

Business Item

Management Committee



Committee meeting date: August 13, 2025

For the Metropolitan Council: August 27, 2025

Business Item: 2025-199

Revised Federal Transit Administration (FTA) Drug and Alcohol Policy

District(s), member(s):	All
Policy/legal reference:	49 CFR Parts 40 and 655
Staff prepared/presented:	Melissa Haas, Senior Manager – Occupational Health Kris Erickson, Program Coordinator – Drug and Alcohol
Division/department:	Regional Administration/Human Resources

Proposed action

That the Metropolitan Council approve the revised Federal Transit Administration (FTA) Drug and Alcohol Policy.

Background

As a recipient of Federal funds, the Metropolitan Council is required by 49 CFR 655.11 to establish an anti-drug use and alcohol misuse program. Although such a policy has been in effect since January 16, 1995, an August 2023 audit by FTA found inaccuracies and provisions contrary to FTA regulations.

FTA provides a “policy builder” tool that uses employer input to create a compliant FTA drug and alcohol policy. This tool was used to produce the revised policy being presented today. The revised policy being presented has been reviewed and deemed compliant by an FTA auditor.

Rationale

The Metropolitan Council is required to establish this policy as a condition of receiving Federal funding.

Thrive lens analysis

On Feb. 12, 2025, the Council adopted Imagine 2050, which builds on policy direction in Thrive MSP 2040. Under the Thrive lens, this revised policy supports our core values of accountability and stewardship by meeting the regulatory requirements of FTA and, consequently, ensuring continued Federal funding.

Funding

There is no additional funding required or requested. Failure to maintain a compliant policy could risk loss of Federal funding.

Small business inclusion

This is not applicable.

POLICY

Federal Transit Administration (FTA) Drug and Alcohol Policy

HR 2-3

Category: Human Resources

Business Unit Responsible: RA: Human Resources

Policy Owner: Kris Erickson, Drug and Alcohol Program Coordinator

Policy Contact: Kris Erickson, Drug and Alcohol Program Coordinator

Synopsis: Establishes a Federal Transit Administration drug and alcohol policy as required by 49 CFR Part 655

PURPOSE OF POLICY

This policy is issued pursuant to 49 CFR Part 655, as amended and 49 CFR Part 40, as amended. Copies of Parts 655 and 40 are available on Met Net and can be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website <http://transit-safety.fta.dot.gov/DrugAndAlcohol/>.

All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655.

Portions of this policy are not FTA-mandated but reflect the Metropolitan Council's policy. These additional provisions are identified by **bold text**.

In addition, the DOT has published 49 CFR Part 32, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

All Metropolitan Council employees are subject to the provisions of the Drug-Free Workplace Act of 1988 and must comply with HR2-2, Drug and Alcohol-Free Workplace Policy [HR 2-2 Drug and Alcohol-Free Workplace Policy.pdf \(sharepoint.com\)](#).

COVERED EMPLOYEES

This policy applies to every person, including an applicant or transferee, who performs or will perform a "safety-sensitive function" as defined in Part 655, section 655.4, for the Metropolitan Council.

A safety-sensitive function includes:

- Operating a revenue service vehicle (floating and rolling stock used to provide revenue service for passengers), including when not in revenue service
- Operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License
- Controlling movement or dispatch of a revenue service vehicle
- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service

- Carrying a firearm for security purposes

See Attachment A for a list of covered positions by job title.

PROHIBITED BEHAVIOR

Use of illegal drugs is prohibited at all times. Prohibited drugs include:

- Marijuana (*)
- Cocaine
- Phencyclidine (PCP)
- Opioids
- Amphetamines

() Although the State of Minnesota has legalized marijuana, marijuana remains an illegal substance under federal law. Employees subject to regulation by the Federal Transit Administration must comply with federal law.*

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having a blood alcohol concentration (BAC) of 0.04 or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an employee has consumed alcohol while on-call, they **must** acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test with a result of less than 0.02 prior to performance.

All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

All covered employees required to take a post-accident test are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

TREATMENT/DISCIPLINE

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a substance abuse professional.

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties until the start of their next regularly scheduled duty period (but for not less than eight hours) unless a retest results in the employee's BAC being less than 0.02.

An employee with a first occurrence of testing positive for drugs or alcohol on a random test or refusing to submit to a random test for drugs or alcohol will be subject to the following:

- Immediate removal from safety-sensitive duties
- Referral to a substance abuse professional for evaluation
- The requirement to successfully pass a return-to-duty drug and/or alcohol test
- The requirement to submit to unannounced follow-up testing as determined by the substance abuse professional

Under the Metropolitan Council's independent authority, a probationary employee may be subject to termination.

A permanent employee may be subject to the following:

- An unpaid suspension of up to 160 hours
- The requirement to sign a Return-To-Work Agreement

The cost of any rehabilitation service or treatment program required by the substance abuse professional will be borne by the employee and/or their medical insurance carrier. If inpatient treatment is required by the substance abuse professional, the employee may use accrued sick leave benefits for the time spent in treatment.

An employee who meets the criteria below will be immediately removed from safety-sensitive duties and referred to a substance abuse professional **and may be terminated from employment:**

- A second occurrence of testing positive for drugs or alcohol on a random test or refusing to test for drugs or alcohol on a random test
- A first occurrence of testing positive or refusing to test for drugs or alcohol on a reasonable suspicion, post-accident, follow-up or return-to-duty test

Under the Metropolitan Council's independent authority, any employee who refuses or fails to comply with the requirements specified in the substance abuse professional's initial evaluation may be terminated from employment.

Under the Metropolitan Council's independent authority, an employee with a first occurrence of an alcohol concentration of 0.02 to 0.039 will be prohibited from performing or continuing to perform safety-sensitive functions for a minimum of eight (8) hours and referred to the employee assistance program for evaluation. An employee with a second occurrence of an alcohol concentration of 0.02-0.039 may be subject to discipline up to and including termination.

CIRCUMSTANCES FOR TESTING

Pre-employment testing

A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions. Employees who transfer from positions that do not require safety sensitive duties to positions that require safety sensitive duties must complete pre-employment testing.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

Reasonable suspicion testing

All covered employees shall be subject to a drug and/or alcohol test when the Metropolitan Council has reasonable suspicion 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 trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

Under the Metropolitan Council's independent authority, when an employee has been directed to undergo reasonable suspicion drug and/or alcohol testing, the employee will not be allowed to perform safety-sensitive duties until the results of the reasonable suspicion test(s) have been received.

- **If the employee was required to submit to both a drug and an alcohol test, and the result of the alcohol test indicates an alcohol concentration below 0.02, the employee will be removed from safety-sensitive duty until the results of the drug test are received.**
- **If the employee was required to submit to both a drug and an alcohol test, and the result of the alcohol test indicates an alcohol concentration of 0.02-0.039, the employee will be removed from safety-sensitive duty for a minimum of eight (8) hours and will not be returned to safety-sensitive duty until the results of the drug test are received.**
- **If the employee was required to submit to only an alcohol test, the employee may return to safety-sensitive duties if the result of the breath alcohol test is less than 0.02.**
- **If the employee was required to submit to only a drug test, the employee will be removed from safety-sensitive duty until the results of the drug test are received.**

[Post-accident testing](#)

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

Fatal accidents involving public transportation vehicles

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, 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, will be tested.

Non-fatal accidents involving public transportation vehicles

Non-fatal accidents include:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (3) The vehicle is a rail car, trolley car or bus, or vessel, and is removed from operation, unless the covered employee can be completely discounted as a contributing factor to the accident

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted 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 covered employee's performance can be completely discounted as a contributing factor in the accident. The decision not to test will be documented in detail and will include the decision-making process used to reach the decision. In addition, 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, will be tested.

If an alcohol test is not administered within 2 hours, the Metropolitan Council will document the reasons the test was not promptly administered. After 8 hours, the Metropolitan Council will cease attempting the alcohol test and will document that the attempts have ceased. Drug testing will occur as soon as possible but no later than 32 hours after the accident.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Under the Metropolitan Council's independent authority, when an employee has been directed to undergo post-accident drug and alcohol testing, the employee will not be allowed to perform safety-sensitive duties until the results of the post-accident drug and alcohol tests have been received.

Random testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at www.transportation.gov/odapc/random-testing-rates.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform 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.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

Return-to-duty testing

Any employee who is allowed to return to safety-sensitive duty after refusing to submit to a DOT drug and/or alcohol test, having a verified positive drug test result, and/or having a confirmed alcohol test result 0.04 or greater must first be evaluated by a substance abuse professional (SAP), complete any SAP-required program of education and/or treatment, and provide a negative return-to-duty test result for any return-to-duty test ordered by the SAP. Any return-to-duty drug testing will be directly observed. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

Follow-up testing

Employees returning to safety-sensitive duty following a return-to-duty test will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the

SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP.

A covered employee may only be subject to follow-up alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be subject to follow-up drug testing anytime while on duty. All follow-up drug tests will be directly observed. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

TESTING PROCEDURES

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

Covered employees must report immediately upon notification to the collection site and will be required to provide a photo ID card for identification to collection staff. Employees are required to cooperate with collection site personnel requests. For drug tests, collection site personnel will request the employee remove any unnecessary outer garments such as coats, sweaters or jackets and will be required to empty their pockets. Collection personnel will complete a Federal Custody and Control Form (CCF) and/or a federal Alcohol Testing Form (ATF) and the employee providing a sample will be required to sign the CCF and/or ATF.

Employees will be tested for alcohol just before, during, or immediately following performance of a safety-sensitive function. If an employee's first attempt indicates an alcohol concentration of 0.02 or greater, the employee will be asked to wait at least 15 minutes and then be tested again. Any result less than 0.02 alcohol concentration is considered a negative test result. If the employee attempts and fails to provide an adequate amount of breath, Occupational Health will refer the employee to a physician, who will perform an examination to determine if there is an adequate medical explanation for the employee's inability to provide a specimen.

The Metropolitan Council will use a split urine specimen collection procedure for drug testing. Collection of urine specimens for drug testing will be conducted by a collector meeting the requirements of 49 CFR 40.33 and will be conducted in a setting and manner to ensure the employee's privacy. At the collection site, the employee will be given a sealed container and must provide at least 45mL of urine for testing. The urine is then split into two separate specimen containers with identifying labels and security seals affixed to both. The collection facility is responsible for maintaining a proper chain of custody for delivery of the sample to an HHS-certified laboratory for analysis. If the employee is unable to provide an adequate amount of urine, Occupational Health will refer the employee to a physician, who will perform an examination to determine if there is an adequate medical explanation for the employee's inability to provide a specimen.

A medical review officer (MRO) will review the results of drug tests from the laboratory. Prior to making a final decision to verify a positive test result, the MRO, or a staff person under the MRO's supervision, will contact the employee directly, on a confidential basis, to discuss the test result. During this discussion, the employee will be afforded the opportunity to offer any additional or clarifying information which may explain the positive test result.

Dilute urine specimen

If there is a negative dilute test result for a test that the employee had advance notice of (e.g., pre-employment and return-to-duty tests), the Metropolitan Council will conduct one additional retest. The result of the second test will be the test of record. If there is a negative dilute test result for a test that the employee had no advance notice of (e.g., random, post-accident, follow-up and reasonable suspicion tests), the negative dilute result will be recorded as a negative result and no second collection will be required.

Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

Split specimen test

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The Metropolitan Council guarantees that the split specimen test will be conducted in a timely fashion. **If the request for a split specimen test is received within 72 hours of being notified by the medical review officer of the positive result, the Metropolitan Council will bear the full cost of testing.**

Inability to produce a sufficient specimen

When an employee does not provide a sufficient amount of specimen to permit a drug test, the employee will be directed to obtain an evaluation from a licensed physician in order to determine if the employee has a medical condition that could have prevented the employee from providing a sufficient specimen.

TEST REFUSALS

A covered employee has refused to test if they:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the Metropolitan Council.
- (2) Fail to remain at the testing site until the testing process is complete. An individual who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a specimen. An individual who does not provide specimen because they have left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of their provision of a specimen.
- (5) Fail to provide a sufficient specimen without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or the Metropolitan Council for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or the Metropolitan Council's designated employer representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed urine test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.

If the MRO reports that a covered employee has a verified adulterated or substituted test result, the employee has refused to take a drug test.

If the covered employee refuses to take a drug and/or alcohol test, the covered employee incurs the same consequences as testing positive. The covered employee will be immediately removed from performing safety-sensitive functions and referred to a substance abuse professional.

VOLUNTARY SELF-REFERRAL

Any employee who has a drug and/or alcohol abuse problem and has not been notified of the requirement to submit to reasonable suspicion, random or post-accident testing or has not refused a

drug or alcohol test may voluntarily refer her or himself to a designated employer representative, who will refer the individual to a substance abuse counselor for evaluation and treatment.

The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.

The cost of any rehabilitation service or treatment program required by the substance abuse counselor will be borne by the employee and/or their medical insurance carrier. If inpatient treatment is required by the substance abuse counselor, the employee may use accrued sick leave benefits for the time spent in treatment.

The voluntary self-referral program is not available to a covered employee who has been assisted under this program within the last ten years.

PRESCRIPTION AND NON-PRESCRIPTION DRUG USE

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 Occupational Health using this form: [*Medical Authorization for Prescription \(RX\) and Over the Counter \(OTC\) Drugs*](#). This form must be completed by the employee's physician and submitted to Occupational Health. Medical advice must be sought, as appropriate, while taking such medication and before performing safety-sensitive duties. An employee that performs safety-sensitive work without disclosing the use of any substance which carries a warning label that indicates that mental function, motor skills, or judgment may be adversely affected may be subject to discipline up to and including termination.

Although recreational marijuana and CBD products are legal in Minnesota, DOT regulations prohibit the use of marijuana in any form for DOT-regulated employees. Any employee subject to this policy is prohibited from using marijuana in any form.

POLICY CONTACTS

For questions about the Metropolitan Council's anti-drug and alcohol misuse program, contact:

Kris Erickson
Drug & Alcohol Program Manager/Designated Employer Representative
kris.erickson@metc.state.mn.us
612-500-1190

Rich Sands
Drug & Alcohol Program Coordinator/Designated Employer Representative
richard.sands@metc.state.mn.us
763-461-1414

Siri Kuenster
HR Assistant/Assistant Designated Employer Representative
siri.kuenster@metc.state.mn.us
651-602-1471

HISTORY

Version 12 – Revised content using FTA's Policy Builder tool

Version 11 – Approval Date

02/09/2022

Version 10 – Template Update

10/14/2020

Version 9 – Approval Date

11/07/2013

Version 8 – Approval Date

07/29/2011

Version 7 – Approval Date

12/31/2008

Version 6 – Approval Date

12/01/2004

Version 5 – Approval Date

11/01/2001

Version 4 – Approval Date

01/01/1999

Version 3 – Approval Date

07/11/1995

Version 2 – Approval Date

06/14/1995

Version 1 – Approval Date

01/16/1995

Last Reviewed Date

09/05/2023

Next Content Review Date

09/05/2024

Former Reference #

4-9-2

Version

11

APPENDIX A – Positions governed by this policy (list is subject to change)

TMSA – LELS – Non-represented	ATU
Assistant Manager Rail Operations	Bus Operator (including Miscellaneous Operator)
Captain Transit Police	Cleaner (including Commuter Rail)
Chief of Police	Dispatcher (General, Mark-Up, Pick & Relief Mark-Up)
Lieutenant	Electrician Apprentice
Manager, Rail Control Center	Electro Mech Tech-Paint and Body
Police Officer	Electro Mechanical Technician
Senior Technical Trainer	Electronic Overhaul Technician
Sergeant	Electronic Repair Technician
Sr. Rail Transit Supervisor	Fac Tech Chief Eng Lic Req
Supervisor, Body Shop	Facilities Technician
Supervisor, Brake Shop	Foreperson, Electro Mechanic Tech
Supervisor, District Streets	Foreperson, Facilities Maintenance
Supervisor, Fleet Service Engine/Trans	Foreperson, SCADA Communication
Supervisor, Fleet Service HVAC/Elec	Foreperson, Signals
Supervisor, Fleet Service Lift/Brakes	Foreperson, Track
Supervisor, Fleet Service Prev Maint	Foreperson, Traction Power
Supervisor, Fleet Service Warranty	Garage Coordinator
Supervisor, Rail Transit	Helper (includes LRT Helper)
Supervisor, Service Garage	Instructor
Supervisor, Transit Control	Intern – Bus Mechanic
	Intern – Rail Technician
	Lead Instructor
	Lead Revenue Mechanical Tech
	Lead Sr Elec Rev Equip Tech
	Licensed Journeyman Electrician
	Licensed Lead Electrician
	Licensed Maintenance Electrician
	Licensed Master Electrician
	Mechanic Technician (including EPA 608)
	Rail Coordinator
	Rail Dispatcher
	Revenue Equip Electronic Tech (and Trainee)
	Revenue Mechanical Technician
	SCADA Comm Electronic Tech
	Senior Electronics Repair Tech
	Signals Technician
	Skilled Helper
	Track Laborer
	Track Maintainer (and Trainee)
	Traction Power Maintainer (and Apprentice)
	Train Operator (including Miscellaneous Operator)

APPENDIX B – Contacts

Substance Abuse Professionals (SAP)

Jan Reisch, LICSW, CEAP
5775 Wayzata Blvd. Suite 700
St. Louis Park, MN 55416
312-787-7441

Christina Eberly, LICSW
AllOne Health
1660 S. Highway 100 #338
St. Louis Park, MN 55416
888-243-5744
612-332-4805

Medical Review Officer

Dr. Andrew Holtz, DO
WorkforceQA
2200 S. Main Street, Suite 475
Salt Lake City, UT 84115
801-503-3400

POLICY

Federal Transit Administration (FTA) Drug and Alcohol Policy

HR 2-3

Category: Human Resources

Business Unit Responsible: RA: Human Resources

Policy Owner: Kris Erickson, Drug and Alcohol Program Coordinator

Policy Contact: Kris Erickson, Drug and Alcohol Program Coordinator

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All Metropolitan Council employees are subject to the provisions of the Drug-Free Workplace Act of 1988 and must comply with HR2-2, Drug and Alcohol-Free Workplace Policy HR 2-2 Drug and Alcohol-Free Workplace Policy.pdf (sharepoint.com).

~~The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify their immediate supervisor no later than five days after such conviction.~~

COVERED EMPLOYEES

This policy applies to every person, including an applicant or transferee, who performs or will perform a "safety-sensitive function" as defined in Part 655, section 655.4, for the Metropolitan Council.

A safety-sensitive function includes:

- Operating a revenue service vehicle (floating and rolling stock used to provide revenue service for passengers), including when not in revenue service
- Operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License
- Controlling movement or dispatch of a revenue service vehicle

- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

See Attachment A for a list of covered positions by job title.

PROHIBITED BEHAVIOR

Use of illegal drugs is prohibited at all times. Prohibited drugs include:

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() Although the State of Minnesota has legalized marijuana, marijuana remains an illegal substance under federal law. Employees subject to regulation by the Federal Transit Administration must comply with federal law.*

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All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an employee has consumed alcohol while on-call, they **must** acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test with a result of less than 0.02 prior to performance.

All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

All covered employees required to take a post-accident test are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

TREATMENT/DISCIPLINE

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a substance abuse professional.

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties until the start of their next regularly scheduled duty period (but for not less than eight hours) unless a retest results in the employee's BAC being less than 0.02.

An employee with a first occurrence of testing positive for drugs or alcohol on a random test or refusing to submit to a random test for drugs or alcohol will be subject to the following:

- Immediate removal from safety-sensitive duties
- Referral to a substance abuse professional for evaluation
- The requirement to successfully pass a return-to-duty drug and/or alcohol test
- The requirement to submit to unannounced follow-up testing as determined by the substance abuse professional

Under the Metropolitan Council's independent authority, a probationary employee may be subject to termination.

A permanent employee may be subject to the following:

- **An unpaid suspension of up to 160 hours**
- **The requirement to sign a Return-To-Work Agreement**

The cost of any rehabilitation service or treatment program required by the substance abuse professional will be borne by the employee and/or their medical insurance carrier. If inpatient treatment is required by the substance abuse professional, the employee may use accrued sick leave benefits for the time spent in treatment.

An employee who meets the criteria below will be immediately removed from safety-sensitive duties and referred to a substance abuse professional and may be terminated from employment:

- **A second occurrence of testing positive for drugs or alcohol on a random test or refusing to test for drugs or alcohol on a random test**
- **A first occurrence of testing positive or refusing to test for drugs or alcohol on a reasonable suspicion, post-accident, follow-up or return-to-duty test**

Under the Metropolitan Council's independent authority, any employee who refuses or fails to comply with the requirements specified in the substance abuse professional's initial evaluation may be terminated from employment.

Under the Metropolitan Council's independent authority, an employee with a first occurrence of an alcohol concentration of 0.02 to 0.039 will be prohibited from performing or continuing to perform safety-sensitive functions for a minimum of eight (8) hours and referred to the employee assistance program for evaluation. An employee with a second occurrence of an alcohol concentration of 0.02-0.039 may be subject to discipline up to and including termination.

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A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions. Employees who transfer from positions that do not require safety sensitive duties to positions that require safety sensitive duties must complete pre-employment testing.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

Reasonable suspicion testing

All covered employees shall be subject to a drug and/or alcohol test when the Metropolitan Council has reasonable suspicion 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 trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

Under the Metropolitan Council's independent authority, when an employee has been directed to undergo reasonable suspicion drug and/or alcohol testing, the employee will not be allowed to perform safety-sensitive duties until the results of the reasonable suspicion test(s) have been received.

- **If the employee was required to submit to both a drug and an alcohol test, and the result of the alcohol test indicates an alcohol concentration below 0.02, the employee will be removed from safety-sensitive duty until the results of the drug test are received.**
- **If the employee was required to submit to both a drug and an alcohol test, and the result of the alcohol test indicates an alcohol concentration of 0.02-0.039, the employee will be removed from safety-sensitive duty for a minimum of eight (8) hours and will not be returned to safety-sensitive duty until the results of the drug test are received.**
- **If the employee was required to submit to only an alcohol test, the employee may return to safety-sensitive duties if the result of the breath alcohol test is less than 0.02.**
- **If the employee was required to submit to only a drug test, the employee will be removed from safety-sensitive duty until the results of the drug test are received.**

[Post-accident testing](#)

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

Fatal accidents involving public transportation vehicles

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, 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, will be tested.

Non-fatal accidents involving public transportation vehicles

Non-fatal accidents include:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (3) The vehicle is a rail car, trolley car or bus, or vessel, and is removed from operation, unless the covered employee can be completely discounted as a contributing factor to the accident

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted 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 covered employee's performance can be completely discounted as a contributing factor in the accident. The decision not to test will be documented in detail and will include the decision-making process used to reach the decision. In addition, 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, will be tested.

If an alcohol test is not administered within 2 hours, the Metropolitan Council will document the reasons the test was not promptly administered. After 8 hours, the Metropolitan Council will cease attempting the alcohol test and will document that the attempts have ceased. Drug testing will occur as soon as possible but no later than 32 hours after the accident.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Under the Metropolitan Council's independent authority, when an employee has been directed to undergo post-accident drug and alcohol testing, the employee will not be allowed to perform safety-sensitive duties until the results of the post-accident drug and alcohol tests have been received.

Random testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at www.transportation.gov/odapc/random-testing-rates.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform 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.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

Return-to-duty testing

Any employee who is allowed to return to safety-sensitive duty after refusing to submit to a DOT drug and/or alcohol test, having a verified positive drug test result, and/or having a confirmed alcohol test result 0.04 or greater must first be evaluated by a substance abuse professional (SAP), complete any SAP-required program of education and/or treatment, and provide a negative return-to-duty test result for any return-to-duty test ordered by the SAP. Any return-to-duty drug testing will be directly observed. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

Follow-up testing

Employees returning to safety-sensitive duty following a return-to-duty test will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the

SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP.

A covered employee may only be subject to follow-up alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be subject to follow-up drug testing anytime while on duty. All follow-up drug tests will be directly observed. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

TESTING PROCEDURES

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

Covered employees ~~are required to~~must report immediately upon notification to the collection site and will be ~~expected~~required to provide a photo ID card for identification to collection staff. Employees are ~~expected~~required to cooperate with collection site personnel requests. For drug tests, collection site personnel will request the employee ~~will be requested to~~ remove any unnecessary outer garments such as coats, sweaters or jackets and will be required to empty their pockets. Collection personnel will complete a Federal Custody and Control Form (CCF) and/or a federal Alcohol Testing Form (ATF) and the employee providing a sample will be required to sign the CCF and/or ATF.

Employees will be tested for alcohol just before, during, or immediately following performance of a safety-sensitive function. If an employee's first attempt indicates an alcohol concentration of 0.02 or greater, the employee will be asked to wait at least 15 minutes and then be tested again. Any result less than 0.02 alcohol concentration is considered a negative test result. If the employee attempts and fails to provide an adequate amount of breath, ~~he/she Occupational Health~~ will ~~be referred~~ the employee to a physician, who will perform an examination to determine if there is an adequate medical explanation for the employee's inability to provide a specimen.

The Metropolitan Council will use a split urine specimen collection procedure for drug testing. Collection of urine specimens for drug testing will be conducted by a collector meeting the requirements of 49 CFR 40.33 and will be conducted in a setting and manner to ensure the employee's privacy. At the collection site, the employee will be given a sealed container and must provide at least 45mL of urine for testing. The urine is then split into two separate specimen containers with identifying labels and security seals affixed to both. The collection facility is responsible for maintaining a proper chain of custody for delivery of the sample to an HHS-certified laboratory for analysis. If the employee is unable to provide an adequate amount of urine, ~~he/she Occupational Health~~ will ~~be referred~~ the employee to a physician, who will perform an examination to determine if there is an adequate medical explanation for the employee's inability to provide a specimen.

A medical review officer (MRO) will review the results of drug tests from the laboratory. Prior to making a final decision to verify a positive test result, the MRO, or a staff person under the MRO's supervision, will contact the employee directly, on a confidential basis, to discuss the test result. During this discussion, the employee will be afforded the opportunity to offer any additional or clarifying information which may explain the positive test result.

Dilute urine specimen

If there is a negative dilute test result for a test that the employee had advance notice of (e.g., pre-employment and return-to-duty tests), the Metropolitan Council will conduct one additional retest. The result of the second test will be the test of record. If there is a negative dilute test result for a test that the employee had no advance notice of (e.g., random, post-accident, follow-up and reasonable suspicion tests), the negative dilute result will be recorded as a negative result and no second collection will be required.

Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

Split specimen test

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The Metropolitan Council guarantees that the split specimen test will be conducted in a timely fashion. **If the request for a split specimen test is received within 72 hours of being notified by the medical review officer of the positive result, the Metropolitan Council will bear the full cost of testing.**

Inability to produce a sufficient specimen

When an employee does not provide a sufficient amount of specimen to permit a drug test, the employee will be directed to obtain an evaluation from a licensed physician in order to determine if the employee has a medical condition that could have prevented the employee from providing a sufficient specimen.

TEST REFUSALS

A covered employee has refused to test if they:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the Metropolitan Council.
- (2) Fail to remain at the testing site until the testing process is complete. An individual who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a specimen. An individual who does not provide specimen because they have left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of their provision of a specimen.
- (5) Fail to provide a sufficient specimen without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or the Metropolitan Council for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or the Metropolitan Council's designated employer representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed urine test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.

If the MRO reports that a covered employee has a verified adulterated or substituted test result, the employee has refused to take a drug test.

If the covered employee refuses to take a drug and/or alcohol test, the covered employee incurs the same consequences as testing positive. The covered employee will be immediately removed from performing safety-sensitive functions and referred to a substance abuse professional.

VOLUNTARY SELF-REFERRAL

Any employee who has a drug and/or alcohol abuse problem and has not been notified of the requirement to submit to reasonable suspicion, random or post-accident testing or has not refused a drug or alcohol test may voluntarily refer her or himself to a designated employer representative, who will refer the individual to a substance abuse counselor for evaluation and treatment.

The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.

The cost of any rehabilitation service or treatment program required by the substance abuse counselor will be borne by the employee and/or their medical insurance carrier. If inpatient treatment is required by the substance abuse counselor, the employee may use accrued sick leave benefits for the time spent in treatment.

The voluntary self-referral program is not available to a covered employee who has been assisted under this program within the last ten years.

PRESCRIPTION AND NON-PRESCRIPTION DRUG USE

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 Occupational Health using this form: [Medical Authorization for Prescription \(RX\) and Over the Counter \(OTC\) Drugs](#). This form must be completed by the employee's physician and submitted to Occupational Health. Medical advice must be sought, as appropriate, while taking such medication and before performing safety-sensitive duties. An employee that performs safety-sensitive work without disclosing the use of any substance which carries a warning label that indicates that mental function, motor skills, or judgment may be adversely affected may be subject to discipline up to and including termination.

Although recreational marijuana and CBD products are legal in Minnesota, DOT regulations prohibit the use of marijuana in any form for DOT-regulated employees. Any employee subject to this policy is prohibited from using marijuana in any form.

POLICY CONTACTS

For questions about the Metropolitan Council's anti-drug and alcohol misuse program, contact:

Kris Erickson
Drug & Alcohol Program Manager/Designated Employer Representative
kris.erickson@metc.state.mn.us
612-500-1190

Rich Sands
Drug & Alcohol Program Coordinator/Designated Employer Representative
richard.sands@metc.state.mn.us
763-461-1414

Siri Kuenster
HR Assistant/Assistant Designated Employer Representative
siri.kuenster@metc.state.mn.us
651-602-1471

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Version

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APPENDIX A – Positions governed by this policy (list is subject to change)

TMSA – LELS – Non-represented	ATU
Assistant Manager Rail Operations	Bus Operator (including Miscellaneous Operator)
Captain Transit Police	Cleaner (including Commuter Rail)
Chief of Police	Dispatcher (General, Mark-Up, Pick & Relief Mark-Up)
Lieutenant	Electrician Apprentice
Manager, Rail Control Center	Electro Mech Tech-Paint and Body
Police Officer	Electro Mechanical Technician
Senior Technical Trainer	Electronic Overhaul Technician
Sergeant	Electronic Repair Technician
Sr. Rail Transit Supervisor	Fac Tech Chief Eng Lic Req
Supervisor, Body Shop	Facilities Technician
Supervisor, Brake Shop	Foreperson, Electro Mechanic Tech
Supervisor, District Streets	Foreperson, Facilities Maintenance
Supervisor, Fleet Service Engine/Trans	Foreperson, SCADA Communication
Supervisor, Fleet Service HVAC/Elec	Foreperson, Signals
Supervisor, Fleet Service Lift/Brakes	Foreperson, Track
Supervisor, Fleet Service Prev Maint	Foreperson, Traction Power
Supervisor, Fleet Service Warranty	Garage Coordinator
Supervisor, Rail Transit	Helper (includes LRT Helper)
Supervisor, Service Garage	Instructor
Supervisor, Transit Control	Intern – Bus Mechanic
	Intern – Rail Technician
	Lead Instructor
	Lead Revenue Mechanical Tech
	Lead Sr Elec Rev Equip Tech
	Licensed Journeyman Electrician
	Licensed Lead Electrician
	Licensed Maintenance Electrician
	Licensed Master Electrician
	Mechanic Technician (including EPA 608)
	Rail Coordinator
	Rail Dispatcher
	Revenue Equip Electronic Tech (and Trainee)
	Revenue Mechanical Technician
	SCADA Comm Electronic Tech
	Senior Electronics Repair Tech
	Signals Technician
	Skilled Helper
	Track Laborer
	Track Maintainer (and Trainee)
	Traction Power Maintainer (and Apprentice)
	Train Operator (including Miscellaneous Operator)

APPENDIX B – Contacts

Substance Abuse Professionals (SAP)

~~Sandy Clark~~
~~Clark Consulting~~
~~933 Manor Drive N.E.~~
~~Spring Lake Park, MN 55432~~
~~651-373-0152~~

Jan Reisch, LICSW, CEAP
5775 Wayzata Blvd. Suite 700
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Medical Review Officer

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