assessments (relating to costs associated with negotiating collective bargaining agreements, administering same and adjusting grievances. Pursuant to said collective bargaining agreement(s) with the DISTRICT shall be paid to SECA in full on or before the date set by SECA at the time of Assessment, or if no date is set, within ten (10) days of the call of the assessment by SECA. SECA shall be responsible for promptly notifying non-SECA members of such assessments.

2.2.3 Notwithstanding Paragraphs 2.1 and 2.2 of this section, any employee who demonstrates in a manner satisfactory to SECA that they are a

member of a bona fide religion, body or sec which has historically held conscientious objections to joining or financially supporting employee organizations shall be excused from joining SECA or paying an organizational service fee to SECA; if such employee shall make a Qualified Charitable Contribution at the time and manner hereinafter prescribed:

- (a) The Qualified Charitable Contribution shall be the payment of a sum equal to the initiation fee, organizational service fee, and general assessments and shall be paid in the amounts and at the times said fees and/or assessments would otherwise be due and payable if the employee were not exempt under this Paragraph 2.2.3.
- (b) The Qualified Charitable Contributions shall be paid to one or more of the following qualified charities so long as such charity remains exempt from taxation under Section 501(e)(3) of the Internal Revenue Code:
 - (i) American Cancer Society;
 - (ii) American Heart Association
 - (iii) Muscular Dystrophy Foundation; and
 - (iv) Arthritis Foundation.
- (c) Payment of Qualified Charitable Contributions by persons and at the times and manner described in this Paragraph 2.2.3, shall be a condition precedent to continued employment. The employee shall supply the DISTRICT and SECA with an acknowledgment of receipt from the qualified charity or other satisfactory evidence on a monthly basis that the Qualified Charitable Contribution has been paid in a timely fashion.
- (d) Any dispute between SECA and an employee as to whether an employee meets the eligibility requirement for payment of Qualified Charitable Contributions shall, at the request of SECA or affected employee, be decided by final and binding arbitration under the rules of the American Arbitration Association. The SECA shall bear the cost of said arbitration, including: the fee of the American Arbitration Association and the arbitrator. The cost of a certified transcript of the

proceedings shall be paid by the party requesting same.

2.2.4 In the event an employee fails to make payments as required by this section, SECA may give written notice of such fact to the DISTRICT and the employee. In the event such notice is given, a representative of SECA and the affected employee shall, within three (3) workdays of such notice (excluding Saturdays, Sundays and holidays), meet for the purpose of hearing the employee's position regarding non-payment, thoroughly explaining the circumstances to the employee and to work out a solution to any existing problems, satisfactory to the SECA. If the employee has not paid the required dues or fees (including general assessments) or initiation fee and the matter is not resolved to the satisfaction of SECA, SECA shall request, in writing, that the employee's employment be terminated. Upon receipt of such request, the DISTRICT shall terminate said employee within twenty-four (24) hours of receipt of said notice. Terminations for violation of this section shall not be subject to any grievance procedure. SECA agrees to keep an adequate itemized record of its financial transactions. Within sixty (60) days after the end of its fiscal year, SECA will make available to the DISTRICT an operating statement in the form and manner prescribed by Government Code §3502.5, covering all periods during which the substantive provisions set forth above are in effect.

2.2.5 SECA and the DISTRICT acknowledge the provisions of §3502.5 of the California Government Code and agree that nothing contained in this section shall act to supersede or waive any of the employee's rights contained herein.

2.2.6 SECA agrees to indemnify and hold harmless the DISTRICT for any loss or damage sustained which arises from the operation of this section.

2.2.7 In the event there is a change in the law whereby any provision hereof becomes invalid or if for any reason any provision of this Agreement is rendered unlawful by decision of a court of competent jurisdiction, this Agreement shall be either forthwith deemed amended to comply with the change or decision in question and those provisions not affected by the change in law shall remain in full force and effect. If this occurs, at the election of either party this provision may be reopened for further negotiations.

ARTICLE 3 DUES CHECKOFF

3.1 SECA will be granted permission by the DISTRICT to have regular dues of its member employees deducted from their paychecks, in accordance with the procedures prescribed by the DISTRICT.

- 3.2 Dues deductions shall be for a specified amount and shall be made only upon the voluntary written authorization of the SECA member, which authorization meets all of the requirements for the assignment of wages as set forth in §300 of the California Labor Code. Dues deduction authorization may be revoked and the dues check-off payroll discontinued at any time by the SECA member upon voluntary written notice to the DISTRICT.
- 3.3 The member employee's earnings must be regularly sufficient after legal and required deductions are made, to cover the amounts of the dues check off authorized. In the case of a member employee who is in a non-pay status during any part of the pay period and the salary is not sufficient to cover the whole withholding, no deductions shall be made. In this connection, all other legal and required deductions have priority over SECA dues.
- 3.4 Neither SECA nor the member employees shall be charged a service fee for the deduction of regular SECA dues as hereinabove provided for.
- 3.5 Dues withheld by the DISTRICT shall be transmitted to the officer designated in writing by SECA as the person authorized to receive such funds at the address specified. Funds may also be transmitted by Automated Clearing House (ACH) or other accepted electronic banking process.
- 3.6 SECA shall indemnify, defend and hold the DISTRICT harmless against any claim made and against any suit instituted against the DISTRICT on account of check-off of SECA dues. In addition, SECA shall refund to the DISTRICT any amount paid to it in error upon presentation of supporting evidence.

ARTICLE 4 - NON-DISCRIMINATION

- 4.1 SMART is an equal opportunity employer and makes employment decisions on the basis of merit. In accordance with applicable law, the District prohibits discrimination based on race, color, religion, creed, sex, marital status, age, national origin or ancestry, physical or mental disability, medical condition, genetic information, military or veteran status, sexual orientation, gender, gender identity, gender expression, or any other consideration protected by federal, state or local laws. All such discrimination is unlawful. The District's commitment to equal opportunity employment applies to all persons involved in the operations of the District and prohibits discrimination by any employee of the District, including Supervisors and co-workers. Neither the SECA nor the DISTRICT shall discriminate against any employee by reason of protected concerted activity or any other basis protected by applicable state or federal law.

ARTICLE 5 - MANAGEMENT RIGHTS

- 5.1 The exclusive rights of the District shall include, but not be limited to, the right to determine the organization of District, as well as its purpose and mission; to set standards of service to be offered to the public; and, through its management officials, to exercise control and discretion over its organization and operations; to establish and effect administrative regulations which are consistent with law and the specific provisions of any collective bargaining agreements that may exist; to direct its employees; to take disciplinary action; to lay off its employees; to determine whether District goods and services shall be made, purchased, or contracted for; to determine the methods, means, and personnel by which the District's services are to be provided, purchased, or contracted; to determine qualifications for employment; to schedule and assign work and overtime; and to otherwise act in the interest of efficient service to the public.
- 5.2 All matters pertaining to the management and scope of operations, such as the type and kind of service rendered to the public, the equipment used, workload, the administration of discipline and efficiency, the standards of hire, promotion and transfer of employees, and their discipline and discharge for cause are within the discretion of SMART. SMART's rules, policies and procedures, as may be amended from time to time, are necessary for efficient operations and infraction of these rules shall constitute cause for disciplinary action, up to and including discharge. Depending on the facts and circumstances involved in each situation, SMART may choose to begin disciplinary action at any step up to and including termination.

ARTICLE 6 – SECA STEWARDS

- 6.1 The DISTRICT agrees to recognize two (2) stewards, one (1) chief steward (Representative on Site) and one (1) alternate to represent employees in the EMPLOYEES bargaining unit. The SECA must inform the DISTRICT, in writing, of an employee's designation as a shop steward or alternate.
- 6.2 The shop steward, as much as possible, shall perform their duties as a shop steward when not scheduled to work. If the shop steward must perform any duties during regularly scheduled work hours, it shall be kept to a minimum and shall not interfere with normal operations. The shop steward must request time off in advance to perform their duties during regularly scheduled work hours. Absent an emergency, the request must be in writing and submitted at least forty-eight (48) hours in advance. The release of shop stewards from work to perform their duties will depend on the DISTRICT'S operational needs as determined by the DISTRICT.

- 6.3 The DISTRICT will not compensate the shop steward for performing any duties as a shop steward, except as otherwise provided for in this Agreement. If the shop steward must perform any duties during regularly scheduled work hours, it shall be kept to a minimum and shall not interfere with normal operations. Except for emergency circumstances, the shop steward must request time off in advance to perform their duties during regularly scheduled work hours. The shop steward shall be allowed time off during their normal working hours to handle grievances or meet with DISTRICT representatives concerning matters affecting employees' working conditions without loss of pay, provided that such meetings shall not exceed one (1) hour unless mutually agreed upon by the parties.
- 6.4 A maximum of three (3) employees shall serve on the SECA Bargaining Team. A maximum of two (2) employees shall be released from work by the DISTRICT to attend negotiations between the SECA and the DISTRICT. However, the employees released by the DISTRICT will be paid their regular rate of pay for negotiations held during their regularly scheduled work hours.

ARTICLE 7 - BULLETIN BOARDS

- 7.1 The DISTRICT agrees to supply and provide suitable space for the SECA bulletin board at each location where bargaining unit members are employed. Postings by the SECA on such boards are to be confined to official business of the SECA. In each location, there shall be a covered bulletin board. SECA stewards shall have a key for the bulletin boards. The DISTRICT shall not remove, tamper with, or alter any notice posted by the SECA unless such notice is harmful to the DISTRICT. Any such notice removed by the DISTRICT shall be re-posted if the SECA'S position is sustained through the grievance procedure.

ARTICLE 8 - ACCESS TO WORK LOCATIONS

- 8.1 Within reasonable circumstances, a SECA business representative shall have access to the DISTRICT premises at a mutually agreeable time to investigate or adjust grievances, or conduct other necessary business. Except for emergency circumstances, requests for access to the Rail Operations Center (ROC) and other SMART Operations facilities will be made 48 hours in advance.
- 8.2 DISTRICT facilities may be made available for meetings upon timely application by employees and SECA. Such use shall not occur during regular duty hours, other than the lunch period. Application for such use shall be made to the designated Human Resources

DISTRICT Representative under whose control the facility is placed. The SECA will contact HR or designee.

ARTICLE 9 - SENIORITY, FURLOUGH AND REDUCTIONS IN FORCE

9.1 The DISTRICT shall maintain a SMART Seniority List, a Bargaining Unit Seniority List and a Classification Seniority List for the EMPLOYEES in this Unit. SMART Seniority is defined as the date an employee was hired by SMART. Bargaining unit seniority is defined as the length of time an employee has been employed by the DISTRICT as a Locomotive Engineer and/or Conductor. Classification Seniority is defined as the date an employee is hired or promoted into a particular job class as either a Locomotive Engineer or as a Conductor. When more than one (1) employee has the same employment date, the employees' relative positions on the seniority list shall be determined by the elder birthdate. In the event of a tie with birthdates, seniority will be determined by lot in the presence of a SECA representative, and acknowledged in writing by the employees.

9.2 An employee's seniority shall be terminated for the following reasons:

9.2.1 Resignation or termination of employment;

9.2.2 Layoff for a period of more than twelve (12) months;

9.2.3 Failure to respond within ten(10) days to a notice of recall during furlough or failure to return to work within fourteen (14) days after a recall notice;

9.2.4 Failure to return to work following an approved leave of absence.

9.3 Furlough & Recall: When the DISTRICT determines it necessary to reduce the workforce, employees shall be furloughed in inverse seniority order within classification. For the purposes of this section, furlough or layoff is defined as a reduction in force whereby the total number of budgeted position allocations in a job classification is reduced. A furlough may also include establishing unpaid days off to avoid the reduction of budgeted positions. A layoff/furlough is an involuntary separation and is not subject to the grievance and arbitration procedure.

9.3.1 The DISTRICT shall give fourteen (14) days' notice to employees that they will be furloughed. If the DISTRICT elects not to give fourteen (14) days' notice, the DISTRICT shall pay the employee their regular rate of pay for each day that notice was not given, up to a maximum of two (2) weeks' pay. The provisions for notice shall not apply if notice of furlough is prevented due to fire, storm, major breakdown, derailment, labor dispute or other cause beyond the control of the

DISTRICT.

9.3.2 Employees on furlough will be recalled to work in seniority order within classification. Employees on furlough shall remain on the seniority list for purpose of recall for a period not to exceed twelve (12) months following furlough. Employees who are recalled within twelve (12) months will retain all seniority accrued in prior service. Benefits do not accrue during a furlough period. Employees will have accrued unused vacation and compensatory time off cashed out. Accrued, unused sick leave will be cashed out at a rate of 25% per District policy.

9.3.3 The DISTRICT will pay for two months of the employee's COBRA medical coverage provided the employee has one or more years of service. Note: Under CALPERS medical, the employee is eligible to receive an additional month of insurance coverage after separation from employment if the employee agrees to pay their portion of the premium (15%) prior to the start of COBRA eligibility.

9.3.4 Any employee who rejects a recall offer, fails to respond to the notice of recall within ten (10) days of receipt of certified mail, or fails to return to work within fourteen (14) days after a recall notice shall be removed from the seniority lists.

9.3.5 In a case of a reduction in force, the DISTRICT will meet and confer with the SECA over the effects of the decision.

9.4 As required per AB 2224, Section 150143, the District agrees that it will not contract out the performance of services performed by or fairly claimable by the employees of the bargaining unit without the agreement of the accredited representative of that bargaining unit's employees.

ARTICLE 10 - PERFORMANCE EVALUATIONS

- 10.1 An annual employee evaluation system shall be used for all probationary and regular employees.
- 10.2 The DISTRICT shall determine the use and significance, if any, of job performance evaluations in determinations regarding, but not limited, examinations, promotions, demotions, transfers, dismissals and suspensions.
- 10.3 Supervisors preparing job performance evaluations shall discuss with employees their evaluations. Employees shall have access to their evaluations on file in Human Resources.
- 10.4 All employees will sign the evaluation indicating their receipt of the evaluation within ten (10) calendar days of receipt. An employee who is dissatisfied with their review may prepare and submit a written response within thirty (30) calendar days following receipt of

the evaluation. The response will be submitted to the General Manager with a copy to the Human Resources Manager. The response will be placed with the evaluation in the employee's personnel file. The employee has no further means of challenging or appealing a performance evaluation. Performance evaluations are not grievable.

- 10.5 The DISTRICT shall notify the SECA of all job openings within the bargaining unit covered by this Agreement. The SECA may refer qualified applicants for such openings. In interviewing and hiring of such job openings, the DISTRICT will not discriminate against any applicant referred by the SECA. Applicants referred by SECA will participate in the competitive process as would any other applicant.

ARTICLE 11 - NEW EMPLOYEES AND TRAINING

- 11.1 All new employees shall meet the minimum qualifications for a position as defined by the District. All new employees shall train for a minimum of eight (8) weeks; unless it is determined by the trainer that additional training is necessary. At no time shall a training employee be allowed to bid into a shift before the end of their training period, unless approved by the SECA.

ARTICLE 12 - PROBATIONARY PERIOD

- 12.1 The probationary period shall be a trial period during which SMART evaluates the employee's ability, competency, fitness and other qualifications to do the work for which they are employed.
- 12.2 All new employees shall be on probation for twelve (12) months immediately following their date of hire. If an employee is absent from work for good cause during the probationary period, probation may, be extended day for day by SMART to allow the employee to complete the full twelve (12) months. New probationary employees may be disciplined or discharged at the total discretion of SMART and such actions shall not be subject to review under any provision of this Memorandum of Understanding.

ARTICLE 13 - PROMOTIONS AND TRANSFERS

- 13.1 Employees who are transferred or promoted out of the bargaining unit, and who fail to successfully complete the probationary period of the new position (for a reason that does not disqualify them from employment in any classification), may elect to return to their original position in their previous classification within the bargaining unit. Bargaining unit Employees who promote to a higher job class within the Transportation division and elect to return to a previously held job classification within the Engineer/Conductors unit will

retain Bargaining Unit seniority. Time spent in the higher job class will count towards Bargaining Unit seniority in the lower class. Bargaining unit Employees who are temporarily promoted to a higher class within the Transportation division will retain Bargaining Unit seniority when they return to their original job class.

- 13.2 Applicants who meet the qualifications of the position descriptions will undergo a selection process as determined by the District. This process may include, but is not limited to, screening of the most qualified applicant for job suitability, skills assessment, such as written, hands on, video or interview. Employees promoted or transferred into the Locomotive Engineers/Conductors Unit from other District positions will be placed on the Locomotive Engineers/Conductors Bargaining Unit Seniority list; pursuant to Article 9.1; the date they were promoted or transferred into the unit.

ARTICLE 14 – TRAINING

- 14.1 The DISTRICT encourages employees to keep their job-related skills current and to look for opportunities to enhance those skills. The Superintendent or designee will meet with each EMPLOYEE once a year through the performance evaluation process to assess individual training and career development needs.
- 14.2 When appropriate, the DISTRICT will provide employees the opportunity to attend job-related training, including, but not limited to, conferences and seminars. Voluntary training sessions attended after an employee's work hours are unpaid.
- 14.3 Upon approval by the DISTRICT, the employee will be reimbursed for expenses related to attending job-related, pre-approved training as allowed per the District's travel policy, vehicle use guidelines and applicable state and federal law.
- 14.4 EMPLOYEES will be required to attend training classes and take examinations connected with their duties as required by Federal, State, Local and Agency regulations. Examinations may be written or oral and include physical examinations, geographical qualification examinations and service examinations as required by Federal Railroad Administration Regulations.
- 14.5 EMPLOYEES required by the District to attend a training class or an examination will be compensated at their base hourly rate of pay for the time engaged in such training or examination. Such hours compensated will be counted as hours worked for the purpose of calculating overtime pay.

ARTICLE 15-SAFETY

- 15.1 When an employee is injured on the job so as to require that they be excused from work by an authorized representative of Management, they shall be paid at their base hourly

rate of pay for the balance of the shift for the initial medical evaluation. Subsequent physician's visits, if necessary, will be charged to sick leave if not scheduled outside of the employee's regular working hours. A copy of the accident report shall be given to the employee.

- 15.2 Workers' Compensation is a plan established by State Law under which payments are made to employees who become disabled due to accident or disease occurring as a direct result of their job. The cost of Workers' Compensation Insurance is paid entirely by DISTRICT. If an employee suffers an industrial injury, receives benefits under this plan and is granted sick leave during a disability resulting from an on-the-job injury, DISTRICT shall receive credit against any Workers' Compensation Insurance granted to him, until such leave is exhausted. Payments to the employee will not exceed 100% of regular base pay.
- 15.3 The employer and employee are required to comply with Federal Railroad Administration regulations & Cal-OSHA standards.
- 15.4 The DISTRICT will hold regular safety meetings pursuant to FRA regulations, in which Engineers/Conductors will have the opportunity to discuss safety matters. Safety matters that are of an emergency nature should be directed in writing to the Superintendent of Transportation.

ARTICLE 16 - GRIEVANCE PROCEDURE

16.1 DEFINITION

A grievance must be in writing, and is defined as a complaint that there has been noncompliance with or a misinterpretation or misapplication of this Agreement or a work rule or resolution of SMART. Grievances will be processed in accordance with SMART policy HRM-0011 Grievance Procedure as modified herein.

16.2 SCOPE

- 16.2.1. Selection appeals, disciplinary action, examination appeals, release from Probationary period, complaints of discrimination, the content of performance evaluations and reviews are not grievable hereunder.
- 16.2.2. A grievance may be filed by an employee on their own behalf or by the SECA.
- 16.2.3 If it is asserted that the grievance is outside of the scope of procedures or definitions contained herein, such assertion will be evaluated and ruled upon at each step. Such claim will not halt the further processing of the grievance until Step 4 of the resolution process is reached, as defined below. At Step 4, the General Manager will evaluate the assertion, and

make a ruling prior to hearing the grievance on its merits. If the General Manager rules that the matter is not Grievable hereunder, the grievance will be dismissed.

16.2.4 Disputes concerning the applicability of the Grievance Procedure that persist beyond step 4 may be submitted to step 5, Arbitration, for determination. The Arbitrator will decide the grievability of the issue before taking evidence concerning the merits of the dismissed grievance. If the Arbitrator decides that the dispute is Grievable, the matter will be referred back to Step 4 for consideration of the merits.

16.2.5 For the purpose of Article 16 “Working Days” shall be defined as those in a normal, five-day work week, Monday through Friday.

16.3 GRIEVANCE TIME LIMITS

16.3.1. Time limits specified in each step of the procedure shall be strictly observed and may only be extended by mutual agreement of the parties in writing.

16.3.2. Failure of a grievant to observe a time limit shall terminate the grievance. Failure of the party to whom the grievance is submitted to observe the time limits shall give the SECA the right to move the grievance to the next level.

16.4 PROCEDURE

16.4.1. The District recognizes that disputes should be resolved at the lowest possible administrative level. The grievance procedure shall be followed in its entirety before further actions are taken to seek resolution to the dispute. When the grievance is filed by a bargaining unit employee, the grievant may be represented by the SECA representative throughout the grievance process.

16.5 INFORMAL GRIEVANCE - STEP 1

16.5.1 The employee will discuss the grievance with their immediate supervisor within ten (10) working days of the event giving rise to the grievance, or within ten (10) working days of when the employee knew of or could have reasonably discovered such action or occurrence. The supervisor shall give their decision to the employee within ten (10) working days following the discussion.

16.5.2. Presentation of an informal grievance will be a prerequisite to the institution of a formal grievance.

16.6 FORMAL GRIEVANCE

16.6.1. STEP 2 - Grievance Form:

16.6.1.1 Within fifteen (15) working days, if the grievant is not satisfied with the informal response, or he/she has not received a response from the supervisor within the ten (10) working day limit specified above, the employee or the SECA may initiate a formal grievance. A formal grievance shall be initiated by completing and filing a Grievance Form with the Human Resources Department with a copy to the supervisor and SECA. The form must contain:

- i. Name(s) of grievant;
- ii. Position title(s);
- iii. Department(s);
- iv. Mailing Address(es);
- v. A clear statement of the nature of the grievance, citing applicable rule, regulation, policy or contract language;
- vi. The date upon which the event giving rise to the alleged grievance occurred;
- vii. The date upon which the informal discussion with the supervisor took place;
- viii. A proposed solution to the grievance;
- ix. The date of execution of the Grievance Form

16.6.2. Resolution Process: After filing the Grievance Form with Human Resources, the process for resolving the grievance is as follows:

- i. **STEP 3:** Within twenty (20) working days after a formal grievance is filed, the Department Manager will investigate the grievance, confer with the SECA in an attempt to resolve the grievance and make a decision in writing.
- ii. **STEP 4:** If the grievance is not resolved in Step 3 to the satisfaction of the SECA, within ten (10) working days of receipt of the Department Manager's decision, the SECA may request consideration of the grievance by the General Manager, by notifying the Human Resources Department in writing.
 - 1) Within twenty (20) working days after such notification, the General Manager will investigate the grievance, conferring with person(s) affected to the extent they deem necessary, and will render a decision in writing.

- 2) If the written decision of the General Manager resolves the grievance to the satisfaction of the SECA, it will bind the District.
- 3) If the SECA is not satisfied with the decision of the General Manager or has not received a response within the time limits specified in Step 4, the SECA may proceed to Step 5.

iii. **STEP 5 Arbitration:** Should the matter remain unresolved in Step 4 above, a final consideration of the grievance to Step 5, arbitration, may be filed in writing with the Human Resources Department not more than fifteen (15) working days from receipt of the General Manager's decision.

- 1) The grievance will be determined by an arbitrator, provided that the District and the grievant agree on the issues to be arbitrated.
- 2) As soon as possible, but no later than twenty (20) working days, after receipt of the Step 4 request for arbitration, the District and the SECA shall select an arbitrator. If the parties are unable to agree upon an arbitrator, they shall request a list of five (5) names from the State Conciliation and Mediation Services and shall strike names until an arbitrator is selected.
- 3) Both parties will endeavor to submit the grievance to the arbitrator within twenty (20) working days after selection.
- 4) The Arbitrator(s) will neither add to, detract from nor modify or ignore the existing language of any District rules, policies or regulations in considering any issue properly before them. If the arbitrator sustains the grievance, they shall fashion an appropriate remedy that does not conflict with any provisions contained in any District rule, policy or regulation.
- 5) The Arbitrator(s) will expressly confine themselves to the precise issues being raised by the grievance and submitted to them, and will have no authority to consider any other issue not so submitted.
- 6) Any monetary award in favor of the grievant is limited to lost wages or benefits suffered measured from the date of the grievance forward. In no event will the Arbitrator(s)

award any other type of monetary award, including, but not limited to, attorney's fees.

- 7) The decision will be final and binding on all parties.

16.6.3 General Considerations

- i. The Human Resources Department will act as the central repository for all grievance records.
- ii. All expenses of arbitration will be shared equally by the District and the SECA.
- iii. Failure on the part of the District or the grievant to appear in any case before an arbitrator, without good cause, will result in forfeiture of the case and responsibility for payment of all costs of arbitration.
- iv. The grievant's or SECA designee's signature is required at each step of the grievance procedure.
- v. A copy of the grievance will be provided to the General Manager at each step of the grievance process.
- vi. There will be no amendments of a grievance without the approval of both parties in writing.
- vii. Mediation may be used by both parties to assist them in resolving grievances. The decision to utilize mediation will be voluntary. Mediation may be held at any step prior to submission of the final appeal under Step 5 of the grievance procedure.

ARTICLE 17 – DISCIPLINE

- 17.1 The DISTRICT has the right to discipline or discharge employees for just cause. The DISTRICT employs a progressive disciplinary program, which program may include, but is not limited to, counseling, verbal warning, written warning, suspension, and discharge. Disciplinary action may begin at any step in the program depending upon the seriousness of the infraction. The District will notify the employee and the SECA by certified mail of the commencement of a disciplinary investigation within seven (7) calendar days of the District's knowledge of the act or occurrence.
- 17.2 The causes for which an employee may be disciplined or discharged shall include, but not be limited to, the following:

- 17.2.1 Dishonesty
- 17.2.2 Insubordination
- 17.2.3 Intoxication or use of alcoholic beverages or illegal drugs while on duty or on DISTRICT property.
- 17.2.4 Sexual harassment or other harassment of fellow employees.
- 17.2.5 Violation of DISTRICT rules or policies.
- 17.2.6 Violation or non-compliance with federal and state operating rules and regulations, including Federal Railroad Administration rules and regulations.
- 17.2.7 Violence and/or threats of violence in the workplace.
- 17.3 The DISTRICT will inform employees in writing as to the reasons for a discharge or suspension.
- 17.4 Regular employees (those who have completed the Probation Period) claiming that they were unjustly disciplined or discharged may challenge the discipline or discharge through the Discipline policy and procedures set forth in the DISTRICT's Discipline Policy, HRM-0018. HRM-0018 and any modifications thereto are incorporated into this Agreement and are binding on all parties. The Regular employee may be represented by the SECA throughout the disciplinary process. Except as provided in paragraph 17.5, no Bargaining unit employee will be disciplined, suspended or dismissed from the service until a fair and impartial formal investigation has been conducted by an authorized Department Manager.
- 17.5 Except when a serious act or occurrence is involved, or as required by Federal Railroad Administration regulations, a Bargaining unit employee will not be held out of service in disciplinary matters before a formal investigation is conducted. A serious act or occurrence is defined in section 17.2 above.
 - 17.5.1 If a Bargaining unit employee is held out of service before a formal investigation, the District may elect to put the employee on Administrative Leave of Absence with pay during the disciplinary process. Holding a Bargaining unit employee out of service before a formal investigation or paying the employee for being out of service for less than a serious act or occurrence is not prejudging the employee.
- 17.6 The General Manager's or designee's decision shall only be appealed by the employee or by the SECA on the employee's behalf to an Arbitrator selected by the Parties.
 - 17.6.1 The request for arbitration may be filed in writing with the Human Resources Department not more than fifteen (15) working days from

- receipt of the General Manager's decision, or the right to appeal the decision is forfeited.
- 17.6.2 The decision will be resolved by an arbitrator, provided that the District and the SECA agree on the issues to be arbitrated.
 - 17.6.3 As soon as possible, but no later than twenty (20) working days, after receipt of the request for arbitration, the District and the SECA shall select an arbitrator. If the parties are unable to agree upon an arbitrator, they shall request a list of five (5) names from the State Conciliation and Mediation Services and shall strike names until an arbitrator is selected.
 - 17.6.4 Both parties will endeavor to submit the appeal to the arbitrator within twenty (20) working days after selection.
 - 17.6.5 The decision of the arbitrator will be final and binding on all parties.
 - 17.6.6 The Arbitrator(s) will neither add to, detract from nor modify or ignore the existing language of any District rules, policies or regulations in considering any issue properly before them. If the arbitrator sustains the decision, he/she shall fashion an appropriate remedy that does not conflict with any provisions contained in any District rule, policy or regulation.
 - 17.6.7 The Arbitrator(s) will expressly confine themselves to the precise issues being raised by the appeal and submitted to them, and will have no authority to consider any other issue not so submitted.
 - 17.6.8 Any monetary award in favor of the employee is limited to lost wages and benefits suffered measured from the date of the imposed discipline forward. In no event will the Arbitrator(s) award any other type of monetary award, including, but not limited to, attorney's fees.
 - 17.6.9 All expenses of arbitration will be shared equally by the District and the employee.
 - 17.6.10 Failure on the part of the District or the employee to appear in any matter before an arbitrator, without good cause, will result in forfeiture of the matter and responsibility for payment of all costs of arbitration.
 - 17.6.11 Mediation may be used by both parties to assist them in resolving the disciplinary matter. The decision to utilize mediation will be voluntary. Mediation may be held at any step prior to submission of the final appeal to arbitration.
- 17.7 Revocation of Certification: For matters related to the revocation of engineer and conductor certifications under the Federal Railroad Administration regulations, 49 CFR 240 and 242, the District will comply with the procedures set forth in sections

49 CFR Parts 240 and 242. The District shall have the discretion to consolidate any such revocation hearing with any discipline hearing arising from the same facts.

ARTICLE 18 – LEAVES

18.1. All leave time, including Holiday, Sick and Vacation leave will be processed in accordance with District policy HRM-0022. Leaves, except as modified herein. From time to time it may be necessary to modify District leave policy as required by Local, State or Federal law. Should the District be required by law to modify a leave policy, the District will notify the SECA in writing of the required change. Any other proposed changes not required by law will be subject to the provisions of the Meyers-Milias Brown Act.

18.2. HOLIDAYS

18.2.1. The DISTRICT observes various District designated holidays each year. Regular full-time and part-time employees are eligible for paid District designated holidays. To be eligible for Holiday pay, employees must work or be in paid status on the employee's regularly scheduled work days the day before and the day after the holiday.

18.2.2. Paid holidays are as follows:

1. New Year's Day - January 1st
2. Martin Luther King, Jr.'s Birthday, third Monday in January.
3. President's Day, the third Monday in February
4. Memorial Day, the last Monday in May.
5. Independence Day, July 4th.
6. Labor Day, the first Monday in September.
7. Veteran's Day, November 11th.
8. Thanksgiving Day
9. The day following Thanksgiving Day
10. Christmas Day, December 25th.
11. Two (2) Floating Holidays
12. Each day appointed by the Governor of the State of California and formally recognized by the Board of Directors as a day of mourning or other special observance.

18.2.3. Floating Holidays. Two eight (8) hour days per year will be deemed as floating holidays, which may be taken at any time during the calendar year in which it is accrued provided a written request is made in advance and the supervisor approves such request in writing. Floating holiday pay will be pro-rated for part-time employees. Employees eligible for floating holidays are regular, Probationary, and at-will. Temporary and contracted employees are not eligible

for floating holiday pay. Floating holiday pay must be taken in increments of eight (8) hours. Floating holiday hours must be used in the year that they are accrued and will not carry over from one calendar year to the next. If an eligible employee does not use their floating holiday hours during the calendar year, one eight (8) hour day may be paid out as cash. Floating holiday hours are not eligible to be paid out upon separation of employment from the District. New hires hired prior to June 1st of each year will receive two floating holidays. New hires hired between June 1st and August 31st of each year will receive one (1) floating holiday. New hires on or after September 1st will not receive the floating holidays for that year. Supervisor approval is needed prior to scheduling a floating holiday.

- 18.2.4 If in the future, the DISTRICT and SECA agree to establish an Alternative Work Schedule, (i.e. a 4/10 shift), employees whose normally scheduled work shift is greater than 8 hours will receive holiday pay equivalent to the number of hours they are regularly scheduled to work. Holiday pay in excess of eight hours will be paid at the straight time rate. If the Employee actually works on the holiday, hours worked will be paid as specified in District policy HRM-0022.

18.3. VACATION ACCRUAL AND PAY

- 18.3.1 All regular full-time employees are eligible to accrue vacation leave based on hours worked on a maximum forty (40) hour workweek. Part-time employees who work a minimum of 20 hours per week shall accrue vacation on a pro-rata basis. Usage and accrual shall be governed by the same rules and regulations applicable to full time employees. Vacation accrual schedules can be found in District policy HRM-0022 – Leaves.
- 18.3.2 If in the future, the DISTRICT and SECA agree to establish an Alternative Work Schedule, (i.e. a 4/10 shift), employees whose normally scheduled work shift is greater than 8 hours may use accrued vacation pay equivalent to the number of hours they are regularly scheduled to work. Vacation pay in excess of eight hours in one day will be paid at the straight time rate.
- 18.3.2 Vacation Buyback. Each represented employee may request once a calendar year to receive payment for up to eighty (80) hours of accrued vacation hours, provided that there is a minimum remaining balance of eighty (80) hours following payment. Such requests may be made bi-weekly during any pay period.
- 18.3.3 Additional Vacation Time – To allow for flexibility throughout the year, after the annual bid process has been completed, employees may request additional vacation or compensatory time off as needed. All such requests must be scheduled in advance and receive Supervisor approval. The District reserves the right to deny additional time off requests due to Operational needs.

18.4. SICK LEAVE ACCRUAL AND PAY

- 18.4.1 Regular full-time and part-time employees are eligible to receive sick pay. Each DISTRICT full-time employee will accrue up to 12 sick days (96 hours) per year, with no limit on accumulation. Regular part-time employees who work at least 20 hours per week are eligible to accrue paid sick leave on a pro-rata basis. In accordance with AB 1522, Article 1.5. Section 246 (b)(1), the minimum sick leave accrual rate for regular part-time employees who work at least 20 hours per week will be one hour per every 30 hours worked. Usage and accrual of said benefits shall be governed by the same rules and regulations applicable to full-time employees. Use of sick leave will be consistent with District policy HRM-0022 Leaves, Section 3, Sick Time Accrual and Pay except as modified herein.
- 18.4.2 If in the future the DISTRICT and SECA agree to establish an Alternative Work Schedule (i.e. a 4/10 shift), employees whose normally scheduled work shift is greater than 8 hours may use accrued sick leave pay equivalent to the number of hours they are regularly scheduled to work. Sick leave used in excess of eight hours in one day will be paid at the straight time rate.

18.5. MEDICAL AND OTHER LEGALLY REQUIRED LEAVES OF ABSENCE

- 18.5.1 Leaves of Absence are periods of time in which an employee is permitted to be away from work without being terminated or considered to have voluntarily resigned. Completion of the Probationary Period is required, except where state or federal laws require otherwise. Examples of circumstances where a leave of absence is appropriate are work-related disabilities, military duty and medical disabilities, (including pregnancy). In instances where the leave occurs during the Probationary Period, the Probationary period is extended by the time an employee is out on a leave. Leaves are generally unpaid time off, unless the employee is eligible for and has accrued time under the sick or vacation plans.
- 18.5.2 The General Manager or designee, on a case-by-case basis, may grant a leave of absence (LOA), depending on the nature of the leave and the business needs at that time. It is the employee's responsibility to maintain contact by phone or in writing, with their supervisor and/or the Human Resources Department while he/she is on a LOA. The employee must provide documentation supporting the need for the leave (e.g., physician's visit certification) and keep it up-to-date. Any holidays that occur while an employee is on a LOA are not paid unless the use of accrued sick, compensatory and/or vacation time on the day prior to and after the District holiday is used. Vacation and sick time does not accrue during a leave if an employee is in unpaid leave status.
- 18.5.3 All legally required leaves will be administered according to DISTRICT policy HRM-0022 – Leaves. DISTRICT reserves the right to update this policy as required to comply with changes in State, Federal or local laws.

ARTICLE 19 - HEALTH AND LIFE INSURANCE

- 19.1 DISTRICT provides each employee with a comprehensive group insurance plan as outlined in District Policy HRM-0019 Employee Benefits 19.2 New employees who work a minimum of 20 hours per week are eligible to participate in District health and welfare benefits on the first day of the month following their date of hire.
- 19.2 Maintenance of Benefits and Premium Sharing – The DISTRICT shall contribute the amounts outlined in APPENDIX A toward health and welfare benefits for the life of this agreement. If Employees elect to enroll in DISTRICT benefit plans, they shall make a premium sharing contribution according to the schedules set forth in APPENDIX A.
- 19.2.1 Medical Benefits for Retirees/Dependents – Eligibility for medical benefits for retirees/dependents is set forth in APPENDIX B per Government Code Section 22892 of the PEMCHA.
- 19.3 At appropriate normal open enrollment periods or other enrollment periods as arranged by the District for initial enrollment, the District's group insurance plans shall be made available to employees covered by this Agreement.
- 19.4 Coordination of Benefits. If an employee and their spouse or other qualified dependent both work for the District, benefits received under group policies will be coordinated with any other Employer-provided benefits an employee or dependent may have. This means an employee and their dependent(s) may not receive double coverage under any plan offered by the District.

ARTICLE 20 - PENSION PLAN

20.1 CalPERS

- 20.1.1 The DISTRICT and each employee, who is scheduled to work twenty (20) hours per week or who actually works one thousand (1,000) hours or more in a fiscal year, shall continue to contribute to the Public Employees' Retirement System in accordance with the applicable rules and regulations.
- 20.1.2 Employees hired on or after January 1, 2013, the effective date of the new CalPERS Retirement Plan, (2% @ Age 62) shall be covered by the terms of that retirement plan.

20.2 457 Deferred Compensation

- 20.2.1 The DISTRICT has available to all employees a 457 b Deferred Compensation Plan. This plan allows employees to make voluntary contributions, on a pre-tax basis, for their own retirement savings. For employees hired after June 1, 2012, the DISTRICT will match employee voluntary contributions up to a maximum of 2% of annual base salary.

ARTICLE 21- WAGES

Wages for this Unit of employees as shown below:

Job Classification	Hourly Wage	Training wage (85%)
Locomotive Engineer/ Conductor	44.96	38.22
Conductor	37.40	31.79

- 21.1 Wages will be effective on the first day of the first full pay period following ratification of the Agreement.
- 21.2 A newly hired employee shall receive 85% of the full rate of pay in effect at the time of hire until such employee has successfully completed the training period and has been certified as an Engineer and/or Conductor by SMART at which time they will be compensated at the full rate of pay.

ARTICLE 22 – DEADHEADING

22.1 Deadheading: Employees who are called to deadhead will be compensated in accordance with the times shown in the matrix in paragraph (25.1.3) below. Employees involved in deadheading not shown in the matrix will be paid actual time consumed; however this time must meet the standards of reasonableness.

22.1.1 Deadheading allowances will be paid as an arbitrary payment separate from the employee’s workday and will be paid at the straight time rate.

22.1.2 Deadheading resulting from the exercise of seniority will not be paid for.

22.1.3 Matrix: From ROC Santa Rosa

STATION	MILEAGE	TIME EQUIVALENT	
		Minutes	Hours
Windsor	5	15	.25
Santa Rosa (North)	6.1	15	.25
Santa Rosa (Downtown)	7	20	.3
Rohnert Park	14	30	.5
Cotati	16	30	.5
Petaluma (Main Office)	21	30	.5
Petaluma Station	23	40	.6

Novato San Marin	33	45	.75
Roblar Office	37	45	.75
Novato Hamilton	38	50	.8
Civic Center-San Rafael	42	55	.9
San Rafael	44	60	1
Larkspur	46	70	1.2

22.1.4 Transportation Expense: When operating employees are required to travel to assignments outside of their home terminal on other than regular assignment, the District will either provide transportation or authorize the use of the employee’s personal vehicle. When so authorized, the employee shall receive compensation per mile equal to the IRS rate then in effect between the ROC and the reporting point and return, and for work-related mileage at the other point.

ARTICLE 23 - CLOTHING ALLOWANCE

23.1 The DISTRICT will provide uniforms; ten shirts (at least one of which must be long sleeve), eight pants and will provide laundered service for such uniforms. The DISTRICT will also provide two pairs of boots annually.

ARTICLE 24 - TRANSIT VEHICLES

24.1 Vehicles assigned to the EMPLOYEES working group will be used by and for the EMPLOYEES. Other DISTRICT employees may, if available, use these cars for DISTRICT-related business.

24.2 EMPLOYEES will be responsible for keeping the vehicles reasonably clean and inspected, but in no case are they responsible for normal wear and tear.

24.3 All vehicles will be equipped with an emergency kit.

24.4 It is each EMPLOYEE’S responsibility to inform the DISTRICT if any emergency items are missing.

ARTICLE 25 - CIVIC DUTY TIME OFF

25.1 SMART encourages employees to serve as jurors or witnesses when called. Full-time and part-time regular employees will receive full pay while serving on jury or witness duty. An employee must notify their Supervisor of the need for time off for jury or witness duty as soon as a notice or summons from the court or a subpoena is received. Proof of attendance shall be required when the employee returns to work.

- 25.2 An employee may retain such payment as may be allowed for travel but shall make payable to SMART any and all fees which the employee may receive in payment for service as a juror. Employees are required to provide written verification of having served from the court clerk. If work time remains after any day of jury or witness duty, the employee will be expected to return to work for the remainder of their work schedule.
- 25.3 For positions covered under the FRA Hours of Service law, the employee will not be required to perform any work during the 24-hour period in which the jury duty is served.
- 25.4 Time spent on jury duty service will be considered time worked for purposes of DISTRICT'S contributions to health and welfare, pension plans, vacation eligibility and payment, holidays, and seniority.

ARTICLE 26 - OVERTIME AND WORK SCHEDULES

- 26.1 Overtime compensation will be paid at the rate of one and one-half (1 ½) times the regular rate for all hours worked in excess of eight hours in one day or forty (40) hours worked in a workweek.
- 26.1.2 Hours spent attending Jury Duty do not count toward the number of hours needed before an employee is eligible for overtime compensation.
- 26.2 Employees may elect compensatory time off for any overtime work performed. Compensatory time off is earned at time and one half. Employees may accumulate a maximum of eighty (80) hours of compensatory time off. Once the maximum number of hours has been accrued, the employee shall receive overtime pay as described in Paragraph 29.1. Employees may not elect compensation time off until they fall below the maximum eighty- (80) hour accumulation.
- 26.3 All employees must submit a timesheet indicating hours worked.
- 26.4 Each workday an employee is called, or required to report without being called, and released without performing service the employee will be paid for actual time held with a minimum of two (2) hours; if held over two (2) hours and released without having performed service, they will be paid for actual hours held in excess of 2 hour minimum.
- 26.5 If an employee is called back to work after the regular work day having performed at least 8 hours of compensated service on the day involved, he shall be paid a minimum of two (2) hours at the overtime rate. All work beyond the first two (2) hours shall be paid by the hour at the overtime rates.
- 26.6 On the seventh consecutive day worked within the workweek, the first eight (8) hours are paid at one and one-half times their regular rate, and hours worked beyond eight (8) are paid at double their regular rate of pay. For overtime purposes, the workday begins at 12:01

a.m. and ends at midnight. The workweek begins at 12:01 a.m. Monday and ends at midnight the following Sunday for all employees.

ARTICLE 27 - SHIFT BIDDING AND EXTRA WORK

- 27.1 The DISTRICT will conduct a minimum of two (2) bids per year, at six- (6) month intervals. The bid dates will be the first week in April, the second (2nd) in first week in October. The DISTRICT will announce bids electronically, distribute and/or post shift schedules to be bid upon at least fourteen (14) days prior to the day on which the bid/s process will occur. Actual bidding will take place at least ten (10) calendar days prior to the day on which the bid will take effect. For commencement of revenue service, the DISTRICT and SECA agree that bid dates may need to be shifted. After the start of revenue service, bid dates will be April and October.
- 27.2 Employees shall bid shifts according to the bargaining unit seniority order. Seniority lists will be distributed with the bid packet at least fourteen days prior to the day on which the bid process will occur. Assignments- will be made to employees in bargaining unit seniority order from bids submitted prior to the close of an advertisement period. Employees will be given confirmation for bids submitted.
- 27.3 Each employee will submit their bid. Employees may submit bids in person, by phone, by proxy or by email. If an employee fails to submit a bid, a SECA representative will bid for them. Bidding will take place on the Saturday of the week prior to effective date of the awarding of bids. Final results will be posted on Saturday in the Rail Operations Center office. The bid/s become effective on Monday within ten (10) days after awarding of the bids.
- 27.4 Employees on a leave of absence who will not be able to work at least two (2) months of the bid period will not be permitted to bid, unless the DISTRICT and the SECA mutually agree to permit the employee to bid. If the employee returns to work during the bid period, the DISTRICT will assign the employee to an open shift.
- 27.5 DISTRICT reserves the right to determine staffing levels of daily Engineers/Conductors assignments. If a shift becomes open between bidding cycles and the DISTRICT determines to cover all or part of that shift, the coverage of that shift will be as follows: Open assignments (vacancies due to resignation, termination or discipline, leaves of absence greater than 30 days or schedules not being covered by a Report or Vacation Relief Engineer) that the DISTRICT determines need to be filled will be offered in the following manner:

27.5.1 Open assignments as defined in 27.5 above will be offered for bid pursuant to bargaining unit seniority. In the event there is no volunteer **or interest in bidding** for the open assignment/s, the EMPLOYEE/S with the least amount of

bargaining unit seniority on the opposing assignment will be obligated to fill the open assignment.

27.5.2 New assignments, assignments subject to re-advertisement, Relief positions and vacancies, will be advertised for bid ***pursuant to Section 27.2.*** The advertising period will close 11:59 p.m. the following Monday, and assignments will be made effective 00:01 a.m. the following Monday.

27.5.3 Regular assignments will be re-advertised when any of the following permanent changes are made in such assignments:

1. Changing the crew base.
2. Changing advertised starting time at the crew base and or tie up time at the end of the assignment, one hour or more
3. Changing the assigned rest days.
4. Changing any run of the assignment to working a different Shift.

27.6 When regular runs, rosters or holiday schedules are rearranged, the local DISTRICT management representative and duly accredited SECA Representative on Site having jurisdiction will meet with the express intent of agreeing to group such assignments consistent with bargaining unit seniority while recognizing the necessity to protect service.

27.7 The SECA shop steward will work with a DISTRICT representative in processing the shift bids. The Superintendent or designee will post copies of all bids submitted each day.

ARTICLE 28 - EMPLOYEE ASSISTANCE PROGRAMS

28.1 The DISTRICT and SECA are committed to protecting the safety, health and well-being of all employees, the public and other individuals in the workplace. The District provides an Employee Assistance Program (EAP) to all Employees as part of its benefits program. In addition, pursuant to Federal Railroad Administration regulations, the District has developed a Critical Incident Stress Plan compliant with 49 CFR Part 272, (APPENDIX C).

28.2 Substance Abuse: As required by District policy and Federal Railroad Administration Regulations, the District has developed a Drug and Alcohol Free Workplace Policy and 49 CFR Part 219 Compliance Plan (APPENDIX D). All Employees in the bargaining unit are covered under the provisions of this plan.

ARTICLE 29 - NO STRIKES, WORK STOPPAGES OR LOCKOUTS

29.1 The SECA agrees that during the life of this Agreement there shall be no strikes, slowdowns, or any other form of work stoppage, including sympathy strikes and the DISTRICT agrees that there shall be no lockouts.

ARTICLE 30 – ACCESS TO NEW HIRE INFORMATION

- 30.1 The DISTRICT will notify the SECA of all new hires at least one week prior to the new employee’s start date. All new hires will receive a new employee orientation on their first day of employment. The DISTRICT agrees to allocate a thirty (30) minute timeframe during the new hire orientation schedule for SECA representatives to meet with the new employee(s). A SECA representative will contact a representative of the District’s human resources department at least twenty four hours in advance of the new hire orientation date to arrange a time to meet with the new employee during the orientation process. If SECA does not wish to send a representative to the new hire orientation, they may provide written materials to the DISTRICT Human Resources Department which will be provided to the new employee.
- 30.2 The DISTRICT will provide the SECA with EMPLOYEE contact information within 30 days of the date of hire pursuant to AB 119, Section 3558 of the California Government Code.

ARTICLE 31 - TERM OF AGREEMENT

- 31.1 This Agreement shall become effective _____ and remain in effect to and including June 30, 2019, and thereafter shall automatically be renewed from year to year unless either party shall give notice in writing to the other party at least sixty (60) days prior to the end of the initial term of a desire to amend, modify, or terminate this Agreement. If such notice or notices are not given, the Agreement shall be deemed to be renewed for the succeeding year.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto, having met and conferred in good faith, have caused their names to be subscribed this _____ day of _____, 2017.

FOR THE DISTRICT

FORTHE SECA

APPROVED

RATIFIED

Deborah Fudge
Chair, Board of Directors

Vince Kerins
SECA President

Attest

SMART NEGOTIATORS

Pat Glenn, Chief Negotiator

Lisa Hansley
SMART Human Resources

Jessica Sutherland
SMART Assistant General Counsel

SECA NEGOTIATORS

Ralph Miranda SECA
Chief Negotiator

Scott Mitchell
SECA Vice President

Rudy Crespo
Local Chairman

APPENDIX A

SMART EMPLOYER/EMPLOYEE MONTHLY BENEFIT PREMIUM CONTRIBUTIONS

EFFECTIVE JANUARY 1, 2017

Benefit Type	Employer Share	Employee share
Medical	85%	15%
Dental	80%	20%
Vision	100%	0%
Long Term Disability	100%	0%
Group Term Life	100%	0%
EAP	100%	0%
Additional Life	0%	100%
Dependent Life	0%	100%
Short Term Disability	0%	100%

APPENDIX B

CALPERS PEMCHA MINIMUM CONTRIBUTION FOR ANNUITANTS

AS OF APRIL 12, 2017

YEAR	PEMCHA Minimum	Employer Monthly Contribution for Annuitants
2011	\$108.00	\$1.00
2012	\$112.00	$\$112.00 \times 5\% \times 1 \text{ Year} = \5.60
2013	\$115.00	$\$115.00 \times 5\% \times 2 \text{ Years} = \11.50
2014	\$119.00	$\$119.00 \times 5\% \times 3 \text{ Years} = \17.85
2015	\$122.00	$\$122.00 \times 5\% \times 4 \text{ Years} = \24.40
2016	\$125.00	$\$125.00 \times 5\% \times 5 \text{ Years} = \31.25
2017	\$128.00	$\$128.00 \times 5\% \times 6 \text{ Years} = \38.40
2018	\$133.00	$\$133.00 \times 5\% \times 7 \text{ Years} = \46.55

APPENDIX C

CRITICAL INCIDENT STRESS PLAN



Critical Incident Stress Plan

(49 CFR Part 272)

February 15, 2017

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Section 2: Purpose,
Intent and Objectives

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Requirements

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Training

Section 7: Program
Review

Section 8:
Definition of
Terms

Section1: Introduction

The Sonoma Marin Area Rail Transit, (herein referred to as SMART) recognizes employees as the agency's most valuable resource and is committed to their wellbeing. Critical incidents occur with unfortunate results on the public, railroad and employees, they expose employees to potentially traumatic events. This exposure can in some cases result in detrimental cognitive, physical and/or emotional reactions. This document serves to outline processes developed by SMART to support employees involved in critical incidents, and to comply with *Title 49, Code of the Federal Regulations (CFR), Part 272 Critical Incident Stress Plans*. This program will be administered by Human Resources and SMART's Psychological Provider/ (See appendix A for details).

Section2: Purpose, Intent and Objectives

Purpose:

This plan is adopted by SMART, in fulfillment of requirements set forth in 49 CFR Part 272, Critical Incident Stress Plans. The purposes of the regulation, as stated in 49 CFR Part 272.1, are to promote:

1. Safety in railroad operations, and
2. Health and safety of railroad employees, specifically those directly involved in critical incidents as defined in 49 CFR Part 272.9.

Intent:

SMART is committed to employee health, safety, and welfare. SMART intends for this plan to optimize the key elements involved in responding to critical incidents, ensure its consistent and effective in its application, provide for its maintenance and continuity, and document its conformance to all requirements of 49 CFR Part 272.

Objectives:

SMART's Critical Incident Plan strives to apply evidence-supported best practices to:

1. Reduce the likelihood of employees developing disorders such as Post Traumatic Stress Disorder (PTSD) and Acute Stress Disorder (ASD) as a result of experiencing a critical incident in the workplace; and
2. Provide clear pathways to access evaluation and treatment as indicated to decrease symptoms and to promote resilience and recovery.

Section 3: Rule Requirements

SMART as required by 49 CFR Part 272 will:

1. Inform each directly-involved employee as soon as practicable of the relief options available in accordance with this plan;
2. Offer timely relief from the balance of the duty tour for each directly-involved employee, after the employee has performed any actions necessary for the safety of persons and contemporaneous documentation of the incident;
3. Offer timely transportation to each directly-involved employee's home terminal, if necessary;
4. Offer counseling, guidance and other appropriate support services to each directly involved employee;
5. Permit relief from the duty tour(s) subsequent to the critical incident; for an amount of time determined by each railroad, if requested by a directly-involved employee as may be necessary and reasonable;
6. Permit each directly involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both provided that the employees clinical diagnosis support the need for additional time off or the employee is in consultation with a health care professional related to the incident and such health care professional supports the need for additional time off in order for the employee to receive preventive services or treatment related to the incident, or both; and

7. Address how the railroad's employees operating or otherwise working on track owned by or operated over by a different railroad will be afforded the protections of the plan.

Section 4: Program Scope: Employees and Events Covered Under Plan

To be covered, employees must meet criteria under "Covered Employee Classifications" and "Directly Involved Employee" (see Definitions):

Critical incidents covered by this plan include:

1. Accidents reportable to the Federal Railroad Administration under 49 CFR Part 225 resulting in fatality, loss of limb, or similarly serious bodily injury; or
2. A catastrophic accident reportable to the Federal Railroad Administration under 49 CFR Part 225 that could reasonably be expected to impair the ability of a directly involved employee to safely perform his or her job duties.
3. SMART is currently negotiating MOU and the Critical Incident Stress Plan has been vetted and fully accepted.

Covered Employee Classifications:

The provisions of the plan apply to directly involved employees in the following job classifications:

1. Employees covered under 49 CFR Part 228 by hours of service (HOS) laws who are:
 - a. Locomotive engineers.
 - b. Conductors.
 - c. Signal employees.
 - d. Dispatching service employees (Control Supervisor)
 - e. Bridge Tenders.
2. Railroad employees who inspect, install, repair, or maintain railroad right-of-way or structures.
3. Railroad employees, who inspect, repair or maintain locomotives, passenger cars, or freight cars.

Directly Involved Employees means:

A directly involved employee for purposes of this plan includes employees in classifications outlined above who:

1. Are closely connected to the critical incident;
2. Witness the critical incident in person as it occurs; or
3. Witness in person the immediate effects of the critical incident; or
4. Are charged directly to intervene or respond to the critical incident, with the exception of SMART Police Officers and Code Compliance Officers.

Section 5: Response Protocols

1. The Critical Incident Stress Plan will be initiated when a critical incident occurs. Upon initiation, SMART Rail Operations Center (ROC) is advised that a critical incident has occurred.
2. ROC issues a text and/or email advising of the train number, location, and time of the incident. Included on the distribution list will be:
 - a. SMART Operations manager will be responsible for responding to the event including notification to the appropriate department heads:
 - Superintendent of Vehicle Maintenance
 - Superintendent of Signals and Way
 - Superintendent of Transportation
 - b. SMART *Psychological Provider/HR.
3. As soon as practical a SMART Field Supervisor will arrive at the site of the critical incident, and the following will occur:
 - a. Identify covered employees;
 - b. Take extra care to connect with and support covered employees;
 - c. Offer/remind directly involved employees of the following support services, including relief options:
 - i. Relief from the balance of the duty tour for each

- directly-involved employee, after the employee has performed any actions necessary for the safety of persons and contemporaneous documentation of the incident;
- ii. Timely transportation for each directly-involved employee to the employee's home terminal, (the employee's home reporting station, specifically the employee's regular reporting point at the beginning of the tour of duty), after the employee has performed any actions necessary for the safety of the persons and contemporaneous documentation of the incident;
 - iii. Counseling, guidance and other appropriate support services.
 - iv. Relief from duty tours subsequent to the critical incident for a period up to three days, without necessitating a diagnosis, including contact information for SMART *Psychological Provider who will grant the relief to each directly-involved employee;
 - v. Additional leave (relief) from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both, provided the employee's clinical diagnosis supports the need for additional time off, or the employee is in consultation with a health care professional related to the incident and such health care professional supports the need for additional time off in order for the employee to receive preventive services or treatment related to the incident or both. Leave will be administered in accordance with applicable state and federal medical leave laws.
- d. Complete checklist of notifications (Appendix B and C), documenting time executed;
4. Documentation (i.e., the checklist documenting actions taken) will be transmitted to SMART *Psychological Provider as soon as practicable.
 5. SMART *Psychological Provider will make an outreach call or text to covered employees within a timely manner of the incident to:
 - a. Offer counseling, guidance and support;

- b. Review additional relief options, and
- c. Facilitate assessment, referral, and treatment as requested by employee.
- d. After the initial assessment, if additional treatment is required, SMART will not restrict the employee's choice of health care practitioners, (e.g., certified employee assistance professional, or personal licensed psychiatrist, clinical psychologist, clinical social worker, or physician), although treatment must be consistent with applicable standards of care, collective bargaining agreements, and pertinent regulations.

Section 6: Plan Communication and Training

- 1. Employees will receive initial information explaining the core features of the Critical Incident Stress plan through a variety of communication means, including the following:
 - a. May be accessed through SharePoint on SMART Web site.
 - b. A memorandum (Appendix C) will be distributed to SMART employees.
- 2. Education on the plan to employees, supervisors and other involved groups on the Critical Incident Stress Plan will be addressed in the following formats:
 - a. Employee pre-incident training will educate all covered employees on resilience, normal reactions to stress, ways to cope with stress and the core features of the Critical Incident Stress Plan. Employee training will be provided through the following:
 - i. Annual training for engineers and conductors, and train movement personnel;
 - ii. Rules Class for mechanical employees; and
 - iii. New Employee Orientation.
 - b. Non agreement supervisors and managers of covered employees will receive training on their responsibilities in enacting the Critical Incident Stress Plan and the principles of Stress First Aid directing them how to interact with employees involved in critical incidents.

Supervisory training will be provided through the following:

- i. Computer-based (EPATH) training;
 - ii. DSLE/Supervisor class
 - iii. Training at job briefings and staff meetings;
- c. * Psychological Provider will be provided with the plan elements, concentrating on case management and advanced Stress First Aid an application of Psychological First Aid (PFA), assessment and treatment for PTSD, ASD, anxiety, and depression.
- d. Supervisor training will be provided through:
- i. Staff training classes;
 - ii. Review at staff meetings

Section 7: Program Review

SMART will maintain documentation of compliance with the Critical Incident Stress Plan. Additionally, the Plan will be reviewed regularly and changes will be made as deemed necessary. Any substantial changes to the plan will be submitted to the FRA and any international/national presidents of labor organizations representing crafts covered by the Critical incident Stress Plan.

* All references to “Psychological Provider” will be directed currently to Dr. Clementi (See Appendix A)

Section 8: Definition of Terms

Critical Incident: accidents reportable to the FRA under 49 CFR Part 225 resulting in fatality, loss of limb, or similarly serious bodily injury; or catastrophic accident reportable to the Federal Railroad Administration under 49 CFR Part 225 that could reasonably be expected to impair the ability of a directly involved employee to safely perform his or her job duties.

Directly Involved Employee: employees covered under 272.7 whose actions are closely connected to the critical incident; who witness the critical incident in person as it occurs or who witness in person the immediate effects of the critical incident; or are charged directly to intervene or respond to the critical incident, with the exception of SMART Police Officers.

FRA: Federal Railroad Administration

Home Terminal: the employee's home reporting station, specifically the employee's regular reporting point at the beginning of the tour of duty

In person: employees who were present on-site or immediately proximal to the critical incident locale and observed the immediate prelude, actual incident, and/or immediate effects therefrom.

Non- Agreement Supervisor/ Manager: management employee in a supervisory role, who is responsible to respond to the critical incident.

Psychological First Aid (PFA): PFA is a flexible, evidence-informed intervention which is tailored to the individual who has experienced a traumatic event. PFA emphasizes a nonintrusive and compassionate approach to providing an individual who has experienced a critical incident practical assistance with immediate needs, safety and comfort, and assistance in establishing connections with primary support networks and social resources, as well as information about common reactions to trauma, ways to cope with stress, follow-up, and how to access additional support services, including treatment (if needed). PFA does not encourage or require individuals to express their experience, including their emotional reactions and symptoms, to peers in a group setting. The goals of PFA are to decrease the initial distress associated with exposure to a traumatic event and to improve adaptive functioning.

Stress First Aid (SFA): SFA is an application of psychological first aid (PFA) developed in conjunction with staff from the National Center for Posttraumatic Stress Disorder to facilitate ready acceptance and efficacious utilization in the railroad workplace.

APPENDIX D

FEDERAL RAILROAD ADMINISTRATION CONTROL OF ALCOHOL AND DRUG USE

(49 CFR PART 219)

MODEL PART 219 RAILROAD COMPLIANCE PLAN

Sonoma-Marín Area Rail Transit

June 12, 2017

Date of FRA Plan Approval: June 11, 2017

MODEL PART 219 RAILROAD COMPLIANCE PLAN

FRA's Model Part 219 Railroad Compliance Plan has been developed by FRA as a tool to assist railroads in complying with the requirements of Title 49, Code of Federal Regulations Part 219 with respect to submission and approval of random alcohol and drug testing and the required programs. This plan, although initially developed for the smaller railroads, may be used by all railroads regardless of class.

Only railroads that are required to comply with Part 219 are authorized to use Federal authority. Therefore, entities having less than 16 covered service employees (unless they operate on tracks of another railroad or otherwise engage in joint operations with another railroad except as necessary for purposes of interchange) are not authorized to utilize Federal authority to conduct Federal random or reasonable cause testing. In those instances, a railroad should use "Company Policy Testing" as their authority. All railroads subject to Part 219.3 would still be responsible for complying with Subpart C – Post-Accident testing requirements.

Simply signing and adopting this plan does not constitute compliance. The actions required by the regulation must be in accordance with regulatory requirements to achieve compliance. **In all cases where there is a difference between this plan and 49 CFR Part 219 or 49 CFR Part 40, the CFR takes precedence.**

A.

NOTE: Title 49, CFR Part 40 requires employers to have a Designated Employer Representative (DER), defined in 40.3 as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40. Service agents cannot act as DERs." In the past, this person may have been referred to as the Program Administrator.

NOTE: Please make all entries, changes, or additions to this model plan in bold, italics, color, or other distinguishing manner in order to expedite review by the FRA Drug & Alcohol Program Specialist.

I. Policy Statement

Sonoma~Marin Area Rail Transit recognizes the problem of substance abuse in today's society. This problem poses particular concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the general public. This railroad has a concern for the safety, health and well being of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. This railroad will comply with all statutes and regulations administered by the FRA in implementing the required Part 219 Drug and Alcohol Program.

Programs have been established on this railroad which requires regulated employees to demonstrate their safety posture through complying with:

1. Urine screens to detect the presence of marijuana, cocaine, opioids, phencyclidine and amphetamines (See 49 CFR § 40.85 and 49 CFR § 40.87);
2. Breath alcohol tests to detect the unauthorized use of alcohol; and
3. Breath, urine, blood and tissue (fatality) testing after qualifying FRA post-accident events.

In accordance with the applicable Federal regulations, this railroad prohibits persons who perform work regulated by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) and/or performing duties as Maintenance-of-Way (MOW) workers as described in the definition of "Roadway Worker" in § 214.7 from being under the influence and/or possession of illegal substances and/or under the influence of alcohol while on duty or within four hours of reporting for regulated service. Additionally, illegal substance use is prohibited **on or off duty**, except as allowed in 49 CFR § 219.103.

II. Identifying Information.

Railroad:

Name: Sonoma-Marín Area Rail Transit

Address: 5401 Old Redwood Highway, Suite 200

Petaluma, CA 94954

Phone: 707-794-3330

E-Mail: sshelton@sonomamarintrain.org

Designated Employer Representative:

Name: Colleen Day-Flynn Address: (If different from above)
Phone: 707-794-3326
E-Mail: cday-flynn@sonomamarintrain.org

Assistant Designated Employer Representative:

Name: Yasamin Mora Serrano Address: (If different from above)
Phone: 707-794-3080
E-Mail: ymserrano@sonomamarintrain.

Medical Review Officer:

Name: Paul Teynor, MD
Address: 76 E 6790 S
Midvale, UT 84047

Phone: 815-486-5400

Testing Laboratory (must be on HHS list of certified labs):

Name: Clinical Reference Laboratory
Address: 8433 Quivira Road
Lenexa, KS 66215

Phone: 913-492-3652

Substance Abuse Professional (SAP):

Name: Lisa Wolper, SAP
Address: 825 College Ave
Santa Rosa, CA 95404
Phone: 707-524-8864

III. Scope

This policy applies to all railroad personnel (including contractors and volunteers) who perform regulated duties subject to either the Federal Hours of Service Laws “Covered Service” and/or performing Maintenance-of-Way (MOW) duties covered by the definition of “Roadway Worker” in § 214.7.

This railroad has a total of 54 regulated service employees (including volunteers and contractors) who perform “Hours of Service” functions.

This railroad has a total of 10 regulated service employees (including volunteers and contractors) who perform “Roadway Worker” functions.

The total number of all regulated employees (**include both covered service and roadway workers**) at the time of this submission is: 64.

(Include any contracted employees in the above counts.)

If applicable, identify the following for the contractor (**if you have multiple regulated service contractors please add appendix at the end of this document with the following information**):

Name of contractor: _____

Regulated Service performed for your railroad: _____

Address: _____

Contact Person: _____

Email address: _____

Phone: _____

Identify whether you operate on tracks of another railroad (or otherwise engage in joint operations with another railroad, except as necessary for purposes of interchange). If so, which railroad (s) and mileage: _____

Previous Employer Checks: This railroad is required to check on the drug and alcohol testing record of employees it is intending to use to perform regulated duties. This railroad will, after obtaining an employee’s written consent, request information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee’s application or transfer into regulated service. **See 49 CFR 40.25.**

An employee must also be asked whether he or she tested positive (or refused to test) on any Federal pre-employment drug or alcohol test administered by a DOT employer to which the employee applied for, but did not obtain regulated service work during the past two years.

With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including Federal follow-up tests) must be provided to this railroad.

IV. Testing Programs

There are numerous situations when Federal **drug and/or alcohol tests** must be administered for the railroad to be in compliance with 49 CFR Part 219. Personnel performing functions listed in Section III of this policy will be required to submit to a drug and/or alcohol test in the instances set forth, as follows:

- 1) **Pre-Employment Drug Testing** – (49 CFR 219.501) Applicants will be informed that all individuals this company will use for regulated service must be drug-free. Passing a Federal pre-employment drug test is a condition prior to performing regulated service duties. If an applicant refuses to submit to the drug test, or tests positive on the drug test, the applicant will not be considered qualified to perform regulated service and will not be offered a position in regulated service.

Federal Pre-Employment Alcohol Testing (Optional) – (49 CFR 219.502)
Authorized but not required. This railroad chooses to conduct Federal alcohol pre-employment testing? Place an "X" in one of the following boxes: Yes No

- 2) **Federal Reasonable Suspicion Testing** – (49 CFR 219.301)
 Regulated service personnel will be required to submit to a Federal drug and/or alcohol test whenever a properly trained supervisory employee of this railroad has reasonable suspicion that a regulated employee is currently under the influence of or impaired by a controlled substance or alcohol. Reasonable suspicion must be based on specific, contemporaneous personal observations the supervisor can articulate concerning the employee's appearance, behavior, speech, body odor, chronic effects or withdrawal effects.

Part 219.11(g) requires supervisory employees to have education and training on alcohol misuse and controlled substance use. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. It will also prepare the supervisors to make the decisions necessary in reasonable suspicion and FRA post-accident situations (i.e., what is a qualifying event and who is to be tested).

The observation for alcohol must be made by at least one qualified supervisory employee who has received proper training in the signs and symptoms of alcohol use per 219.11(g). Documentation of this decision must be maintained, as required by Part 219 Subpart J.

The observation for drugs must be made by at least two qualified supervisory employees, one of which has received proper training in the signs and symptoms of drug use/misuse per 219.11(g). One qualified supervisor must be on-site, but the supervisor trained per

219.11(g), although preferred does not have to be the supervisor on-site. Documentation of this decision must be maintained, as required by Part 219 Subpart J.

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable suspicion cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a “reasonable suspicion” to have the regulated service person subjected to Federal drug and/or alcohol testing.

- 3) **Federal Reasonable Cause Testing** – (49 CFR 219.401) **Authorized but not required.**
A railroad must choose whether or not to conduct Federal drug and alcohol Reasonable Cause testing. If a railroad selects to conduct Federal (DOT) Reasonable Cause testing, then the railroad cannot perform company (non-DOT) testing for any event described in 219.403. If a railroad selects to conduct company (non-DOT) Reasonable Cause testing, then the railroad cannot perform DOT testing for any event described in 219.403.

This railroad chooses to conduct Federal Reasonable Cause drug and alcohol testing for all train accident/incidents and rule violations that meet the criteria of 49 CFR 219.403. Please check the appropriate box:

Place an “X” in one of the following boxes: Yes No

A Federal reasonable cause drug and/or alcohol test may be required (employer’s decision) when a regulated service employee:

- a. Was involved in a qualifying Train accident/incident per 219.403 (a) and a supervisor has a reasonable belief based on specific and articulable facts that the regulated service person’s acts or omissions contributed to the occurrence or severity of the accident/incident; or
- b. Committed a rule violation described in 219.403 (b).

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable cause cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the

supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a “reasonable cause” to have the regulated service person subjected to Federal drug and/or alcohol testing.

4) **FRA Post-Accident Drug/Alcohol Testing** – (49 CFR 219.201)

FRA regulations require blood and urine specimens from all surviving **regulated service personnel** when they are directly involved in a qualifying accident or incident. Tissues are also collected, in addition to urine and blood from any fatality involving an on-duty railroad employee (**direct or “regulated service” contractual employee**). Events requiring FRA post-accident testing include (note regulatory exceptions will be followed):

1. **Major Train Accident** involving any rail equipment accident with reportable damages in excess of the current calendar year reporting threshold under 49 CFR Part 225 and one or more of the following:
 - a. A fatality (any fatality).
 - b. A release of hazardous materials from railroad “lading” that results in an evacuation or reportable injury caused by the hazmat release.
 - c. Damage to railroad property of **\$1.5 Million** or more.
2. **Impact Accident** involving reportable damage in excess of the current reporting threshold that results in:
 - a. A reportable injury; or
 - b. Damage to railroad property of \$150,000 or more.
3. **Fatal Train Incident** involving any on-duty railroad employee or regulated contractor employee where damages do not exceed the current reporting threshold.
4. **Passenger Train Accident** with a reportable injury to any person in a train accident involving damage in excess of the current reporting threshold that involves a passenger train.
5. **Human-Factor Highway-Rail Grade Crossing Accident/Incident** meeting one of the following criteria:
 - i. Regulated employee interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for

the safety of highway traffic that depends on the normal functioning of such a system, as prohibited by § 234.209, is subject to testing.

- ii. Train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of a grade crossing system, as provided § 234.105 (c)(3), is subject to testing.
- iii. Regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5), but who failed to do so, due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105 (c)(1) and (2), 234.106, or 234.107 (c)(1)(i), is subject to testing.
- iv. If there is a fatality of any regulated service employee regardless of fault. (fatally injured regulated employee must be tested)
- v. If regulated employee violates an FRA regulation or railroad operating rules and whose actions may have played a role in the cause or severity of the accident/incident, is subject to testing.

Testing Decision: For an accident that meets the criteria for a Major Train Accident, all assigned **crew members of all involved trains and on-track equipment** must be tested. Test any other regulated service employees that had a possible role in the cause or severity of the accident.

For an Impact Accident, Fatal Train Incident, Passenger Train Accident or Human-Factor Highway-Rail Grade Crossing Accident/Incident, Test any other regulated service employees that had a possible role in the cause or severity of the accident. The railroad must exclude other regulated service employee if the responding railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident (considering any such information immediately available at the time).

For a fatal train incident, the fatally injured employee cannot be excluded from being tested.

If there is a fatality of any regulated service employee as result of a Highway-Rail Grade Crossing Accident/Incident, the fatally injured regulated employee must be tested regardless of fault.

Exceptions from Testing: No test may be required in the case of a collision between railroad rolling stock (including any on-track equipment) and a motor vehicle or other highway conveyance at a rail/highway grade crossing, unless it meets the criteria set forth above in Item 5 (i-v).

No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

The railroad supervisor(s) on the scene will make timely determinations as to the event being a qualifying event and which regulated service employees (if any) are required to be tested according to the rule.

This railroad will identify the appropriate personnel who must be tested and then ensure that specimens are collected and shipped.

A. Random Drug and Alcohol Testing – (49 CFR 219.601)

The railroad is responsible for ensuring that the random program meets regulatory requirements and is approved by FRA (see Appendix A). The principles which are required in the FRA regulation for the plan to be in compliance are attached (see Appendix B). The selection process will ensure that each regulated service person has an equal chance of being selected at every random selection. The random plan shall ensure that testing is accomplished at the beginning and at the end of the duty period for alcohol. The minimum annual random percentage of alcohol testing at either end of the duty period is 10 percent over the course of the year.

Regulated Service (Covered Service)

Current employers must test at a minimum of **25 percent annual rate for drugs and 10 percent annual rate for alcohol** for employees who perform regulated duties subject to the Federal Hours of Service Laws “**Covered Service**”. A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

Regulated Service (Roadway Worker)

Beginning June 12, 2017, Current employers must test at a minimum **50 percent annual rate for drugs and 25 percent annual rate for alcohol** for employees who perform regulated duties defined as “**Roadway Worker**” in **49CFR § 214.7**.

A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

Random Testing Pools:

- a) Identify and maintain an up-to-date database or list of all personnel working in regulated service (at least once per quarter) and ensure they are all in the random pool(s). Identify how many random testing pools you have. For example, most short

line railroads will have only one random pool, but larger railroads may have multiple pools (**FRA recommends Roadway Workers be placed in separate and stand-alone random pools. Railroads not normally required to submit MIS reports as required by 49 CFR Part 219.800 should contact Sam Noe to discuss the combining of random pools**): _____ SMART and ADTS will maintain the following pools: (1) DOT/FRA Hours of Service Pool; and (1) MOW/Roadworker Pool (To be included in a ADTS consortium pool)

- b) Identify what regulated service employee crafts/functions are in each of the railroad’s random testing pool(s). For example, engineers, conductors, brakemen, switchmen, utility employees, hostlers, mechanical employees performing hostling duties, train dispatchers, signal maintainers, roadway workers, etc.

____ Hours of Service Pool: Engineer, Conductor, Engineer-Conductor, Controller Supervisor, Vehicle Maintenance Technician, Supervisor Vehicle Maintenance, Signal Technician, Signal Technician Supervisor, , Bridge Tenders, Facilities Maintenance Supervisor, Facilities Maintenance Technicia Track Maintenance Supervisor n

MOW ADTS Consortium: Track Maintainer, Track Maintenance Supervisor, Track Maintenance Supervisor

Random Selection and Testing Procedures:

1. There are only two acceptable methods of selection: computer program or random number table. The lottery style, e.g., drawing names out of a hat is no longer an acceptable method of selection. Identify your railroad’s method of selection: Computer Program coordinated by our TPA, ADTS, LLC
 2. Identify whether your railroad is making selections by name, ID number, train number, job number, etc. : ID #
 3. Random Pools are in a consortium or managed by a Third Party Administrator (TPA):
 Yes No
 4. If using C/TPA pools, please provide name of the C/TPA pool: SMART’s MOW pool will be in the ADTS DOT-MOW/Roadway Worker Consortium
 5. If your railroad is using a consortium/third party administrator (C/TPA) to assist in random testing, identify the following information for the C/TPA:
 Name of C/TPA: ADTS Alcohol and Drug Testing Services, LLC
-

Address: 2700 E. Sunset Road, Suite #7 Las Vegas, NV
89120

Contact Person: Jana Stephens Ghigo

Phone: 702-769-9871

Please mark the following services the C/TPA are performing for your railroad:

- None
- Random Pool Maintenance
- Random Pool Selections
- Collection Services - Drug
- Collection Services - Alcohol
- HHS Laboratory
- Medical Review Officer (MRO)
- Substance Abuse Professional (SAP)
- Employee Assistance Professional (EAP)
- Drug and Alcohol Counselor (DAC)
- Other: _____

6. Identify how often your railroad is making selections, e.g., monthly or quarterly:

Monthly

Note: If selecting quarterly in order to maintain the deterrent effect of random testing for very small railroads and contractors, FRA is requiring each individual random testing pool established under subpart G to select and randomly test at least one entry per quarter, even if fewer tests are needed to meet FRA’s minimum random testing rates.

Objective Procedure, if making quarterly selections:

7. Identify how you determine whether a selection is to be tested for drugs, for alcohol, or both:

TPA’s Random Selection results by Employee ID #

8. Identify your testing “window,” e.g., 30 days.

30 Days

Note that if you’re making monthly selections, the testing windows may not exceed 30 days and not past the end of the month. If you’re making quarterly selections, the testing window is 90 days but not past the end of the quarter.

9. Provide additional descriptions of your random testing selection procedure, as applicable: _____

-
-
10. This railroad will safeguard these selection records to ensure that information concerning collection dates and selections are not disclosed until necessary to arrange for collection or provide notifications.
 11. These random testing records are required to be maintained for 2 years. This includes an electronic or hard copy “snapshot” of the random testing pool each time selections are made, a copy of the list of selected employees, a copy of the drug chain of custody form and/or alcohol testing form, and the reason for not testing any of the selected employees.
 12. In the event that all or a clearly defined portion of the railroad is subject to an emergency such as a flood or severe ice storm, the ranking operations officer on duty is authorized to declare an emergency by completing a memorandum setting forth the facts necessitating this action. If such an emergency determination is made, the date/time of the emergency and random drug/alcohol tests that were suspended must be entered into the DER’s files. Random selections not administered because of the emergency are deemed void, and the selection numbers will be adjusted later to make the required percentage.
 13. Only a substantiated medical emergency involving the selected person or an emergency involving an immediate family member (e.g., birth, death, or a medical emergency) provides the basis for excusing a regulated employee/person from being tested once notified. A medical emergency is defined as an acute medical condition requiring immediate emergency care. A person excluded under these criteria must provide substantiation from a credible outside professional (e.g., doctor, hospital, law enforcement officer, school authority, court official) which can be furnished prior to this release or within a reasonable period of time after the emergency has been resolved. Such excluded (excused) persons will not be tested based on this selection.
 14. Once the regulated service person selection is made, the DER will arrange notification. No prior notification will be given. A selected person will only be tested during his/her tour of duty, extended only long enough to complete testing but not to exceed Federal hours of service law requirements. The person, once notified, must proceed to the selected testing facility IMMEDIATELY. Identify how your railroad will notify selected employees:
The employee’s supervisor will notify the employee with a written notification indicating the type of testing (drug and / or alcohol)
-
15. The collection date and time during the selection period (testing window) will be varied by the DER to ensure that it cannot be anticipated. It is not necessary for the railroad to randomly select the “testing date.”

V. Drug Testing Procedures

The designated collection agents will be qualified and follow the proper collection procedures as described in 49 CFR Part 40.

- a. The Medical Review Officer (MRO) will review drug test results as required in 49 CFR Part 40. All test results will be reported exclusively through the MRO.
- b. A laboratory certified by the Department of Health and Human Services/ Substance Abuse and Mental Health Service Administration (DHHS/ SAMHSA), under the Mandatory Guidelines for Federal Workplace Drug Testing Programs, will perform all drug testing.
- c. Test results will be reported from the laboratory only to the MRO for review and action consistent with 49 CFR Part 40.
- d. The name of the individual providing the specimen will remain confidential and will not be provided to the laboratory performing the test. The testing laboratory is only able to identify the specimen by the specimen ID number printed on the chain-of-custody form. The laboratory will only use a urine custody and control form consistent with the requirements of 49 CFR Part 40.
- e. The designated laboratory will only test for the drugs listed in 49 CFR 40.85.
- f. The MRO will verify the results and report (using procedures in 49 CFR Part 40) to the DER whether the test was positive or negative and the drugs for which there was a positive result.
- g. External blind performance testing of specimens is now only required for those employers or C/TPAs with an aggregate of 2,000 or more DOT-regulated employees per 49 CFR 40.103.

VI. Alcohol Testing Procedures

Breath alcohol testing will be performed by fully trained and certified Breath Alcohol Technicians (BAT) using the National Highway Traffic Safety Administration (NHTSA) approved testing devices. The results will be documented on an approved Federal Breath Alcohol Testing Form and will be signed by the employee and the BAT. At the time of the alcohol test, the employee will receive a copy of the test result, with an identical copy being sent to the railroad's DER.

- a. Negative results. The DER will be mailed a copy of the negative test results.

- b. Positive results. The BAT will immediately and directly notify the railroad's DER if the test results are positive (0.02 percent or higher) who will take appropriate action to remove or restrict the employee from regulated service as required by Part 219.

VII. Drug Test Results

For any FRA testing, the railroad should as a "best practice" notify the employee in writing of test results.

Positive or Otherwise Non-Negative Results. If the laboratory reports the drug test result as POSITIVE or otherwise non-negative, the following procedures will be followed:

- a. The MRO will immediately inform the regulated service person of the result and offer the person the opportunity for an interview to discuss the test result. If the MRO has difficulty reaching the employee, the procedures set forth in 49 CFR 40.131 will be followed.
- b. The MRO will complete and document the review as required by 49 CFR Part 40 Subpart G, determining if the external chain of custody was intact, if the person has a legitimate medical explanation for the presence of any controlled substance, and whether there is any basis to question the scientific sufficiency of the test results. In the case of an opiate positive, the MRO will also make the special determinations required by the regulation.
- c. If the MRO verifies the test result as positive, the MRO will report the result to the railroad's DER. If the MRO determines that the result is non-negative and the non-negative result cannot be explained, the appropriate regulatory action will be pursued. The chart at Appendix D delineates the appropriate action. The MRO will report the verified test result in accordance with 49 CFR § 40.163. The MRO will not provide the DER with the quantitative test results unless the employee, as stipulated in the regulation, disputes the test.

Negative results. If the MRO has determined that the drug test is NEGATIVE, the MRO will accomplish the required administrative review and report the negative results to the railroad's DER in accordance with 49 CFR § 40.163.

Negative-dilute results. Unless the MRO directs a railroad to conduct a recollection under direct observation (for a result with creatinine from 2 to 5 mg/dL), per 40.197, a negative-dilute is considered a negative test, although a railroad may, but is not required to direct the employee to immediately take another test. Such recollections must not be collected under direct observation unless there is another basis to do so. A railroad must treat all regulated employees the same. For example, it must not retest some employees and not others. A railroad may establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). **This railroad's policy for negative-dilutes is as follows:**

SMART will conduct retests for pre-employment only.

VIII. Confidentiality

- a. Medical information a regulated person provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to the railroad except as provided in Part 40.
- b. Confidentiality of Federal drug or alcohol testing results will be maintained as required by the regulations. For example:
 1. The laboratory observes confidentiality requirements as provided in the regulations. This railroad does not advise the laboratory of the identity of persons submitting specimens. The laboratory performing the testing must keep all records pertaining to the drug test for a period of two years.
 2. All test results will remain exclusively in the secure files of the MRO. The MRO will observe strict confidentiality in accordance with the regulations and professional standards. The MRO will retain the reports of individual test results as required in Part 219 Subpart J.
 3. The DER will maintain all test results reported by the MRO, both positive and negative, in secure storage. The results will be retained as required in Part 219 Subpart J. Other personnel will be informed of individual test results only in the case of positive tests and authorized only on a need-to-know basis.

IX. Regulated Service Personnel Training Program (49 CFR 219.11)

Each regulated service person will receive a copy of this policy and the other information requirements in 49 CFR Part 219.23 (e) which clearly states the prohibitions required by the regulation. In addition, each regulated person will be given information concerning the problems caused by alcohol or controlled substances and available methods of intervening when an alcohol or controlled substance problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

X. Prescription Drugs (40 CFR 219.103)

The use of controlled substances (on Schedules II through V of the controlled substance list) is not prohibited as long as they are prescribed or authorized by a medical practitioner and used at the dosage prescribed or authorized. Either one treating medical professional or a railroad-designated physician should determine that use of the prescription(s) at the prescribed or authorized dosage is consistent with the safe performance of the employee's duties. Regulated service employees should also seek the advice of a medical professional whenever they are taking any over-the-counter drug that may adversely affect the safe performance of duties.

XI. Compliance with Testing Procedures

- a. All regulated service personnel/applicants requested to undergo a Federal drug and/or alcohol test are required to promptly comply with this request. This railroad expects all prospective and current regulated service personnel to exercise good faith and cooperation in complying with any procedures required under this policy. Refusal to submit to a Federal drug or alcohol test required under FRA rules, engaging in any conduct which jeopardizes the integrity of the specimen or the reliability of the test result, or any other violations of the prohibited conduct in 49 CFR 219.101 or 219.102 could subject the person to disciplinary action (up to and including termination), independent and regardless of any test result. This includes failure to show up on time for a drug/alcohol test, failing to remain at the testing site until the testing process is complete, etc. (see 40.191).
- b. All DOT Federal return-to-duty and follow-up urine specimens must be collected under direct observation (using the direct observation procedures in 40.67 (i)). Note that a SAP may also require return-to-duty and follow-up “drug” tests in addition to alcohol tests following an alcohol positive of 0.04 percent or greater.
- c. Direct Observation Urine Collection Procedures: The collector (or observer) must be the same gender as the employee. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry “clean” urine and urine substitutes AND for watching the employee urinate into the collection container. The observer will request the employee to raise his or her shirt, blouse or dress/skirt, as appropriate, above the waist, just above the navel; and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.
 - 1) If the employee has a device, the observer immediately notifies the collector; the collector stops the collection; and the collector thoroughly documents the circumstances surrounding the event in the remarks section of the testing form. The collector notifies the DER. This is a refusal to test.
 - 2) If the employee does not have a device, the employee is permitted to return his/her clothing to its proper position for the observed collection. The observer must watch the urine go from the employee’s body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.
 - 3) Failure of the employee to permit any part of the direct observation procedure is a refusal to test.
- d. As a minimum, a regulated service person will be removed from FRA regulated service for a minimum of nine months if there is a finding of “refusal to test.”

XII. Positive Test Results

- a. **Alcohol positive of 0.02 to 0.039:** Regulated service personnel should receive written notification of test results which are other than negative. A Federal positive drug test or a Federal alcohol test result of 0.02 percent or greater or a refusal to test will result in immediate removal from regulated service under FRA regulations. A positive alcohol test of at least 0.02 percent but less than 0.04 percent will result in the removal of the person from regulated service for at least eight hours. The railroad is not prohibited from taking further action under its own company policy.
- b. **Federal violation:** A regulated service person with an MRO verified positive drug test or a breath alcohol test result of 0.04 percent or greater (or a refusal) has violated Federal regulations and must be immediately removed from regulated service. Prior to or upon withdrawing the employee from regulated service, the railroad must provide notice to the employee of the reason for this action. If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by 219.101 or 219.102, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing. **See 219.104 (c) for the hearing provisions.**

Even if the railroad does not wish to keep the employee in its employment, it must provide the above hearing (if requested) and at a minimum provide the employee with a list of qualified Substance Abuse Professionals. Prior to returning to regulated service the employee will be required to undergo an evaluation by a qualified Substance Abuse Professional (SAP) that is railroad approved, to determine the need for treatment and/or education. The employee will be required to participate and comply with the SAP-recommended treatment and any after-care or follow-up treatment that may be recommended or required.

After successful treatment, for a Federal positive drug test (or alcohol test result of 0.04 percent or greater), per the SAP's requirements, the person must provide a Federal return-to-duty urine specimen and/or breath specimen for testing (which is negative) prior to being allowed to return to regulated service. In addition, the person will be subject to additional unannounced Federal follow-up testing, as determined by the SAP, for a maximum period of 60 months, with a minimum of six tests being performed in the first twelve months (**engineers and conductors – SAP will require a minimum of 6 drug tests and 6 alcohol tests in the first 12 months**). Failure to comply with these provisions and remain alcohol and/or drug-free will result in subsequent removal from regulated service and could result in disciplinary action, up to and including termination. Note: Federal regulation does not guarantee the employee will maintain an employment relationship. This is determined via employer and employee negotiation. These Federal return-to-duty and follow-up drug tests must be collected under direct observation.

- c. Identify other employer sanctions (if applicable) for a Federal alcohol test result of at least 0.02 percent but less than 0.04 percent:

___ If the alcohol confirmation test is 0.02% - 0.039%, SMART employees will be removed from covered service until their next regularly scheduled duty, but for not less than 8 hours. They need not be evaluated by a SAP, nor are they required to comply with any other FRA requirements before returning to duty.

Identify other employer sanctions (if applicable) for a Federal alcohol test result of 0.04 percent or greater:

___ SMART will follow the FRA regulations in this instance. SMART will also invoke the following Company policy: Employees who violate the District's drug and alcohol policy with a 0.04 percent or greater alcohol test result will be removed from the workplace immediately. The employee will be subject to disciplinary action and may be required to enter rehabilitation at the cost of the employee. An employee required to enter rehabilitation who fails to successfully complete the program will be terminated from employment.

Identify other employer sanctions (if applicable) for a Federal positive drug test:

___ SMART will follow the FRA regulations in this in this instance. SMART will also invoke the following Company policy: Employees who violate the District's drug and alcohol policy with a positive drug test result will be removed from the workplace immediately. The employee will be subject to disciplinary action and may be required to enter rehabilitation at the cost of the employee. An employee required to enter rehabilitation who fails to successfully complete the program will be terminated from employment.

XIII. Self-referral, Co-worker referral, and Non-peer referral (optional) Policies

This railroad's policy to comply with 49 CFR Part 219.1001 and 49 CFR Part 219.1003 is as follows:

Employment Relationship. As per 219.1003(b), a regulated employee who enters and follows the tenants of this program as discussed below, will maintain his or her position upon successful completion of an education, counseling, and treatment program as specified by a Drug and Alcohol Counselor (DAC). Before the employee is charged with conduct sufficient to warrant dismissal, the employee must seek assistance through the railroad for his or her

alcohol or drug use problem or be referred for such assistance by another employee or by a representative of the employee’s collective bargaining unit.

Imminent Detection. An employee may not use the referral program for the purpose of avoiding the imminent and probable detection of a rule violation by a supervising employee. No employee may take advantage of self-referral after being notified of a testing event or while in imminent risk of being detected for possession of alcohol or controlled substances.

Reasonable Suspicion. In the case of a Co-worker referral or a Non-peer referral (optional), if the employee accepts the referral and has agreed to a Rule G waiver, there is no need for the railroad to perform a Federal reasonable suspicion test. If the Federal reasonable suspicion test occurs, the referral takes precedence and a written request shall be submitted to the FRA Drug and Alcohol Program Manager for permission for reclassification to non-DOT status. This will allow the employer to vacate the return-to-duty and follow-up (RTD/FU) requirements of the reasonable suspicion test violation. Thus, the co-worker referral will take precedence and all subsequent RTD/FU testing will be appropriately conducted under non-DOT/company authority as per Part 219 Subpart K. In this scenario, the reasonable suspicion positive test result(s) are not subject to 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

In the case of a Co-worker referral or a Non-peer referral (optional), when the employee does not accept the referral and does not agree to a Rule G waiver, the railroad must properly observe the employee for signs and symptoms of alcohol and/or drug use/misuse. If signs and symptoms are observed, the railroad must perform a Federal reasonable suspicion testing. In this scenario, the reasonable suspicion positive test result(s) are subject to DOT-regulated RTD/FU testing and 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

Referral Sources. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees. Identify acceptable referral sources besides the affected regulated service employee:

This company accepts referrals from non-peer sources? Yes No

Examples of non-peer sources include friends and family, etc. that contact the railroad. A railroad representative will meet with the employee in person regarding the information and determine whether to the employee is unsafe to work with or in violation of 49 CFR Part 219. If the railroad representative determines that employee is unsafe, the employee may either accept or reject the referral.

If rejected, a railroad representative trained in signs and symptoms would perform a Rule G observation on the employee in question. If signs and symptoms are present, then the railroad representative would order reasonable suspicion testing of the on-duty employee.

General Conditions. If the employee accepts the referral they must contact the DAC within 3 days.

The employee must cooperate with the DAC in the recommended course of counseling or treatment. Locomotive engineers and conductors that do not cooperate with the DAC will be considered to have active substance abuse disorders as per 49 CFR Part 240.119 and 49 CFR Part 242.115 and would have their confidentiality waived.

Once an employee has contacted the DAC, the DAC's evaluation shall be completed within 10 working days. If more than one evaluation is required, the evaluations must be completed within 20 working days.

No follow-up treatment, care, or testing shall exceed 24 months unless it involved a Part 219 violation.

Confidentiality. The railroad treats the referral and subsequent handling, including counseling and treatment, as confidential. With respect to a certified locomotive engineer, conductor or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the Employee Assistance Professional (EAP) or DAC, official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

Any drug and/or alcohol testing conducted pursuant to this railroad's referral policy is non-Federal testing because a violation of Federal regulations has not occurred.

Leave of Absence. The railroad will grant a minimum leave of absence that the DAC recommends to complete a primary education, counseling, or treatment program and to establish control over the employee's drug or alcohol abuse problem. An employee with an active substance abuse disorder may not perform regulated service until the DAC reports that safety is no longer effected.

Return to Service. The employee will be returned to service on the recommendation of the DAC. The employee must be returned to service within five working days of the DAC's notification to the railroad that the employee is fit to return to regulated service and the receipt of a follow-up testing plan as per Part 219.1003(h)(2). The railroad may condition the employee's return on a return-to-duty medical evaluation.

This railroad requires a return-to-duty medical evaluation? Yes No

Compensation. 49 CFR Part 219.1001(d)(1) does not require the railroad to compensate the employee for any period that the regulated employee is restricted from performing regulated service under the referral program. However, compensation at a nominal rate

has been seen to markedly increase participation in the referral program to enhance safety at the railroad.

This railroad compensates employees while engaged in a referral program of education, counseling, and treatment? Yes No

Compensation is at _0% of regular pay while participating in a referral program.

Self-referral: Regulated employees may contact the DAC at the following telephone and/or email address and contact hours:

<u>Drug and Alcohol Counselor (DAC):</u>	
Contact person:	<u>Lisa Wolper</u>

Address:	<u>825 College Ave</u>
_____ <input type="checkbox"/>	
	<u>Santa Rosa, CA</u>
	<u>95404</u>
Phone:	<u>707-524-8864</u>

Optional Provisions.

1. The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with 49 CFR Part 219.1005(c) or who has previously elected to waive investigation under 49 CFR Part 219.1005 (co-worker report policy).

Adopts this option: Yes No

If you checked the above option "No", please identify how many times and/or at what intervals an employee may use the referral programs: An employee may only utilize this option once over the course of their employment with SMART.

2. A referral policy may provide that the rule of confidentiality is waived if the employee at any time refuses to cooperate in a DAC's recommended course of counseling or treatment; and/or the employee is later determined, after investigation, to have been involved in an alcohol or drug related disciplinary offense growing out of subsequent conduct. Identify whether you adopt the first, second, or both options:

Adopts Both Options: Yes No

Adopts 1st Option only: Yes No

Adopts 2nd Option only: Yes No

3. The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either during non-duty hours (i.e., at a time when the employee is off duty); or while unimpaired and otherwise in compliance with the railroad’s alcohol and drug rules consistent with 219.1005(d). Identify whether you adopt this optional provision:

Adopts this option: Yes No

4. The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in regulated service. Identify whether you adopt this optional provision:

Adopts this option: Yes No

5. Other Optional Provisions: _____

Co-worker referral General Conditions and Procedures.

1. The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of Part 219 or the railroad’s alcohol and drug rules.
2. If the railroad representative determines that the employee is in violation, the railroad will immediately remove the employee from service in accordance with its existing policies and procedures. The railroad must allow the employee the opportunity to accept the co-worker referral. If rejected, the railroad may proceed to reasonable suspicion testing based on signs and symptoms of prohibited alcohol or drug use as determined by a trained supervisor.

Alternate Programs.

The railroad may request FRA to consider the following alternate program to fulfill the requirements under 49 CFR Part 219.1001 with more favorable conditions to regulated employees troubled by drug or alcohol abuse problems. The alternate program must have the concurrence of the recognized representatives of the railroad employees as per 49 CFR Part 219.1007(b):

If applicable enter alternate

This company requests FRA to consider an alternate program for consideration? Yes
No

Submit to the FRA Drug and Alcohol Program Manager at:

U.S. Department of Transportation
Federal Railroad Administration, Office of Railroad Safety - RRS-19
1200 New Jersey Avenue SE
Washington DC 20590

##

APPENDIX A

Once the FRA has approved a Random drug and alcohol testing plan, the railroad will receive an approval letter, which includes these conditions.

STANDARD APPROVAL CONDITIONS FOR RANDOM TESTING PROGRAMS

1. **This approval is effective upon receipt with respect to all matters within its scope. FRA reserves administration jurisdiction over all approvals and may reopen review based upon experience gained during implementation (audits).**
2. **Approval of the subject random testing program does not constitute or imply the granting of a waiver or exemption from any provision of Federal law or regulation. Compliance with all applicable provisions of 49 CFR Parts 219 and 40 is required. All random program plans must be applied in accordance with the criteria listed in this Appendix A and Appendix B.**
3. **Approval is contingent upon the railroad making appropriate amendments to the program to conform to any pertinent regulatory amendments that may be issued hereafter. Any such program amendments that may be required shall be submitted to the Associate Administrator for Safety at FRA by the effective date of the subject regulatory amendments, or by the expiration of 30 days from publication of the regulatory amendments in the *Federal Register*, whichever is later.**
4. **Amendments to the program shall be submitted as required by 49 CFR 219.605 and 49 CFR 219.607 and 49 CFR 219.609 and shall not be implemented prior to approval. The following guidance is provided with respect to when a program is deemed to have been amended.**
 - A. Any change in the selection methodology, the criteria for scheduling collections, non-availability criteria, or other structural element is a program amendment. Any change in the organizational level at which a function is carried out is a program amendment.
 - B. Substitution of incumbents performing the same function at the same organizational level (persons or contractors/volunteers) is not deemed to amend the program. Notification of these changes would be appreciated to assist FRA in maintaining liaison, but is not required.
 - C. Any change in a program that is occasioned by an amendment of an applicable DOT/FRA regulation and that involves the exercise of discretion to choose between or among one or more courses of action is a program amendment required to be filed under item 3 above. Any non-discretionary change in a program that is required by amendment of an applicable DOT/FRA regulation is not considered a program amendment requiring approval; however, the Office of Safety, FRA, would appreciate receipt of an informational copy of the revised program document showing current compliance.
 - D. Any case not addressed above may be resolved by contacting the Office of Safety, Administrator for Safety or that individual's delegate.

APPENDIX B

CRITERIA FOR ASSESSING DEPARTMENT OF TRANSPORTATION (DOT)

RANDOM DRUG AND ALCOHOL TESTING PROGRAMS

Section I. Random Testing Pools

- A. Random pool(s) must accurately and completely include all regulated service personnel. Whoever is performing the safety-sensitive “regulated service”, regardless of job title or status, is subject to 49 CFR Part 219 requirements (supervisors, volunteers, contractors, etc.). Pool lists must be retained for a minimum of two years.
- B. An employer may not mix regulated service and non- regulated service personnel in the same pool.
- C. Multiple pools for an employer are acceptable.
- D. Employees do not need to be placed in separate pools for drug and alcohol testing selection.
- E. **Employees from different DOT operating administrations can be included in the same pool. It is strongly recommended, however, that employers not mix groups of personnel subject to different drug or different alcohol testing rates (i.e., having some employees subject to a 50% rate for drugs and other employees subject to a 25% rate in the same pool). If they do, they must test the entire pool at the highest selection rate for any of the groups with personnel in the pool.**
- F. **Pools may not be diluted with regulated service personnel who rarely perform regulated service duties (i.e., less than once per quarter).**
- G. **Pools must be routinely updated (i.e., at least monthly for employers with either a changing workforce or seasonal employees; and quarterly for employers with a generally stable workforce).**
- H. **Besides individual employees, specific jobs (i.e., third shift main dispatcher at XYZ location) or operational units (i.e., trains) may also be pool entries. However, there may not be a significant difference in the size of the entries in the pool.**
- I. **Pool entries may not be constructed in a way which could result in a manager/supervisor having discretion as to who would be actually provide a sample (e.g., a specific job cannot be selected with multiple people working in it at the same time, but with only one to be tested).**

Section II. Random Selections

- A. Everyone in a pool must have an equal chance of selection in each selection period.

1. No individual, job, or operational unit may be removed from the pool if it is still actively performing regulated service. However, employees doing de minimus regulated service may be eliminated from the pool (see Section I.-F).
 2. There may be no selections without replacement (i.e., an individual cannot be removed from the pool because he or she was previously tested).
 3. No selection weightings are allowed which would increase or decrease the chance of any individual being selected.
- B. The following selection options are acceptable. Note that manual selection using names or social security numbers drawn out of a hat (or equivalent) is no longer an acceptable practice:**
1. Computer programs which randomly select entries from an employee list without apparent bias. The specific selection criteria used by the computer must be extensively detailed in writing, and each computer draw must be retained as a record for a minimum of two years; or
 2. Manual selection from a list of employees using a random-number table. The specific criteria used to select from the table must be documented in writing, including detail on how the initial starting point in the table was determined. Each draw, as well as a copy of the table portion used, must be retained as a record for a minimum of two years. See Appendix C for Model Procedures to Conduct a FRA-Acceptable Random Testing Program Using a Random Number Table for Selections.
- C. If the employee testing pool is so small that it does not allow testing each selection period, then the employer must have in place a mechanism to randomly determine which selection periods will have selections and which will not. The specific criteria used to make this determination must be detailed in writing and the determination itself must be retained as a record for a minimum of two years.**
- D. If required drug and alcohol testing rates are different (i.e., 25% for drugs and 10% for alcohol) and a single pool is being used, it is permissible to select one list of employees and designate a proportion for both drug and alcohol testing and a proportion for drug testing only. The specific criteria used to make this determination must be detailed in writing, and the master selection list with both sub-groups clearly identified must be retained as a record for a minimum of two years.**
- E. Employers should carefully monitor significant changes in its workforce in order to ensure that an appropriate number of tests will be conducted each year. Unless otherwise directed by the DOT Operating Administration, changes in the employee base of greater than 10% in a quarter should result in a recalculation of total tests required.

Section III. Implementation of Random Collections

- A. Collections must be distributed unpredictably throughout the designated testing period, covering all operating days (including holidays) and shifts (24-hour clock). There is no expectation that day/night or shift collection distributions be equal but**

- there has to be sufficient testing to establish deterrence by generally mirroring employer operations.
- B. Collections must be unpredictable within a work shift (some collections must be conducted at the beginning, middle, and end). There is no expectation that “within-shift” collection distributions be equal. Sufficient testing must be conducted at the start, middle and end of shifts to provide deterrence. Both beginning of and ending of shift collections are particularly important. For alcohol testing, at least 10% of successful collections must fall within each period of the shift.**
- C. No discretion is allowed with collection dates or collection times which would result in a subjective choice by a field manager/supervisor as to who was actually collected. That is, if a test time frame is permitted in the employer’s program, a manager/supervisor with knowledge of specific personnel assignments may not have discretion in the selection of who will be tested.**
- D. Specific reasons for “no-tests” must be documented in writing by the employer, with records maintained for two years. Acceptable reasons for no-tests should relate to critical safety concerns, unforeseen or unpredictable significant adverse impact to operations, or employee illness or vacation.**

Section IV. Records

- A. All records which support the random testing program, including notes, memoranda, pool makeups, number tables, etc., must be retained for a minimum of two years.**