

POLICY

Drug Free Workplace Policy

HR 2-2

Category: Human Resources

Business Unit Responsible: RA: Human Resources

Policy Owner: Deborah Aebi, Senior Manager HR, Data Operations and Occupational Health

Policy Contact: Alexis Rogers, Human Resource Manager, Occupational Health

Synopsis: The Metropolitan Council is committed to a drug free workplace and may require drug testing to ensure compliance. Failure to comply may lead to discharge.

POLICY

The Metropolitan Council is committed to a drug free workplace to ensure high productivity and the safety and health of employees and the public. The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace. The Council may require drug testing. Employees who fail to comply with this policy shall be subject to disciplinary action up to and including discharge.

PURPOSE OF POLICY

1. It is recognized by the Council, its management and employees that all have a vital interest in maintaining a safe and productive workforce and working environment.
2. Employees who abuse controlled substances and/or come to work under the influence of drugs pose a serious safety and health hazard to themselves, co-workers, and the public. A "drug," as used in this policy, is a controlled substance as defined in Minnesota Statutes.
3. To establish expectations and guidance for employees.
4. To establish an ongoing drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Council's policy of maintaining a drug-free workplace, the availability of the Employee Assistance Program (EAP), and the penalties for failure to comply with this policy.
5. To maintain compliance with the requirements of the U.S. "Drug-Free Workplace Requirements" and other state and federal statutes

BACKGROUND & REASONS FOR POLICY

The Council and employees have developed this policy as part of a joint commitment to a drug free workplace.

The Council may require drug testing in accordance with this policy and as provided in Minnesota [Statutes section 181.950 through 181.957](#) and federal regulations [49 CFR Part 655](#), [49 CFR Part 40](#) and 49 CFR Part 29.

The Council will offer reasonable assistance to employees through an employee assistance plan. It is the employee's responsibility, however, to obtain help and resolve the problem

IMPLEMENTATION & ACCOUNTABILITY

Employees have the responsibility for remaining drug free in the workplace and for following this policy and related procedures.

Managers are responsible for implementation.

Human Resources is responsible for administration.

The Council is responsible for the following:

1. Providing access to an [Employee Assistance Program \(EAP\)](#) for employees.
2. Publishing the Council's policy that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace.
3. Establishing an ongoing drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Council's policy of maintaining a drug-free workplace, the availability of the [Employee Assistance Program \(EAP\)](#), and the penalties for failure to comply with this policy.
4. Providing each employee a copy of the Council's Drug Free Workplace policy. The Council shall notify each employee, by copy of this policy that all employees shall abide by the terms of the Council's Drug Free Workplace policy.
5. Notifying each employee, by copy of this policy that effective immediately, employees will be required to notify the Council in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) days after that conviction.
6. Notifying the Federal Transit Authority (FTA) in writing within ten (10) calendar days after receiving notice from any employee as required by paragraph (4) above or otherwise receiving actual notice of that conviction.
7. The Council shall, within thirty (30) calendar days of receiving notice as required by paragraph (4) above, take appropriate disciplinary action, up to and including discharge. The Council shall, within thirty (30) days, require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program through the EAP provider or other appropriate agency.
8. The Council shall remain committed to making continued good faith efforts to maintain a drug-free workplace through the implementation of paragraphs (1), (2), (3), (4), (5), and (6) above.

RESOURCES

Related Policies:

- [HR 2-3 FTA Safety Sensitive Drug and Alcohol Program Policy](#)
- [HR 2-4 Drug and Alcohol Testing Program for Non-FTA Employees Policy](#)

Related Procedures:

- [HR 2-4a MCES Alcohol and Drug Testing Program Procedure](#)

Statutory Resources (Minnesota Statutes or Rules, U.S. Code, Federal Regulations)

- [Minnesota Statutes 181.950](#) – definitions
- [Minnesota Statutes 181.951](#) – authorized drug and alcohol testing
- [Minnesota Statutes 181.952](#) – policy contents; prior written notice
- [Minnesota Statutes 181.953](#) – reliability and fairness safeguards
- [Minnesota Statutes 181.954](#) – privacy, confidentiality, and privilege safeguards

- [Minnesota Statutes 181.955](#) – construction
- [Minnesota Statutes 181.956](#) – remedies
- [Minnesota Statutes 181.957](#) – federal preemption
- [49 CFR Part 655](#)
- [49 CFR Part 40](#)
- 49 CFR Part 29

Other Resources (training, relevant links):

- [Employee Assistance Program \(EAP\) – Sand Creek](#)

HISTORY

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10/12/2020 - Updated content into new template.

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Version

2

POLICY

FTA Safety Sensitive Drug and Alcohol Program

HR 2-3

Category: Human Resources

Business Unit Responsible: RA: Human Resources

Policy Owner: Deborah Aebi, Senior Manager HR, Data Operations and Occupational Health

Policy Contact: Alexis Rogers, Human Resource Manager, Occupational Health

Synopsis: Establishes drug and alcohol program to comply with all applicable federal regulations governing workplace anti-drug and anti-alcohol programs for FTA safety sensitive employees working at the Metropolitan Council.

POLICY

The Metropolitan Council is dedicated to providing safe, dependable transportation services to the public and provide a safe work environment for Metropolitan Council employees that is free from risks which result from alcohol and prohibited drug use.

Metropolitan Council employees are our most valuable resource and it is our goal to provide a healthy, safe, and secure work environment. In meeting these goals, it is our policy to:

- assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;
- create a workplace environment free from the adverse effects of drug and alcohol substance abuse or misuse;
- prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;
- encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties;
- provide required training as outlined in [49 CFR Part 655](#) , [49 CFR Part 40](#) and education on the ramifications of drug and/or alcohol use on personal health, safety, and the work environment as well as roles, responsibilities and testing process; and
- monitor contractors' compliance with FTA regulations by confirming and reviewing the existence and administration of drug and alcohol testing programs for their safety sensitive employees.

This Policy is applicable to all FTA safety sensitive employees working at the Metropolitan Council's Transportation Division which includes Metro Transit, Transportation & Transit Development and Metro Mobility.

PURPOSE OF POLICY

The purpose of this Policy is to assure employee fitness for duty and to protect Metropolitan Council employees, passengers, and the public from the risks posed by the use of alcohol and prohibited drugs.

Alcohol and other drugs can impair essential safety skills on the job, such as vision, judgment and coordination. This can increase the risk of accidents and endanger public safety. Using alcohol and other drugs can lead to a variety of physical problems including: cancer and damage to vital organs, depression and other mental problems, social problems and isolation from family and friends. In addition, alcohol and drug use can affect job performance in the areas of: increased absences, frequent accidents, decline in quality/quantity of work, lack of cooperation, poor concentration and judgment, and lack of motivation.

Participation in The Metropolitan Council's Drug and Alcohol testing program is a requirement of each employee covered by this Policy.

Each employee hired, promoted or transferred to a safety sensitive position is required to participate in a policy training program. The program reviews the Policy, problems that arise as a result of alcohol misuse and drug abuse, resources available to employees if a problem exists, and the consequences associated with various testing categories. Written acknowledgment by employee of training will be required.

The signs of alcohol misuse include but are not limited to a lack of coordination, constricted pupils, bloodshot or watery eyes, aggressive or antagonistic behavior, slurred speech and slowed reaction time. If an employee, coworker or manager suspects an alcohol problem exists, the Metropolitan Council has designated an Employee Assistance Program (EAP) for confidential intervention.

The intervention process is accessible through an Employee Assistance Program (EAP) to assist employees in assessment of alcohol misuse in a confidential manner. Professional counselors can provide assistance before the misuse turns into a crisis situation. Reference the supplemental attachment page of this Policy for a current provider listing.

BACKGROUND & REASONS FOR POLICY

This Policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug and anti-alcohol programs in the transit industry.

The Federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT) has enacted 49 CFR Part 655 that mandates drug and alcohol testing for safety sensitive positions and prohibits employees from performing safety sensitive functions when an employee has tested positive for drugs and/or alcohol. The regulations governing the procedures for testing programs are set forth in [49 CFR Part 40](#). Copies of the Federal regulations are available for inspection in Metro Transit's Human Resources office and on the Council's intranet site, MetNet.

- The DOT has enacted 49 CFR Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses.
- The Metropolitan Council has established an employee education and training program for all covered employees, including:
 - Education. The education component includes display and distribution to every covered employee of: informational material and a community service hot-line number for employee assistance.
 - Training. (1) Covered employees. Covered employees will receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate

prohibited drug use. (2) Supervisors. Supervisors and/or other company officers authorized by the Metropolitan Council to make reasonable suspicion determinations will receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

IMPLEMENTATION & ACCOUNTABILITY

This Policy applies to all FTA safety sensitive employees, contractors and volunteers when they are on Metropolitan Council property or when performing any Metropolitan Council related business. This Policy applies to off-site lunch periods or breaks when an employee is scheduled to return to work. This Policy also applies to certain off-duty conduct discussed in Section 2.0.

Volunteers, while performing Metropolitan Council related business are subject to drug/alcohol testing under the independent authority of the Metropolitan Council. Refer to Section 15 for a list of safety sensitive covered positions.

1.0 Conduct Prohibited Under FTA Regulations

1.1 Alcohol Use

No employee will report for duty or remain on duty when his/her ability to perform assigned functions is adversely affected by alcohol. No covered employee will consume alcohol while on duty. A covered employee with a confirmed alcohol concentration of 0.02 or greater will be prohibited from performing or continuing to perform safety-sensitive functions.

No FTA safety sensitive employee will consume alcohol within *8 hours* prior to performing safety sensitive functions. No FTA safety sensitive employee will consume alcohol during the hours that they are on paid call. Covered employees who have consumed alcohol during specified on-call hours, whether the employee is on call on company premises or not, have the opportunity to inform their immediate supervisor of their inability to perform his or her safety-sensitive function. If the covered employee has acknowledged use, then the covered employee is required to take an alcohol test even if he claims ability to perform his or her safety-sensitive function. In this circumstance, the employee will be subject to the discipline provisions outlined in Section 6.

Violation of these provisions is prohibited and punishable by disciplinary action *up to and including termination*.

1.2 Use of Prohibited Substances

Covered employees may not use prohibited drugs at any time unless legally prescribed. Prohibited drugs include: marijuana, amphetamines, opiates, phencyclidine (PCP), cocaine, and any of their metabolites. The Metropolitan Council has authority to apply for a FTA waiver that would, under limited circumstances, permit the Council to stand an employee down following the MRO's receipt of a laboratory report of a confirmed positive test, an adulterated test or a substituted test.

1.3 Failure to Comply with Testing Requirements

Failure to comply with testing requirements includes the following as defined by FTA regulations but is not limited to:

- A. refusal to take a drug or alcohol test, as provided by 49 CFR Part 40, including:
 - failure to appear for a required test in a timely manner (except a pre-employment test);
 - failure to remain at the test site until the testing process is complete;

- failure to provide an adequate specimen amount without a valid medical examination;
 - failure to submit to a medical exam as directed by the MRO or the DER as authorized under 49 CFR Part 40;
 - fail or decline to take a second drug test if directed by the collector or the DER;
 - failure to sign the Step 2 certification of the Alcohol Testing form;
 - In a case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen;
 - failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process);
 - failure to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test;
 - possessing or wearing a prosthetic or other device used to tamper with the testing process;
 - admitting the adulteration or substitution of a specimen to the collector or MRO; and
 - the MROs verification of test as adulterated or substituted.
- B. attempting to falsify test results through tampering, contamination, adulteration, or substitution; and
- C. leaving the scene of an accident without a valid reason before the necessary tests have been conducted.

In addition, providing false information in connection with a test will be deemed failure to comply with testing requirements.

- 1.3.1 Employees who participate in any of the above described activities, except an inability to produce a specimen, or any other activities regarded as a failure to comply with testing requirements will be:
1. Immediately removed from a safety sensitive position;
 2. *terminated from employment*; and
 3. referred to the Substance Abuse Professional (SAP)

2.0 Conduct Prohibited Under Metropolitan Council's Independent Authority

In addition to the conduct prohibited by the FTA under Section 1.0 of this Policy, the Metropolitan Council has adopted the following prohibitions and policies based on independent authority.

2.1 Manufacture, Trafficking, Possession, and Use

Any employee engaging in the manufacture, distribution, dispensing, possession, or use of prohibited substances on Metropolitan Council premises, in Metropolitan Council vehicles or while conducting Metropolitan Council business or in any manner which relates to the employee's position will be subject to disciplinary action up to and including termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected. This Policy is not intended to alter any other Metropolitan Council rule or policy related to off duty conduct.

2.2 Intoxication/Under the Influence

Any employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be suspended from job duties pending an investigation and verification of condition including drug and/or alcohol testing.

2.3 Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and medical advice obtained, as appropriate, before performing work-related duties.

Employees must report the use of medically authorized drugs or other substances which may alter job performance to his/her immediate supervisor and provide proper written medical authorization from his/her physician.

The failure to report the use of such drugs or other substances as specified above, or the failure to provide proper medical authorization can result in disciplinary action. It is the employee's responsibility to determine from his/her physician/practitioner whether or not the drug/substance would alter job performance.

A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, the period of authorization, and whether the prescribed medication may alter job performance. This requirement also applies to refills of prescribed drugs.

The misuse or abuse of legal drugs while performing Metropolitan Council business is prohibited.

2.4 Unable To Provide Specimen

Employees who are unable to provide a specimen or an adequate amount of specimen without a valid medical explanation will be regarded as failing to comply with testing requirements and will be disciplined in the same manner as an employee with a confirmed first positive test result; and subject to:

1. An unpaid suspension of 160 hours to be arranged by the supervisor;
2. Mandatory referral to the SAP for evaluation;
3. Release of information to management confirming compliance with SAP recommendations;
4. Successful completion of a return-to-duty drug/alcohol test; and
5. Submission to unannounced follow-up testing for up to 60 months as recommended by the SAP.
6. A second instance of failure to comply with testing requirements by an inability to provide a specimen or an adequate amount of specimen will be treated with the same consequences as a second confirmed positive test result, resulting in termination.

2.5 Treatment Requirements

Any employee who refuses or fails to comply with requirements for treatment, after care, or return to duty will be terminated from employment.

2.6 Notifying the Metropolitan Council of Criminal Drug Conviction

An employee must notify his/her immediate supervisor of any criminal drug conviction for a violation occurring in the workplace no later than 5 days after such conviction. An employee who fails to notify his/her immediate supervisor of such a conviction within five days shall be subject to disciplinary action, up to and including termination. In accordance with the Federal Drug-Free Workplace Act, The Metropolitan Council will notify the appropriate agency of the conviction within 10 days after receiving such notification.

Within 30 days after receiving notice from a covered employee of a drug-related conviction, the Metropolitan Council will take appropriate action against the employee up to and including termination, or require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program.

3.0 Testing Methods for Prohibited Substances

The Metropolitan Council will strive to ensure the highest integrity in drug and alcohol testing and reporting procedures. The Metropolitan Council will work with the Medical Review Officer (MRO), the collection sites, and the laboratory to ensure that the integrity of the testing process is maintained. All tests will be performed by a trained collection professional in a setting which affords privacy to the individual being tested. Employees being tested must provide the proper form of employee identification to the collector upon arrival at the collection site. Acceptable forms of identification include:

1. A photo identification (e.g., drivers license, employee badge issued by the Metropolitan Council, or any other picture identification issued by a Federal, State, or local government agency), or
2. Identification by an employer or employer representative.

Note: If the employee cannot produce positive identification, the collector will contact the DER to verify the identity of the employee. The collection will not proceed until positive identification is obtained.

The Metropolitan Council shall comply with 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

3.1 Alcohol

Employees will be tested for alcohol just before, during, or immediately following the performance of an FTA safety sensitive function.

Tests for alcohol concentration conducted for FTA safety sensitive employees will be performed utilizing an evidential breath testing device (EBT) that conforms to the specifications set forth in 49 CFR Part 40, including a manufacturer-developed quality assurance plan approved by the National Highway Traffic Safety Administration. The alcohol test shall be conducted by a trained breath alcohol technician (BAT) who has demonstrated competence in the operation of the device and use of the breath alcohol-calibrating unit. The test shall be conducted in a manner that provides the employee with privacy to the greatest extent possible. The testing site shall be secured, with no unauthorized access at any time the EBT is unsecured or when testing is occurring. The BAT shall conduct only one test at a time and shall not leave the testing site while the preparations for testing or the test itself are in progress. The EBT operator shall not be the employee's direct supervisor.

If the initial test indicates an alcohol concentration of 0.02 or greater, a second confirmation test utilizing an EBT will be performed. The confirmation test must be conducted not less than 15 minutes, but not more than 30 minutes after completion of the initial test. Even if more than 30 minutes have passed since the screening test result was obtained, the confirmation test procedures will begin, not another screening test.

Before the confirmation test is administered, the BAT shall conduct an airblank on the EBT. If the reading is greater than 0.00, the BAT shall conduct one more airblank. If the

second airblank reading is greater than 0.00, that EBT shall not be used to conduct the test.

If the initial and confirmatory test results are not identical, the confirmation test result shall be deemed to be the final result. If the result displayed on the EBT itself is not the same as that on the printed form produced by the EBT, the test shall be canceled, and the EBT removed from service.

An employee who has a confirmed alcohol concentration of 0.02 or greater, but less than 0.04 will be removed from his/her position without pay for a minimum of eight hours or until the end of the scheduled workday.

A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this Policy and will subject the employee to the discipline provisions outlined in Section 6.0. A covered employee with a confirmed alcohol concentration of 0.02 or greater will be prohibited from performing or continuing to perform safety-sensitive functions.

3.2 Drugs

A covered employee may be randomly tested for prohibited drug use anytime while on duty.

The split sample method of collection shall be utilized to test urine specimens. Urine specimens shall only be collected by a licensed medical professional or medical technologist or technician who is provided instruction for collection under 49 CFR Part 40 and who performs the collection and certifies completion as required therein; or by a person who has successfully completed training as a collector as required by 49 CFR Part 40. The collection site person shall not be the direct supervisor of the covered employee, and may not be related to the employee or a close personal friend. Urine specimens shall only be collected at secure, designated collection sites which have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage and shipping or transportation of specimens to a certified drug testing laboratory.

Under the split sample method of collection, individuals are required to provide at least 45 ml of urine. If the individual is unable to provide at least 45 ml, the collector shall urge the individual to drink a maximum of 40 ounces of fluids over the course of up to three hours. The individual shall again attempt to provide a complete specimen. If the individual fails for any reason to provide 45 ml of urine within three hours the test shall be discontinued and the collector shall contact the MRO to obtain guidance on the action to take. It is not a refusal to test if the employee declines to drink.

A minimum of 45 ml of urine is required for the split specimen procedure to be utilized under this Policy. The urine specimen must be split and poured into two (2) specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen which shall also be forwarded to the laboratory.

Specimens shall be placed in containers designated to minimize the possibility of damage during shipment to the laboratory and shall be securely sealed to eliminate the possibility of undetected tampering.

Urine specimens shall be analyzed by a laboratory certified under the Department of Health and Human Services' (DHHS) Mandatory Guidelines for Federal Workplace Drug

Testing Programs. The laboratory shall be secure at all times and shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The Metropolitan Council's laboratory is identified in the supplemental attachment.

The drug testing laboratory shall have a quality assurance program which encompasses all aspects of the drug testing process including, but not limited, to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, certification of calibrators and controls, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

In addition, there shall be laboratory quality control requirements for both initial and confirmation tests.

An initial drug screen will be conducted on the specimen by the testing laboratory utilizing an immunoassay that meets the requirements set forth in 49 CFR Part 40. For those specimens that are not negative, a confirmatory test will be performed using gas chromatography/mass spectrometry (GC/MS). The laboratory shall report the test results to the Metropolitan Council's Medical Review Officer (MRO), who shall be a licensed physician with knowledge of substance abuse disorders and appropriate medical training for reviewing and interpreting drug test results. The MRO shall review the test results, as set forth in Section 5 of this Policy, and determine whether the test results are positive or require further investigation. Further investigation is required for tests that are reported as adulterated, substituted, dilute, invalid or canceled.

- Employees with a verified positive drug test, as determined by the MRO, will be immediately removed from performing any safety-sensitive functions.
- Employees with an adulterated or substituted test result, who do not provide a valid medical explanation as determined by the MRO, will be reported to the DER as a refusal to test, will be immediately removed from performing any safety-sensitive functions,
- Employees with a negative, but dilute, specimen will be required to take another test immediately.
- Employees who receive an invalid test result, and who do not provide a valid medical explanation, will be required to take another test immediately. This second test will be an observed test.
- Employees who have a test that is determined by the MRO to be canceled, will be required to take another test under limited circumstances as set forth in 49 CFR Part 40, including pre-employment tests, return-to-duty tests, and follow-up tests.

Employees with a confirmed positive drug test, as determined by the MRO, will be subject to the discipline provisions outlined in Section 6.0.

3.3 Observed Drug Tests

Procedures for collecting urine specimens shall allow individual privacy except under limited circumstances as set forth in 49 CFR Part 40. In these circumstances, an individual may be required to submit to an observed urine collection. Arrangements will be made with the collection provider to assure the collector or observer is the same sex. The following circumstances are the only grounds constituting a reason for requiring an observed drug test:

- When an individual submits a urine specimen which is determined by the collection professional to be outside the normal temperature range.
- When the collection site staff witnesses during a collection conduct which indicates an attempt to substitute or adulterate the sample, or if inspection of the sample by the collector suggests tampering. The employee will be required to undergo an observed collection immediately.
- When a previous sample was determined to be invalid and the MRO has determined there was no adequate medical explanation.
- When a previous sample was canceled because the split sample test could not be performed and the initial test was reported as positive, adulterated, or substituted after review by the MRO.
- When the test administered is a return-to-duty test or a follow-up test.

4.0 Categories of Testing

Employees who perform FTA safety sensitive functions will be subject to the categories of testing listed below, as provided under 49 CFR Part 655.

4.1 Pre-Employment Testing

All applicants who have received a conditional offer of employment shall undergo drug testing with a verified negative result prior to performing a safety-sensitive function. Failure to successfully complete the testing requirements, including passing the drug test, will result in a referral to a SAP and withdrawal of the job offer. Failure of an applicant to keep an appointment for testing, or to provide a sufficient specimen does not constitute a refusal to test or comply with the testing requirements. If an applicant's drug test is canceled, the Metropolitan Council shall require the applicant to take another pre-employment drug test. The DER will notify the applicant if the Medical Review Office (MRO) has canceled a test. Under Part 40 rules, the MRO will cancel a test that is scientifically insufficient or suspect because of irregularities. Applicants who do not successfully pass and complete the testing requirement will be disqualified from employment for a period of 12 consecutive months following the test.

All applicants are required to provide written consent to the Metropolitan Council to conduct a record check of previous DOT-regulated employers regarding the applicant's drug and alcohol testing record during the two years before the application.

Current employees who have not performed a safety-sensitive function for 90 calendar days must undergo a pre-employment drug test unless the employee has been in the random selection pool during that period. The employee must receive a verified negative drug test result before being permitted to perform a safety-sensitive function.

When an applicant has failed or refused a pre-employment drug test administered under this part, the employee must provide the Metropolitan Council proof of having successfully completed a referral, evaluation and treatment plan as set forth in Section 7.0 of this Policy.

4.2 Transfers to FTA Safety Sensitive Jobs

Employees who do not perform an FTA safety sensitive function, who are conditionally offered an FTA safety sensitive position, will be required to submit to a urine drug test prior to transfer with a verified negative result.

If a transferee's drug test is canceled, the Metropolitan Council shall require the transferee to take another pre-employment drug test. The DER will notify the transferee if the Medical Review Office (MRO) has canceled a test. Under Part 40 rules, the MRO will cancel a test that is scientifically insufficient or suspect because of irregularities.

All employees who are transferring to a safety-sensitive job are required to provide written consent to the Metropolitan Council to conduct a record check of previous DOT-regulated employers regarding the employee's drug and alcohol testing record during the two years before the transfer.

Failure to successfully complete the testing requirement will result in withdrawal of the job offer. In addition, an employee who fails to successfully pass and complete the testing requirement will be subject to the discipline provisions outlined in the Metropolitan Council Drug/Alcohol Policy covering employees in non-safety sensitive positions.

4.3 Reasonable Suspicion Testing

All employees will be subject to a fitness for duty evaluation, including drug and alcohol testing, when there are reasons to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a supervisor/manager that has received appropriate and required reasonable suspicion training and the decision will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the covered employee. Alcohol testing will be conducted only if the observations are made during, just preceding or just after the employee has performed a safety-sensitive function.

Employees will be required to submit to a urine drug and breath alcohol test once reasonable suspicion has been determined. Employees will be placed on *paid* administrative leave pending the results of the drug test, and if the breath alcohol test indicates the presence of alcohol at less than 0.02. If the confirmatory alcohol test indicates the presence of alcohol at 0.02 or greater, but less than 0.04, the employee will be placed on *unpaid* administrative leave for a minimum of eight hours or until the results of the drug test are received. The employee will not be allowed to perform safety-sensitive duties until he/she has a negative alcohol test showing an alcohol concentration of less than 0.02.

If the confirmatory alcohol test indicates the presence of alcohol at 0.04 or greater, the employee will be placed on *unpaid* administrative leave, considered to have a positive alcohol test and subject to the disciplinary provisions outlined in Section 6.0.

If the employee's confirmatory drug test is positive, the employee will be subject to the disciplinary provisions outlined in Section 6.0.

The alcohol test will be conducted within 2 hours but no longer than 8 hours following the observed behavior. If no specimen is obtained within 2 hours, a report will be filed indicating the reason for the delay, and efforts will continue to obtain a specimen for up to 8 hours. If a specimen is not obtained in 8 hours, a written report must document the reason for failing to obtain a specimen.

4.4 Post Accident Testing

A post accident drug/alcohol test will be conducted when an employee performing a safety sensitive function is involved in or could have contributed to an accident.

An employee involved in an accident is prohibited from consuming alcohol for eight hours following the accident or until he/she undergoes a post accident alcohol test, unless it is determined by a supervisor that a test is not necessary-

4.4.1 Definition of Accident

For purposes of this Policy, the term “accident” means an occurrence associated with the operation of a vehicle, if as a result –

- An individual dies; or
- An individual suffers a bodily injury and immediately receives medical attention away from the scene of the accident; or
- When the public transportation vehicle involved is a bus, van or automobile, and one of the involved vehicles (including non-FTA-funded vehicles) incurs disabling damage and is towed; or
- The public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, and the transit vehicle is removed from service.

4.4.2 Testing After Fatal Accident

As soon as practicable following an accident involving the loss of human life, The Metropolitan Council will conduct drug and alcohol tests on each surviving covered employee operating the public transportation vehicle at the time of the accident. The Metropolitan Council will also conduct drug and alcohol tests on any other covered employee whose performance could have contributed to the accident, as determined by the Metropolitan Council using the best information available at the time of the decision.

4.4.3 Testing after Non-Fatal Accident

As soon as practicable following an accident not involving the loss of human life, in which the public transportation vehicle involved is a bus, electric bus, van, automobile, rail car, trolley car, trolley bus or vessel, the Metropolitan Council will conduct drug and alcohol tests on each covered employee operating the public transportation vehicle at the time of the accident unless the Metropolitan Council determines, using the best information available at the time of the decision, that the employee’s performance can be completely discounted as a contributing factor to the accident. The Metropolitan Council will also conduct drug and alcohol tests on any other covered employee whose performance could have contributed to the accident, as determined by the Metropolitan Council using the best information available at the time of the decision. Decisions not to test must be documented in detail, including the decision-making process used to reach the decision not to test.

Any employee who leaves the scene of the accident without appropriate authorization prior to submission to drug and alcohol testing, who fails to inform appropriate Metropolitan Council personnel as to his/her whereabouts, and who does not remain readily available for testing will be considered to have refused the test and subject to discipline as provided in Section 6.0. An employee may, however, leave the scene of an accident if necessary to obtain medical attention or to obtain assistance in responding to the accident.

Under this section, employees will be required to submit to a urine drug and breath alcohol test. The drug test will be conducted as soon as practicable, but at least within 32 hours. The alcohol test will be conducted within 2 hours but no longer than 8 hours following the accident. If no specimen is obtained within 2 hours, a report will be filed indicating the reasons for the delay, and efforts will continue to obtain a specimen for up to 8 hours. If a specimen is not obtained in 8 hours, a written report must document the reasons for failing to obtain a specimen.

In the event the Council is unable to perform a post-accident test within the required time period, the Council is authorized to obtain and use the results of blood, urine, and/or breath tests conducted by law enforcement authorities that conform to proper law enforcement testing requirements.

Employees will be placed on paid administrative leave pending the results of the drug test and if the breath alcohol test indicates the presence of alcohol at less than 0.02. If the confirmatory alcohol test indicates the presence of alcohol at 0.02 or greater, but less than 0.04, the employee will be placed on unpaid administrative leave for a minimum of eight hours or until the results of the drug test are received.

If the confirmatory alcohol test indicates the presence of alcohol at 0.04 or greater, the employee will be placed on unpaid administrative leave, considered to have a positive alcohol test and subject to the disciplinary provisions outlined in Section 6.0.

If an employee's confirmatory drug test is positive, the employee will be subject to the disciplinary provisions outlined in Section 6.0.

4.5 Random Testing

All safety sensitive employees will be subject to random drug and/or alcohol testing. An employee shall be randomly selected for drug and/or alcohol testing by using a scientifically valid random number generation method. Once an employee is randomly tested, his/her number will be re-entered into the selection pool. The dates for administering unannounced testing of randomly selected covered employees shall be spread reasonably throughout the calendar year. This ensures that employees will have a reasonable expectation they might be called for a test on any day they are at work. Random test dates are unannounced and immediate. A covered employee shall be randomly tested for alcohol only while the employee is performing safety sensitive functions, just prior to performing safety sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

The Metropolitan Council will randomly test safety sensitive employees at least at the minimum rate required by the FTA for prohibited drugs and alcohol each year. These rates are subject to annual FTA review. Under this section, employees will be required to submit to a urine drug and/or breath alcohol test. Employees will return to their regular duties at the conclusion of the test, assuming the breath alcohol test indicates the presence of alcohol at less than 0.02.

If the confirmatory alcohol test indicates the presence of alcohol at 0.02 or greater, but less than 0.04, the employee will be placed on unpaid administrative leave for a minimum of eight hours.

If the confirmatory alcohol test indicates the presence of alcohol at 0.04 or greater, the employee will be placed on unpaid administrative leave, considered to have a positive alcohol test and subject to the disciplinary provisions outlined in Section 6.0.

If an employee's confirmatory drug test is positive, the employee will be subject to the disciplinary provisions outlined in Section 6.0.

4.6 Return to Duty Testing

All employees who have violated any portion of this Policy, including a refusal to submit to testing, and are eligible to return to work, must test negative for drugs and less than 0.02 concentration of alcohol before returning to work. Under this section, employees will be required to submit to a urine drug and/or breath alcohol test.

If the employee's confirmatory drug and/or alcohol test is positive, the employee will be subject to the disciplinary provisions outlined in Section 6.0.

4.7 Follow-up Testing

Employees who have been referred to a SAP for violating this Policy will be required to submit to follow-up/unannounced drug and alcohol testing for a period up to 60 months. A minimum of six tests will be conducted during the first twelve months following the employee's return to safety-sensitive duty. Follow-up testing frequency and length will be determined by the SAP.

Employees will be required to submit to a urine drug and/or breath alcohol test. Employees will return to their regular duties at the conclusion of the test, assuming the breath alcohol test indicates the presence of alcohol at less than 0.02.

If the confirmatory alcohol test indicates the presence of alcohol at 0.02 or greater, but less than 0.04, the employee will be placed on unpaid administrative leave for a minimum of eight hours or until the results of the alcohol test are received.

If the confirmatory alcohol test indicates the presence of alcohol at 0.04 or greater, the employee will be placed on unpaid administrative leave, considered to have a positive alcohol test and subject to the disciplinary provisions outlined in Section 6.0.

If the employee's confirmatory drug test is positive, the employee will be subject to the disciplinary provisions outlined in Section 6.0.

4.8 Blind Sample Test

Blind samples shall be randomly intermingled by the Metropolitan Council and sent to the testing laboratory with individual specimens. The blind samples will be analyzed in the same manner to ensure the accuracy of the laboratory-testing program.

Blind quality control sample submissions must be evenly spread throughout the year and all blind quality control samples must be submitted as DOT split specimen collections.

This provision does not apply to Metropolitan Council contractors who employ less than 2000 DOT-covered employees.

5.0 Categories of Testing

5.1 Drug Tests

The Metropolitan Council Medical Review Officer (MRO) will review the results of drug tests from the laboratory and determine if the employee/applicant received a positive result or if further investigation is required. The MRO will review confirmed positive,

adulterated, substituted, dilute or invalid test results. After investigation as required under 49 CFR Part 40, the MRO will verify test results as negative, positive, test canceled, or refusal to test because of adulteration or substitution. The MRO will not convey test results to the Metropolitan Council until the MRO has made a final verification decision. This review is consistent with 49 CFR Part 655. A current provider listing of The Metropolitan Council's appointed MRO may be referenced on the supplemental attachment page of this document.

Negative Results

The MRO will notify the DER in writing of a negative result within 2 days of verifying the negative result. The DER will communicate the negative result to the appropriate Metropolitan Council supervisor within 1 working day. The supervisor will verbally notify the employee within 3 working days after notification from human resources. If an employee has not received a result within 7 working days the employee should contact the DER. Employees/applicants may request and receive a copy of the test result as set forth in Section 12.0.

Positive, Adulterated, Substituted, or Invalid Results

An employee/applicant who tests positive, adulterated, substituted, or invalid on a confirmatory drug test will be contacted by the MRO, and:

- May speak and/or meet with the MRO, who will review the individual's medical history, including any medical records provided.
- Will be informed of the right to request to have the split specimen tested as long as the request is made within 72 hours of notification of the test result.
- Will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information which may explain the positive result.
- If there is some new information which may affect the finding, the MRO may request an employee to submit to further medical evaluation and request the laboratory to perform additional testing on the original specimen in order to further clarify the results.
- A final determination will be made by the MRO that the test is positive, negative, invalid, canceled, or refusal to test because of adulteration or substitution and the employee will be so advised.
- If the employee provides an adequate explanation, the MRO will verify the test as negative or canceled with the DER.
- If the employee fails to provide an adequate explanation, the MRO will verify the test as positive, canceled as invalid, or refusal to test because of adulteration or substitution and report the result to the DER. An employee whose test is canceled as invalid is required to take a second collection immediately under direct observation. An employee who has a dilute negative test will be required to take a second collection immediately.
- The employee may request a copy in writing of the laboratory report identifying threshold levels from the MRO.

The MRO shall make reasonable attempts to contact the employee within 24 hours. If the MRO is unsuccessful in this effort, the DER will be notified and the DER will attempt to contact the employee. The employee is required to respond to the MRO within 72 hours of notice.

If the individual declines to discuss the test, or fails to respond to reasonable efforts to arrange an appointment to discuss test results that are confirmed positive, adulterated, substituted or invalid with the MRO, including failing to return phone calls in a timely

manner, the test will be considered positive, invalid, or refusal to test because of adulteration or substitution and appropriate action (including disciplinary action) will be taken as set forth in Section 6.0.

An employee who tests positive on a confirmatory drug test will be removed from his/her safety sensitive position, will be required to meet with his/her supervisor, and will be subject to discipline provisions outlined in Section 6.0.

Employees/applicants will be notified in writing of the confirmed positive drug test result by the Metropolitan Council's DER within three working days after receipt of the positive test result. Employees/applicants may request and receive a copy of the test result as set forth in Section 12.0.

5.2 Alcohol Tests

Negative Results

The breath alcohol test results are known immediately upon completion of a test. Negative test results will be reported to the DER, who will communicate the results of the breath alcohol test to the appropriate Metropolitan Council supervisor. Employees will receive a copy of the breath alcohol test results upon completion of the test.

Positive Results

The breath alcohol test results are known immediately upon completion of a test. Confirmed positive alcohol test results will be reported to the DER by the breath alcohol technician (BAT) immediately following the test. Employees will receive a copy of the breath alcohol test results upon completion of the tests.

An employee who receives a confirmed positive alcohol test result will be removed from his/her safety sensitive position, will be required to meet with his/her supervisor and will be subject to discipline provisions outlined in Section 6.0.

Employees will be notified in writing of the confirmed positive alcohol test result by the Metropolitan Council's DER within 3 working days after receipt of the positive test result.

5.3 Employee/Applicant Requested Retest After Confirmed Positive Test or Refusal to Test Because of Adulteration or Substitution

Positive Drug Test; Refusal to Test Because of Adulteration or Substitution

Any employee/applicant who questions the results of a confirmed positive drug test or a refusal to test because of adulteration or substitution under Sections 4.1 through 4.7 of this Policy may request that a confirmatory retest be conducted as follows:

- The confirmatory retest will be conducted on the split urine sample.
- This test must be conducted at a different DHHS-certified testing laboratory. The MRO will direct in writing that the laboratory provide the split specimen to another DHHS-certified laboratory for analysis.
- The MRO shall notify the employee who has a confirmed positive or a refusal to test because of adulteration or substitution, that the employee has 72 hours from notification in which to request a retest on the split specimen. The employee needs to notify the MRO within 72 hours of the notification if they wish to have a retest of the split specimen conducted. The Metropolitan Council DER will assist in the retest process.
- Requests after 72 hours will be accepted only if the delay was due to documented facts that were beyond the control of the employee.

- If the split specimen is not able to be analyzed, or if the results of the split sample are not adequate scientifically, the MRO will declare the original test to be canceled.
- An employee who has requested a retest may not perform safety sensitive functions pending results of the retest.

If the confirmatory retest does not confirm the original positive test result, adverse personnel action taken against the employee based on the original confirmatory test will be reversed. Repayment of lost wages will be made to the employee if the test results are reversed.

In cases of job applicants and transfers from non-safety sensitive positions to safety sensitive positions, if the confirmatory retest does not confirm the original positive test result, the applicant will be offered the position that was retracted. The test will be canceled and the applicant/transferee will be subject to taking another pre-employment test, and a negative test result must be produced.

6.0 Employee Discipline Associated with Drug/Alcohol Testing

Discipline actions described in this section are mandated by the Metropolitan Council and will be administered appropriately. The right of the Metropolitan Council to terminate employees as provided under this section is permitted, although not required by federal law. Contractors are required to issue disciplinary procedures consistent with state and federal law.

6.1 Reasonable Suspicion Drug/Alcohol Test

Employees who test positive on a confirmatory reasonable suspicion drug and/or alcohol test will immediately be removed from their position, referred to a SAP, and be terminated from employment.

This action may be appealed to the General Manager and/or Assistant General Manager of Administration/Operations for review and at his/her discretion such action may be reversed under this category.

6.2 Post Accident Drug/Alcohol Test

Employees who test positive on a confirmatory post accident drug and/or alcohol test will immediately be removed from their position, referred to a SAP, and be terminated from employment.

This action may be appealed to the General Manager and/or Assistant General Manager of Administration/Operations for review and at his/her discretion such action may be reversed under this category.

6.3 Random Drug/Alcohol Test

First confirmed positive random drug/alcohol test:

Any employee who tests positive on a confirmatory drug and/or alcohol test will be subject to the following*:

- immediate removal from his/her position;
- referral to the Substance Abuse Professional (SAP) for evaluation;
- an unpaid suspension of 160 hours to be arranged by the supervisor;
- a return to work agreement;
- the requirement to successfully pass a return to duty drug/alcohol test; and,
- submission to unannounced testing for a period of up to 60 months.

Employees who voluntarily report drug or alcohol abuse to a manager/supervisor prior to being called for random testing, will be subject to the following: =

- immediate removal from his/her position;
- referral to the EAP for evaluation;
- authorize release of information such as status of compliance and treatment recommendations;
- sign a return to work agreement;
- successfully pass a return to duty drug and alcohol test

Employees who voluntarily report drug/alcohol abuse are not subject to the 160-hour suspension. However, if employees are found to be positive on any future required drug/alcohol test(s), they will be terminated from employment.

*Employees who previously participated in a drug and/or alcohol inpatient or outpatient rehabilitation/treatment program while in the employ of the Metropolitan Council will not be subject to this provision and will be terminated from employment. This action may be appealed to the General Manager and/or Assistant General Manager of Administration/Operations for review and at his/her discretion such action may be reversed.

Second confirmed positive random drug/alcohol test:

Any employee who tests positive on a second confirmatory drug/alcohol test will be subject to the following regardless of the time period between the first and second positive tests:

- immediate removal from his/her position.
- termination from employment.
- referred to the Substance Abuse Professional (SAP) (reference supplemental page).

6.4 Return to Duty Drug/Alcohol Test After Positive Test

All employees who test positive on a confirmatory return to duty drug and/or alcohol test will immediately be removed from their position, referred to a SAP, and be terminated from employment regardless of the time period between the first and second positive test.

6.5 Follow-up/Unannounced Drug/Alcohol Test After Positive Test

All employees who test positive on a confirmatory follow-up drug and/or alcohol test will immediately be removed from their position, referred to a SAP, and be terminated from employment regardless of the time period between the first and second positive test.

6.6 Refusal to Take a Drug/Alcohol Test

Refusal by an employee to take a drug and/or alcohol test or comply with the requirements of the collection process is considered insubordinate and a positive test. The employee will immediately be removed from their position, referred to a SAP, and be terminated from employment.

6.7 Second Confirmed Positive

An employee with a second confirmed positive drug and/or alcohol test, within any time period, will immediately be removed from their position, referred to a SAP, and be terminated from employment.

7.0 Substance Abuse Professional (SAP) Evaluation

An employee or applicant who has a verified positive drug or alcohol test result, refuses to submit to a drug or alcohol test, or engages in conduct prohibited under Section 1.0 of this Policy must be evaluated by a Substance Abuse Professional (SAP). The SAP will determine the assistance the covered employee is in need of consistent with 49 CFR Part 655.

Employees who refuse to undergo SAP evaluation will be terminated from employment. Applicants and employees who refuse to undergo SAP evaluation, referral, and education/treatment will not be permitted to perform any safety-sensitive duties.

The Metropolitan Council has designated the EAP provider as the SAP. The current EAP/SAP provider is listed on the supplemental reference page of this document.

Before an employee can perform safety-sensitive duties, he/she must properly follow the rehabilitation program prescribed by the SAP. Follow-up testing frequency and length will be determined by the SAP. The cost of any treatment or rehabilitation services will be paid directly by the employee or his/her insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

8.0 Return to Work Agreement

An employee who returns to work after a confirmed positive drug and/or alcohol test, verified by the MRO, must agree to the following provisions or have his/her employment terminated. The provisions include (but are not limited to):

- a release to work statement from the SAP ;
- a negative return to duty test for drugs and alcohol;
- an agreement to submit to unannounced/follow-up testing for a period up to 60 months; and,
- an agreement to follow specified after care requirements with the understanding that violation and non-compliance of these provisions are grounds for termination.

An employee must receive written certification from the SAP that he/she has complied with and properly followed the recommendations made by the SAP before returning to duty to perform an FTA safety-sensitive function.

Until the employee receives certification from the SAP of compliance, he or she will not be reinstated regardless of whether the suspension imposed under this Policy has been completed. The requirement of SAP certification is mandated by FTA regulations and is in addition to all other discipline imposed by the Metropolitan Council under its own authority.

9.0 Grievance Rights

Employees covered under this Policy are subject to the following grievance rights for disputes arising from this Policy:

- **Union** employees have a right to file a grievance as provided in the collective bargaining agreement.
- **Non-Union** employees have the right to file a grievance as provided in the Employees in the Workplace Policies and Procedures document.

10.0 Confidentiality and Release of Information

The Metropolitan Council shall maintain records of its anti-drug and anti-alcohol program in a secure location with controlled access, as required in 49 CFR Part 655. No test result or other information from this Drug/Alcohol Policy shall be released except as provided in this Policy.

The test result of an individual who was administered a drug and/or alcohol test under this part shall be released to a third party only if the individual tested authorizes the request, in writing, to the DER (except as provided in this Section).

The Metropolitan Council may disclose information related to a test result to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee tested.

When requested, the Metropolitan Council shall release information to the National Transportation Safety Board (NTSB) about a test performed as a result of an accident under NTSB investigation; or to the Secretary of Transportation or to any U.S. DOT agency with regulatory authority over the Metropolitan Council or its employees.

The Metropolitan Council shall also permit the Secretary of Transportation or any U.S. DOT agency with regulatory authority over the Metropolitan Council or any of its employees, access to all facilities utilized in complying with the requirements of this Policy.

Nothing in this provision shall limit the Metropolitan Council from releasing information in accordance with state and federal law.

11.0 Policy Contacts

Any employee or job applicant with questions regarding this Policy or any other aspect of the drug and alcohol testing program at the Metropolitan Council should contact the DER in Human Resources.

12.0 Rights to Examine Records

A covered employee is entitled, upon written request to the DER, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs, including any records pertaining to his or her previous drug tests within the Metropolitan Council's possession. The Metropolitan Council will provide requested records within 5 working days of a written request, assuming the DER has received the requested documents within that period of time. The employee may request a copy in writing of the laboratory report identifying threshold and quantitative levels from the MRO. See the supplemental listing for the name of the designated DER.

13.0 Reporting

The Metropolitan Council shall annually prepare and maintain a summary of the results of its drug and alcohol testing program and provide the summary, when requested, to the FTA. The standard Management Information System (MIS) reports that must be used are contained in 49 CFR Part 655. The Metropolitan Council shall also prepare and maintain annual MIS reports on Metropolitan Council's contractors whose employees perform safety sensitive functions and are, therefore, covered by the FTA regulations.

14.0 Certifications

The Metropolitan Council shall certify annually to the FTA compliance with the requirements of 49 CFR Part 655 using language similar to that contained in Sections 655.82 and 655.83. Certification means a written statement, authorized by the Metropolitan Council's governing board or other authorizing official, that the Metropolitan Council has complied with the provisions of Part 655.

15.0 FTA Safety Sensitive Positions

TMSA – LESL – Non-represented	ATU
Asset Protection Specialist	Bus Operator (including Miscellaneous Operator)
Assistant Manager Overhaul Base	Bus Stop Coordinator
Assistant Manager Rail Transportation	Cleaner
Assistant Manager Street Operations	Coordinator Central Stores
Assistant Manager Transit Control Center	Dispatcher (Garage General, Mark-Up, Relief Mark-Up)
Assistant Transportation Manager	Electrician Helper
Captain Transit Police	Electrician Licensed Lead
Director Security & Police Services	Electro-Mechanic Technician
District/Street Supervisor	Electronic Farebox Technician
Electronic Maintenance Supervisor	Electronic Repair Technician
Fleet Service Supervisor Engines/Transmissions	Foreperson, Electro-Mechanic
Fleet Service Supervisor HVAC/Electrical	Foreperson Track
Fleet Service Supervisor Ins/Ser/QA	Foreperson Traction Power
Fleet Service Supervisor Inspections/Warranties	Foreperson, SCADA/Signals/Communication
Fleet Service Supervisor Lifts/Brakes	Garage Coordinator
Fleet Service Supervisor MIS	Garage Stockroom Coordinator
Foreman, Brake Shop	Head Stockkeeper
Manager, Instruction	Helper
Manager, Maintenance	Instructor
Manager, OHB	Instructor - Rail
Manager, Rail Control Center	Lead Instructor
Manager, SCADA Signals/Communication	Lead Senior Farebox Technician
Manager, Street Operations	Lead Stockkeeper
Manager, TCC	Licensed Electrician
Manager, Transportation	Master Electrician
Non Revenue Foreman	Mechanic
Overhaul Shop Foreman	Motor Builder
Police Officer	Motor Specialist
Rail Transit Supervisor	Rail Dispatcher
Senior Asset Protection Specialist	Receiving Clerk
Senior Maintenance Training Officer	SCADA/Signals/Communication Electronic Technician
Supervisor, Operator Instruction	Senior Electronic Farebox Technician
Supervisor Production (Body Shop Supervisor)	Senior Mechanic
Supervisor, Service Garage	Senior Repair Technician
Supervisor, Transit Control Center	Skilled Helper
Supervisor, Transit Police	Stockkeeper
Track Manager	Traction Power Maintainer
Traction Power Manager	Train Operator
	Transmission Overhaul Specialist

FTA POLICY DEFINITIONS

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

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol Use: The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Alcohol Concentration: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

Breathe Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

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

Certification: Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official that the recipient has complied with the provisions of 49 CFR Part 40.

Collector: Collector means a trained person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the urine specimen provided by those employees, and who initiates and completes the Federal Drug Testing Custody and Control Form (CCF).

Collection Site: A place designated by the Metropolitan Council where individuals present themselves for the purpose of providing a specimen of their urine, blood, or breath. A collection site could be a hospital, clinic, or a Metropolitan Council facility.

Confirmation (or Confirmatory) Test: In drug or alcohol testing, a second analytical procedure to identify the presence of alcohol or a specific drug or metabolite that is separate from the initial screening test. The confirmatory test uses a different technique and chemical principle from that of the screening test to ensure reliability and accuracy. (Gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine). In alcohol testing, a second test, following an initial screening test with a result of 0.02 or greater, that provides quantitative data on alcohol concentration.

Contractor: A person or organization that provides a safety-sensitive service for the Metropolitan Council consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered Employee: Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to 49 CFR PART 655.

Designated Employer Representative (DER): An employee authorized by the Metropolitan Council to take immediate actions(s) to remove employees from safety-sensitive duties, or causes 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 49 CFR Part 40. Service agents cannot act as DERs.

Dilute Specimen: Dilute specimen is a specimen with creatinine and specific gravity values that are lower than expected for human urine

Directly Observed Collection: A directly observed collection procedure is the same as a routine collection procedure with the additional requirement that an observer physically watches the employee urinate into the collection container. The observer must be the same gender as the employee.

DHHS: The Department of Health and Human Services.

Drugs: The drugs for which tests are required under 49 CFR Part 40 are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

Drug Metabolite: The specific substance produced when the human body metabolizes a given prohibited drug as it passes through the body and is excreted in urine.

Evidential Breath Testing Device (EBT): An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath.

Employee: An individual designated by the Metropolitan Council as subject to drug testing and/or alcohol testing. As used in this Policy, an “employee” includes an applicant for employment, transferee, contractor, or volunteer. “Employee” and “individual” have the same meaning for purposes of this Policy.

Employee Assistance Program (EAP): A program provided by the Metropolitan Council to assist employees in dealing with drug or alcohol dependency and other personal problems.

Employee Assistance Program (EAP) Professional: A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

FTA: Federal Transit Administration as an agency of the United States Department of Transportation.

FTA Safety Sensitive Function: An FTA Safety Sensitive function is any duty related to the safe operation of mass transit service including the operation, dispatch, and maintenance of a revenue service vehicle (whether or not the vehicle is in revenue service) and any other employee who holds a Commercial Driver’s License. Those employees who carry a firearm for security purposes will be included.

Initial Test: (also known as a “screen” test), the first test performed to eliminate “negative” specimens from further consideration.

Invalid Drug Test: The result of a drug test for a urine specimen that contains an unidentified adulterant or interfering substance, has abnormal physical characteristics, or has abnormal concentrations that prevent the laboratory from completing a valid drug test result.

Job Applicant: A person who applies to become an FTA safety sensitive employee of the Metropolitan Council. This includes an applicant who has received a job offer contingent on the applicant successfully completing and passing the drug/alcohol testing.

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

On-Call Hours: means hours during which the employee must be available to work, whether the employee is located on company premises or not.

Pass a drug/alcohol Test: An individual passes a drug/alcohol test when a Medical Review Officer determines that the results of the test(s):

- showed evidence of a prohibited drug, drug metabolite, or alcohol for which there was a legitimate medical explanation.
- showed no evidence or insufficient evidence of a prohibited drug, drug metabolite, or alcohol.
- were scientifically insufficient to warrant further action.
- were suspect because of irregularities in the administration of the test, or observation, or custody and control procedures.

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

Positive Test Results: A finding of the presence of alcohol at 0.04 or greater, a drug(s), or drug metabolites, in the specimen tested, at levels equal to or above the threshold detection levels set by federal law. A copy of the drug threshold detection levels utilized by the Metropolitan Council as set by federal law may be obtained from the DER in Human Resources. Refusal to take a required drug/alcohol test will be considered a positive test. See supplemental attachment for threshold levels.

Prohibited Drugs/Substances: Marijuana, cocaine, opiates, amphetamines, or phencyclidine.

Refusal to Submit a Test: See section 1.3

Revenue Service Vehicle: A vehicle used to transport passengers, such as a bus or van.

Substance Abuse Professional (SAP): A licensed physician, or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

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

Verified Test: A drug test result or validity testing result from a certified laboratory that has undergone review and final determination by the MRO.

Volunteer: A volunteer is deemed a covered employee when he or she receives remuneration in excess of their actual personal expenses incurred while performing the volunteer service.

METROPOLITAN COUNCIL DRUG & ALCOHOL CONTRACTOR MONITORING PROGRAM

1.0 Purpose

Consistent with FTA regulations, the Metropolitan Council will maintain a Contractor Monitoring Program to ensure contractor compliance with applicable federal laws regulating drug and alcohol testing. This program is intended to create a compliance structure for contractor monitoring. The scope of this Program is intended to include all Metropolitan Council contractors with safety sensitive employees as defined by federal law.

2.0 Implementation of Contractor Review

2.1 Employees of contractors who are “standing in the shoes of” the Metropolitan Council and who perform safety-sensitive functions are subject to compliance with FTA regulations

- regarding drug and alcohol testing (i.e., the safety-sensitive functions for contract employees are the same functions as for the Metropolitan Council employees).
- 2.2 If the Metropolitan Council uses a contract service provider or maintenance provider, the Metropolitan Council shall ensure and certify to the FTA that the contractor is in compliance with the FTA regulations regarding drug and alcohol testing.
- The Metropolitan Council shall notify all such contractors in writing of the FTA regulations and the requirements for their compliance with them.
 - The Metropolitan Council shall obtain from each contractor an annual Management Information System Report (MIS) and file the report with the FTA.
- 2.3 All invitations for bids and requests for proposals involving the performance of safety-sensitive functions shall include a statement regarding the required compliance with FTA regulations regarding drug and alcohol testing. The Metropolitan Council shall inform the contractor in writing of the FTA requirements and of the Metropolitan Council's intent to monitor the contractor's compliance with them.
- 2.4 The Metropolitan Council shall provide all such contractors with copies of the applicable FTA regulations and ensure that each contractor provides a signed form acknowledging receipt of the regulations.

PREEMPTION OF STATE & LOCAL LAWS

1.0 The FTA regulations upon which this Policy is primarily based preempt any state or local law, rule, regulation or order when:

- 1.1 Compliance with both the state or local requirement and any requirement of the FTA regulations is not possible; or
- 1.2 Compliance with the state or local requirement is an obstacle to accomplishing and executing any requirement of the regulations.

2.0 However, the regulations do not preempt any provisions of state criminal law that impose sanctions for reckless conduct leading to loss of life, injury, or damage to property.

RESOURCES

Related Policies

- [HR 2-2 Drug Free Workplace Policy](#)
- [HR 2-4 Drug and Alcohol Testing Program for Non-FTA Employees Policy](#)

Related Procedures

- [HR 2-4a MCES Alcohol and Drug Testing Program Procedure](#)

Statutory Resources (Minnesota Statutes or Rules, U.S. Code, Federal Regulations)

- [49 CFR Part 655](#)
- [49 CFR Part 40](#)

Other Resources (training, relevant links):

- [Employee Assistance Program \(EAP\) and Substance Abuse Professional \(SAP\) – Sand Creek](#)

HISTORY

Version 10 – Template Update

10/14/2020 - Updated content into new template.

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01/16/1995

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12/11/2013

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Version

10

SUPPLEMENTAL ATTACHMENTS

A. Contact Information

Drug/Alcohol Program Manager

Alexis Rogers, HR Manager – Occupational Health, Metropolitan Council
612-349-7668

Drug/Alcohol Program Administrator

(DER-Designated Employer Representative)
Chastity (Chas) Cooper, Human Resources Assistant
612-349-7153

Stacy Sorsveen, Occupational Health Technician
612-349-7553

Chemical Health Referral Programs Suggested by EAP

Minneapolis

3 R's Counseling Center	612-789-8030
Behavior Care Network	612-863-4930
CREATE	612-874-9811

St Paul

Alert	651-488-6825
Regions Hospital	651-221-3456
Twin Town Treatment Center	651-645-6331

A comprehensive listing may be obtained from Metropolitan Council DER or Sand Creek.

Employee Assistance Program (EAP)/Substance Abuse Professional (SAP)

Sand Creek 612-332-4805 -or- 800-367-3271
1660 South Highway 100, #338
St. Louis Park, MN 55416

Medical Review Officer (MRO)

Dr. F. D. Proano	701-577-0498 –or-877-537-7588
Advanced Drug Testing Inc. (ADT)	701-577-0708 fax
15500 1 st Ave S, #106	
Burien, WA 98148	

B. Threshold Levels Defined by FTA

Drug/Drug Metabolite	Initial Test	Confirmatory
Amphetamines		
Amphetamine	500 ng/ml	250 ng/ml
Methamphetamine	500 ng/ml	250 ng/ml
MDMA ⁴	500 ng/ml	250 ng/ml
MDA ⁵	500 ng/ml	250 ng/ml
Cocaine Metabolites	150 ng/ml	100 ng/ml
Benzoylcegonine	150 ng/ml	100 ng/ml
Marijuana	50 ng/ml	15 ng/ml
Opioids		
Codeine	2000 ng/ml	2000 ng/ml
Morphine	2000 ng/ml	2000 ng/ml
Hydrocodone	300 ng/ml	100 ng/ml
Hydromorphone	300 ng/ml	100 ng/ml
Oxycodone	100 ng/ml	100 ng/ml
Oxymorphone	100 ng/ml	100 ng/ml
6--Acetylmorphine	10 ng/ml	10 ng/ml
Phencyclidine	25 ng/ml	25 ng/ml
Alcohol	0.02	0.02

Authorized Laboratory

MedTox Laboratories, Inc.
 402 W. County Rd. D
 St. Paul, MN 55112
 800-832- 3244/651-636-7466

POLICY

Drug and Alcohol Testing Program from Non-FTA Employees

HR 2-4

Category: Human Resources

Business Unit Responsible: RA: Human Resources

Policy Owner: Deborah Aebi, Senior Manager HR, Data Operations and Occupational Health

Policy Contact: Alexis Rogers, Human Resource Manager, Occupational Health

Synopsis: Establishes drug and alcohol testing program to comply with all applicable Minnesota Statutes. This Policy applies to all Metropolitan Council employees not specifically covered under the Drug and Alcohol Testing Policy for FTA safety sensitive employees.

POLICY

The Metropolitan Council is committed to a drug and alcohol free workplace to ensure high productivity and the safety and health of employees and the public. The Council will require drug and/or alcohol testing in accordance with this Policy and as provided in [Minnesota Statutes sections 181.950 - 181.957](#). This Policy applies to all employees or applicants of the Metropolitan Council who are not specifically covered under the Metropolitan Council's [HR 2-3 FTA Safety Sensitive Drug and Alcohol Program Policy](#).

PURPOSE OF POLICY

1. Metropolitan Council employees are our most valuable resource and it is our goal to provide a healthy and safe productive work place.
2. Employees who abuse controlled substances and/or come to work under the influence of drugs or alcohol pose a serious safety and health hazard to themselves, co-workers and the public.
3. To establish expectations and guidance for employees.
4. To further the Council objective of providing a safe and healthy work environment, the Council has instituted the drug and alcohol-testing program set forth in this Policy.

BACKGROUND & REASONS FOR POLICY

While this Policy is intended to eliminate drugs and/or alcohol from the workplace, the Council also offers assistance to employees to resolve chemical dependency issues through an [Employee Assistance Program](#). Ultimately, it is the employee's responsibility to obtain help and resolve any drug or alcohol problems they may have.

IMPLEMENTATION & ACCOUNTABILITY

This section applies to all employees or applicants who are not covered under the [HR 2-3 FTA Safety Sensitive Drug and Alcohol Program Policy](#).

The [HR 2-4a MCES Alcohol and Drug Testing Program Procedure](#) is intended to supplement this procedure for Environmental Services staff.

1.0 Prohibited Employee Conduct

1.1 Manufacture, Trafficking, Possession and Use

Any employee engaging in the manufacture, distribution, dispensing, possession, or the use of prohibited substances on Metropolitan Council premises, in Council owned vehicles or while conducting Council business in any manner which relates to the employee's position will be subject to disciplinary action up to and including termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

1.2 Alcohol Use

No employee will report to work or remain at work when his/her ability to perform assigned functions is adversely affected by alcohol and/or who tests at .04% alcohol concentration or higher. No employee may consume alcohol while at work, at lunch, or on breaks during the employee's work hours.

2.0 Types of Testing

The Council will require drug and/or alcohol testing under the following circumstances:

2.1 Job Applicants

The Council will require job applicants who have received an offer of employment which is contingent upon successful completion of a drug and/or alcohol test to undergo such test, provided the same test is required of all job applicants conditionally offered employment for the particular position. If the job applicant has received a job offer that is contingent on the applicant passing drug and/or alcohol testing, the Council will withdraw the offer based on a positive test result from an initial screening test that has been verified by a confirmatory test. In the event the job offer is withdrawn, the Council shall notify the job applicant of the reason for its action.

2.2 Reasonable Suspicion Testing

- a. The Council will require an employee to undergo drug and/or alcohol testing if the Council has reasonable suspicion that the employee:
 1. is under the influence of drugs and/or alcohol;
 2. has violated the Council's Policy prohibiting the use, possession, sale, transfer of drugs or alcohol on Council property (including vehicles), while operating Council vehicles, while conducting Council business, or during the workday, including lunch or other breaks, whether or not the employee is on or off Council property;
 3. has sustained or caused another to sustain a personal injury as defined in [Minnesota Statutes section 176.011](#), Subd. 16; or
 4. has caused or was involved in a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.
- b. A test may be conducted when:

1. The employee engages in behavior that is a recognized and accepted symptom of intoxication, impairment, or the use of controlled substances. These signs may be, but are not limited to:
 - difficulty in maintaining balance;
 - slurred speech;
 - possession of controlled substances and/or related paraphernalia;
 - abnormal or erratic behavior;
 - inability to perform assigned duties in a safe and satisfactory manner;
 - following any accident in which there is reason to suspect impairment.
2. An employee's behavior is observed by a supervisor and, when possible, confirmed by another managerial employee. Such observations must be documented, and an attempt to contact a Union Steward must be made. Inability to contact a Union steward will not delay testing, but the Union will be informed in writing that a test has occurred.

Employees who are directed to submit to testing based upon reasonable suspicion shall be relieved of all duties and placed on administrative leave of absence, without pay, pending the receipt of test results and the completion of any investigation by the Council.

A positive reasonable suspicion test will result in disciplinary action. A refusal to submit to testing will be treated as a positive test.

Before any reasonable suspicion testing occurs, both supervisory personnel and union stewards will be afforded training opportunities.

2.3 Routine Physical Examinations

The Council may require employees to undergo drug and/or alcohol testing as part of a routine physical examination. However, such testing shall not be required more than once annually, and employees shall be given at least two (2) weeks written notice that such testing may be required as part of the examination.

2.4 Random Testing

The Council will require random testing on a random selection basis of employees in safety-sensitive positions as defined by state law.

2.5 Treatment Program Testing

Any employee participating in a chemical dependency treatment program, under an employee benefit plan, or referred for chemical dependency treatment or evaluation by the Council, may be required to undergo drug and/or alcohol follow-up testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program. Subsequent testing may also be required under other sections of this Policy.

3.0 Failure to Comply with Requirements to Submit to Test

Failure to comply with testing requirements includes, but is not limited to:

- refusal to comply with a request to submit to drug/alcohol testing;
- providing false information in connection with a test;
- attempting to falsify test results through tampering, contamination, adulteration, or substitution;
- failure to provide a specimen (urine or blood) without a valid medical explanation;

- demonstrating behavior which is obstructive, uncooperative, or verbally offensive, resulting in the inability to conduct the test;
- failure to report to the collection site in the time allotted; and
- leaving the scene of an accident, (industrial, motor vehicle, or any time there is property damage or injury) without a valid reason before any necessary tests have been conducted.

Employees who fail to comply with testing requirements will be subject to disciplinary action.

4.0 Methods of Testing for Prohibited Substances

The Metropolitan Council will strive to ensure the highest integrity in drug and alcohol testing and reporting procedures. The Council will work with a Medical Review Officer (MRO), the collection sites, and the laboratory to ensure that the integrity of the testing process is maintained. All tests will be performed by a trained professional in a setting, which affords reasonable privacy to the individual being tested.

4.1 Alcohol. Tests for alcohol concentration will be performed with either, 1) an evidential breath testing device (EBT) which will be operated by a trained breath alcohol technician (BAT) or, 2) a urine or blood specimen which will be collected by a trained professional.

A confirmed alcohol concentration of 0.04% or greater will be considered a positive alcohol test and a violation of this Policy and will subject the employee to disciplinary action, as provided for in Section 6.0 of this Policy. An alcohol concentration of less than 0.04% does not preclude disciplinary action for the behavior which led to the test result.

4.2 Drugs. A urine specimen will be collected by a trained professional at a collection site. An initial drug screen will be conducted on the specimen by the testing laboratory. For those specimens that are not negative, a confirmatory test will be performed. Confirmatory drug tests will be considered positive when the amount(s) present are above the minimum thresholds established by applicable laws as hereby adopted by this Policy. Employees with a confirmed positive test will be subject to disciplinary action as provided in Section 6.0 of this Policy.

4.3 Observed Drug Tests. There are certain situations in which an employee may be required to submit to an observed urine test:

- when an individual submits a urine specimen that is determined by the collection professional to be outside the normal range by virtue of color, clarity, odor or temperature;
- when the collection site staff witnesses conduct during a collection that clearly indicates an attempt to substitute or adulterate the sample; and
- when a test result indicates that the levels of specific gravity and/or creatinine in the urine are low, without a valid medical explanation by the MRO.

The collection professional will document his/her determination and the reasons for the observed collection.

5.0 Communication of Test Results

The Medical Review Officer (MRO) will review the results of drug and/or alcohol tests from the laboratory and determine if the employee received a confirmed positive or negative result.

The MRO will not convey test results to the Metropolitan Council until the MRO has made a final decision that the test was positive or negative.

- 5.1 **Negative Drug/Alcohol Test Results.** Negative results will be reported to the Metropolitan Council Non-FTA Drug & Alcohol Program Administrator by the MRO. The Administrator will communicate the results of the negative drug and/or alcohol test to the appropriate supervisor, who will verbally notify the employee of the negative test result.
- The Administrator will also notify the employee in writing within three working days after the receipt of the negative test result. The employee may request and receive a copy of the test result. In the case of a negative test result, the Metropolitan Council will repay lost wages, if any, to the employee.
- 5.2 **Positive Drug/Alcohol Test Results.** An employee who tests positive on a confirmatory drug and/or alcohol test will be contacted by the MRO and required to meet, by telephone or in person, with the MRO. The employee has the right to submit information to the MRO to explain the positive result on a confirmatory test within three working days after notice of the test result. The employee shall be informed in writing of the employee's right to offer an explanation for the positive test.
- The MRO will review the individual's medical history, including any medical records provided. During the interview, the individual will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information that may explain the confirmed positive result. If there is some new information which may affect the finding, the MRO may request the laboratory to perform additional testing on the original specimen. A final determination will be made by the MRO that the test is either positive or negative, and the employee will be so advised.
- If the employee fails to keep an appointment to discuss the confirmed positive result with the MRO, including failing to return phone calls in a timely manner, the test will be considered positive and appropriate action (including disciplinary action) will be taken.
- An employee who receives a confirmed positive test result will be removed from his/her position, will be required to meet with his/her supervisor, and will be subject to discipline.
- 5.3 **Employee Requested Retest after a Confirmed Positive Test.** Any employee who questions the results of a confirmed positive drug and/or alcohol test may request a confirmatory retest. Confirmatory retests may not be conducted when EBT testing methods are used, unless requested immediately.
- In the case of a urine and/or blood sample testing, the confirmatory retest must be conducted on the original urine and/or blood sample. All costs for such testing are paid by the employee. The request for a confirmatory retest on a urine and/or blood sample must be made in writing to the program administrator within five working days of receiving notice of a positive test result on a confirmatory test. Within three working days after receipt of such notice, the Metropolitan Council Non-FTA Program Administrator will notify the laboratory the employee has requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory.
- If the confirmatory retest does not confirm the original positive test result, no adverse personnel action will be taken against the employee based on the original positive test result. Repayment of lost wages and retest costs will be made to the employee if the test results are reversed.

6.0 Employee Discipline

It is the intent of the Metropolitan Council to offer an opportunity for rehabilitation after a first confirmed positive drug and/or alcohol test result. However, the Council also reserves the right to

impose discipline up to and including termination for reasons other than the existence of the confirmed positive test result. Discipline will be for just cause in instances of confirmed positive tests as described in this Policy.

6.1 First Confirmed Positive Test. Any employee who tests positive on a confirmatory drug and/or alcohol test will be subject to the following:

- immediate removal from his/her position;
- referral to EAP professional for evaluation;
- an unpaid suspension of at least 20 days unless otherwise provided for in an employee's collective bargaining agreement;
- return to work (last chance) agreement;
- the requirement to successfully pass a return to work drug and alcohol test; and
- unannounced testing for twenty-four months.

6.2 Second Confirmed Positive Test. An employee with a second confirmed positive drug and/or alcohol test, within any time period, will be terminated from employment, unless otherwise provided for in an employee's collective bargaining agreement.

6.3 Failure to Comply with or Refusal to Take a Drug/Alcohol Test. Refusal by an employee to take a drug and/or alcohol test or comply with the requirements of the collection process will be deemed a first positive test.

6.4 Failure to Complete Rehabilitation. Refusal to participate in a recommended rehabilitation program or failure to successfully complete rehabilitation will result in termination from employment.

7.0 Employee Assistance Program (EAP)

The Metropolitan Council will provide the services of an *Employee Assistance Program*. It shall be the purpose of the EAP to educate employees about the dangers of substance abuse and to provide a resource for treatment of alcohol and drug related problems. The services of the EAP shall be provided by the Council at no cost to the employee. The costs of any services, to which the employee is referred, beyond those provided by the EAP, are the responsibility of the employee or his/her individual health insurance provider.

An employee who has a first confirmed positive drug and/or alcohol test will be evaluated by an EAP Professional. The EAP Professional will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug and/or alcohol abuse.

Before an employee can return to duty after a positive confirmatory test, he/she must properly follow the rehabilitation program prescribed by the EAP. The cost of any treatment or rehabilitation will be paid directly by the employee or his/her insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

8.0 Return to Work (Last Chance) Agreement

An employee who, 1) requests to return to work after a confirmed positive drug and/or alcohol test, and 2) who has successfully completed a rehabilitation program or is currently enrolled in a rehabilitation program but has been released by the EAP Professional to return to work, must agree to the following provisions before returning to work. Provisions for returning to work include (but are not limited to):

- a letter of compliance and release to work from the EAP;
- a negative return to work test for drugs and alcohol;
- an agreement to submit to unannounced follow-up testing for a period of 24 months;
- an agreement to follow specified after care requirements with the understanding that violation of these provisions is just cause for termination.
- authorization provided to the Council to receive verification and information regarding status of rehabilitation;
- an agreement that any future positive drug and/or alcohol test result within any time period will be just cause for immediate termination; and
- the return to work agreement must be executed by the employee and the employee's union.

9.0 Confidentiality and Release of Information

No test results or other information resulting from the administration of this program will be released except as provided in this Policy. The test result of an individual who was administered a drug and/or alcohol test will be released to a third party if the individual tested authorizes the release to an identified third party, in writing. Nothing in this provision shall limit the Council from releasing information in accordance with state and federal law.

Notwithstanding the foregoing, evidence of a positive test result on a confirmatory test may be (1) used in an arbitration proceeding pursuant to the collective bargaining agreement, an administrative hearing under veterans preference statutes or other applicable state or local law, or a judicial proceeding, provided that the information is relevant to the hearings or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation, or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

PROCEDURES

- [HR 2-4a MCES Alcohol and Drug Testing Program Procedure](#)

DEFINITIONS

Drug: “Drug” means a controlled substance as defined in the Minnesota Statutes.

Drug and/or Alcohol Testing: “Drug and/or alcohol testing” means the analysis of a body component sample approved by the Commissioner of the Minnesota Department of Health for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.

Employee: “Employee” means any person, independent contractor, or person working for an independent contractor who performs services for compensation, either full-time or part-time, in whatever form, for the Council. Metropolitan Council Members are not included in this Policy and are addressed in a separate code of ethics.

Job Applicant: “Job applicant” means a person, independent contractor, or person working for an independent contractor who applies to become an employee of the Council, and includes a person who has received a job offer made contingent on the person passing drug or alcohol testing.

Impairment: “Impairment” includes, but is not limited to, the inability of an employee to perform their job in accordance with established practice, the inability to communicate clearly, inability to exercise reasonable judgment in making decisions, and the inability to conduct oneself in an appropriate and professional manner.

Positive Test Result: “Positive test result” means a finding of the presence of drugs, alcohol, or their metabolites in a sample tested in levels at or above the threshold detection levels set by the Commissioner of the Minnesota Department of Health.

Random Selection Basis: “Random Selection Basis” means a method for selection of employees that:

- A. results in an equal probability that any employee from a group of employees subject to the selection method will be selected; and
- B. does not give the employer discretion to waive the selection of any employee selected under the method.

Reasonable Suspicion: “Reasonable suspicion” means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

Medical Review Officer: “Medical review officer” means a licensed physician responsible for receiving laboratory results generated by an employer’s drug testing program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with their medical history and any other relevant biomedical information.

RESOURCES

Related Policies:

- [HR 2-2 Drug Free Workplace Policy](#)
- [HR 2-3 FTA Safety Sensitive Drug and Alcohol Program Policy](#)

Statutory Resources (Minnesota Statutes or Rules, U.S. Code, Federal Regulations)

- [Minnesota Statutes Sections 181.950 - 181.957](#)
- [Minnesota Statutes section 176.011](#), Subd. 16

Other Resources (training, relevant links):

- [Employee Assistance Program – Sand Creek](#)

HISTORY

Version 2 – Template Update

10/14/2020 - Updated content into new template.

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