

**Management Committee**

For the Metropolitan Council meeting of 2-9-2022

<b>Subject:</b> Drug and Alcohol Policies
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**Proposed Action**

That the Metropolitan Council authorize the Regional Administrator to approve the new Federal Motor Carrier Safety Administration (FMCSA) and the Non-Department of Transportation (Non-DOT) Drug and Alcohol policies and the revised Drug and Alcohol-Free Workplace, and Federal Transit Administration (FTA) Drug and Alcohol policies.

**Summary of Committee Discussion/Questions**

Motion by Council Member Lilligren and Seconded by Council Member Lee.

## Management Committee

Meeting date: January 26, 2022

For the Metropolitan Council meeting of February 9, 2022

**Subject:** Drug and Alcohol Policies

**District(s), Member(s):** All

**Policy/Legal Reference:** HR 2-2 – Drug Free Workplace Policy

**Staff Prepared/Presented:** Deborah Aebi, Senior Human Resources Manager – 651-425-0095

Marcy Syman, Human Resources Director, 651-602-1417

**Division/Department:** Regional Administration/Human Resources

### Proposed Action

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### Background

The federal Drug-Free Workplace Act of 1988 requires the Council in part to prepare and distribute a formal drug-free workplace policy, establish a drug-free awareness program and ensure that the Council makes every effort to meet the requirements of the Drug-Free Workplace Act.

The Department of Transportation mandates pre-employment, random, post-accident, return to duty, and follow up drug testing for safety-sensitive employees in Metro Transit operations and for employees that require a commercial driver's license for their positions in Environmental Services (pursuant to 49 CFR Part 655 FTA, and 49 CFR Part 382 - FMSA).

The Council mandates pre-employment, random, post-accident, return to duty, and follow up drug testing for employees in non-DOT safety-sensitive positions in accordance with Minnesota Statutes sections -181.950 through 181.957.

Policy revisions include:

The Drug and Alcohol- Free Workplace Policy was updated to include regulatory changes, adopt inclusive language and to use language consistent with other policies

The Federal Transit Administration (FTA) policy was updated to:

- remove managers/supervisors from governance by the FTA policy if they do not perform FTA safety sensitive work
- replace the word opiates with opioids
- remove blind testing
- prohibit any form of marijuana use for DOT-governed employees
- add the requirement for commercial vehicle operators to notify management by the close of business the day following a drug/alcohol arrest or conviction

The Non-FTA policy governs all manager/supervisors and safety sensitive employees that are not governed by DOT (FMCSA, FRA or FTA) policies. This policy was renamed the Non-DOT policy and was updated to:

- add new impairment language
- govern MT non-FTA safety sensitive positions
- govern ES non-FMCSA safety sensitive positions
- remove alcohol testing for pre-employment tests
- preclude rehire for a safety sensitive employees dismissed due to a drug/alcohol policy violation
- add requirement for reasonable suspicion testing after a workplace injury/accident or for conduct leading to an injury

The Federal Motor Carrier Safety Administration (FMCSA) policy is a new policy required by the Federal Motor Carrier Safety Administration. This policy applies to commercial driver license holders in ES and:

- includes similar content and discipline as FTA and FRA policies
- follows part 382 regulations for FMCSA covered employees
- includes new FMCSA Clearinghouse regulations

## **Rationale**

The Council is required to adhere to the Drug-Free Workplace Act of 1988 and conduct employee drug and alcohol testing because divisions receive federal grants or have contracts of \$100,000 or more with the federal government.

## **Thrive Lens Analysis**

This action furthers the Thrive outcomes of Equity, Livability and Sustainability within the region by improving access for all residents to real, sustainable and safe transportation.

## **Funding**

There is no funding implication.

## **Small Business Inclusion**

This is not applicable.

## **Known Support / Opposition**

None.

## Management Committee

Meeting date: January 26, 2022

For the Metropolitan Council meeting of February 9, 2022

**Subject:** Drug and Alcohol Policies

**District(s), Member(s):** All

**Policy/Legal Reference:** Policies HR 2-2, HR 2-3, HR 2-4, HR 2-5

**Staff Prepared/Presented:** Deborah Aebi, Senior Human Resources Manager – 651-425-0095

Marcy Syman, Human Resources Director, 651-602-1417

**Division/Department:** Regional Administration/Human Resources

### Proposed Action

That the Metropolitan Council authorize the Regional Administrator to approve the following revised and new policies.

- HR 2-2 Drug and Alcohol-Free Workplace Policy – Revised
- HR 2-3 Federal Transit Administration (FTA) Drug and Alcohol Policy – Revised
- HR 2-4 Non-DOT (Department of Transportation) Drug and Alcohol Policy – Revised
- HR 2-5 Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Policy – New

### Background

The federal Drug-Free Workplace Act of 1988 requires the Council in part to prepare and distribute a formal drug-free workplace policy, establish a drug-free awareness program and ensure that the Council makes every effort to meet the requirements of the Drug-Free Workplace Act.

The Department of Transportation mandates pre-employment, random, post-accident, return to duty, and follow up drug testing for safety-sensitive employees in Metro Transit operations and for employees that require a commercial driver's license for their positions in Environmental Services (pursuant to 49 CFR Part 655 *FTA*, and 49 CFR Part 382 - *FMSA*).

The Council mandates pre-employment, random, post-accident, return to duty, and follow up drug testing for employees in non-DOT safety-sensitive positions in accordance with Minnesota Statutes sections -181.950 through 181.957.

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## **Rationale**

The Council is required to adhere to the Drug-Free Workplace Act of 1988 and conduct employee drug and alcohol testing because divisions receive federal grants or have contracts of \$100,000 or more with the federal government.

## **Thrive Lens Analysis**

This action furthers the Thrive outcomes of Equity, Livability and Sustainability within the region by improving access for all residents to real, sustainable and safe transportation.

## **Funding**

There is no funding implication.

## **Small Business Inclusion**

This is not applicable.

## **Known Support / Opposition**

None.

## POLICY

### Drug and Alcohol-Free Workplace Policy

HR 2-2

**Category:** Human Resources

**Business Unit Responsible:** RA: Human Resources

**Policy Owner:** Deborah Aebi, Senior Manager Human Resources

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

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

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## 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 unlawful manufacture, distribution, dispensing, possession, impairment from, or use of alcohol or a controlled substance is prohibited in the workplace. The Metropolitan Council may require drug and alcohol testing. Employees who fail to comply with this policy shall be subject to disciplinary action up to and including termination.

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## PURPOSE & SCOPE

The Metropolitan Council has developed this policy as part of its commitment to a drug and alcohol-free workplace. Employees who abuse alcohol or 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. The Metropolitan Council, its management, and employees all have a vital interest in maintaining a safe and productive workforce and working environment.

The purpose of the policy is:

- To establish expectations and guidance for employees
- To establish an ongoing drug and alcohol-free awareness program to inform employees about the dangers of drug and alcohol abuse in the workplace, the Metropolitan Council's policy of maintaining a drug and alcohol-free workplace, the availability of the Employee Assistance Program (EAP), and the penalties for failing to comply with this policy
- To maintain compliance with the "Drug-Free Workplace Requirements" based on the Drug-Free Workplace Act and other state statutes and federal regulations

The Metropolitan Council may require drug and alcohol testing in accordance with this policy and as provided in [Minnesota Statutes section 181.950 through 181.957](#) and the following federal regulations: Federal Transit Administration (FTA's) [49 CFR Part 655](#), Federal Motor Carrier Safety Administration (FMCSA's) [49 CFR Part 382](#), Federal Railroad Administration (FRA's) [49 CFR Part 219](#) and [49 CFR Part 40](#).

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## **IMPLEMENTATION & ACCOUNTABILITY**

### **Employee assistance program**

The Metropolitan Council has established an employee assistance program to assist employees in dealing with drug and alcohol dependency and other personal problems. It is the employee's responsibility to obtain help to resolve drug and alcohol dependency and other problems. The Council contracts with Sand Creek to provide this service. Employees may contact Sand Creek at 651 -430-3383 or online at SandCreekEAP.com.

### **Prohibited conduct**

#### *Manufacture, trafficking, possession, and use*

Any employee engaging in the manufacture, distribution, dispensing, possession, or use of prohibited substances on Metropolitan Council premises, in Council vehicles or while conducting 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.

#### *Intoxication/under the influence*

Any employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or unfit for duty due to use of drugs or alcohol shall be suspended from job duties pending an investigation and verification of condition, including drug and/or alcohol testing.

#### *Alcohol use*

Employees may not report for duty or remain on duty when their ability to perform assigned functions is adversely affected by alcohol. Employees may not consume alcohol while on duty (while at work, at lunch or on breaks during the employee's work hours). Employees who fail to comply shall be subject to disciplinary action up to and including termination.

#### *Drug use*

Employees may not use prohibited drugs at any time unless legally prescribed. Prohibited drugs include marijuana, amphetamines, opioids, phencyclidine (PCP), cocaine, and any of their metabolites.

#### *Legal drugs*

The use of legally prescribed drugs and non-prescription medications are not prohibited if used appropriately.

No employee will report to work or remain at work when impaired by legal or illegal drugs and/or alcohol. Any employee governed by the Metropolitan Council's Non-DOT Drug and Alcohol policy is required to obtain information from their physician or practitioner about whether the drug or substance would alter job performance. Employees must advise their supervisor if unable to work due to impairment.

Any employee governed by one of the Metropolitan Council's DOT Drug and Alcohol policies must report the use of medically authorized drugs or other substances which may impair job performance to Occupational Health and provide proper written medical authorization from their physician. The failure to report the use of such drugs or other substances or to provide proper medical authorization may result in disciplinary action. It is the employee's responsibility to determine from their physician or practitioner whether the drug or substance would impair job performance.

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

## Notifying the Metropolitan Council of criminal drug and/or alcohol conviction

Any employee operating a commercial motor vehicle for the Metropolitan Council must notify their immediate supervisor of any criminal drug and/or alcohol arrest or conviction by the close of business the day after losing the right to operate a commercial motor vehicle.

All other safety-sensitive employees governed by the Council's FTA, FRA, or FMCSA policy must notify their immediate supervisor of any criminal drug or alcohol conviction no later than 5 days after an arrest or conviction.

All other Council employees must notify their immediate supervisor of any criminal drug or alcohol conviction arising out of a violation of this policy in the workplace no later than 5 days after the conviction.

Failure to provide required notifications will result in disciplinary action up to and including termination.

In accordance with the Federal Drug-Free Workplace Act, the Metropolitan Council will notify appropriate regulatory agencies of the conviction within 10 days after receiving such notification if applicable. Within 30 days after receiving notice from a covered employee of a drug-related conviction, the Metropolitan Council will take appropriate disciplinary action against the employee, up to and including termination, or require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program.

### ROLES & RESPONSIBILITIES

Role	Responsibilities
Employees	Employees are responsible for remaining drug and alcohol-free in the workplace and for following this policy and related policies/procedures.
Human Resources	Human Resources is responsible for administration.
Managers	Managers are responsible for implementation.
Metropolitan Council	<p>The Metropolitan Council is responsible for the following:</p> <ul style="list-style-type: none"> <li>• Offering reasonable assistance to employees through an EAP. It is the employee's responsibility to obtain help and resolve any problem.</li> <li>• Publishing the Metropolitan Council's policy that the unlawful manufacture, distribution, dispensing, possession, or use of alcohol or a controlled substance is prohibited in the workplace.</li> <li>• Establishing an ongoing drug and alcohol-free awareness program to inform employees about the dangers of drug and alcohol abuse in the workplace, the Metropolitan Council's policy of maintaining a drug and alcohol-free workplace, the availability of the EAP, and the penalties for failure to comply with this policy.</li> <li>• Providing each employee with a copy of the Metropolitan Council's Drug and Alcohol-Free Workplace policy. The Metropolitan 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.</li> <li>• Maintaining an ongoing good faith effort to meet all the requirements of the Drug-Free Workplace Act.</li> </ul>



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## DEFINITIONS

**Controlled substance:** A drug, substance, or immediate precursor in Schedules I through V of section 152.02. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tob acco.

**Drug:** A controlled substance and includes all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either humans or other animals.

**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.

**Federal Motor Carrier Safety Administration (FMCSA):** An agency of the United States Department of Transportation responsible for regulating and providing safety oversight of commercial motor vehicles.

**Federal Railroad Administration (FRA):** An agency of the United States Department of Transportation responsible for the safe, reliable, and efficient movement of people and goods using railroad transportation.

**Federal Transit Administration (FTA):** An agency of the United States Department of Transportation responsible for regulating and providing safety to local public transit systems, including buses, subways, light rail, commuter rail, trolleys, and ferries.

**Legal Drugs:** A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug for purposes of medical treatment. A legally prescribed drug must be labeled with 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 labels for refills of prescribed drugs.

**Manufacture:** Manufacture in places other than a pharmacy, means and includes the production, cultivation, quality control, and standardization by mechanical, physical, chemical, or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of drugs.

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## 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*
- *HR 2-5 Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Policy*
- *HR 2-6 Federal Railroad Administration (FRA) Drug and Alcohol Policy*

### *Related Procedures*

- *HR 2-4a MCES Alcohol and Drug Testing Program Procedure*

### *Statutory Resources*

- [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
- [https://old.govregs.com/uscode/title41\\_subtitleIV\\_chapter81\\_section8103](https://old.govregs.com/uscode/title41_subtitleIV_chapter81_section8103)
- [Drug Free Workplace Act](#)
- [49 CFR Part 40](#) - DOT
- [49 CFR Part 655](#) - FTA
- [49 CFR Part 382](#) - FMCSA
- [49 CFR Part 219](#) - FRA

#### Other Resources

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

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## HISTORY

### Version 3 – Template Update

11/19/2021 – Updated language for consistency across policies. Included requirement to report use of substances including alcohol that can impair performance for employees subject to Metropolitan Council DOT policies. Emphasized employee’s responsibility to notify the Council of a criminal drug and/or alcohol conviction.

### Version 2 – Template Update

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

### Version 1 – Approval Date

09/13/2000

### Last Reviewed Date

Not Set

### Next Content Review Date

11/02/2022

### Former Reference #

4-9-1

### Version

3

## POLICY

### Federal Transit Administration (FTA) Drug and Alcohol Policy

HR 2-3

**Category:** Human Resources

**Business Unit Responsible:** RA: Human Resources

**Policy Owner:** Deborah Aebi, Senior Manager Human Resources

**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.

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## POLICY

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

To meet these goals, it is the Metropolitan Council's policy to:

- Assure FTA safety-sensitive 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 FTA safety-sensitive 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](#) and [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
- 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. Refer to Section 13 for a list of safety-sensitive covered positions.

This policy sets forth the requirements of [49 CFR Part 655](#) and [49 CFR Part 40](#). Those areas of the policy that appear in italics reflect the Metropolitan Council's independent authority to require drug and alcohol testing procedures.

Questions about this policy may be directed to the Designated Employer Representative in Occupational Health identified in the supplemental attachment below. The Council's medical review officer, third party administrator and substance abuse professional are also identified in the supplemental attachment.

All FTA safety-sensitive employees must also comply with the Council's Drug and Alcohol-Free Workplace policy.

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## PURPOSE OF POLICY

The purpose of this policy is to assure the fitness for duty of FTA safety-sensitive employees and to protect Metropolitan Council employees, passengers, and the public from the risks posed by the use of alcohol and prohibited drugs. The policy also provides information about the Metropolitan Council's Employee Assistance Program (EAP).

Participation in the Metropolitan Council's drug and alcohol testing program is a requirement of each employee covered by this policy.

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## BACKGROUND

This policy is 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 on the Metropolitan Council's intranet site, MetNet.

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## EDUCATION & TRAINING

The Metropolitan Council will provide covered employees with educational materials that explain the requirements of this policy and the Council's responsibility to adhere to FTA alcohol and drug testing requirements. The Metropolitan Council will distribute a copy of this policy to each driver prior to the start of alcohol and controlled substances testing under this policy and to any new employee that is hired or transferred into a position governed by FTA regulations.

The Metropolitan Council will display and distribute to every covered employee informational material. 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.

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.

Additional resources on drug use and alcohol misuse are located on the Metropolitan Council's [Drug Free Workplace MetNet site](#).

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## **EMPLOYEE ASSISTANCE PROGRAM**

The Employee Assistance Program is available to provide confidential intervention if an employee, coworker, or manager suspects an alcohol problem exists. 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.

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## **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 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 and/or alcohol testing under the independent authority of the Council. Refer to Section 13.0 for a list of safety-sensitive covered positions.

### **1.0 Employee Disclosures**

#### **1.1 *Disclosure of off-duty drug or alcohol offense***

*Commercial motor vehicle operators must notify their supervisor of any criminal drug and/or alcohol arrest or conviction by the close of business the day after losing the right to operate a commercial motor vehicle.*

Non-commercial motor vehicle operators working in FTA safety-sensitive positions must notify their immediate supervisor of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction. An employee who fails to notify their 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.

#### **1.2 *Disclosure of medications or substances***

Employees must report the use of medically authorized drugs or other substances which may alter job performance to Occupational Health and provide proper written medical authorization from a medical provider to take the drug or substance. It is the employee's responsibility to consult with their physician or practitioner to determine whether a therapeutic drug, prescribed medication, or over-the-counter medication will alter job performance. 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 and medical advice obtained, as appropriate, before performing work-related duties.

### **1.3 Pre-Employment Record Check**

All applicants for FTA safety-sensitive positions are required to provide written consent to the 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.

All employees who are transferring to an FTA 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.

### **1.4 Voluntary Report**

Employees may voluntarily report the use of controlled substances and or alcohol misuse. To qualify as a voluntary report:

1. The self-identification must be done in writing and in accordance with this policy;
2. The employee must not self-identify in order to avoid testing under the requirements of this policy;
3. The employee must report alcohol misuse or controlled substance use prior to performing a safety-sensitive function (i.e., prior to reporting for duty); and
4. The employee must not perform a safety-sensitive function until the Metropolitan Council is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

*If an employee makes a Voluntary report to Occupational Health through FMLA or fit for duty paperwork Occupational Health will disclose to the manager or supervisor that the employee will be out on leave for treatment.*

Employees who voluntarily report drug and/or alcohol abuse will be subject to consequences outlined in Section 3.8.

## **2.0 Prohibited conduct**

### **2.1 Alcohol use**

No employee will report for duty or remain on duty when their ability to perform assigned functions is 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 in on-call status. 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 their safety-sensitive functions. If the covered employee has acknowledged use, then the covered employee is required to take an alcohol test even if they claim ability to perform their safety-sensitive function. In this circumstance, the employee will be subject to the discipline provisions outlined in Section 3.0.

## **2.2 Use of prohibited substances**

Covered employees may not use prohibited drugs at any time unless legally prescribed.

## **2.3 Failure to comply with testing requirements**

Covered employees may not fail or refuse to comply with testing requirements. Failure to comply with testing requirements includes but is not limited to:

- A. Refusal to take a drug or alcohol test, as provided by 49 CFR Part 40, including the conditions listed below.
  - Fail to appear for a required test in a timely manner (except a pre-employment test)
  - Fail to remain at the test site until the testing process is complete
  - Fail to provide an adequate specimen amount without a valid medical explanation
  - Fail to submit to a medical exam as directed by the medical review officer or the designated employer representative as authorized under 49 CFR Part 40
  - Failure or refusal to take a second drug test if directed by the collector or the designated employer representative
  - Fail to sign the Step 2 certification of the alcohol testing form
  - Fail to permit the observation or monitoring of collection of a specimen, in a case of a directly observed or monitored collection in a drug test
  - Fail 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)
  - Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test
  - Possess or wear a prosthetic or other device used to tamper with the testing process
  - Admit the adulteration or substitution of a specimen to the collector or medical review officer; and the medical officer's verification of test as adulterated or substituted.
- B. Attempting to falsify test results through tampering, contamination, adulteration, or substitution
- 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.

## **2.4 Legal drugs**

*The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, no employee may perform work-related duties while taking any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected unless authorized to do so by Occupational Health.*

*The claimed use of products containing cannabidiol (CBD) will not be accepted by the Metropolitan Council as a medical excuse for a positive THC (marijuana) test. Any form of marijuana is prohibited for all DOT safety-sensitive employees.*

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

## **2.5 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.*

## **2.6 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.*

## **2.7 Leaving the scene of an accident**

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 their 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 3.0. 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.

## **2.8 Failure to disclose off-duty DUI and drug offense**

No employee who operates a commercial motor vehicle may fail to timely notify their supervisor of any criminal drug and/or alcohol arrest or conviction in accordance with Section 1.1.

# **3.0 Consequences of Prohibited Conduct**

Any driver who engages in prohibited conduct identified in Section 2.0 will be subject to disciplinary action up to and including termination.

*Disciplinary actions described in this section are mandated by the Metropolitan Council and will be administered appropriately. Contractors are required to issue disciplinary procedures consistent with state and federal law. Any safety-sensitive employee covered under this policy who violates any portion of this policy and is dismissed or allowed to resign or retire due to the violation, may not be eligible for re-hire into a safety-sensitive position.*

## **3.1 Removal from Duty pending testing**

The Metropolitan Council will not permit a safety-sensitive employee regulated under the Federal Transit Administration to remain on duty when a management or supervisory employee:

- Personally observes a safety-sensitive regulated employee use or possess alcohol or use drugs in violation of this policy
- Receives information regarding a violation of this policy from a previous employer of a regulated safety-sensitive employee regulated under the Federal Transit Administration in response to a background information request required by 49 CFR part 40.25



- Receives an admission from an employee regulated under the Federal Transit Administration of prohibited alcohol possession or prohibited alcohol or drug use
- Refers an employee for reasonable suspicion testing
- Refers an employee for post-accident testing

*When an employee has been referred for reasonable suspicion or post-accident testing, the employee will not be allowed to perform safety-sensitive duties until they have a negative drug and alcohol test showing an alcohol concentration of less than 0.02.*

### **3.2** *Pay status while removed from duty pending testing*

#### **3.2.1** *Reasonable suspicion testing*

*When referred for reasonable suspicion testing, employees will be placed on paid administrative leave pending the results of the drug test if the breath alcohol test indicates an alcohol concentration of less than 0.02.*

*If the confirmatory alcohol test indicates an alcohol concentration of 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 and will be subject to the disciplinary provisions outlined in Section 3.6.*

If the confirmatory alcohol test indicates an alcohol concentration of 0.04 or greater, the employee will be considered to have a positive alcohol test. An employee with a confirmatory alcohol test or an employee with a positive confirmatory drug test will be placed on unpaid administrative leave and will be subject to the disciplinary provisions outlined in Section 3.5.

#### **3.2.2** *Post accident testing*

*When referred for post-accident testing, employees will be placed on paid administrative leave pending the results of the drug test if the breath alcohol test indicates an alcohol concentration of less than 0.02.*

*If the confirmatory alcohol test indicates an alcohol concentration of 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 and will be subject to the disciplinary provisions outlined in Section 3.6.*

If the confirmatory alcohol test indicates an alcohol concentration of 0.04 or greater, the employee will be considered to have a positive alcohol test. An employee with a confirmatory alcohol test or an employee with a positive confirmatory drug test will be placed on unpaid administrative leave and will be subject to the disciplinary provisions outlined in Section 3.5.

### **3.3** *Failure or refusal to test*

Employees who fail to comply with testing requirements as stated in Section 2.3, except an inability to produce a specimen with a valid medical explanation, will be immediately removed from a safety-sensitive position, terminated from employment, and referred to the substance abuse professional.

### **3.4** *First confirmed positive random drug and/or alcohol test*

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

- Immediate removal from their position;
- Referral to the substance abuse professional for evaluation (and required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations);
- 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 and/or alcohol testing; and
- Submission to unannounced testing for a period of up to 60 months.

### **3.5 Other positive drug and/or alcohol test (0.04 or greater)**

*Any employee who engages in any of the following behaviors will immediately be removed from their position, referred to a substance abuse professional, and be terminated from employment regardless of the time period between the first and second positive test.*

- *First positive on a confirmatory reasonable suspicion drug and/or alcohol test*
- *First positive on a confirmatory post-accident drug and/or alcohol test*
- *First positive on a confirmatory follow-up drug and/or alcohol test*
- *First positive on a confirmatory return-to-duty drug and/or alcohol test*
- *Second confirmed random positive drug and/or alcohol test*

### **3.6 Alcohol result 0.02 to less than 0.04**

*An employee with a first confirmed alcohol concentration result of 0.02 to less than 0.04 will be subject to removal from their safety-sensitive function for a minimum of 8 hours without pay.*

*An employee with a second confirmed alcohol concentration result of 0.02 to less than 0.04 will be subject to removal from their safety-sensitive function for a minimum of 8 hours without pay, and will be referred to the employee assistance program for evaluation (and required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations).*

*An employee with a third confirmed alcohol concentration result of 0.02 to less than 0.04 will be terminated.*

### **3.7 Failure to produce a specimen**

*Employees who are unable to provide a specimen or an adequate amount of specimen without a valid medical explanation 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 substance abuse professional for evaluation (and required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations);*
- 3. Successful completion of a return-to-duty drug and/or alcohol test; and*

4. *Submission to unannounced follow-up testing for up to 60 months as recommended by the substance abuse professional.*

*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.*

*\*This does not apply to employees in their probationary period. Employees will be subject to discipline.*

### **3.8 Voluntary report:**

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

- *Immediate removal from their position;*
- *Referral to the employee assistance program for evaluation (and will be required to complete an authorization consent form to authorize release of information such as status of compliance and treatment recommendations);*
- *Requirement to sign a return to work agreement; and*
- *Successfully pass a return to duty drug and alcohol test*

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

*Employees who previously participated in a drug and/or alcohol inpatient or outpatient rehabilitation or treatment program, while in the employ of the Metropolitan Council, will not be subject to this provision and will be terminated from employment.*

## **4.0 Testing methods**

The Metropolitan Council strives to ensure the highest integrity in drug and alcohol testing and reporting procedures. The Metropolitan Council works with the medical review officer, 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 reasonable 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., driver's 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

The collection will not proceed until positive identification is obtained.

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

## 4.1 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 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 will be conducted by a trained breath alcohol technician who has demonstrated competence in the operation of the device and use of the breath alcohol-calibrating unit. The test will be conducted in a manner that provides the employee with privacy to the greatest extent possible. The testing site will be secured, with no unauthorized access at any time the evidential breath test is unsecured or when testing is occurring. The breath alcohol technician will conduct only one test at a time and will not leave the testing site while the preparations for testing or the test itself are in progress.

If the initial test indicates an alcohol concentration of 0.02 or greater, a second confirmation test utilizing an evidential breath test 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 breath alcohol technician will conduct an airblank on the EBT. If the reading is greater than 0.00, the BAT will conduct one more airblank. If the second airblank reading is greater than 0.00, that evidential breath test will not be used to conduct the test.

If the initial and confirmatory test results are not identical, the confirmation test result will be deemed to be the final result. If the result displayed on the evidential breath test itself is not the same as that on the printed form produced by the evidential breath test, the test will be canceled, and the evidential breath test 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 their position without pay for a minimum of eight hours or until the end of the scheduled workday. 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.*

A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test in violation of this policy.

## 4.2 Drugs

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

The split sample method of collection will 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. 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 drugtesting 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 will urge the individual to drink a maximum of 40 ounces of fluids over the course of up to three hours. The individual will 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 will be discontinued, and the collector will contact the medical review officer to obtain guidance on the action to take. There is no requirement for the employee to actually drink liquids during this time, however the test will be discontinued if a complete specimen is not provided.

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 will be poured into one bottle, to be used as the primary specimen. At least 15 ml will be poured into the other bottle, to be used as the split specimen which will also be forwarded to the laboratory.

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

Urine specimens will be analyzed by a laboratory certified under the Department of Health and Human Services' Mandatory Guidelines for Federal Workplace Drug Testing Programs. The laboratory will be secure at all times and will 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.

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 . The laboratory will report the test results to the Metropolitan Council's medical review officer. The medical review officer will review the test results, as set forth in Section 6 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 medical review officer, 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 medical review officer, will be reported to the designated employer representative as a refusal to test, will be immediately removed from performing any safety-sensitive functions.
- Employees with a negative, but diluted, 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 medical review officer 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 medical review officer, will be subject to the discipline provisions outlined in Section 3.0.

### **4.3** *Observed drug tests*

Procedures for collecting urine specimens allow individual privacy except as set forth below. In these circumstances, an individual may be required to submit to an observed urine collection. 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 witness 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 medical review officer 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 medical review officer; or
- When the test administered is a return-to-duty test or a follow-up test.

## **5.0** *Testing categories*

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

### **5.1** *Pre-employment testing*

All applicants who have received a conditional offer of employment must undergo drug testing with a verified negative result prior to performing an FTA safety-sensitive function. Failure to successfully complete the testing requirements, including failure to pass the drug test, will result in a referral to a substance abuse professional 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 failure to comply with the testing requirements. If an applicant's drug test is canceled, the Metropolitan Council will require the applicant to take another pre-employment drug test. The designated employer representative will notify the applicant if the medical review officer has canceled a test. The medical review officer 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.*

Current employees who have not performed an FTA 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.

## **5.2** *Transfers to FTA safety-sensitive jobs*

Employees who do not perform an FTA safety-sensitive function, who are conditionally offered transfer to 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 will require the transferee to take another pre-employment drug test. The designated employer representative will notify the transferee if the medical review officer has canceled a test. The medical review officer will cancel a test that is scientifically insufficient or suspect because of irregularities.

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 Council's drug and alcohol policy applicable to their current position.

## **5.3** *Reasonable suspicion testing*

All FTA safety-sensitive 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 or 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. The observations will be recorded in writing. When possible these observations will be confirmed by a second trained managerial 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.

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

## **5.4** *Post-accident testing*

A post-accident drug and/or alcohol test will be conducted when an employee performing an FTA 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 they undergo a post-accident alcohol test, unless it is determined by a supervisor that a test is not necessary.-

#### **5.4.1 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 who was 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.

#### **5.4.2 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 who was 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 their 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 3.0. 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 two hours but no longer than eight hours following the accident. If no specimen is obtained within two hours, a report will be filed indicating the reasons for the delay, and efforts will continue to obtain a specimen for up to eight hours. If a specimen is not obtained in eight hours, a written report must document the reasons for failing to obtain a specimen.

In the event the Metropolitan Council is unable to perform a post-accident test within the required time period, the Metropolitan 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.



## 5.5 *Random testing*

All FTA safety-sensitive employees will be subject to random drug and/or alcohol testing. The Metropolitan Council will randomly test safety-sensitive employees at the minimum rate required by the FTA for prohibited drugs and alcohol each year. These rates are subject to annual FTA review. The selection of drivers for random alcohol and controlled substances testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each driver selected for random alcohol and controlled substances testing under the selection process used will have an equal chance of being tested each time selections are made. Each driver selected for testing will be tested during the selection period.

Random alcohol and controlled substances tests conducted under this policy will be unannounced and the dates for administering random alcohol and controlled substances tests will be spread reasonably throughout the calendar year including different days of the week and different times of the day. This ensures that employees will have a reasonable expectation they might be called for a test on any day they are at work.

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 an alcohol concentration of less than 0.02.*

## 5.6 *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 an alcohol concentration of 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 test is positive and/or their alcohol test is 0.02 or higher, the employee will not be allowed to return to duty and will be subject to the disciplinary provisions outlined in Section 3.0.*

## 5.7 *Follow-up testing*

Employees who have been referred to a substance abuse professional 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 12 months following the employee's return to safety-sensitive duty. Follow-up testing frequency and length will be determined by the substance abuse professional.

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 an alcohol concentration of less than 0.02.*

# 6.0 **Testing results**

## 6.1 *Drug tests*

The Metropolitan Council medical review officer will review the results of drug tests from the laboratory and determine if the employee or applicant received a positive result or if further investigation is required. The medical review officer will review confirmed positive,

adulterated, substituted, diluted, or invalid test results. After investigation, the medical review officer will verify test results as negative, positive, test canceled, or refusal to test because of adulteration or substitution. The medical review officer will not convey test results to the Metropolitan Council until the medical review officer has made a final verification decision. A current provider listing of the Metropolitan Council's appointed medical review officer may be referenced on the supplemental attachment page of this document.

### *Negative results*

The medical review officer will notify the designated employer representative in writing of a negative result within two days of verifying the negative result. The designated employer representative will communicate the negative result to the appropriate Metropolitan Council supervisor within one working day. The supervisor will orally notify the employee within three working days after notification from human resources. If an employee has not received a result within seven working days, the employee should contact the designated employer representative. Employees or applicants may request and receive a copy of the test result as set forth in Section 10.0.

### *Positive, adulterated, substituted, or invalid results*

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

- May speak and/or meet with the medical review officer, 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 new information which may affect the finding, the MRO may request the individual 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 medical review officer that the test is positive, negative, invalid, canceled, or refusal to test because of adulteration or substitution and the individual will be so advised
- If the individual provides an adequate explanation, the medical review officer will verify the test as negative or canceled with the designated employer representative
- If the individual fails to provide an adequate explanation, the medical review officer will verify the test as positive, canceled as invalid, or refusal to test because of adulteration or substitution and report the result to the designated employer representative. An employee or applicant whose test is canceled as invalid is required to take a second collection immediately under direct observation. An employee or applicant who has a diluted negative test will be required to take a second collection immediately
- The individual may request a copy in writing of the laboratory report identifying threshold levels from the medical review officer

The Metropolitan Council has authority to remove an employee (after receiving a stand-down waiver from the FTA) from their safety-sensitive function on the basis of a confirmed laboratory report of a positive test, or other specific circumstance, that has not been verified by the medical review officer.

The medical review officer shall make reasonable attempts to contact the individual within 24 hours. If the medical review officer is unsuccessful in this effort, the designated employer representative will be notified and the designated employer representative will attempt to contact the individual. The individual is required to respond to the medical review officer 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 medical review officer, 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.

Employees or applicants will be notified in writing of the confirmed positive drug test result by the Metropolitan Council's designated employer representative within three working days after receipt of the positive test result. Employees or applicants may request and receive a copy of the test result as set forth in Section 10.0. Appropriate action (including disciplinary action) will be taken as set forth in Section 3.0 for employees.

## **6.2** *Alcohol test results*

### *Negative results*

The breath alcohol test results are known immediately upon completion of a test. Negative test results will be reported to the designated employer representative. 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 designated employer representative by the breath alcohol technician 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 their safety-sensitive position, will be required to meet with their supervisor and will be subject to discipline provisions outlined in Section 3.0.

Employees will be notified in writing of the confirmed positive alcohol test result by the Council's designated employer representative within three working days after receipt of the positive test result.

## **6.3** *Employee or 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 or applicant who questions the results of a confirmed positive drug test or a refusal to test because of adulteration or substitution under Sections 5.1 through 5.7 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 Department of Health and Human Services-certified testing laboratory. The medical review officer will direct in writing that the laboratory provide the split specimen to another certified laboratory for analysis
- The medical review officer shall notify the individual who has a confirmed positive or a refusal to test because of adulteration or substitution, that the individual has

72 hours from notification in which to request a retest on the split specimen. The individual needs to notify the medical review officer within 72 hours of the notification if they wish to have a retest of the split specimen conducted. The Metropolitan Council designated employer representative 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 individual
- 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 FTA 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 required to take another pre-employment test, and a negative test result must be produced.

## **7.0 Substance abuse professional 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 2.0 of this policy must be evaluated by a substance abuse professional. The substance abuse professional will determine the assistance the covered employee requires.

Employees who refuse to undergo substance abuse professional evaluation will be terminated from employment.

The Metropolitan Council has designated a substance abuse professional. Employees are required to use the Council's designated substance abuse professional. The current provider is listed on the supplemental reference page of this document.

Before an employee can perform safety-sensitive duties, they must properly follow the rehabilitation program prescribed by the substance abuse professional. Follow-up testing frequency and length will be determined by the substance abuse professional. The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. Employees will be allowed to use accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program (once they have served the unpaid suspension time if required).

## **8.0 Return-to-work agreement**

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

- A release to work statement from the substance abuse professional;
- 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 substance abuse professional that they have complied with and properly followed the recommendations made by the substance abuse professional before returning to duty to perform an FTA safety-sensitive function.

Until the employee receives certification from the substance abuse professional of compliance, they will not be reinstated regardless of whether the suspension imposed under this policy has been completed. The requirement of substance abuse professional certification is mandated by FTA regulations and is in addition to all other discipline imposed by the Council under its own authority.

## **9.0 Confidentiality and release of information**

The Metropolitan Council will maintain records of its anti-drug and anti-alcohol program in a secure location with controlled access. No test result or other information from this drug and alcohol policy will 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 will be released to a third party only if the individual tested authorizes the request, in writing, to the designated employer representative (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 or in accordance with a court order.

When requested, the Metropolitan Council will 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 will 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 Council from releasing information in accordance with state and federal law.

## **10.0 Rights to examine records**

A covered employee is entitled, upon written request to the designated employer representative, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs, including any records pertaining to their previous drug tests within the Metropolitan Council's possession. The Metropolitan Council will provide requested records within five working days of a written request, assuming the designated employer representative 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 medical review officer. See the supplemental listing for the name of the designated employer representative.

## **11.0 Reporting**

The Metropolitan Council will 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 reports that must be used are contained in 49 CFR Part 655. The Metropolitan Council will also prepare and maintain annual reports on Metropolitan Council's contractors whose employees perform safety-sensitive functions and are, therefore, covered by the FTA regulations.

## 12.0 Certifications

The Metropolitan Council will 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.

## 13.0 FTA safety-sensitive positions (this list is subject to change)

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

	Rail Dispatcher
	Revenue Equip Electronic Tech
	Revenue Mechanical Technician
	SCADA/Comm Electronic Tech
	Senior Electronics Repair Tech
	Signals Technician
	Skilled Helper
	Track Maintainer (and Trainee)
	Traction Power Maintainer (and Apprentice)
	Train Operator (including Miscellaneous Operator)

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## FTA POLICY DEFINITIONS

**Accident:** The term “accident” means an occurrence associated with the operation of a vehicle, if as a result an individual dies or suffers a bodily injury and immediately receives medical attention away from the scene of the accident; 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 when the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, and the transit vehicle is removed from service.

**Adulterated specimen:** An 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.

**Breath alcohol technician:** An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing.

**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.

**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 is the only authorized confirmation method for cocaine, marijuana, opioids, amphetamines, and phencyclidine). In alcohol

testing, a second test, following an initial screening test with an alcohol concentration 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:** An employee authorized by the Metropolitan Council to take immediate actions 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 designated employer representative also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40. Service agents cannot act representatives.

**Diluted specimen:** Diluted 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 identified gender as the employee.

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

**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 :** An evidential breath testing device 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:** A program provided by the Metropolitan Council to assist employees in dealing with drug or alcohol dependency and other personal problems.

**Employee assistance program 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 is 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.

**Legally prescribed drug:** 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.

**Medical review officer:** 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 their 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 and/or alcohol test:** An individual passes a drug/alcohol test when a medical review officer determines that the results of the tests:

- 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 they are 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 designated employer representative in Human Resources. Refusal to take a required drug and/or alcohol test will be considered a positive test. See supplemental attachment for threshold levels.

**Prohibited drugs or substances:** Marijuana, cocaine, opioids, amphetamines, or phencyclidine.

**Refusal to submit a test:** See section 2.3

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

**Substance abuse professional :** 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 medical review officer.

**Volunteer:** A volunteer is deemed a covered employee when they receive remuneration in excess of their actual personal expenses incurred while performing the volunteer service.

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## 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 FTA 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 FTA 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 Council will ensure and certify to the FTA that the contractor is in compliance with the FTA regulations regarding drug and alcohol testing.
  - The Metropolitan Council will notify all such contractors in writing of the FTA regulations and the requirements for their compliance with them.
  - The Metropolitan Council will obtain from each contractor an annual Management Information System Report and file the report with the FTA.
- 2.3 All invitations for bids and requests for proposals involving the performance of safety-sensitive functions will include a statement regarding the required compliance with FTA regulations regarding drug and alcohol testing. The Metropolitan Council will 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 will 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.

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## 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 \(SAP\) – SandCreek](#)

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## HISTORY

*Version 11 – Approval Date*

10/14/2020 – Updated opiates to opioids, removed blind testing. Added that any form of marijuana is prohibited for DOT employees and that commercial motor vehicle operators must notify their supervisor of any drug and/or alcohol arrest or conviction within 5 days. Added discipline for multiple offenses of an alcohol result of from 0.02 to less than 0.04 and that employees that violate this policy will not be eligible for re-employment for two years.

*Version 10 – Template Update*

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

*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

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01/16/1995

*Last Reviewed Date*

Not Set

*Next Content Review Date*

11/02/2022

*Former Reference #*

4-9-2

*Version*

11

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## SUPPLEMENTAL ATTACHMENTS

### A. Contact information

#### *Drug/Alcohol Program Manager*

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

#### *Drug/Alcohol Program Administrator*

(Designated Employer Representative)

Chastity (Chas) Cooper, Human Resources Assistant  
612-349-7153

#### *Chemical Health Referral Programs Suggested by employee assistance program*

##### 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/Substance Abuse Professional*

Sand Creek 612-332-4805 -or- 888-243-5744  
1660 South Highway 100, #338  
St. Louis Park, MN 55416

#### *Medical Review Officer*

Joseph Sentef, MD	423-870-0701
Corporate Medical Services, Inc.	423-870-7880 fax

5490 Dayton Blvd.  
Chattanooga, TN 37415

#### *Third Party Administrator*

Corporate Medical Services, Inc.	423-870-0701
5490 Dayton Blvd.	423-870-7880 fax

Chattanooga, TN 37415

## 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 <sup>4</sup>	500 ng/ml	250 ng/ml
MDA <sup>5</sup>	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

### Non-DOT (Department of Transportation) Drug and Alcohol Policy

HR 2-4

**Category:** Human Resources

**Business Unit Responsible:** RA: Human Resources

**Policy Owner:** Deborah Aebi, Senior Manager Human Resources

**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 a DOT policy.

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## 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 Metropolitan Council will require drug and/or alcohol testing in accordance with this policy and as provided by [Minnesota Statutes sections 181.950 - 181.957](#). This policy applies to all employees or applicants of the Metropolitan Council who are not covered under the Council's DOT drug and alcohol policies.

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## PURPOSE OF POLICY

The Metropolitan Council has instituted the drug and alcohol testing program set forth in this policy to provide a safe and healthy work environment and to establish expectations and guidance for employees.

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## BACKGROUND

This policy is intended to eliminate drugs and/or alcohol from the workplace. The Metropolitan Council offers assistance to employees to resolve chemical dependency issues through an Employee Assistance Program. It is the employee's responsibility to obtain help and resolve any drug or alcohol problems they may have.

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## EDUCATION AND TRAINING

The Metropolitan Council will provide covered employees with educational materials that explain the requirements of this policy. The Metropolitan Council will distribute a copy of this policy to each safety-sensitive employee prior to the start of alcohol and controlled substances testing under this policy and to any new employee that is hired or transferred into a safety-sensitive position governed by this policy.

Additional resources on drug use and alcohol misuse are located on the [Metropolitan Council's Drug Free Workplace MetNet site](#).

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## **EMPLOYEE ASSISTANCE PROGRAM**

The Metropolitan Council provides the services of an Employee Assistance Program. The program's purpose is 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 Employee Assistance Program are provided by the Metropolitan Council at no cost to the employee. The costs of any services, to which the employee is referred, beyond those provided by the program, are the responsibility of the employee or their individual health insurance provider.

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## **IMPLEMENTATION & ACCOUNTABILITY**

This policy covers drug and alcohol testing for all safety-sensitive, and non-safety-sensitive employees or applicants of the Metropolitan Council not specifically covered under the following drug and alcohol policies governed by the U.S. Department of Transportation:

- HR 2-3 Federal Transit Administration (FTA) Drug and Alcohol Policy
- HR 2-5 Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Policy
- HR 2-6 Federal Railroad Administration (FRA) Drug and Alcohol Policy

HR 2-4a MCES Alcohol and Drug Testing Program Procedure is intended to supplement this policy for Environmental Services safety-sensitive employees.

### **1.0 Employee disclosures**

Safety-sensitive employees may voluntarily report the use of controlled substances and or alcohol misuse. To qualify as a voluntary report:

1. The self-identification must be done in writing and in accordance with this policy;
2. The employee must not self-identify in order to avoid testing under the requirements of this policy;
3. The employee must report alcohol misuse or controlled substance use prior to performing a safety-sensitive function (i.e., prior to reporting for duty); and
4. The employee must not perform a safety-sensitive function until the Metropolitan Council is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

If an employee makes a Voluntary report to Occupational Health through FMLA or fit for duty paperwork, Occupational Health will disclose to the manager or supervisor that the employee will be out on leave for treatment.

Employees who voluntarily report drug and/or alcohol abuse will be subject to consequences outlined in Section 6.0.

## **2.0 Prohibited conduct**

### **2.1 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 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.

### **2.2 Alcohol use**

No employee may report to work or remain at work when their ability to perform assigned functions is affected by their use of alcohol and/or they test at 0.02% alcohol concentration or higher. No employee may consume alcohol while at work, at lunch, or on breaks during the employee's work hours.

### **2.3 Impairment**

No employee will report to work or remain at work when impaired by legal or illegal drugs and/or alcohol. It is the employee's responsibility to obtain information from their physician or practitioner about whether the drug or substance would alter job performance. Employees must advise their supervisor if unable to work due to impairment.

Besides having a zero-tolerance policy for the use or possession of alcohol, illegal drugs, or misused prescription drugs on the worksite, the Metropolitan Council also prohibits the use, possession of, or impairment by any cannabis or medical cannabis products (e.g., hash oils or pills) on the worksite by a person working as an employee at the Metropolitan Council or while "on call" and subject to return to work.

Having a medical marijuana card, patient registry number, and/or cannabis prescription from a physician does not allow any employee to use, possess, or be impaired by that drug while on duty. Applicants and employees are still subject to testing under our drug and alcohol testing policy.

All employees may be subject to discipline, up to and including discharge, after testing positive on a reasonable suspicion test for cannabis if the employee used, possessed, or was impaired by cannabis, including medical cannabis, while on the premises of the place of employment or during the hours of employment.

### **2.4 Failure to comply with requirements to submit to test**

Employees who fail to comply with testing requirements will be subject to disciplinary action as provided in Section 6.0 of this policy. 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
- 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

Consequences of engaging in prohibited conduct is discussed in section 6.0 of this policy.

## **3.0 Testing methods**

### **3.1 Testing**

The Metropolitan Council strives to ensure the highest integrity in drug and alcohol testing and reporting procedures. The Metropolitan Council will work with a medical review officer, the collection sites, and the laboratory to ensure that the integrity of the testing process is maintained. All tests will be performed in a setting which affords reasonable privacy to the individual being tested. Employees with a confirmed positive test will be subject to disciplinary action as provided in Section 6.0 of this policy.

### **3.2 Alcohol**

All alcohol tests will be performed by a trained alcohol technician. Testing for alcohol concentration will be performed with an evidential breath testing device. If the device indicates a positive result, a saliva or blood specimen will immediately be collected. Confirmatory alcohol testing will be performed on the saliva or blood specimen.

### **3.3 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 amounts present are above the minimum thresholds established by this policy.

### **3.4 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;
- 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 medical review officer.

The collector or observer will be the same identified gender as the employee. The collection professional will document their determination and the reasons for the observed collection.

## 4.0 Testing categories

The Metropolitan Council requires drug and/or alcohol testing under the following circumstances:

### 4.1 Pre-employment testing (applicants and transfers)

The Metropolitan Council requires job applicants and employee's transferring into a safety-sensitive position after having received a conditional offer of employment to complete a pre-employment drug 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 conditioned on the applicant passing a drug test, the Metropolitan Council will withdraw the offer based on a verified confirmatory positive test result or a refusal to test. In the event the job offer is withdrawn, the Metropolitan Council shall notify the job applicant in writing of the reason for its action. An applicant who refuses to test or receives a positive test result may not be eligible for employment in a safety-sensitive position with the Metropolitan Council for the next two years (from date of collection).

### 4.2 Random testing

Employees in safety-sensitive positions are subject to random drug and/or alcohol testing. A list of safety-sensitive positions appears in Section 9.0 of this policy. Those subject to testing are randomly selected, using a scientifically valid random number generation method, from a "pool" of Non-DOT covered employees. The Metropolitan Council uses the same random rate for non-DOT safety-sensitive employees that is required by the Federal Transit Administration (FTA) and/or Federal Motor Carrier Safety Association (FMCSA) for drug and alcohol testing each year.

### 4.3 Reasonable suspicion testing

The Metropolitan Council requires all employees, without regard to whether or not the employee works in a safety-sensitive position, to undergo drug and alcohol testing if the Council has reasonable suspicion that the employee:

1. Is under the influence of drugs and/or alcohol; or

2. Has violated the Metropolitan Council's Drug-free Workplace Policy prohibiting the use, possession, sale, transfer of drugs or alcohol on Metropolitan Council property (including vehicles), while operating Council vehicles, while conducting Council business, or during the workday, including lunch or other breaks, whether the employee is on or off Council property; or
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.

A test may be conducted when an employee engages in behavior that is recognized as an 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

A reasonable suspicion referral for testing will be made by a supervisor or manager that has received appropriate and required reasonable suspicion training. The decision will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. When possible these observations will be confirmed by a second trained managerial employee. All observations will be documented in writing.

Employees who are directed to submit to testing based upon reasonable suspicion shall be relieved of all duties and placed on an administrative leave of absence pending the receipt of test results and the completion of any investigation by the Metropolitan Council.

A positive reasonable suspicion test may result in disciplinary action up to and including termination as detailed in Section 6.0. A refusal to submit to testing will be treated as a positive test.

#### **4.4 Return-to-duty testing**

Employees who have violated any portion of this policy, and are eligible to return to work, must test negative for drugs and less than 0.02% concentration of alcohol before they will be permitted to return to work. Under this section, employees will be required to submit to a urine drug and breath alcohol test.

#### **4.5 Follow-up testing**

After a first confirmed positive an employee will be referred to the employee assistance program. Any employee that is mandated to complete a chemical dependency treatment program may be subject to drug and/or alcohol testing without notice for up to 24 months after competing treatment. The follow up plan will be determined by the employee assistance professional.

### **5.0 Testing results**

The medical review officer will review the drug and or alcohol test result from the laboratory and determine if the employee received a confirmed positive. The medical review officer will convey final test results to the Metropolitan Council.

#### **5.1 *Negative drug and/or alcohol test results***

Breath alcohol test results are known immediately upon completion of a test. Employees will receive a copy of the breath alcohol test results upon completion of the test. Negative test results will be reported to the Council's Non-DOT Drug & Alcohol Program administrator. The administrator will communicate the results of the negative drug and or alcohol test to the appropriate supervisor. The employee will be notified in writing within three working days of a negative urine, blood or saliva test result and of the employee's right to receive a copy of the test result report.

#### **5.2 *Positive drug and/or alcohol test results***

Breath alcohol test results are known immediately upon completion of a test. If an employee tests positive on a breath alcohol test, the test administrator will immediately inform the employee of the test result and conduct the confirmatory alcohol test described in Section 3.3. The test administrator will report the positive breath alcohol test to the Council Non-DOT Drug & Alcohol Program administrator immediately following the test and will report the results of the confirmatory saliva or blood test to the Program Administrator as soon as the results are received.

The employee will be informed in writing within three working days following the Program Administrator's receipt of a confirmed positive drug and or alcohol test result. The employee will be provided with a copy of this policy with the notification.

An employee who tests positive on a confirmatory drug or alcohol test will be contacted by the medical review officer and required to meet, by telephone or in person, with the medical review officer. The employee has the right to submit information to the medical

review officer to explain the positive result on a confirmatory test within three working days after notice of the test result.

The medical review officer 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 medical review officer may request the laboratory to perform additional testing on the original specimen. A final determination will be made by the medical review officer 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 medical review officer, including failing to return phone calls in a timely manner, the drug test will be considered positive and appropriate action (including disciplinary action up to and including termination) will be taken.

An employee who receives a confirmed positive test result will be removed from their position, will be required to meet with their supervisor, and will be subject to discipline up to and including termination.

### **5.3** *Requesting a confirmatory retest after a confirmed positive test*

Any employee who receives a confirmed positive drug and/or alcohol test may request a confirmatory retest. Retests for alcohol testing will be performed on a confirmatory specimen. In the case of a urine, saliva or blood sample testing, the confirmatory retest must be conducted on the original sample. All costs for such testing are paid by the employee. The employee must make the request for a confirmatory retest on the original sample 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 the employee's request, the Metropolitan Council Non-DOT Drug and Alcohol Program administrator will notify the laboratory that the employee has requested a confirmatory retest. 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 Consequences of prohibited conduct**

It is Metropolitan Council's intent to offer an opportunity for rehabilitation after a first confirmed positive random drug and/or alcohol test result. However, the Metropolitan 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. Any employee covered under this policy who violates any portion of this policy and is dismissed or allowed to resign or retire due to the violation, will have no guarantee of re-hire into a position.

## **6.1 First confirmed positive random drug and/or alcohol test**

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

1. Immediate removal from their position;
2. Referral to employee assistance professional for evaluation (required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations);
3. Before an employee can return to duty after a positive confirmatory test, they must properly follow the chemical dependency treatment program prescribed by the Employee Assistance Program. The cost of any treatment or rehabilitation will be paid directly by the employee or their insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed chemical dependency treatment program;
4. Requirement to sign a return-to-work (i.e., "last chance") agreement;
5. Successfully pass a return-to-duty drug and alcohol test; and
6. Submit to unannounced testing for up to 24 months if the employee participated in a chemical dependency treatment program (as determined by the employee assistance professional).

## **6.2 Other positive drug and/or alcohol test (0.04 or greater)**

Any employee who engages in any of the following behaviors will immediately be removed from their position, referred to an employee assistance professional, and be terminated from employment regardless of the time period between the first and second positive test.

- First positive on a confirmatory reasonable suspicion drug and/or alcohol test
- First positive on a confirmatory post-accident drug and/or alcohol test
- First positive on a confirmatory follow-up drug and/or alcohol test
- First positive on a confirmatory return-to-duty drug and/or alcohol test

## **6.3 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 the employee's collective bargaining agreement.

## **6.4 Alcohol test result 0.02 to less than 0.04**

- An employee with a first confirmed alcohol concentration result of 0.02 to less than 0.04 will be subject to removal from their safety-sensitive function for a minimum of 8 hours without pay.
- An employee with a second confirmed alcohol concentration result of 0.02 to less than 0.04 will be subject to removal from their safety-sensitive function for a minimum of 8 hours without pay and will be referred to the employee

assistance program for evaluation (and required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations).

- An employee with a third confirmed alcohol concentration result of 0.02 to less than 0.04 will be terminated.

## **6.5 Failure to comply with or refusal to take a drug and/or alcohol test**

Refusal by an employee to take a drug and/or alcohol test or comply with the requirements of the collection process at anytime will be grounds for discipline up to and including termination.

## **6.6 Failure to complete rehabilitation**

Refusal to participate in a recommended rehabilitation program or failure to successfully complete rehabilitation will result in discipline up to and including termination from employment.

## **6.7 Pay status while removed from duty pending test results**

### **6.7.1 Reasonable suspicion testing**

*When referred for reasonable suspicion testing, employees will be placed on paid administrative leave pending the results of the drug test if the breath alcohol test indicates an alcohol concentration of less than 0.02.*

*If the confirmatory alcohol test indicates an alcohol concentration of 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 and will be subject to the disciplinary provisions outlined in this section.*

If the confirmatory alcohol test indicates an alcohol concentration of 0.04 or greater, the employee will be considered to have a positive alcohol test. An employee with a confirmatory alcohol test or an employee with a positive confirmatory drug test will be placed on unpaid administrative leave and will be subject to the disciplinary provisions outlined in this section.

### **6.7.2 Post accident testing**

*When referred for post-accident testing, employees will be placed on paid administrative leave pending the results of the drug test and if the breath alcohol test indicates an alcohol concentration of less than 0.02.*

*If the confirmatory alcohol test indicates an alcohol concentration of 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 and subject to the disciplinary provisions outlined in this section.*

If the confirmatory alcohol test indicates an alcohol concentration of 0.04 or greater, the employee will be considered to have a positive alcohol test. An employee with a confirmatory alcohol test or an employee with a positive

confirmatory drug test will be placed on unpaid administrative leave and will be subject to the disciplinary provisions outlined in this section.

## **6.8 Failure to produce a specimen**

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

1. Immediate removal from their position;
2. An unpaid suspension of 80 hours to be arranged by the supervisor;
3. Mandatory referral to the substance abuse professional for evaluation (and required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations);
4. A return-to-work agreement;
5. Successful completion of a return-to-duty drug and/or alcohol test; and
6. Submission to unannounced follow-up testing for up to 24 months as recommended by the substance abuse professional.

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.

\*This does not apply to employees in their probationary period. Employees will be subject to discipline.

## **6.9 Voluntary report**

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

- Immediate removal from their position;
- Referral to the employee assistance program for evaluation (and will be required to complete an authorization consent form to authorize release of information such as status of compliance and treatment recommendations);
- Requirement to sign a return- to-work agreement; and
- Requirement to successfully pass a return to duty drug and alcohol test

Employees who voluntarily report drug and/or alcohol abuse are not subject to the 80-hour suspension. However, if employees are found to test positive on any future required drug and/or alcohol tests, they will be terminated from employment.

Employees who previously participated in a drug and/or alcohol inpatient or outpatient rehabilitation or treatment program, while in the employ of the Metropolitan Council, will not be subject to this provision and will be terminated from employment.



## 7.0 Return-to-work agreement

An employee who returns to work after a confirmed positive drug and/or alcohol test and has successfully completed a chemical dependency treatment program or is currently enrolled in a chemical dependency treatment program but has been released by the employee assistance 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):

1. A letter of compliance and release to work from the employee assistance professional;
2. A negative return-to-duty test for drugs and alcohol;
3. An agreement to submit to unannounced follow-up testing for a period up to 24 months from the completion of treatment (if the rehabilitation program was a chemical dependency treatment program);
4. An agreement to follow specified after care requirements with the understanding that violation of these provisions is just cause for termination;
5. Authorization provided to the Metropolitan Council to receive verification and information regarding status of rehabilitation;
6. An agreement that any future positive drug and/or alcohol test result within any time period will be just cause for immediate termination; and
7. The return-to-work agreement must be executed by the employee and the employee's manager or supervisor.

## 8.0 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 Metropolitan 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.

## 9.0 Non-DOT safety-sensitive positions (this list is subject to change)

<b>Metro Transit Positions</b>	<b>Environmental Services Positions</b>
Assist. Mgr, Overhaul Base	ABUM Operations
Assist. Mgr, Rail Transp	Apprentice Machinist Mechanic
Assist. Mgr, Street Ops	Assist. Mgr, Indust Waste-SS
Assist. Mgr, TCC Operations	Asst. Mgr, Planning and Sched
Assist. Mgr, TCC Systems	Business Unit Coordinator
Assist. Mgr, Training	Business Unit Coordinator Main
Assist. Transp Mgr-Trng Admin	Chief Stationary Engineer
Assist. Transportation Manager	Electrician
Community Service Officer	Industrial Waste Technician
Manager, Bus Maintenance	Interceptor Service Worker
Manager, Communication Systems	Interceptor Service Worker II
Manager, Fleet Serv and QA	Inventory Technician
Manager, Fleet Services MTS	Lead Electrician
Manager, Instruction	Lead Machinist Mechanic
Manager, Rail Operations	Lead Painter
Manager, Rail Qual. Assurance	Machinist Mechanic
Manager, Rail Training Develop	Manager, Bus Systems II-MANA
Manager, Rail Transportation	Manager, Business Unit
Manager, SCADA Comm Sig	Manager, Business Unit - NR
Manager, Street Operations	Manager, Industrial Waste
Manager, TCC	Manager, Interceptor Area
Manager, Track	Materials Spec Leadworker-AFS
Manager, Traction Power	Painter
Manager, Training Bus Maintenance	Pipefitter
Manager, Transportation	Plant Operator (all types without CDL)
Senior Manager, Rail QATrngAnl	Prin. Industrial Waste Tech
Supv, Electronic Maint	Program Supv, BU Performance
Supv, Electronic Shop	Security Specialist
Supv, Non-Revenue	Sr Industrial Waste Technician
Supv, Rail Maintenance	Stationary Engineer
Supv, Rail Mtnc QA and Trng	Stationary Engineer - Relief
Supv, SCADA Communication	Vehicle Mechanic - ES
Supv, Signals	
Supv, Track	
Supv, Traction Power	

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## PROCEDURES

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

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## DEFINITIONS

**Controlled substance:** The drugs tested for may include all or some of the following: (1) amphetamines; (2) cannabinoids; (3) cocaine; (4) phencyclidine (PCP); and (5) opioids.

**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 Metropolitan Council. 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 Metropolitan Council and includes a person who has received a job offer conditioned on the person passing a drug test.

**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 contained in the standards of one of the programs listed in [section 181.953, subdivision 1.](#)

**Prohibited substance:** Prohibited drugs and substances: marijuana, cocaine, opioids, amphetamines, or phencyclidine.

**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.

**Safety-sensitive:** A job in which an impairment caused by drug or alcohol usage would threaten the safety or health of any person.

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

### *Other Resources*

- [Employee Assistance Program – Sand Creek](#)
  - [Drug Free Workplace - MetNet](#)
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## HISTORY

### *Version 3 – Approval Date*

Not Set – The name was changed from Non-FTA to Non-DOT policy. Added impairment language, safety-sensitive position titles, prohibit alcohol percentage of 0.02 or greater, and articulated when a workplace accident requires a reasonable suspicion test. Removed alcohol testing for pre-employment tests. Added that employees who violate the policy and are dismissed may not be eligible for rehire.

### *Version 2 – Template Update*

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

### *Version 1 – Approval Date*

11/29/2000

### *Last Reviewed Date*

11/29/2000

### *Next Content Review Date*

11/02/2022

### *Former Reference #*

4-9-3

### *Version*

3

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## SUPPLEMENTAL ATTACHMENTS

### A. Contact information

#### *Drug/Alcohol Program Manager*

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

#### *Drug/Alcohol Program Administrator*

Chastity (Chas) Cooper, Human Resources Assistant  
612-349-7153

#### *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 Drug and Alcohol program administrator or Sand Creek.

#### *Employee Assistance Program (EAP)*

Sand Creek 612-332-4805 -or- 888-243-5744  
1660 South Highway 100, #338  
St. Louis Park, MN 55416

#### *Medical Review Officer (MRO)*

Joseph Sentef, MD 423-870-0701  
Corporate Medical Services, Inc. 423-870-7880 fax  
5490 Dayton Blvd.  
Chattanooga, TN 37415

#### *Third Party Administrator (TPA)*

Corporate Medical Services, Inc. 423-870-0701  
5490 Dayton Blvd. 423-870-7880 fax  
Chattanooga, TN 3741

## B. Threshold levels

Drug/Drug Metabolite	Initial Test	Confirmatory
Amphetamines		
Amphetamine	500 ng/ml	250 ng/ml
Methamphetamine	500 ng/ml	250 ng/ml
MDMA <sup>4</sup>	500 ng/ml	250 ng/ml
MDA <sup>5</sup>	500 ng/ml	250 ng/ml
Cocaine Metabolites	150 ng/ml	100 ng/ml
Benzoyllecgonine	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

## POLICY

### Federal Motor Carrier Safety Administration Drug and Alcohol Policy

HR 2-5

**Category:** Human Resources

**Business Unit Responsible:** RA: Human Resources

**Policy Owner:** Deborah Aebi, Senior Manager Human Resources

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

**Synopsis:** Establishes drug and alcohol testing program to comply with all applicable federal regulations that applies to all FMCSA covered safety-sensitive employees

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## POLICY

This policy and 49 CFR Part 40 of the U. S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs are integral parts of this policy and apply to all covered Metropolitan Council Environmental Services employees. Collection procedures, laboratory procedures, medical review officer review, alcohol testing, third party record-keeping and all other procedural requirements shall adhere to 49 CFR Part 40. The Metropolitan Council shall test employees required to maintain a commercial driver's license (CDL) for the use of controlled substances and the misuse of alcohol.

This policy is applicable to all FMCSA safety-sensitive employees that operate commercial motor vehicles for the Metropolitan Council.

This policy sets forth the requirements of 49 CFR Parts 382 and 40. Those areas of the policy that appear in italics reflect the Metropolitan Council's independent authority to require drug and alcohol testing procedures.

Questions about this policy may be directed to the Designated Employer Representative in Occupational Health identified in the supplemental attachment below. The Council's medical review officer, third party administrator and substance abuse professional are also identified in the supplemental attachment.

All FMCSA safety-sensitive employees must also comply with the Council's Drug and Alcohol-Free Workplace policy.

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## PURPOSE OF POLICY

The purpose of this policy, in addition to meeting federal regulations, is to establish a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

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## BACKGROUND

This policy applies to drivers that operate commercial motor vehicles for the Metropolitan Council's Environmental Services division.

The Metropolitan Council requires each driver/employee subject to this policy to participate in its controlled substances and alcohol testing program as a condition of employment.

Before performing an alcohol or controlled substances test under the federal regulations, the Metropolitan Council will notify a driver that the alcohol or controlled substances test is required by federal regulation.

The Metropolitan Council will ensure that all covered employees are aware of the provisions and coverage of this policy and that all employees are notified prior to testing. Covered drivers are subject to DOT regulated alcohol and drug testing at all times during the workday from the time a driver begins work or is required to be in readiness to work until the time the driver is relieved from all responsibility for performing work. A driver is required to be in compliance with this policy during that period of the workday when they are on-duty performing safety-sensitive functions.

See Section 9.0 for a list of Federal Motor Carrier Safety Administration safety-sensitive positions covered by this policy.

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## EDUCATION & TRAINING

The Metropolitan Council will provide covered employees with educational materials that explain the requirements of this policy and the Council's responsibility to adhere to Federal Motor Carrier Safety Administration alcohol and drug testing requirements. The Metropolitan Council will distribute a copy of this policy to each driver prior to the start of alcohol and controlled substances testing under this policy and to any new employee that is hired or transferred into a position governed by Federal Motor Carrier Safety Administration regulations.

The Metropolitan Council will require each driver to sign a statement certifying that they have received the materials described in this section and will maintain an original copy of the acknowledgement signed by the driver.

The Metropolitan Council will ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

Additional resources on drug use and alcohol misuse are located on the Metropolitan Council's [Drug Free Workplace MetNet site](#).

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## EMPLOYEE ASSISTANCE PROGRAM

The Employee Assistance Program is available to provide confidential intervention if an employee, coworker, or manager suspects an alcohol problem exists. 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.



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## IMPLEMENTATION & ACCOUNTABILITY

This policy applies to all FMCSA safety-sensitive employees, contractors, and volunteers when they are on Metropolitan Council property or when performing any 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. Refer to Section 9.0 for a list of safety-sensitive covered positions.

### 1.0 Required Employee Disclosures

#### 1.1 *Disclosure of off-duty DUI and Drug offense*

*Any employee operating a commercial motor vehicle for the Metropolitan Council must notify their immediate supervisor of any criminal drug and/or alcohol arrest or conviction by the close of business the day after losing the right to operate a commercial motor vehicle.*

The Metropolitan Council will immediately remove covered drivers who have engaged in off-duty, unsafe behavior related to alcohol or drug misuse from their safety-sensitive functions performed for the Council.

In accordance with the federal Drug-Free Workplace Act, the Metropolitan Council will notify the appropriate regulatory 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. Action may include requiring the employee to satisfactorily participate in a chemical dependency treatment program.

#### 1.2 *Pre-duty disclosure of medical or substances*

All drivers subject to this policy are required to disclose prior to duty that they are taking any therapeutic drug, prescription medication, over-the-counter medication, mind altering synthetic or designer drugs or substances which may have an effect on their ability to safely operate a commercial motor vehicle or perform safety-sensitive duties. It is an essential function of every driver's position at the Metropolitan Council to be able to work in a constant state of alertness and in a safe manner.

*It is the employee's responsibility to consult with their physician or practitioner to determine whether a therapeutic drug, prescribed medication, or over-the-counter medication will alter job performance. Employees must report the use of medically-authorized drugs or other substances which may alter job performance to the Designated Employer Representative in Occupational Health and provide proper written medical authorization for use of the drug from their physician.*

*If a driver discloses use of a drug, medication, or substance that impairs their ability to safely perform their job the Metropolitan Council may send the driver for a fitness-for-duty evaluation to evaluate the medication and its possible adverse effects on the driver's ability to safely operate a commercial motor vehicle or perform other safety-sensitive duties. The Council's Occupational Medical provider will determine whether the employee has a legally valid prescription and whether the driver may safely operate a commercial motor vehicle given any safety-related risks of any drug, medication or substance the*

*driver is taking. The Metropolitan Council will make the final determination as to whether the driver is qualified to drive/operate a commercial motor vehicle.*

The claimed use of products containing cannabidiol will not be accepted by the Metropolitan Council as a medical excuse for a positive test for THC (tetrahydrocannabinol, also known as the active ingredient in marijuana). Any form of marijuana is prohibited for all DOT safety-sensitive employees.

### **1.3 Notification to other employers of a testing program violation**

Each covered driver who violates the alcohol and controlled substances prohibitions of this policy, must notify in writing all other current employers of such violations. The driver must also notify the Metropolitan Council of any testing violations they commit while working for other current employers. *The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.* If the employee does not report a violation within this time period, the employee may be terminated.

### **1.4 Voluntary Report**

*Employees may voluntarily report the use of controlled substances and or alcohol misuse. To qualify as a voluntary report:*

- 1. The self-identification must be done in writing and in accordance with this policy;*
- 2. The employee must not self-identify in order to avoid testing under the requirements of this policy;*
- 3. The employee must report alcohol misuse or controlled substance use prior to performing a safety-sensitive function (i.e., prior to reporting for duty); and*
- 4. The employee must not perform a safety-sensitive function until the Metropolitan Council is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.*

*If an employee makes a Voluntary report to Occupational Health through FMLA or fit for duty paperwork Occupational Health will disclose to the manager or supervisor that the employee will be out on leave for treatment.*

*Employees who voluntarily report drug and/or alcohol abuse will be subject to consequences outlined in Section 2.9.*

## **2.0 Prohibited conduct**

### **2.1 Alcohol concentration**

*No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of greater than 0.02. When the Metropolitan Council has actual knowledge that a driver has an alcohol concentration greater than 0.02, the driver will not be permitted to perform or continue to perform safety-sensitive functions.*

## **2.2** *On duty use*

No driver may use alcohol while performing safety-sensitive functions. If the Metropolitan Council has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, that driver will not be permitted to perform or continue to perform safety-sensitive functions.

## **2.3** *Pre-duty alcohol use*

No driver may perform safety-sensitive functions within four (4) hours after using alcohol. If the Metropolitan Council has actual knowledge that a driver has used alcohol within four (4) hours, that driver will not be permitted to perform or continue to perform safety-sensitive functions.

## **2.4** *Use following an accident*

No driver required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until the driver undergoes a post-accident alcohol test, whichever occurs first.

## **2.5** *Refusal to submit to a required test*

No driver may refuse to submit to the following required tests: a post-accident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, a return to duty alcohol or controlled substances test, or a follow-up alcohol or controlled substances test. The Metropolitan Council will not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

## **2.6** *Failure to disclose off-duty DUI and drug offense*

*No employee operating a commercial motor vehicle for the Metropolitan Council may fail to timely notify their immediate supervisor of any criminal drug and/or alcohol arrest or conviction by the close of business the day after losing the right to operate a commercial motor vehicle in accordance with Section 1.1.*

## **2.7** *Failure to disclose impairment*

*The failure to report the use of a drug, medication, or substance that impairs their ability to safely perform their job, or the failure to provide proper medical authorization is prohibited. If a driver takes any drug, medication, or substance that impairs their ability to safely perform their duties; does not disclose the drug, medication, or substance prior to the start of their shift; and tests positive or is determined by the Council's Occupational medical provider to be a potential safety risk due to use, that driver will be subject to discipline, up to and including termination, for violation of this safety rule.*

## **2.8** *Controlled substance use*

No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver has used any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

When the Metropolitan Council has actual knowledge that a driver has used a controlled substance, it will not permit the driver to perform or continue to perform a safety-sensitive function including driving a commercial motor vehicle.

All drivers subject to this policy are required to disclose prior to duty that they are taking any controlled substance which may have an effect on their ability to safely operate a commercial motor vehicle or perform safety-sensitive duties. It is an essential function of every driver's position at the Metropolitan Council to be able to work in a constant state of alertness and in a safe manner.

*It is the employee's responsibility to consult with their physician or practitioner to determine whether a controlled substance will alter job performance. Employees must report the use of medically-authorized drugs or other substances which may alter job performance to the Designated Employer Representative in Occupational Health and provide proper written medical authorization for use of the drug from their physician.*

*If a driver discloses use of a controlled substance that may impair their ability to safely perform their job the Metropolitan Council may send the driver for a fitness-for-duty evaluation to evaluate the medication and its possible adverse effects on the driver's ability to safely operate a commercial motor vehicle or perform other safety-sensitive duties. The Council's Occupational Medical provider will determine whether the employee has a legally valid prescription and whether the driver may safely operate a commercial motor vehicle given any safety-related risks of any drug, medication or substance the driver is taking. The Metropolitan Council will make the final determination as to whether the driver is qualified to drive/operate a commercial motor vehicle.*

## **2.9** *Controlled substance testing*

No driver may report for duty, remain on duty, or perform a safety-sensitive function, if the driver tests positive for controlled substances or has adulterated or substituted a test specimen. When the Metropolitan Council has actual knowledge that a driver has tested positive for controlled substances or has adulterated or substituted a test specimen, it will not permit the driver to perform or continue to perform safety-sensitive functions. When the medical review officer has notified the driver that they have a verified positive drug test and/or refusal to test because of adulteration or substitution, the driver has 72 hours from the time of notification to request a test of the split specimen.

## **3.0** *Consequences of prohibited conduct*

Any driver who engages in prohibited conduct will be subject to disciplinary action up to and including termination.

*Any safety-sensitive employee, subject to Federal Motor Carrier Safety Administration regulation and covered under this policy who violates any portion of this policy and is dismissed or allowed to resign or retire due to the violation may not be eligible for re-hire into a safety-sensitive position.*

### **3.1** *Removal from duty pending testing*

The Metropolitan Council will not permit a safety-sensitive employee regulated under the Federal Motor Carrier Safety Administration to remain on duty when a management or supervisory employee:

- Personally observes a safety-sensitive regulated employee use or possess alcohol or use drugs in violation of this policy
- Receives information regarding a violation of this policy from a previous employer of a regulated safety-sensitive employee regulated under the Federal Transit Administration in response to a background information request required by 49 CFR part 40.25
- Receives an admission from an employee regulated under the Federal Motor Carrier Safety Administration of prohibited alcohol possession or prohibited alcohol or drug use
- Refers an employee for reasonable suspicion testing
- Refers an employee for post-accident testing

*When an employee has been referred for reasonable suspicion or post-accident testing, the employee will not be allowed to perform safety-sensitive duties until they have a negative drug and alcohol test showing an alcohol concentration of less than 0.02.*

### **3.2** *Pay status while removed from duty pending testing*

#### **3.2.1** *Reasonablesuspicion testing*

*When referred for reasonable suspicion testing, employees will be placed on paid administrative leave pending the results of the drug test if the breath alcohol test indicates an alcohol concentration of less than 0.02.*

*If the confirmatory alcohol test indicates an alcohol concentration of 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 and will be subject to the disciplinary provisions outlined in Section 2.7.*

If the confirmatory alcohol test indicates an alcohol concentration of 0.04 or greater, the employee will be considered to have a positive alcohol test. An employee with a confirmatory alcohol test or an employee with a positive confirmatory drug test will be placed on unpaid administrative leave and will be subject to the disciplinary provisions outlined in Section 2.6.

#### **3.2.2** *Post accident testing*

*When referred for post-accident testing, employees will be placed on paid administrative leave pending the results of the drug test and if the breath alcohol test indicates an alcohol concentration of less than 0.02.*

*If the confirmatory alcohol test indicates an alcohol concentration of 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 and subject to the disciplinary provisions outlined in Section 2.7.*

If the confirmatory alcohol test indicates an alcohol concentration of 0.04 or greater, the employee will be considered to have a positive alcohol test. An employee with a confirmatory alcohol test or an employee with a positive confirmatory drug test will be placed on unpaid administrative leave and will be subject to the disciplinary provisions outlined in Section 2.6.

### 3.3 *Legal drugs*

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. *However, no employee may perform work-related duties while taking any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected unless authorized to do so by Occupational Health.*

The claimed use of products containing cannabidiol (CBD) will not be accepted by the Metropolitan Council as a medical excuse for a positive THC (marijuana) test. Any form of marijuana is prohibited for all DOT safety-sensitive employees.

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

### 3.4 *Failure or refusal to test*

Employees who fail to comply with testing requirements as stated in Section 2.8, except an inability to produce a specimen with a valid medical explanation, will be immediately removed from a safety-sensitive position, terminated from employment, and referred to the substance abuse professional.

### 3.5 *First confirmed positive random drug and/or alcohol test*

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

1. *Immediate removal from their position;*
2. *Referral to the substance abuse professional for evaluation (and will be required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations);*
3. *An unpaid suspension of 80 hours to be arranged by the supervisor;*
4. *A return-to-work agreement;*
5. *The requirement to successfully pass a return-to-duty drug and/or alcohol test; and*
6. *Submission to unannounced testing for a period of up to 60 months.*

### 3.6 *Positive drug and/or alcohol test (greater than 0.04)*

*Any employee who engages in any of the following behaviors will immediately be removed from their position, referred to a substance abuse professional, and will be terminated from employment regardless of the time period between the first and second positive test:*

- *First positive on a confirmatory reasonable suspicion drug and/or alcohol test*
- *First positive on a confirmatory post-accident drug and/or alcohol test*
- *First positive on a confirmatory follow-up drug and/or alcohol test*
- *First positive on a confirmatory return-to-duty drug and/or alcohol test*
- *Second confirmed random positive drug and/or alcohol test*

### **3.7** *Alcohol result 0.02 to less than 0.04*

*An employee with a first confirmed alcohol concentration result of 0.02 to less than 0.04 will be subject to removal from their safety-sensitive function for a minimum of 24 hours without pay.*

*An employee with a second confirmed alcohol concentration result of 0.02 to less than 0.04 will be subject to removal from their safety-sensitive function for a minimum of 24 hours without pay, referred to the substance abuse professional for evaluation (and will be required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations).*

*An employee with a third confirmed alcohol concentration result of 0.02 to less than 0.04 will be subject to removal from their safety-sensitive function for a minimum of 24 hours without pay and will be terminated from employment.*

### **3.8** *Failure to produce a specimen*

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

1. Immediate removal from their position;
2. *An unpaid suspension of 80 hours to be arranged by the supervisor;*
3. Mandatory referral to the substance abuse professional for evaluation (and required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations);
4. *A return-to-work agreement;*
5. Successful completion of a return-to-duty drug and/or alcohol test;
6. Submission to unannounced follow-up testing for up to 60 months as recommended by the substance abuse professional.

*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.*

*\*This does not apply to employees in their probationary period. Employees will be subject to discipline.*

### **3.9** *Voluntary reports*

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

1. Immediate removal from their position;
2. Referral to the substance abuse professional for evaluation (and will be required to complete a consent form authorizing release of information such as status of compliance and treatment recommendations);
3. *A return-to-work agreement;*

4. *Successful completion of a return-to-duty drug and/or alcohol test; and*
5. *The requirement to participate in unannounced testing for a period of up to two years.*

*Employees who voluntarily report drug and/or alcohol abuse are not subject to the 80-hour suspension. However, if employees are found to test positive on any future required drug and/or alcohol tests, they will be terminated from employment.*

Employees who previously participated in a drug and/or alcohol inpatient or outpatient rehabilitation or treatment program while in the employ of the Metropolitan Council will not be subject to this provision and will be terminated from employment.

## **4.0 Testing methods**

The Metropolitan Council strives to ensure the highest integrity in drug and alcohol testing and reporting procedures. The Metropolitan Council will work with the medical review officer, the collection sites, and the laboratory to ensure that the integrity of the testing process is maintained. The procedures that will be used to test for the presence of alcohol and controlled substances will protect the driver and the integrity of the testing process. All tests will be performed by a trained collection professional.

### **4.1 Testing procedures**

The Metropolitan Council shall ensure that all alcohol or controlled substances testing conducted under this policy complies with the procedures set forth in 49 CFR Part 40.

### **4.2 Driver Identification**

For each alcohol and/or drug test performed, the driver and/or the Metropolitan Council will provide the driver's commercial driver's license number and state of issuance to the collector to complete the appropriate federal forms.

### **4.3 Alcohol testing**

A driver will only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

Tests for alcohol will be performed utilizing an evidential breath testing device that conforms to the specifications set forth in 49 CFR Part 40. The alcohol test shall be conducted by a trained breath alcohol technician who has demonstrated competence in the operation of the device and use of the breath alcohol-calibrating unit.

### **4.4 Drug testing**

A driver may be tested for prohibited drug use anytime while on duty.

Tests for prohibited drug use will be conducted by a licensed medical professional, medical technologist, or technician who has received instruction for collection under 49 CFR Part 40, or by a person who has successfully completed training as a collector as required by 49 CFR Part 40.

The split sample method of collection will be used to test urine specimens.

The Metropolitan Council shall require a re-collection of a urine specimen on any drug test if the result is negative-dilute. The medical review officer has authority to direct that re-



collection be observed. If the second test result is also negative-dilute, the Metropolitan Council will accept the result as a negative test.

Employees, who have a test that is determined by the medical review officer to be canceled, will be required to take another type of test under limited circumstances as set forth in 49 CFR Part 40, including pre-employment tests, return-to-duty tests, and follow-up tests.

#### **4.5 Observed tests**

Procedures for collecting urine specimens shall allow individual privacy except under the limited circumstances as set forth below. In these circumstances, an individual may be required to submit to an observed urine collection. The following circumstances are 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; or
- When the collection site staff witness conduct during a collection that indicates an attempt to substitute or adulterate the sample or when inspection of the sample by the collector suggests tampering, the employee will be required to undergo an observed collection immediately; or
- When a previous sample was determined to be invalid and the medical review officer has determined there was no adequate medical explanation; or
- 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 medical review officer; or
- When the test administered is a return-to-duty test or a follow-up test.

## **5.0 Testing categories**

### **5.1 Pre-employment testing**

Prior to the first time a driver performs safety-sensitive functions for the Council, the driver will undergo testing for controlled substances as a condition of employment.

### **5.2 Post-accident testing**

As soon as practicable, following an accident involving a Metropolitan Council-owned or operated commercial motor vehicle operating on a public road in commerce, the Metropolitan Council shall test for controlled substances and alcohol for each surviving driver:

Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life;

Who receives a citation within eight hours (for alcohol) and 32 hours (for controlled substances) of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved either of the following conditions;

- bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or

- one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle

The following table notes when a post-accident test is required to be conducted:

Type of accident involved	Citation issued to the commercial motor vehicle driver	Test must be performed by Metropolitan Council
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

#### *Alcohol testing:*

If a test required by this section is not administered within two hours following the accident, the Metropolitan Council will prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the Metropolitan Council will cease attempts to administer an alcohol test and will prepare and maintain the same record. Records will be submitted to the Federal Motor Carrier Safety Administration upon request.

#### *Controlled substance testing:*

If a test required by this section is not administered within 32 hours following the accident, the Metropolitan Council will cease attempts to administer a controlled substance test and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records will be submitted to the Federal Motor Carrier Safety Administration upon request.

A driver who is subject to post-accident testing must remain readily available for such testing or may be deemed to have refused to submit to testing. Nothing in this section will be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver 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.

The Metropolitan Council will provide drivers with necessary post-accident information, procedures, and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

In the event the Metropolitan Council is unable to perform a post-accident test within the required time period, the Metropolitan Council may 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.

This section does not apply to:

- An occurrence involving only boarding or alighting from a stationary motor vehicle;
- An occurrence involving only the loading or unloading of cargo;
- An occurrence in the course of operating a passenger car or a multi-purpose passenger vehicle by the Metropolitan Council unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 C.F.R. § 177.823.

### **5.3** *Random testing*

Every driver will submit to random alcohol and controlled substance testing as required in this section.

The minimum annual percentage rate for random alcohol testing will be 10 percent of the average number of driver positions. The minimum annual percentage rate for random controlled substances testing will be 50 percent of the average number of driver positions. These rates are subject to annual Federal Motor Carrier Safety Administration review and may change.

The selection of drivers for random alcohol and controlled substances testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each driver selected for random alcohol and controlled substances testing under the selection process used, will have an equal chance of being tested each time selections are made. Each driver selected for testing will be tested during the selection period.

Random alcohol and controlled substances tests conducted under this policy will be unannounced and the dates for administering random alcohol and controlled substances tests will be spread reasonably throughout the calendar year including different days of the week and different times of the day. This ensures that employees will have a reasonable expectation they might be called for a test on any day they are at work.

Each driver who is notified of selection for random alcohol and/or controlled substances testing must proceed to the test site immediately. However, if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the driver must cease performing the safety-sensitive function and proceed to the testing site as soon as possible.

### **5.4** *Reasonable suspicion testing*

When the Metropolitan Council has reasonable suspicion to believe that a driver has violated Sections 2.1, 2.2, 2.3, 2.4. or 2.7 of this policy, the Council will require the driver to submit to an alcohol and/or controlled substances test. The determination of reasonable suspicion will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of alcohol or controlled substances. The observations must be made during, just preceding, or just after the period of the workday that the driver is required to be in compliance with this policy.

The required observations for alcohol and/or controlled substances reasonable suspicion testing will be made by a supervisor or an official of the Metropolitan Council who is trained to make a reasonable suspicion determination. When possible these observations will be confirmed by a second trained managerial employee.

Written record will be made of the observations leading to an alcohol or controlled substances reasonable suspicion test and signed by the supervisor or an official of the Metropolitan Council who made the observations within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

If an alcohol test is not administered within two (2) hours following the determination, the Metropolitan Council will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the determination, the Metropolitan Council will cease attempts to administer an alcohol test and will state in the record the reasons for not administering the test.

Notwithstanding the absence of a reasonable suspicion alcohol test, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse. *The Metropolitan Council will not permit the driver to perform or continue to perform safety-sensitive functions, until a verified test result of less than 0.02 has been received or twenty four (24) hours have elapsed following the determination that there is reasonable suspicion to believe that the driver has violated the prohibitions in this policy concerning the use of alcohol or controlled substances.*

*If an employee insists on driving following a reasonable suspicion determination, local law enforcement authority should be notified that an employee, who the Metropolitan Council believes may be under the influence of a drug or alcohol, is leaving Metropolitan Council premises while operating a motor vehicle.*

## **5.5** *Return-to-duty testing*

Employees who test positive on a first confirmed random drug and/or alcohol test, must test negative for drugs and alcohol before returning to work. Employees will be required to submit to a directly observed urine drug and breath alcohol test.

## **5.6** *Follow-up testing*

Employees who test positive on a first confirmed random drug and/or alcohol test will be required to submit to follow-up or unannounced directly observed urine drug and/or breath alcohol testing for a period up to sixty (60) months. A minimum of six tests will be conducted during the first twelve (12) months following a positive test. Follow-up testing frequency and length beyond the first year will be determined by management based on the recommendation of the Metropolitan Council's substance abuse professional.

# **6.0 Testing results**

## **6.1** *Review and confirmation by medical review officer*

The Metropolitan Council medical review officer will review drug test results submitted by the laboratory including all confirmed positive, adulterated, substituted, dilute, or invalid

test results. After investigation, the medical review officer will verify test results as negative, positive, test canceled, or refusal to test because of adulteration or substitution. The medical review officer will convey test results to the Metropolitan Council after final verification.

*The medical review officer will notify the designated employer representative in writing of a negative result within two days of verifying the negative result. The designated employer representative will communicate the negative result to the appropriate Metropolitan Council supervisor within one working day. The supervisor will orally notify the employee within three working days after receiving notification from Human Resources.*

## **7.0 Substance abuse professional evaluation**

A driver will be referred to a substance abuse professional (SAP) after a positive drug and/or alcohol test or test refusal for an evaluation. Referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O. Employees who refuse to undergo a substance abuse professional evaluation will be terminated from employment.

## **8.0 Return-to-work agreement**

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

1. A release-to-work statement from the substance abuse professional;
2. A negative return-to-duty test for drugs and alcohol;
3. An agreement to follow specified after care requirements provided by the substance abuse professional with the understanding that violation and non-compliance of these provisions are grounds for termination; and
4. An agreement to submit to unannounced follow-up testing for a period up to 60 months.

## **9.0 Confidentiality and release of information**

### **9.1 Retention of records**

The Metropolitan Council will maintain records of its alcohol misuse and controlled substances use prevention programs. The records will be maintained in a secure location with controlled access.

### **9.2 Reporting results in a management information system**

The Metropolitan Council will prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the Metropolitan Council or any of its drivers.

### 9.3 Commercial driver's license Drug and Alcohol Clearinghouse

The Federal Motor Carrier Safety Administration established the commercial driver's license (CDL) Drug and Alcohol Clearinghouse. This database contains information pertaining to violations of the U.S. Department of Transportation (DOT) controlled substances and alcohol testing program for holders of CDLs.

The Metropolitan Council will query the clearinghouse for each current and prospective employee's drug and alcohol violations before permitting the employee to operate a commercial motor vehicle on public roads and will conduct additional queries annually for each driver.

To facilitate the Metropolitan Council's access to clearinghouse records, employees are required to:

1. Grant consent electronically to the Metropolitan Council through the clearinghouse to query the driver's record in the clearinghouse. The driver must submit electronic consent through the clearinghouse, granting the Metropolitan Council access to the following specific records:
  - Verified positive, adulterated, or substituted controlled substances test results;
  - Alcohol confirmation tests with a concentration of 0.04 or higher;
  - Refusals to submit to testing;
  - Any employer's actual knowledge of on-duty alcohol use, pre-duty alcohol use, alcohol use following an accident, and controlled substance use;
  - Any substance abuse professional reports of the successful completion of the return-to-duty process;
  - Any negative return-to-duty tests; and
  - Any employer's report of completion of follow-up testing.
2. Grant consent electronically for the Metropolitan Council to release information through the clearinghouse to other employers. The Metropolitan Council will report to the clearinghouse any of the following items for all employees covered by this policy:
  - A verified positive, adulterated, or substituted drug test result;
  - An alcohol confirmation test with a concentration of 0.04 or higher;
  - A refusal to submit to any test;
  - The Metropolitan Council's knowledge related to on-duty alcohol use, pre-duty alcohol use, alcohol use following an accident, controlled substance use, a negative return-to-duty test, and the Metropolitan Council's report of completion of follow-up testing.

An employee who refuses to grant consent to the Metropolitan Council to access the employee's clearinghouse record is prohibited from performing any safety-sensitive functions.

#### **9.4** *Access to facilities and records*

Except as required or authorized by law, the Metropolitan Council will not release driver information that is contained in drug and alcohol testing records.

A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to their alcohol or controlled substances tests. The Metropolitan Council will promptly provide the records requested by the driver. Access to a driver's records will not be contingent upon payment for records other than those specifically requested.

The Metropolitan Council and each service agent who maintains records for the Metropolitan Council, will make available to regulatory agencies with authority over the Council or its drivers copies of all results for DOT alcohol and/or controlled substances testing conducted by the Metropolitan Council and any other information pertaining to the organization's alcohol misuse and/or controlled substances use prevention program. These requests may come from the Secretary of Transportation, any DOT agency, any state or local officials with regulatory authority over the Metropolitan Council or any of its drivers or the National Transportation Safety Board as a part of an accident investigation.

The Metropolitan Council may disclose information pertaining to a driver to the decision-maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results). The Metropolitan Council may also release records in response to a court order.

The Metropolitan Council shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person, including a subsequent employer. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent.

#### **9.5** *Employer notifications*

The Metropolitan Council will notify a driver of the results of a pre-employment, controlled substances test conducted under this policy, if the driver applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The Metropolitan Council will notify a driver of the results of random, reasonable suspicion, and post-accident tests for controlled substances conducted under this policy if the test results are verified positive. The Metropolitan Council will also inform the driver which controlled substance or substances were verified as positive.

When the medical review officer has been unable to contact a driver who submitted a specimen under this policy, the designated employer representative will make reasonable efforts to contact the driver to direct the driver to contact the medical review officer within 24 hours to discuss the results of the controlled substances test. The designated employer representative will immediately notify the medical review officer that the driver has been notified to contact the medical review officer.

#### **9.6** *Inquiries of previous employers*

The Metropolitan Council will request alcohol and controlled substance information from all DOT-regulated employers that employed the driver within the previous three years and the scope of the information requested will date back three years.

The Metropolitan Council uses the Drug and Alcohol Clearinghouse to report and gather information. However, when an employee who is subject to follow-up testing has not successfully completed all follow-up tests, the Metropolitan Council will request the previous employer's follow-up testing plan directly from the previous employer.

If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT agency other than Federal Motor Carrier Safety Administration, the Metropolitan Council will request the alcohol and controlled substances information required under this section directly from those employers regulated by the other agency.

## 10.0 Safety-sensitive positions covered under the Federal Motor Carrier Safety Administration (this list is subject to change)

Job Title
Business Unit Coordinator-CDL
Business Unit Coord-Maint-CDL
Business Unit Crdntr - CDL
Interceptor Service Wrkr-CDL
Interceptor Srvc Wrkr II - CDL
Interceptor System Leadwkr CDL
Lead Machinist Mechanic-CDL
Lead Vehicle Mechanic
Machinist Mechanic-CDL
Lead Machinist Mechanic
Plant Operator-EBU-CDL
Plant Operator-Maintenance-CDL
Plant Operator-CDL
Plant Operator-Maint HE-CDL
Plant Operator-EBU/BU-CDL
Plant Operator-M-EBU/BU-CDL
Plant Operator EBU BU (CDL)
Plant and Maintenance Operator
Stationary Engineer - CDL
Vehicle Mechanic-CDL

## DEFINITIONS

**Actual knowledge:** Actual knowledge for the purposes of this policy means actual knowledge by the Metropolitan Council that a driver has used alcohol or controlled substances based on the direct observation of the employee, information provided by the driver's previous employers, a traffic citation for driving any motor vehicle while under the influence of alcohol or controlled substances, or an employee's admission of alcohol or controlled substance use, except as provided in 49 CFR part 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 49 CFR part 382.307.



**Alcohol:** Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

**Alcohol concentration (or content):** Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this policy.

**Alcohol use:** Alcohol use means the drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication) containing alcohol. [Caution: Certain brands and types of cough medicines and mouthwashes contain alcohol.]

**CFR:** Code of Federal Regulations

**Commercial motor vehicle:** A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle has one of the following characteristics:

- Has gross combination weight rating of 26,001 or more pounds (11,794 or more kilograms) inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds (4,536 kilograms)
- Has a gross vehicle weight rating of 26,001 or more pounds (11,794 or more kilograms)
- Is designed to transport 16 or more passengers, including the driver
- Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR part 172, Subpart F

**Confirmation (or confirmatory) drug test:** A second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite

**Confirmation (or confirmatory) validity test:** A second test performed on a urine specimen to further support a validity test result

**Confirmed drug test:** A confirmation test result received by a medical review officer from a laboratory

**Consortium/third-party administrator:** A service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. A consortium or third-party administrator typically provides or coordinates the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). A consortium or third-party administrator is not an "employer" for purposes of federal regulations.

**Controlled substances:** Those substances identified in 40.85. As of January 1, 2018, the drugs tested for may include all or some of the following: (1) amphetamines; (2) cannabinoids; (3) cocaine; (4) phencyclidine (PCP); and (5) opioids.

**Designated employer representative:** An individual Metropolitan Council employee identified by the Metropolitan Council as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The Metropolitan Council's designated employer representative is identified in the attachment to this policy.

**Disabling damage:** Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. It includes damage to motor vehicles that could have been driven, but would have been further damaged if so driven. It does not include:

- Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- Tire disablement without other damage even if no spare tire is available.
- Headlight or taillight damage.
- Damage to turn signals, horn, or windshield wipers which make them inoperative.

**DOT agency:** An agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653, and 654) in accordance with 49 CFR part 40.

**Driver:** Any person who operates a commercial motor vehicle. This includes but is not limited to: full time, regularly employed commercial motor vehicle drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

**Licensed medical practitioner:** A person who is licensed, certified, and/or registered, in accordance with applicable federal, state, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

**Negative return-to-duty test:** A return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02.

**Performing (a safety-sensitive function):** A driver is considered to be performing a safety-sensitive function during any period in which the driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**Positive alcohol test:** An alcohol test with an alcohol concentration of greater than or equal to 0.04.

**Positive rate for random drug testing:** The number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

Refuse to submit to an alcohol or controlled substances test means that you as a driver:

- Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (49 CFR part 40.61(a))
- Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test
- Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided that an employee who does not provide a urine specimen because they have left the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test
- In the 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 (49 CFR part 40.67(l) and 40.69(g))

- Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (49 CFR part 40.193(d)(2))
- Fail or decline to take an additional drug test the employer or collector has directed you to take (49 CFR part 40.197 (b))
- Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER (49 CFR part 40.193(d)). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test
- Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector)
- For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process
- Possess or wear a prosthetic or other device that could be used to interfere with the collection process
- Admit to the collector or medical review officer that you adulterated or substituted the specimen
- For a breath alcohol test, refusing to sign the certification at Step 2 of the alcohol testing form (49 CFR part 40.261 (a) (3))
- As an employee, if the medical review officer reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. 40.191

**Safety-sensitive function:** Means all time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- All time at a Metropolitan Council plant, terminal, facility, or other property, or on any public property
- All time waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by 49 C.F.R. § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. 49 C.F.R. §382.107.

**Screening test (or initial test):** In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs. In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

**Service agent:** Any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, breath alcohol technicians and screening test technicians, laboratories, medical review officers, substance abuse professionals, and consortia or third-party administrators. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

**Stand-down:** The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the medical review officer of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the medical review officer has completed verification of the test results.

**Violation rate for random alcohol testing:** The number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

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## RESOURCES

### *Related Policies*

- *HR 2-2 Drug Free Workplace Policy*
- *HR 2-3 FTA Safety-Sensitive Drug and Alcohol Program Policy*
- *HR 2-4 Drug and Alcohol Testing Program for Non-FTA Employees Policy*
- *HR 2-4a MCES Alcohol and Drug Testing Program Procedure*
- *HR 2-6 Federal Railroad Administration (FRA) Drug and Alcohol Policy*

### *Statutory Resources*

- [49 CFR Part 40](#)
- [49 CFR Part 382](#)
- [49 CFR Part 386.2](#)
- [49 CFR Part 390.5](#)

### *Other Resources (training, relevant links)*

- [Employee Assistance Program \(EAP\)](#)
- [U.S. Department of Transportation Office of Drug & Alcohol Policy & Compliance](#)

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## HISTORY

*Version 1 – Approval Date (Business Item xx-2021)*

Not Set

*Last Reviewed Date*

Not Set

*Next Content Review Date*

Not Set

*Version*

1

Draft

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## Supplemental Attachments

### A. POLICY CONTACTS

#### **Service Agent Contact Information**

Metropolitan Council (DOT Employer)  
560 Sixth Ave Minneapolis, MN 55411  
USDOT #: 1551884

#### *Designated Employer Representative (DER)*

Chastity Cooper  
HR Assistant  
612-349-7153

[chastity.cooper@metc.state.mn.us](mailto:chastity.cooper@metc.state.mn.us)

#### *Drug & Alcohol Program Manager (DAPM)*

Alexis Rogers  
HR Manager, Occupational Health

[alexis.rogers@metc.state.mn.us](mailto:alexis.rogers@metc.state.mn.us)

#### *Medical Review Officer (MRO)*

CMS (Corporate Medical Services, Inc.)  
5490 Dayton Blvd. Chattanooga, TN 37415  
423-870-0701

#### *Laboratory*

Medtox  
402 County Road D W, St Paul, MN 55112

#### *Substance Abuse Professional (SAP)*

Sand Creek (AllOne Health)  
1660 South Highway 100 STE 338, Minneapolis, MN 55416  
651-430-3383 or 888-243-5744

#### *Third Party Administrator (TPA)*

CMS (Corporate Medical Services, Inc.)  
5490 Dayton Blvd. Chattanooga, TN 37415  
423-870-0701

### B. THRESHOLD LEVELS

Drug/Drug Metabolite	Initial Test	Confirmatory
Amphetamines		
Amphetamine	500 ng/ml	250 ng/ml
Methamphetamine	500 ng/ml	250 ng/ml
MDMA <sup>4</sup>	500 ng/ml	250 ng/ml
MDA <sup>5</sup>	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

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