


Date: December 12, 2018

To: Board of Directors

From: Doug Kelsey 

Subject: **RESOLUTION 18-12-77 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) ADOPTING A REVISED ANTI-DRUG AND ALCOHOL POLICY**

1. Purpose of Item

The attached resolution adopts a minor FTA required revision to TriMet's Anti-Drug and Alcohol Misuse Policy (Policy).

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Approval of Anti-Drug and Alcohol Misuse Policy

3. Reason for Board Action

Federal Transit Administration (FTA) regulations require all fund recipients to implement an anti-drug and alcohol misuse policy, which must be adopted by the recipient's local governing board (49 C.F.R. § 655.15). The proposed revisions are indicated in Exhibit A with the new text shown in underscore and the deleted text in the margin.

4. Type of Action

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

On February 15, 1994, the FTA published a final rule on the Prevention of Prohibited Drug and Alcohol Use in Transit Operations, based on the Omnibus Transportation Employee Testing Act of 1991 (Act). The Act required all transit systems that serve a population of 200,000 or greater to adopt and implement a drug and alcohol policy testing program. TriMet's initial Policy was adopted by the Board in December 1994, and has been periodically updated by the Board, most recently in January 2018.

The Policy, in compliance with FTA regulations, requires drug testing for safety-sensitive employees in the following circumstances: pre-employment, post-accident, reasonable suspicion, random (and return-to-duty/follow-up for employees with previous positive tests.) The majority of drug tests are random. Employees are selected using a random generator software program. The tests are conducted on all shifts and each day of the week to maintain

the deterrent effect of the program. All of the samples collected are tested for the prohibited drugs at a Health and Human Services certified lab, and reviewed by a medical review officer, who is a qualified physician. The minimum random drug testing rate has been 25 percent of covered (or safety-sensitive) employees since 2007.

Effective January 1, 2019, the minimum random drug testing rate for FTA employers will increase to 50 percent of all covered employees. 49 CFR Part 655.45(b) requires the FTA Administrator to raise the minimum annual random drug testing rate from 25 percent to 50 percent when the transit industry random positive rate is equal to or greater than one percent. In calendar year 2017, the industry random drug test positive rate was 1.06 percent.

6. Impact if Not Approved

Federal regulations require that TriMet adopt and implement an Anti-Drug and Alcohol Misuse policy in accordance with federal requirements. Therefore, the only option recommended is adoption of the Resolution.

RESOLUTION 18-12-77

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) ADOPTING A REVISED ANTI-DRUG AND ALCOHOL MISUSE POLICY

WHEREAS, the Federal Transit Administration (FTA) mandates all fund recipients to adopt and implement an anti-drug and alcohol misuse policy (Policy); and

WHEREAS, the TriMet Board of Directors (Board) adopted an initial Policy in December 1994; and

WHEREAS, the Policy was last updated by the Board in January 2018; and

WHEREAS, effective January 1, 2019, the minimum random drug testing rate for FTA employers will increase to 50 percent of all covered employees; and

WHEREAS, the Board desires to adopt a revised Policy that reflects the new FTA required regulation as set forth in the attached Exhibit A;

NOW, THEREFORE, BE IT RESOLVED:

That the TriMet Board of Directors hereby adopts the TriMet Anti-Drug and Alcohol Misuse Policy as set forth in the attached and incorporated Exhibit A.

Dated: December 12, 2018

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

RESOLUTION 18-01-01

EXHIBIT A

Adopted January 24, 2018

TRIMET ANTI-DRUG AND ALCOHOL MISUSE POLICY

A. INTRODUCTION

TriMet (hereinafter “District”) has the responsibility to its customers and the general public to provide safe, efficient transportation services while insuring safe working conditions for its employees. To satisfy these responsibilities, the District must establish a work environment where its employees are free from the effects of drugs or alcohol.

B. APPLICABILITY

This Anti-Drug and Alcohol Misuse Policy (Policy)* applies to all District employees and certain contracted employees **and will be distributed accordingly.**

C. PURPOSE

The purpose of this Policy is to assure employee fitness for duty and to protect District employees, customers, and the public from risk posed by worker use of drugs or alcohol. This Policy is intended to comply with all applicable Federal regulations governing workplace drug use and alcohol misuse in the transit industry, as well as the Drug Free Workplace Act of 1988. Regulations issued by the U.S. Department of Transportation (DOT) and the Federal Transit Administration (FTA) mandate urine drug testing and evidential breath alcohol testing for safety-sensitive positions. This Policy sets forth the District drug and alcohol abuse program and the testing and reporting guidelines for **both safety-sensitive employees as required by those regulations, and for employees in non-safety sensitive positions, as promulgated under the District’s authority.**

It is the goal of this Policy to prevent substance abuse and rehabilitate rather than terminate the employment of workers. **However, all persons covered by this Policy should be aware that the first violation of this Policy will result in discipline pursuant to Section M of this policy, or in not being hired. A second violation of this Policy at any time and under any circumstance will result in immediate termination of employment.**

Compliance with DOT/FTA drug and alcohol regulations **and District policy** is a condition of employment.

** Mandates conducted under TriMet rather than FTA authority are identified in bold text.*

D. PROHIBITED SUBSTANCES

The FTA Regulations prohibit the consumption of the following drugs and drug metabolites at any time: marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine. In addition to the aforementioned drugs, it is the District's policy to prohibit **use of any illegal controlled substance by all District employees**, as well as any drug not approved for medical use by the USDA or USFDA. Illegal use includes use of, or impairment by, any illegal drug, misuse of legally prescribed or over-the-counter drugs, illegally obtained prescription drugs, or use of any substance or product intended to defraud USDOT urine screens.

With respect to safety-sensitive employees, the FTA prohibits the consumption of any alcoholic substance, beverage, or mixture, including any medication containing alcohol within four (4) hours of the employee's scheduled time to report for work, while on duty or within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first.

Medical marijuana is the use of marijuana to treat a bona fide medical condition, supported in writing with a medical certification by a licensed medical doctor. Employees who possess an identification card issued by the Oregon Department of Health for the use of marijuana for medical purposes are not exempt from the District's drug policy. It is important to know that federal laws supersede state laws, and marijuana remains an illegal substance (Class I controlled substance), and is not considered to have an accepted medical use in the United States. Furthermore, employees covered by federal or Oregon Department of Transportation drug and alcohol regulations are still prohibited from using marijuana for any purpose.

The District will not accept the use of medical marijuana as a legitimate explanation for a positive drug test. The District's Medical Review Officer (MRO) will automatically verify such test result as a positive test. The law does not allow the public use of medical marijuana and it will not be allowed at the District for any reason. This provision applies to both safety and non-safety-sensitive employees.

E. PROHIBITED BEHAVIOR

The use, possession, distribution, sale, purchase, manufacture, dispensation of or intoxication by alcoholic substances or beverages, intoxicants, illegal drugs, controlled substances not medically authorized, related drug paraphernalia, any substance or product intended to defraud USDOT urine screens, or other substances, **including prescription drugs**, which impair job performance or mental or motor function by any employee or any other person to whom this Policy applies while on District premises or in the course of conducting District

business during regular business hours, including while subject to being on-call in a paid status, at lunch or on breaks, is strictly prohibited.

Both safety-sensitive and non-safety-sensitive employees are prohibited from the consumption of illegal drugs at all times.

Employees performing safety-sensitive job functions are prohibited from reporting to or remaining on duty with an alcohol concentration level of 0.02 or greater. Safety-sensitive employees may not use alcohol from any source while on duty or within four (4) hours prior to performing safety-sensitive duty.

Safety-sensitive employees on call are prohibited from using alcohol during hours they are on on-call paid status. Any time an employee (not on paid status) is called to report for duty, and the employee has used alcohol within 4 hours of the call, the employee must turn down the work or acknowledge the use of alcohol and the inability to perform the safety-sensitive function.

Employees who are reasonably suspected of engaging in a prohibited activity or of not being fit for duty due to drug or alcohol misuse will be suspended from duty pending an investigation and verification. Employees who fail to pass a drug or alcohol test, or who engage in a prohibited activity will be removed from duty **and subject to disciplinary action pursuant to Section M of this policy.**

F. ALCOHOL

1. Adverse Effects

It is recognized that alcohol is a legal, socially acceptable drug when consumed in moderation. However, when consumed primarily for its physical and mood-altering effects, it is a substance that is subject to abuse. As a depressant, it slows physical responses and progressively impairs mental functions, including the ability to safely operate a motorized vehicle or machinery. The chronic consumption of alcohol over time may result in critical health issues, including dependency, fatal liver diseases, ulcers, and increased possibility of cancers. Slurred speech, poor coordination, inability to walk straight, rapid eye movement, impaired attention or memory, stupor or coma are all signs of alcohol use and problems.

If an alcohol problem is suspected, the Employee Assistance Program or Drug and Alcohol Program Administrator should be contacted.

2. Use

The FTA requires that no safety-sensitive employee shall report for duty within four (4) hours of using any alcoholic substances or beverages, including medications, or use alcohol while subject to being on-call in a paid status. An employee who has a confirmed alcohol concentration of 0.02 or greater, but less than 0.04, on an evidentiary breath testing device, will result in removal from his/her position for eight (8) hours or until the

employee tests below a concentration level of less than 0.02, whichever is sooner. The employee will be placed in a non-pay status for the period of non-availability.

A confirmed alcohol concentration of 0.04 or greater is considered a positive alcohol test and will result in disciplinary action pursuant to Section M of this policy.

G. SAFETY-SENSITIVE FUNCTIONS

The District is a recipient of federal funds. Thus, in addition to the District's drug and alcohol testing program, employees who perform safety-sensitive functions, including contractors performing safety-sensitive functions on behalf of the District on or off District property, are required to participate in the federally mandated drug and alcohol testing program. The District is responsible for identifying those contractors who perform DOT-defined safety-sensitive functions on behalf of the District, on or off District property, and ensuring that these contractors have a DOT-compliant drug and alcohol testing program in place prior to performing safety-sensitive services for the District. If the safety-sensitive contractor does not have a DOT-compliant drug and alcohol program in place, that contractor will be given a reasonable amount of time in which to put a DOT-compliant drug and alcohol program in place.

A safety-sensitive function, as defined by the FTA, is any duty related to the safe operation of public transportation, including the:

1. Operation of revenue service vehicles, in or out of service,
2. Operation of non-revenue service vehicles that require drivers to hold a Commercial Driving License (CDL),
3. Controlling the dispatch or movement of revenue service vehicles,
4. Maintenance of revenue service vehicles or equipment used in revenue service, including parts repair, rebuilding and overhaul, and
5. Carrying of a firearm for security purposes.

A safety-sensitive employee is considered to be performing a safety-sensitive function when he or she is actually performing, ready to perform, or immediately available to perform such functions.

The District has reviewed the actual duties performed by employees to determine which functions and positions are safety-sensitive.

A list of safety-sensitive positions is attached (Exhibit A). The list will be updated as necessary.

H. PRESCRIPTION AND OVER-THE-COUNTER DRUG USE

The appropriate use of legally prescribed drugs and non-prescription over-the-counter medication is not prohibited. **However, it is the policy of the District that each safety-sensitive employee must, prior to performing safety-sensitive duties, submit a form reporting the use of medically authorized drugs that may impair job performance or mental function to either his/her immediate supervisor or by faxing the completed form directly to TriMet's occupational health doctor.**

Please refer to the District's Prescription and Over-the-Counter Drug Use Policy.

I. COMPLIANCE WITH TESTING

Any employee or applicant who refuses to comply with a request for testing, who provides false information in connection with a test, who modifies or alters test forms, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution will be removed from duty immediately or barred from employment.

Refusal includes:

- Failure to provide a breath or urine specimen.
- An inability to provide a specimen or breath sample, or to provide a sufficient amount of urine, without a valid medical reason (confirmed by a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide);
- Tampering, adulterating, or substituting specimen, or admitting to the collector or MRO that you adulterated or substituted the specimen;
- Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process;
- Delaying arrival at a designated collection site; or failure to appear in a timely fashion for a drug or alcohol test (except for a pre-employment test);
- Leaving the collection site prior to test completion;
- Failure to permit an observed or monitored collection when required;
- For an observed collection, failure to follow the observer's instructions to raise and lower clothing and to turn around to permit the observer to determine if any type of prosthetic or other device could be used to interfere with the collection process;
- Failure to take a second test when required;
- Failure to undergo a medical evaluation when required;
- Failure to cooperate with any part of the testing process;

- Behaving in a confrontational way that disrupts the collection process;
- Once test is underway, failing to remain at site and provide a specimen;
- Failure to sign Step 2 of alcohol test form; and
- Leaving the scene of an accident without just cause prior to submitting to the test.
- A verified adulterated or substituted test result as reported by the MRO.

A refusal constitutes a positive test result. The first refusal will be recorded as a positive test, **will result in a disciplinary unpaid five-day suspension**, and will require the employee to be examined by the substance abuse professional. The second refusal will constitute a positive test result, be recorded as such, **and result in immediate termination of employment.**

J. GENERAL PROVISIONS FOR DRUG AND ALCOHOL TESTING

In order to promote and maintain a drug and alcohol-free workplace, the District will utilize a program of drug and alcohol screening. **It is the District's policy that this program applies to all employees except where noted.**

All drug and alcohol testing will be in accordance with 49 CFR Part 40 (Procedures for Transportation Workplace Drug Testing Programs Sections), and part 655 (Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations). These regulations may be viewed on Tri-Net or obtained from Station Managers, Rail and Bus Maintenance Managers, and managers of rail transportation, field operations and facilities maintenance, collection personnel and the Safety Department.

1. Types of Testing

a. Post-Offer/Pre-Employment (Safety-Sensitive Positions Only)

Following a conditional offer of employment, applicants for all safety-sensitive positions will undergo urine drug testing as a condition of employment. As mandated by the FTA, applicants will be screened for the presence of marijuana, cocaine, opioids, phencyclidine (PCP), and amphetamines. **In addition, under District authority, applicants will be required to provide a second urine specimen for non-DOT testing. The second specimen will be tested, using an extended testing panel for the presence of the aforementioned drugs as well as barbiturates, benzodiazepines, methadone, and propoxyphene.** Applicants will be notified of the testing requirement during the application process. Failure to appear, failure to remain at the site prior to commencement of test and aborting the collection before the test commences is not considered a refusal of a pre-employment test.

A verified negative result is required prior to performing any safety-sensitive functions and is a condition of employment. If the test is cancelled, the applicant must re-take the test and pass before being hired.

Failure to pass will result in the disqualification of the applicant. **Applicants who fail to pass the drug screen will not be permitted to reapply for any position within the District for one year and must provide proof of having successfully completed a referral, evaluation, and treatment plan.**

Current District employees transferring into safety-sensitive positions will not be allowed to perform safety-sensitive duties until the employee takes a pre-employment drug test with a verified negative result.

Current District employees who have not performed a safety-sensitive function for 90 or more consecutive days, and have not been in TriMet's random selection pool during that time, are required to take a pre-employment drug test with a verified negative result prior to returning to safety-sensitive duties.

b. Reasonable Suspicion

It is the District's policy that all employees are subject to fitness-for-duty evaluation consisting of a drug and alcohol test when there is reason to suspect the employee is impaired by alcohol or drugs on duty. A referral for testing will be made when a trained supervisor can articulate and substantiate physical, behavioral and performance indicators of probable drug use or alcohol misuse by observing the appearance, behavior, speech or body odors of the employee.

The FTA drug testing regulations require that all supervisors must undergo a minimum of 60 minutes of training on the signs and symptoms of drug use before they are qualified to make a reasonable suspicion determination. A similar provision in the FTA alcohol testing regulation requires supervisors to undergo an additional 60 minutes of training on the signs and symptoms of alcohol misuse. Those supervisors that have not received the required training are not allowed to make drug and alcohol testing decisions until they have received the required training.

The District provides and encourages refresher training for supervisory personnel.

The FTA requires that all employees in safety-sensitive positions will be tested for on or off duty drug use when there is reasonable suspicion of such impairment or use. Reasonable suspicion testing of safety-sensitive employees must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or direct observations of drug or alcohol use. A covered employee will be tested for alcohol only if these observations are made during, just preceding, or just after the covered employee performs safety-sensitive duties. A covered employee may undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the

employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

In accordance with District policy, employees in non-safety-sensitive positions may be subject to the same criteria as employees in safety-sensitive positions, except that employees in non-safety-sensitive positions shall only be tested for reasonable suspicion of on-duty drug or alcohol use or impairment.

Testing under District authority will be conducted as Non-DOT testing and on Non-DOT chain of custody forms. The same high standards in testing procedures will be maintained.

Upon conclusion of the specimen collection, employees will be required to make arrangements for their own transportation home. If necessary, the District will make arrangements and pay for transportation. Under no circumstance will the employee be permitted to operate a motor vehicle for the trip home.

c. Post-Accident (Safety-Sensitive Employees Only)

All surviving safety-sensitive employees who have a direct or possible involvement in an accident while in the course and scope of their employment will be tested for the presence of drugs and alcohol under any of the following circumstances:

- A fatality has occurred;
- An individual suffers injury requiring immediate medical attention away from the scene;
- A vehicle incurs disabling damage as the result of the occurrence and a vehicle is transported away from the scene by a tow truck or other vehicle (in which the transit vehicle involved is a bus, electric bus, van, or automobile)or
- A rail car or trolley car is removed from revenue service. (In which the transit vehicle involved is a rail or trolley car.)¹

Following an accident under the above circumstances, every attempt must be made to test the employee for the presence of drugs and alcohol within the first two (2) hours following the accident. If the alcohol test is not administered within the first two (2) hour time period, a report must be prepared and maintained on file stating the reasons for the delay. If the alcohol test is not administered within 8 hours, all attempts to perform the test will cease and the two-hour report will be updated to document the reason why the test could not be performed.

¹ For accidents not involving a fatality, a post-accident drug test is required, unless the employee's performance can be completely discounted as a contributing factor to the accident.

Under no circumstances will a drug test be administered more than thirty-two (32) hours, or an alcohol test more than eight (8) hours following an accident. Employees involved in accidents must refrain from alcohol use for eight (8) hours following the accident or until an alcohol test is administered. Employees must remain readily available. Employees who leave the scene of an accident without authorization or cannot be located for testing following the accident will be considered to have refused the test and will be subject to discipline, *pursuant to Section M of this policy.*

Post-accident testing is stayed while the employee assists at the scene of the accident. In the event the employee is hospitalized or treated for injury, the drug and alcohol screen will be ordered at the treating facility.

In accordance with the FTA regulations, post-accident tests administered by a law enforcement agency will be accepted in lieu of the FTA-mandated tests, when the District is unable to perform the required tests due to law enforcement agency requirements.

d. Random (Safety-Sensitive Positions Only)

Random testing of safety-sensitive employees will be conducted in a manner consistent with the requirements of 49 CFR Part 655 (Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations) and 49 CFR Part 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs).

The District will maintain a listing of the names of all employees in safety-sensitive positions. During the calendar year, drug and alcohol tests will be administered to these employees on a random-selection basis. The District shall ensure that random drug and alcohol tests conducted will be unannounced, immediate and that the dates for administering random tests are spread reasonably throughout the calendar month and year. Testing can be conducted on all days and hours during which safety-sensitive work is performed. A covered employee may be randomly tested for prohibited drug use anytime while on duty. All random test notifications will occur while the employee is on the clock. **In the event the random test collection extends beyond the end of the shift, the employee will be paid overtime for the additional time, in accordance with the Collective Bargaining Agreement.** There is no discretion on the part of management or operations in the selection and notification of individuals for testing.

A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

A computer based random number generator, which is a scientifically valid method, is used for random selections. All safety-sensitive employees shall have an equal chance of being selected each time selections are made.

It is the District's policy to comply with the FTA-random testing rate requirement to annually complete drug tests equivalent to ~~25~~50% of the number of covered safety-sensitive employees and complete alcohol tests equivalent to 10% of the number of safety-sensitive employees.

The FTA may increase or decrease the minimum annual percentage rate for random drug and alcohol testing. The percentages stated are considered the minimum rates of testing; **the District may exceed the stated rates under its own authority.** Any changes to this rate will be noted in future amendments to this Policy.

e. Return-to-Duty

All employees who refuse or test positive for drugs and/or alcohol on a DOT test, and who are allowed to return to work, must be evaluated for drug and alcohol use by a Substance Abuse Professional (SAP), must complete all disciplinary actions, and must test negative prior to being released for duty as outlined in 49 CFR Part 40.

It is the goal of this Policy to prevent substance abuse and rehabilitate rather than terminate the employment of workers. However, all persons covered by this Policy should be aware that violations of the Policy will result in discipline pursuant to Section M of this Policy, or in not being hired.

f. Follow-up

Employees permitted to return to duty following a positive test for drugs and/or alcohol will be subject to unannounced follow-up testing as determined by the SAP. The testing will be in accordance with 49 CFR Part 40, subpart O and will be in addition to the employee's selection for testing under the random testing program.

2. Negative Dilutes

Dilute specimen means a specimen with creatinine and specific gravity values that are lower than expected for human urine. If the test result is reported by TriMet's MRO as a negative dilute, TriMet may, but is not required to direct the employee to take another test. **TriMet's policy is not to re-test in the event of a negative dilute result unless directed to conduct an observed recollection by the MRO. A negative dilute test result will not be considered a positive test.**

3. Methodology

Procedures for specimen collection, chain of custody of specimens, laboratory analysis procedures, and quality control requirements will be in accordance with the United States Department of Health and Human Services Mandatory

Guidelines for Federal Workplace Drug Testing Programs, Final Guidelines, and the provisions set forth in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs to assure a high degree of accuracy and reliability.

4. Substance Abuse Professional Evaluations

An employee who fails or refuses a DOT drug or alcohol test will be removed immediately from his or her safety-sensitive functions and evaluated by a District-designated SAP. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with substance abuse. The evaluation will consist of a clinical assessment, treatment recommendations, and referrals, as appropriate. At a minimum, the employee must participate in a substance abuse education and prevention class. The SAP will inform the District, in writing, of the clinical-assessment-based treatment recommendations, which must be complied with. In addition, the SAP will specify the duration and frequency of follow-up drug and/or alcohol tests. The SAP's evaluations, assessment, treatment recommendations, referrals and follow-up testing recommendations will be in accordance with 49 CFR Part 40.

The District has secured the services of a Licensed Clinical Social Worker (LCSW) to perform the SAP duties. This individual has knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders. The LCSW acts as an objective public gatekeeper to help ensure that only drug and alcohol-free Tri-Met employees are allowed to work in safety-sensitive positions. Information regarding the current SAP is available from the Designated Employer Representative (DER).

5. Confidentiality

Confidentiality will be maintained throughout the drug and alcohol testing process. To assure confidentiality, all test results will be sent only to a designated and qualified DER by means of a secure communication system.

The Safety Office will maintain results in a medical file separate from the official personnel file. The employee has an unqualified right, upon written request, to obtain copies of any records pertaining to his or her drug or alcohol tests.

Test results will be released without written consent only:

- To those District personnel directly involved in the decision for the tested employee's dismissal or disciplinary action;
- To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee tested;
- When an accident investigation is performed by the National Transportation Safety Board; or

- When records are requested by the DOT or any DOT agency with regulatory authority, including the state rail fixed guideway systems oversight agency.

The District will carry out this policy in accordance with DOT/FTA regulations. Records will be made available to a subsequent employer upon receipt of a written request from the employee. As directed by the specific, written consent of the employee, information regarding the employee's record will be released to an identified person.

With respect to documents pertaining to a positive test result, such as a suspension letter, return-to-work letter, or termination letter, the document will only be sent to the employee, the employee's supervisor, Human Resources, and the Drug and Alcohol Program Testing Manager (DAPM), unless the employee provides specific written consent authorizing release to another identified individual. For represented employees, a contemporaneous, generic notice of discipline will be sent to the Union pursuant to the Collective Bargaining Agreement. This notice will not contain any confidential information regarding drug test results.

6. Notification of Criminal or Driving While Intoxicated Conviction

The Drug Free Workplace Act of 1988 requires all employees to notify the Drug and Alcohol Program Administrator of any conviction under a criminal drug statute for violations occurring on District property within five (5) days of conviction. Additionally, the District policy requires the employee to notify the Drug and Alcohol Program Administrator of all convictions under a criminal drug statute for violations occurring off District property and of all moving violations causing the loss of driver's license by State or local law enforcement involving drugs or alcohol. This notification must occur within five (5) days of conviction or violation. Failure to report such conviction or violation will result in disciplinary action *pursuant to Section M of this policy*. The District is a drug-free employer.

K. EMPLOYEE ASSISTANCE PROGRAM

The District recognizes its commitment and its responsibility to its employees by seeking to provide, through the Employee Assistance Program (EAP) an opportunity for employees to deal with drug and alcohol-related problems. Any employee who voluntarily requests assistance in dealing with a personal drug and/or alcohol problem may do so through the EAP in complete confidence and without jeopardizing his/her employment with the District solely because of the request for assistance. Telephone numbers for the EAP are available from the Human Resource Department. Other treatment programs for drug and alcohol problems are available through the health and welfare providers selected by individual employees. The discontinuation of any involvement with alcohol or drugs is an essential requisite for participation in any treatment program.

Although employees are encouraged to receive help for drug or alcohol problems, participation in treatment under the EAP will not excuse an employee's failure to comply with the requirements of this Policy.

L. EDUCATION AND TRAINING

DOT/FTA regulations require that all supervisors of safety-sensitive employees receive a minimum of 60 minutes of instruction on the alcohol program and an additional 60 minutes on the drug program. Supervisors who make reasonable suspicion determinations must have training on physical, behavioral, and performance indicators of probable cause and alcohol misuse.

Safety-sensitive employees will receive at least 60 minutes of drug awareness training. This training includes information on the effects and consequences of prohibited drug use on personal health, safety, the work environment, and indicators of prohibited use. Employees will also receive information on the effects of alcohol misuse on personal health, safety, the work environment, and available methods of intervention.

It is the policy of the District that training and education programs will be made available to all District employees and Union officials.

M. DISCIPLINE

Any employee whose conduct is found to be in violation of this Policy will be subject to disciplinary action including immediate suspension or termination. Performance and other employment factors, and the nature of the violation will be taken into consideration in determining the degree of disciplinary action. The first violation of this Policy will be subject to a mandatory five (5) day suspension without pay. A second violation of this Policy at any time under any circumstance will result in immediate termination.

Represented employees will be disciplined in accordance with the Collective Bargaining Agreement. All disciplinary action will be reviewable through the grievance procedures in the Collective Bargaining Agreement.

With respect to non-represented individuals, management shall have sole discretion to determine the appropriate disciplinary action for violation of this Policy.

N. RETURN-TO-WORK REQUIREMENTS

Prior to being allowed to return to work, all employees that refuse or test positive for drugs or alcohol on a DOT test or a non-DOT test, as defined under the terms of this Policy, and who, under the discipline policy, are allowed to return to work, will be required to successfully complete the following:

1. Meet with a SAP (or an EAP counselor for non-DOT tests) for assessment.

2. Abide by the treatment recommendations made by the SAP (or an EAP counselor for non-DOT tests), including successful completion of any treatment program or substance abuse prevention class, as applicable, and monitoring by the SAP (or EAP counselor for non-DOT tests) to assure compliance with the aftercare plan.
3. **Complete the five (5) day unpaid suspension.**
4. Undergo observed return-to-duty drug and alcohol tests. A verified negative result must be obtained before the employee will be permitted to return to work.
5. **Complete a Return-to-Work Agreement, in conjunction with the employee's manager, outlining the terms for returning to work. The Agreement will be based in part on the SAP's (or EAP counselor's, for non-DOT tests) terms of compliance. At a minimum, the Return-to-Work Agreement will include the following requirements:**
 - a) Successful compliance with, and completion of the treatment program and/or substance abuse prevention class, as applicable;
 - b) Compliance with the after-care plan;
 - c) Participation in, and compliance with, the requirements of a follow-up testing program;
 - d) **A second violation of this Policy at any time under any circumstance will result in immediate termination. For the purposes of a Return-to-Work Agreement, a positive test is any confirmed alcohol concentration of .02 or greater; refusal to test or any confirmed positive drug test, verified by a MRO; and**
 - e) Employee signature on the Return-to-Work agreement acknowledging the acceptance and understanding of the conditions set forth within the agreement, in consideration of continued employment.

Failure to sign the Return-to-Work Agreement or failure to adhere to any of the aforementioned requirements will result in immediate termination of the employee.

O. MODIFICATIONS

The DER is authorized and directed to promulgate modifications, amendments, and revisions to the TriMet Drug and Alcohol Abuse Program and to enact any policies as may be necessary to ensure TriMet's compliance with laws and regulations affecting drug and alcohol matters. Each employee is required to receive a complete and updated copy of this Policy and to sign receipt of the policy acknowledging the employee's

responsibility to read the Policy and ask any appropriate questions. A copy of the employee's signature acknowledging receipt of the Policy and responsibility to read and understand the Policy will be kept in the employee's personnel file and in the employee's drug and alcohol file.

P. PROGRAM ADMINISTRATION

The Safety Office is responsible for administering the Drug and Alcohol Policy and with certifying compliance with the FTA substance abuse program requirements. Any questions about the Policy, testing program, or the drug and alcohol misuse prevention program may be addressed to the DAPM at (503) 962-4828.

The DAPM/DER is knowledgeable about the DOT and FTA regulations, company policies and internal procedures. The DAPM/DER is accessible to collection site personnel, Breath Alcohol Technicians (BATs), and MROs, and are prepared to address drug and alcohol testing issues, make decisions, and provide direction in a timely manner. The DAPM/DER has the authority to take necessary and immediate actions (directly or through the employee's direct supervisor) to remove employees from safety-sensitive duties, send employees for re-tests, and to direct the actions of service agents.

Paragraph G, Exhibit A - TriMet DOT/FTA defined Safety-Sensitive-Positions

Position	Job/Position Codes
Streetcar Superintendent	146
Streetcar Maintenance Training Technician	182
Streetcar Operator	488
Lead Supervisor	489
Assistant Supervisor Rail	529
Power Maintainer	531
Helper	533
LRV Apprentice	534
Rail Supervisor	536
Pressure Washer	537
Rail Controller	538
Track Maintainer	540
Signals Maintainer	541
LRV Mechanic	551
Assistant Supervisor	556
Plant Maintenance Mechanic	557
Maintenance of Way Laborer	561
Assistant Supervisor MOW	564
Assistant Supervisor	566
Signal Maintainer Apprentice V	568
Traction Overhead Apprentice	569
Traction Substation Technician Apprentice	570
Apprentice Plant Maintenance Mechanic	572
LRV Apprentice Mechanic	573
Rail Operator	580
Assistant Supervisor Field Technician	590
Field Technician	591
Field Technician Apprentice	592
Lead Operations Command Center	700
Training Supervisor (Rail)	775
Traction Substation Technician	779
Assistant Supervisor	780
Training Supervisor (Bus)	832
Road Supervisor	834
Dispatcher	836
Bus Operator	880
Mini-Run Operator	881
Trainer Facilities Maintenance	915
Maintenance Trainer	918
Assistance Supervisor	930
Journeyman Mechanic	931
Maintenance Mechanic	932
Helper	933
Apprentice Mechanic	934
Spotter	936
Cleaner	940
Tireman	941/942
Service Worker (Bus)	944
Service Worker (Rail)	945
Assistant Supervisor	964
Plant Maintenance Mechanic (MOW)	968