

EXHIBIT BOOK

POLICIES FOR BOARD APPROVAL PURSUANT TO NYS PUBLIC AUTHORITIES LAW

Corporate Governance Committee Meeting
03/28/2022

Exhibit Book
Corporate Governance Committee Meeting
3/28/2022

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I. PURPOSE

The MTA Long Island Rail Road (LIRR) is committed to an alcohol and drug free workplace. This Corporate Policy and Procedure (Policy) is in furtherance of that commitment.

This Policy notifies employees of the conduct that is prohibited by the LIRR and that the consequences of engaging in prohibited conduct or other violations of this Policy include discipline, up to and including dismissal.

This Policy explains the LIRR's drug and alcohol testing program under:

- 49 CFR Part 219, which applies to employees designated by the Federal Railroad Administration (FRA) as performing Regulated Service;
- 49 CFR Part 382, which applies to employees performing commercial driving functions for the LIRR as covered by the Federal Motor Carrier Safety Administration (FMCSA); and
- LIRR authority, which applies to all LIRR employees.

This Policy describes the LIRR resources available to employees in need of treatment for drug and/or alcohol problems and encourages them to voluntarily seek such treatment before jeopardizing their safety, the safety of others, and their continued LIRR employment.

II. SCOPE

This Policy applies to all LIRR employees. Compliance is a condition of accepting and continuing LIRR employment.

Nothing in this Policy prohibits the LIRR from taking disciplinary action, up to and including dismissal, with or without conducting drug and/or alcohol testing, when there is a violation of this Policy or a reasonable suspicion of a violation of this Policy.

III. DEFINITIONS**A. Substances**

1. **Alcohol** - The intoxicating agent in beverage alcohol, ethanol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
2. **Controlled Substances** - All substances listed in Schedules I to V as set forth in 21 C.F.R. 802 Parts 1301-1316, or as the Schedules may be revised from time to time by publication in the Federal Register. Controlled Substances include Narcotics/Opiates, Depressants, Stimulants, Hallucinogens, and Cannabis.
3. **Drug** - Any substance other than alcohol that has known mind or function-altering effects on humans; specifically, including any psychoactive substance, including but not limited to, controlled substances.
4. **Intoxicant** - Any agent that produces intoxication, including but not limited to a drug or toxic substance or alcoholic beverages.
5. **Over-the-Counter (OTC) Medications** - Medications that do not require a prescription that can be purchased from pharmacies or other retail establishments.

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6. **Prescription Drugs** - Medications prescribed by a licensed medical practitioner for a specific course of treatment.

B. Employee Classifications**1. Regulated Service Employees - 49 CFR Part 219:**

- a. **Covered Service Employees** - Employees who perform service subject to the Hours of Service Act (49 U.S.C. § 20101, *et seq.*) (Covered Service), both represented and non-represented. This category includes the following:
- i. Engine Service Employees: Locomotive Engineer, Locomotive Engineer Trainee, Road Foreman; Training Specialist – Engine Service;
 - ii. Train Service Employees: Assistant Conductor, Conductor, Collector, Special Duty Assistant Conductor, Special Duty Conductor, Transportation Manager, Assistant Trainmaster, Transportation Rules and Air Brake Examiner, Training Specialist – Train Service;
 - iii. Dispatch Employees: Assistant to Chief Train Dispatcher, Assistant Train Director, Assistant to Train Director, Block Operator, Block Operator Trainee, Chief Train Dispatcher, Customer Communications Coordinator, Information Coordinator, Lead Train Director, PSCC Console Operator, Train Director, Train Dispatcher;
 - iv. Signal Employees: Signal Helper, Assistant Signalman – Signal, Signal Inspector, Signal Maintainer, Signal Specialist, Signal Technician, Signalman, Signalman-in-Training, Assistant Foreman – Signal, Foreman – Signal, Foreman – Signal Specialist;
 - v. M/E (Other) Employees – Electrician – ASC, Electrician – Car Mover, Electrician – Road Car.
- b. **Maintenance of Way/Roadway Work Protection Employees (MOW/RWP Employees)** - Employees whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined 49 CFR 214.7.

Attachment A to this Policy is a list of titles designated, or that may be designated, as performing MOW/RWP duties. This list is subject to change at any time without notice.

- c. **Mechanical Employee (MECH Employee)** - Any employee who, on behalf of a railroad, performs mechanical tests or inspections required by part 215, 221, 229, 230, 232, 238, or 299 of this chapter on railroad rolling equipment, or its components, EXCEPT FOR:
- (i) An employee who is a member of a train crew assigned to test or inspect railroad rolling equipment that is part of a train or yard movement the employee has been called to operate; or

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(ii) An employee who only performs one or more of the following duties:

(A) Cleaning and/or supplying cabooses, locomotives, or passenger cars with ice, food concession items, drinking water, tools, sanitary supplies, or flagging equipment;

(B) Servicing activities on locomotives such as fueling, replenishing engine oils and engine water, sanding, and toilet discharge and recharge;

(C) Checking lading for pilferage or vandalism; or

(D) Loading, unloading, or shifting car loads.

(2) An employee who only performs work related to the original manufacturing, testing, or inspection of railroad rolling equipment, or its components, on the manufacturer's behalf, is not a mechanical employee or MECH employee.

This category includes but is not limited to employees in the following crafts: Car Repairman, Electrician, Gang Foreman, Machinist, Road Car Inspector, and Sheet Metal Worker.

When an Employee is Designated as Performing Regulated Service - An employee is designated as performing Regulated Service (subject to drug/alcohol testing under federal authority) if he/she is likely to perform Covered Service or MOW/RWP duties at least four (4) times annually or an average of once per quarter.

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2. Commercial Motor Vehicle Drivers (Commercial Drivers) - 49 CFR Part 382

Employees who perform service for the LIRR requiring a commercial driver's license (CDL) issued by a state authorizing operation of a commercial motor vehicle:

- a. Weighing 26,001 or more pounds; or
- b. That has a gross combination weight of 26,001 or more pounds, inclusive of a towed unit with a gross weight rating more than 10,000 pounds; or
- c. Carrying sixteen (16) or more passengers; or
- d. Transporting placardable hazardous material.

3. Safety Sensitive Employees

Though Regulated Service Employees are designated as safety sensitive under 49 CFR Part 219 and LIRR authority and Commercial Drivers are designated as safety sensitive under 49 CFR Part 382 and LIRR authority, for the purposes of this Policy, the Safety Sensitive Employee classification refers to those employees whose job titles/duties LIRR has designated as safety sensitive under LIRR authority, but does not include Regulated Service Employees or Commercial Motor Vehicle Drivers, who are classified separately (see 1. and 2. above).

4. Non-Safety-Sensitive Employees - Employees whose job titles/and or duties do not fall within the Employee Classifications in Section III.B.1, 2, or 3 of this Policy.**C. Other**

- 1. Medical Review Officer (MRO)** - A licensed physician designated by the LIRR who is qualified per 49 CFR 40.121 and is responsible for receiving and reviewing laboratory results generated by the LIRR's drug testing program and evaluating medical explanations for certain drug test results.
- 2. Substance Abuse Professional (SAP)** - A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor, with the credentials required under 49 CFR 40.281 with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. For the purposes of this Policy, an LIRR Employee Assistance Professional (EAP) is the SAP, who also performs the functions of a Drug and Alcohol Counselor (DAC) under 49 CFR 219, Subpart K, and 49 CFR 240 and 242.7.
- 3. Supervisor** - Any employee who is responsible for supervising or monitoring the conduct or performance of one (1) or more employees.
- 4. Co-Worker** - Another employee, including a representative of the employee's collective bargaining unit.
- 5. Accident/Incident** - An event or occurrence related to a LIRR operation that is required to be reported, including: fatality, injury, or illness; collision, derailment, and/or similar events involving the operation of on-track equipment that resulted in monetary damage in excess of the current reporting threshold; and impact between rail on-track equipment and highway users at crossings.

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6. **“Identifying the Troubled Employee”** - A training course given by the LIRR and required for all Supervisors, per the LIRR’s Management Education Core Curriculum Program (EDUC-001), which provides instruction on the requirements of FRA regulations, Federal Motor Carrier Safety Administration (FMCSA) regulations, and LIRR policies and rules regarding drug and alcohol use and testing.
7. **Co-Worker Referral** – As per 49 CFR 219, Subpart K, a report by a Co-worker to a Supervisor that a Regulated Service Employee appeared to be unsafe to work with and/or appeared to be in violation of this Policy. The name of the Co-worker will be confidential and the Co-worker who made the report will not be called as a witness should a subsequent administrative or disciplinary action be required. If the Regulated Service Employee who is the subject of a Co-Worker Report is referred to EAP, accepts such referral, and follows the EAP’s recommendation(s) disciplinary action may be held in abeyance.
8. **Voluntary Referral** – As per 49 CFR 219, Subpart K, a program designed to encourage and facilitate the identification of a Regulated Service Employee who abuses drugs or alcohol by providing the employee the opportunity to obtain counseling or treatment before the Regulated Service Employee's drug or alcohol abuse manifests itself in a detected violation of federal regulation and/or this Policy.
9. **Verified Positive Test Result**
 - a. For a drug test, a test result that was positive on an initial immunoassay test, confirmed by a gas chromatography/mass spectrometry assay or other chromatographic methods with mass spectrometry and reviewed and verified as positive by an MRO in accordance with the procedures set forth in 49 C.F.R. Part 40 - "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."
 - b. For an alcohol breath test, an initial breath or saliva test performed on a Department of Transportation (DOT) approved "Evidential Breath Testing" or "Saliva Screening Test" device. A result of .02 or higher on the initial breath or saliva test will be confirmed by a second breath test on a DOT-approved "Evidential Breath Testing" device; the result of the second breath test must be .02 or higher for a verified positive test result.

IV. PROHIBITED CONDUCT AND EMPLOYEE REQUIREMENTS**A. All employees are prohibited from:**

1. Using alcoholic beverages, intoxicants or controlled substances, or from being under the influence or impaired by same, while subject to duty or while on duty.
2. Possessing alcohol while on duty.
3. Illegally manufacturing, distributing, selling, dispensing, possessing or using any illegally obtained controlled substance on or off duty.
4. Possessing drug paraphernalia in the workplace.
5. Consuming alcohol during working hours, including meal and break periods.

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6. Refusing to cooperate or intentionally interfering with the LIRR's efforts to enforce this Policy or related federal regulations, including, but not limited to, refusing to submit to drug and/or alcohol testing conducted pursuant to this Policy or related federal regulations, or tampering with the integrity of a breath, saliva, or urine sample in connection with any such test.
 7. Violating the LIRR rules and regulations (customer rules) applicable to customers on LIRR terminals, trains and stations. If there is a conflict between employee conduct that is prohibited by this Policy and conduct that is prohibited under the customer rules, this Policy governs.
- B.** All employees, whether on or off duty, are prohibited from:
1. Consuming alcohol on LIRR property.
 2. Possessing an open container of an alcoholic beverage on LIRR property.
 3. Possessing or consuming alcohol while wearing an LIRR uniform.
 4. Possessing or being under the influence of or impaired by alcohol on non-public LIRR property, including, but not limited to, shops, tracks, towers and offices.
- C.** No alcoholic beverages are permitted at LIRR-sponsored functions.
- D.** The detection of a prohibited substance resulting from any required toxicological test is a violation of this Policy.
- E.** Employees are prohibited from refusing to take a drug and/or alcohol test when directed to do so. Employees who are directed to take a urinalysis and/or breath test are expected and required to comply. A refusal to test will be considered insubordination and a violation of this Policy.
- Note:** The LIRR recognizes a refusal to test as defined in 49 CFR 40.191 and 40.261 and specified in Attachment C to this Policy (Sections VII and VIII); please see these documents for full descriptions of what constitutes a refusal to test under both federal and LIRR authority.
- F.** Medication Reporting Requirements
1. **Regulated Service Employees and Commercial Drivers** are prohibited from working while taking prescription and/or OTC medications, other than those noted in F.2. (below), unless:
 - a. Such use is brought to the attention of the MRO or designee by the employee;
 - b. The medication is prescribed or authorized for the employee's use by a licensed medical practitioner **and**;
 - c. The MRO or designee has made a good faith judgment that use of the substance as prescribed is consistent with the safe performance of the employee's duties. The determination of the MRO or designee is final and binding.

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2. The following types of medications do not need to be reported to the MRO or designee by any classification of employee prior to the employee working while using them:

- Allergy shots;
- Antibiotics;
- Antifungals;
- Asthma medications;
- Beta-blockers;
- Birth control pills;
- Blood pressure medications;
- Cholesterol medications;
- Cough drops;
- Ear drops;
- Erectile dysfunction medications;
- Joint injections;
- Laxatives;
- Stool softeners;
- Reflux medications;
- Topical products (i.e., creams/ointments);
- Vaccines;
- Vitamins (ex.: A, B, C, D, E);
- Over-the-counter medications that do not have a safety-related warning on their label.

Regulated Service Employees and Commercial Drivers must report any medication with a safety-related warning to the MRO or designee prior to working while taking it; such warnings include, but are not limited to, those indicating that drowsiness/dizziness may occur or those directing you not to operate a vehicle or heavy machinery while taking the medication.

If an employee is unsure of the type of medication he/she has been prescribed after conferring with his/her prescribing doctor, then the employee must report this medication to Medical.

3. Regulated Service Employees and Commercial Drivers may work while taking prescription anti-inflammatory medications without prior approval from Medical. However, these must be reported to Medical within 24 hours of taking them or on the next business day on which Medical is open (whichever is later).
4. All employees must provide all medication and other medical information to LIRR Medical Facility (Medical) staff upon request during any visit to Medical.

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G. Arrest and Conviction Reporting Requirements

1. Pursuant to the federal Drug-Free Workplace Act, 41 U.S.C. §8102, et seq., an employee convicted of violating a criminal drug statute in the workplace must report the conviction to his/her department head within five (5) days of the conviction; it is the department head's responsibility to report this to Labor Relations and the Assistant Director – Employee Services.
2. An employee who is a Regulated Service Employee, a Commercial Driver or a Safety Sensitive Employee arrested for, or convicted of, violating a criminal drug or alcohol statute (including the New York State Vehicle & Traffic Law and Penal Law), in or out of the workplace, must report the arrest or conviction to his/her department head within five (5) days of the arrest or conviction; it is the department head's responsibility to report this to Labor Relations and the Assistant Director – Employee Services.

V. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT AND NON-REPORTING

- A. Employees determined to be in violation of this Policy (IV.A through IV.E above) are subject to dismissal. A represented employee may be offered the opportunity to sign a Trial Waiver/Last Chance Agreement after a first violation of this Policy and will be dismissed after a second violation.
- B. At the discretion of the LIRR, employees who are in violation of IV.A through IV.D. above (other than Locomotive Engineers, Conductors, or Candidates for Certification who test positive for alcohol at a level of 0.04 or greater, see V.D below) may be offered a Trial Waiver/Last Chance Agreement and suspension of not less than six (6) months without pay.
- C. At the discretion of the LIRR, employees refusing to test in violation of IV.E. above may be offered a Trial Waiver/Last Chance Agreement and a suspension of not less than nine (9) months without pay.
- D. At the discretion of the LIRR, pursuant to 49 CFR 240 and 242 (Qualification and Certification of Locomotive Engineers and Conductors, respectively), Locomotive Engineers, Conductors, or Candidates for Certification who test positive for alcohol at a level of 0.04 or greater may be offered a Trial Waiver/Last Chance Agreement and a suspension of not less than nine (9) months without pay.
- E. At the discretion of the LIRR, employees determined to have failed to report prescription medications and/or to report arrests/convictions, as required above (IV.F. and IV.G.) may also be subject to disciplinary action, up to and including dismissal.

VI. DRUG TESTING PROGRAM**A. General**

1. All employees are subject to drug and/or alcohol testing as required by applicable federal regulations and/or this Policy.

Attachment B to this Policy is a list of the current Drug Testing Panels under federal authority and under LIRR authority. Federal and/or LIRR Drug Testing Panels are subject to change at any time without notice.

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2. Pursuant to 49 CFR Part 219, the FRA requires and/or permits the LIRR to conduct, for Regulated Service Employees, the following types of drug and/or alcohol testing:
 - a. Pre-Placement;
 - b. Reasonable Suspicion;
 - c. Reasonable Cause;
 - d. Post-Accident;
 - e. Random; and
 - f. Federal Return-to-Duty and Follow-up.
3. Pursuant to 49 CFR §219.23, guidance for Regulated Service Employees about 49 CFR Part 219 is in **Attachment C** to this Policy.
4. Pursuant to 49 CFR Part 382, the FMCSA requires and/or permits the LIRR to conduct, for Commercial Drivers, the following types of drug and/or alcohol testing:
 - a. Pre-placement;
 - b. Reasonable Suspicion;
 - c. Post-Accident;
 - d. Random; and
 - e. Federal Return-to-Duty and Follow-up.
5. The LIRR may conduct drug and/or alcohol testing of **all employees** for:
 - a. Reasonable Suspicion;
 - b. Reasonable Cause; and
 - c. Discretionary.
6. The LIRR may conduct drug and/or alcohol testing of Regulated Service Employees, Commercial Drivers and/or Safety Sensitive Employees for:
 - a. Pre-placement; and as part of:
 - b. Periodic Physical Examinations;
 - c. CDL Medical Examination; and
 - d. Return-to-Duty.
7. Employees and applicants whose initial drug test results are returned as negative-dilute will be retested for the following tests: Pre-Placement; Reasonable Suspicion, Reasonable Cause, Follow-Up, and Return-to-Duty. A second negative-dilute result (from a retest as noted above) will be considered negative.
8. The LIRR is not required to conduct drug and/or alcohol testing before taking disciplinary action, up to and including dismissal, for a violation of this Policy.

B. Types of Drug/Alcohol Testing**1. Pre-Placement**

Human Resources will schedule a Pre-Placement drug test for applicants or employees who have received offers to perform service for the LIRR as a Regulated Service Employee; as a Commercial Driver; or as a Safety Sensitive Employee. No such employee may perform service prior to passing a drug test administered by the LIRR Medical Facility.

2. Random

Regulated Service Employees and Commercial Drivers are subject to a drug and/or alcohol test performed randomly under FRA/FMCSA regulations as applicable.

3. Reasonable Suspicion**a. Guidelines for Regulated Service Employees:**

- i. When Reasonable Suspicion exists for a Regulated Service Employee, drug and/or alcohol testing is mandatory under 49 CFR Part 219.
- ii. **Alcohol Test** - At least one (1) Supervisor who has completed the LIRR training course "Identifying the Troubled Employee" must make the required observation before sending a Regulated Service Employee for an alcohol test.
- iii. **Drug Test** - At least two (2) Supervisors, one (1) of whom has completed the LIRR Training course "Identifying the Troubled Employee," must make the required observation before sending a Regulated Service Employee for a drug test.
- iv. The LIRR must make diligent efforts to conduct a drug and/or alcohol test within two (2) hours of the required observation of a Regulated Service Employee. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after the expiration of eight (8) hours from the time of the required observation.
- v. Regulated Service Employees may not be tested after they have been released from duty.

b. Guidelines for Commercial Drivers

- i. All Commercial Drivers are subject to drug and/or alcohol testing when Reasonable Suspicion exists.
- ii. **Alcohol Test** - A Commercial Driver may not be subjected to alcohol testing under FMCSA regulations unless the Supervisor's observation is made just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions. At least one (1) Supervisor who has completed the LIRR's training course, "Identifying the Troubled Employee," must make the required observation before sending a Commercial Driver for a test. The LIRR must make all reasonable efforts to conduct alcohol testing

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within two (2) hours of the observed behavior. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to why the test was not promptly administered. No alcohol testing may be performed after the expiration of eight (8) hours from the time of observation.

Note: A Commercial Driver may be subjected to alcohol testing under company authority (Guidelines for Safety Sensitive and Non-Safety Sensitive employees) if the Supervisor's observation is made at a time other than just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions.

- iii. **Drug Test** - At least one (1) Supervisor who has completed the LIRR's Training Program, "Identifying the Troubled Employee," must make the required observation before sending a Commercial Driver for a test. The LIRR must make diligent efforts to conduct a drug test within two (2) hours of the required observation. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted.
 - iv. Commercial Drivers may not be tested after they have been released from duty.
- c. Guidelines for Safety Sensitive and Non-Safety Sensitive Employees:**
- i. All employees are subject to drug and/or alcohol testing when Reasonable Suspicion exists.
 - ii. The decision that Reasonable Suspicion exists must be based on specific contemporaneous and articulable observations by a Supervisor who has completed the required LIRR training course on "Identifying the Troubled Employee" and can document one or more of the following criteria about an on-duty employee's appearance, behavior, speech, or body odor associated with drug and/or alcohol use:
 - Staggered gait, difficulty walking
 - Slurred speech
 - Drowsiness/sleepiness
 - Odor of an intoxicant
 - Disorientation (time/place/person)
 - Rapid mood swings with no apparent reason
 - Poor coordination or body control
 - iii. Note that direct observation of the possession or use of an intoxicant or controlled substance is a violation of this Policy; no alcohol and/or drug test should be done upon such observation.
 - iv. The criteria in VI.B.3.c.ii above also applies to the direct observation necessary for a Supervisor to corroborate and investigate an FRA Co-Worker Referral.

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- v. Alcohol Test - At least one (1) Supervisor who has completed the LIRR training course "Identifying the Troubled Employee" must make the required observation before sending a Safety Sensitive or Non-Safety Sensitive Employee for an alcohol test.
- vi. Drug Test - At least one (1) Supervisor who has completed the LIRR training course "Identifying the Troubled Employee" must make the required observation before sending a Safety Sensitive or Non-Safety Sensitive Employee for a drug test.
- vii. The LIRR must make diligent efforts to conduct a drug and/or alcohol test within two (2) hours of the required observation. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after the expiration of eight (8) hours from the time of the required observation.
- viii. Safety Sensitive and Non-Safety Sensitive Employees may not be tested after they have been released from duty.
- ix. Documentation - Within a reasonable time following a Supervisor's determination of Reasonable Suspicion, the Supervisor must document the date, time, and place, as well as a description of the observed behavior, and send a copy of such documentation to the Assistant Director-Employee Services or designee.

4. Reasonable Cause

a. Guidelines for Regulated Service Employees

Reasonable Cause drug and/or alcohol testing will be conducted for Regulated Service Employees under the following circumstances:

- i. **Accident/Incident** - There is an Accident/Incident and a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts or omissions contributed to the occurrence or the severity of the Accident/Incident; or
- ii. **Rule Violation** - The Regulated Service Employee has been directly involved in one (1) or more of the following Operating Rule violations or errors.
 - Noncompliance with a train order, track warrant, track bulletin, track permit, stop and flag order, timetable, signal indication, special instruction or other directive with respect to movement of railroad on-track equipment that involves -
 - _____
 - (i) Occupancy of a block or other segment of track to which entry was not authorized;
 - _____
 - (ii) Failure to clear a track to permit opposing or following movements to pass;
 - _____

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- (iii) Moving across a railroad crossing at grade without authorization;
- (iv) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required); or
- (v) Failure to take appropriate action, resulting in the enforcement of a positive train control system.
- (2) Failure to protect on-track equipment, including leaving on-track equipment fouling an adjacent track;
- (3) Operation of a train or other speedometer-equipped on-track equipment at a speed that exceeds the maximum authorized speed by at least 10 miles per hour or by 50% of such maximum authorized speed, whichever is less;
- (4) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under on-track equipment, or unauthorized running through a switch;
- (5) Failure to restore and secure a main track switch as required;
- (6) Failure to apply brakes or stop short of a derail as required;
- (7) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;
- (8) Entering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover movement is completed;
- (9) Failure to provide point protection by visually determining that the track is clear and giving the signals or instructions necessary to control the movement of on-track equipment when engaged in a shoving or pushing movement;
- (10) In the case of a person performing a dispatching function or block operator function, issuance of a mandatory directive or establishment of a route that fails to provide proper protection for on-track equipment;
- (11) Interference with the normal functioning of any grade crossing signal system or any signal or train control device without first taking measures to provide for the safety of highway traffic or train operations which depend on the normal functioning of such a device. Such interference includes, but is not limited to, failure to provide alternative

methods of maintaining safety for highway traffic or train operations while testing or performing work on the devices or on track and other railroad systems or structures which may affect the integrity of the system;

- _____
- _____ (12) Failure to perform stop-and-flag duties necessary as a result of a malfunction of a grade crossing signal system;
- _____
- _____ (13) Failure of a machine operator that results in a collision between a roadway maintenance machine and on-track equipment or a regulated employee;
- _____
- _____ (14) Failure of a roadway worker-in-charge to notify all affected employees when releasing working limits;
- _____
- _____ (15) Failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment;
- _____
- _____ (16) Failure to ascertain that provision was made for on-track safety before fouling a track;
- _____
- _____ (17) Improper use of individual train detection in a manual interlocking or control point;
- _____
- _____ (18) Failure to apply three point protection (fully apply the locomotive and train brakes, center the reverser, and place the generator field switch in the off position) that results in a reportable injury to a regulated employee;
- _____
- _____ (19) Failure to display blue signals in accordance with § 218.25 through § 218.30 of this chapter;
- _____
- _____ (20) Failure to perform a required brake test, or having knowledge that a required brake test was not performed, pursuant to the Class I, Class IA, Class II, or Class III, or transfer train brake test provisions of part 232, or the running brake test provisions of part 238, of this chapter;
- _____
- _____ (21) Failure to comply with prohibitions against tampering with locomotive mounted safety devices, or permitting a train to be operated with an unauthorized disabled safety device in the controlling locomotive; or
- _____
- _____ (22) Failure to have a derailing device in proper position and locked if required in accordance with § 218.109 of this chapter. Non-compliance with a train order, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves:

- ~~➤ Occupancy of a block or other segment of track to which entry was not authorized;~~
 - ~~➤ Failure to clear a track to permit opposing or following movement to pass;~~
 - ~~➤ Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);~~
 - ~~● Failure to protect a train as required by a rule consistent with 49 CFR §218.37 (including failure to protect a train that is fouling an adjacent track);~~
 - ~~● Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour;~~
 - ~~● Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;~~
 - ~~● Failure to apply or stop short of derail as required;~~
 - ~~● Failure to secure sufficient hand brakes;~~
 - ~~● Entering a crossover before both switches are lined for movement; or~~
 - ~~● In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.~~
- iii. The LIRR must make diligent efforts to conduct the drug and/or alcohol test within four (4) hours of an accident/incident. If testing is not conducted within four (4) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after expiration of eight (8) hours from the time of the accident/incident.
- iv. Regulated Service Employees may not be tested after they have been released from duty.
- v. **Documentation** - The Supervisor must document the date, time, and place of the occurrence, giving rise to testing, as well as the reason for testing, and send a copy of such documentation to the Assistant Director-Employee Services or designee.
- vi. All Reasonable Cause testing is performed under LIRR authority.
- b. Guidelines for Commercial Drivers**
- The LIRR will test any Commercial Driver for drugs and/or alcohol following an Accident/Incident giving rise to Reasonable Cause testing as set forth in Section VI.B.4(c) of this Policy.
- c. Guidelines for All Employees**
- There is Reasonable Cause for LIRR to test any employee for drugs and/or alcohol under the following circumstance:

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- i. There is an Accident/Incident and/or a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts or omissions contributed to the occurrence or the severity of the Accident/Incident.
- ii. The LIRR must make diligent efforts to conduct the drug and/or alcohol test within four (4) hours of an accident/incident. If testing is not conducted within four (4) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after expiration of eight (8) hours from the time of the accident/incident.
- iii. Employees may not be tested after they have been released from duty.
- iv. All Reasonable Cause testing is performed under LIRR authority.

5. Post Accident

- a. **Regulated Service Employees** - The FRA regulations set forth in 49 CFR Part 219, Subpart C on the control of alcohol and drug use require toxicological testing after accidents that involve one (1) or more of the circumstances described below:
 - i. **Major train accident** - Any train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold) that involves one (1) or more of the following:
 - 1) A fatality;
 - 2) Release of hazardous material lading from railroad equipment accompanied by:
 - An evacuation; or
 - A reportable injury resulting from the hazardous material release, e.g. from fire, explosion, inhalation, or skin contact with the material); or
 - 3) Damage to railroad property of \$1,500,000 or more.
 - ii. **Impact accident** - An impact accident (*i.e.*, a rail equipment accident defined as an "impact accident" in § 219.5 that involves damage in excess of the current reporting threshold) resulting in:
 - 1) A reportable injury; or
 - 2) Damage to railroad property of \$150,000 or more.
 - iii. **Fatal train incident** - Any train incident that involves a fatality to any on-duty railroad employee.
 - iv. **Passenger train accident** - Reportable injury to any person in a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.
 - v. **Human-factor highway-rail grade crossing accident/incident**. A highway rail grade crossing accident/incident when it involves:

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- 1) A Regulated Service Employee who interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first taking measures to provide for the safety of highway traffic that depends on the normal functioning of such system, as prohibited by § 234.209 of this chapter;
- 2) A train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of the grade crossing system, as provided by § 234.105(c)(3) of this chapter;
- 3) A Regulated Service Employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in 49 CFR § 234.5 due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by 49 CFR § 234.105(c)(1)(2), 49 CFR § 234.106, or 49 CFR § 234.107(c)(1)(i);
- 4) A fatality to any Regulated Service Employee performing duties for the railroad, regardless of fault; or
- 5) A Regulated Service Employee who violated an FRA regulation or railroad operating rule and whose actions may have played a role in the cause or severity of the accident/incident.

Exceptions - Except for a human-factor highway-rail grade crossing accident/incident as described above: No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident, the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster) or vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

In the event of an accident requiring a toxicological test, a Supervisor must contact the Assistant Director-Employee Services or designee to advise of the use of a toxicological test kit and the need for a replacement.

The determination of whether an FRA Post Accident test is required should be made based on the above and review of the FRA's most current Post Accident Testing Criteria flowchart.

b. Commercial Drivers

The FMCSA regulations set forth in 49 CFR § 382.303 on the control of alcohol and drug use require toxicological testing as soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce. The LIRR shall test for alcohol and controlled substances for each surviving driver:

- i. Who was performing safety-sensitive functions with respect to the vehicle, if the accident/incident involved the loss of human life; or
- ii. Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

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- 1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- 2) 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.

Alcohol Test - If a test required by this section is not administered within two (2) hours following the accident/incident, the LIRR shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the accident/incident, the LIRR shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

Controlled Substance Test - If a required test is not administered within thirty-two (32) hours following the accident/incident, the LIRR shall 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 shall be submitted to the FMCSA upon request of the Associate Administrator.

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident/incident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident/incident or to obtain necessary emergency medical care.

Exceptions - No test shall be conducted for:

- 1) An occurrence involving only boarding or alighting from a stationary motor vehicle;
- 2) An occurrence involving only the loading or unloading of cargo; or
- 3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR Part 382.303 § 571.3) 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 CFR Part 382.303 § 177.823.

In the event of an accident requiring toxicological testing, a Supervisor must contact the Assistant Director-Employee Services or designee.

6. Federal Return-to-Duty and Follow-up

- a. Any Regulated Service Employee or Commercial Driver who has pled guilty to engaging in conduct in violation of federal regulations (i.e., FRA or FMCSA) as applicable must pass a federal drug and/or alcohol test in order to return to his/her position.

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- b. Any Regulated Service Employee or Commercial Driver who has pled guilty to engaging in conduct in violation of federal regulations (i.e., FRA or FMCSA) is subject to unannounced federal follow-up drug and/or alcohol testing as directed by applicable FRA/FMCSA federal laws and regulations or as directed by the SAP.
7. **Discretionary** – Any employee who has pled guilty to engaging in conduct in violation of this Policy that is not also a violation of federal regulations is subject to unannounced LIRR-authorized drug and/or alcohol testing as directed by LIRR EAP or as a condition of discipline.
8. **Periodic Physical Examinations** – Regulated Service Employees whose positions require Periodic Physical Examinations may be subjected to drug testing as part of those examinations if the examination occurs on the randomly selected monthly test date.
9. **CDL Medical Examinations** – Employees who perform commercial driving functions for the LIRR and who elect to have LIRR Medical perform their required CDL medical examination will be subject to a drug test at that time; this test will be performed under LIRR authority.
10. **Return-to-Duty** – Regulated Service Employees, Commercial Drivers, and Safety Sensitive Employees who have been absent from work for any reason for thirty (30) calendar days or more will be subject to drug and/or alcohol testing. This will be performed as part of a Return-to-Duty physical examination when applicable. All employees who are returning to work following a violation of this Policy that was not also a violation of federal regulations will be subject to drug and/or alcohol testing as part of a Return-to-Duty physical examination.

C. Summary of Types of Drug Testing Applicable to Employee Classifications**1. Pre-Placement**

- a. Regulated Service Employees are subject to Pre-Placement testing under federal and LIRR authority.

Note: Regulated Service Employees may only be given one federal Pre-Placement test; once the employee has a negative Pre-Placement test result on file with the LIRR, the employee may only be given LIRR authority Pre-Placement tests.

- b. Commercial Drivers are subject to Pre-Placement testing under federal and LIRR authority.

Note: Commercial Drivers may only be given one federal Pre-Placement test; once the employee has a negative Pre-Placement test result on file with the LIRR, the employee may only be given LIRR authority Pre-Placement tests.

- c. Safety Sensitive employees are subject to Pre-Placement testing under LIRR authority.
- d. Non-Safety Sensitive employees are not subject to Pre-Placement testing.

2. Random

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- a. Regulated Service Employees are subject to Random testing under federal authority.
- b. Commercial Drivers are subject to Random testing under federal authority.
- c. Safety Sensitive Employees are not subject to Random testing.
- d. Non-Safety Sensitive Employees are not subject to Random testing.

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3. Reasonable Suspicion

- a. Regulated Service Employees are subject to Reasonable Suspicion testing under federal authority.
- b. Commercial Drivers are subject to Reasonable Suspicion testing under federal and LIRR authority.

Note: Commercial Drivers will be subject to federal Reasonable Suspicion testing in all instances except when an alcohol test is being given based on a Supervisor's observation that was made at a time other than just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions.

- c. Safety Sensitive employees are subject to Reasonable Suspicion testing under LIRR authority.
- d. Non-Safety Sensitive employees are subject to Reasonable Suspicion testing under LIRR authority.

4. Reasonable Cause

- a. Regulated Service Employees are subject to Reasonable Cause testing under LIRR authority.
- b. Commercial Drivers are subject to Reasonable Cause testing under LIRR authority.
- c. Safety Sensitive employees are subject to Reasonable Cause testing under LIRR authority.
- d. Non-Safety Sensitive employees are subject to Reasonable Cause testing under LIRR authority.

5. Post-Accident

- a. Regulated Service Employees are subject to FRA Post Accident testing under federal authority.
- b. Commercial Drivers are subject to FMCSA Post-Accident testing under federal authority.
- c. Safety Sensitive Employees are not subject to Post Accident Testing.
- d. Non-Safety Sensitive Employees are not subject to Post Accident Testing.

6. Federal Return-to-Duty and Follow-Up Testing

Note: This category of Return-to-Duty testing applies only to those employees returning to duty following a violation of federal drug and alcohol regulations.

- a. Regulated Service Employees are subject to Federal Return-to-Duty and Follow-Up testing under federal authority.
- b. Commercial Drivers are subject to Federal Return-to-Duty and Follow-Up testing under federal authority.
- c. Safety Sensitive employees are not subject to Federal Return-to-Duty and Follow-Up testing.

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- d. Non-Safety Sensitive employees are not subject to Federal Return-to-Duty and Follow-Up testing.

7. Discretionary Testing

- a. Regulated Service Employees are subject to Discretionary testing under LIRR authority.
- b. Commercial Drivers are subject to Discretionary testing under LIRR authority.
- c. Safety Sensitive employees are subject to Discretionary testing under LIRR authority.
- d. Non-Safety Sensitive employees are subject to Discretionary testing under LIRR authority.

8. Periodic

- a. Regulated Service Employees are subject to Periodic testing as applicable under LIRR authority.
- b. Commercial Drivers are not subject to Periodic testing.
- c. Safety Sensitive employees are not subject to Periodic testing.
- d. Non-Safety Sensitive employees are not subject to Periodic testing.

9. CDL Medical Examinations

- a. Regulated Service Employees are not subject to CDL Medical Examination testing.
- b. Commercial Drivers are subject to CDL Medical Examination testing under LIRR authority.
- c. Safety Sensitive employees are not subject to CDL Medical Examination testing.
- d. Non-Safety Sensitive employees are not subject to CDL Medical Examination testing.

10. Return-to-Duty

Note: This category of Return-to-Duty testing applies only to those employees returning to duty following an absence of thirty (30) calendar days or more OR following a violation of this Policy that was not also a violation of federal regulations.

- a. Regulated Service Employees are subject to Return-to-Duty testing under LIRR authority.
- b. Commercial Drivers are subject to Return-to-Duty testing under LIRR authority.
- c. Safety Sensitive employees are subject to Return-to-Duty testing under LIRR authority.
- d. Non-Safety Sensitive employees are subject to Return-to-Duty testing under LIRR authority when specified following a violation of LIRR policy; they are not subject to Return-to-Duty testing following an absence of thirty (30) calendar days or more.

VII. RESOURCES**A. LIRR Employee Assistance Program (EAP) – (347) 494 - 6285**

1. EAP is an employee benefit available to all employees and their family members. EAP's role is to offer professional assistance in the form of short-term confidential counseling and referrals for a wide range of personal assistance, including alcohol/substance abuse.
2. Regarding alcohol/substance abuse, an EAP Substance Abuse Professional qualified by experience, education, and training (a) counsels persons affected by alcohol and/or substance abuse and evaluates their recovery; and (b) provides alcohol and drug awareness training to Supervisors.

B. An employee may seek the confidential services of the EAP regarding his/her use of controlled substances and/or alcohol or may be referred by a Supervisor, another employee, the employee's union representative or as a condition of discipline. All requests for information and assistance are held in the strictest confidence except when written permission is given by the employee or disclosure is required by law or other authority.

C. Health Insurance Benefits - The LIRR's group health insurance plans include coverage for alcohol and/or drug abuse treatment.

D. Referral Programs (FRA) – A Regulated Service Employee will be classified as participating in a Referral Program from the time he/she seeks assistance through LIRR's designated DAC, provided that said assistance is requested before the employee has been charged with conduct deemed by LIRR sufficient to warrant dismissal, except as noted in Section VII.D.5. below, and that the employee reports to the DAC either (1) during non-duty hours or (2) while unimpaired and otherwise in compliance with this Policy. A referred employee may maintain an employment relationship with the LIRR subject to the conditions and procedures of Federal regulations and LIRR policies.

1. A Voluntary Referral is designed to encourage and facilitate the identification of a Regulated Service Employee with a drug and/or alcohol issue by providing the employee the opportunity to obtain counseling or treatment before this issue manifests itself in a safety concern for the Regulated Service Employee or others or a violation of Federal regulation and/or LIRR policy.
2. A Co-Worker Referral is designed to encourage co-worker participation in avoiding safety concerns based on a Regulated Service Employee's drug and/or alcohol issue or a violation of Federal regulation and/or LIRR policy. A Regulated Service Employee may be classified as a Co-Worker Referral following an alleged offense of the LIRR's Alcohol and Drug Policy, provided the alleged violation is brought to the attention of the LIRR by the Regulated Service Employee's Co-Worker. The Co-Worker must report that the Regulated Service Employee was apparently unsafe to work with or was, or appeared to be, in violation of the LIRR's Alcohol and Drug Policy. The Regulated Service Employee must accept a referral to the DAC to be considered a Co-Worker Referral.

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3. Referral Program Provisions

- a. The DAC will handle the referral and all subsequent counseling and treatment as confidential except as indicated in Section VII.D.4 (below).
 - b. The DAC will schedule the necessary interviews with the Regulated Service Employee and complete an evaluation within ten (10) calendar days of the date the Regulated Service Employee contacted the DAC with the request to be evaluated.
 - c. At the time a referred Regulated Service Employee requests assistance through the LIRR for an alcohol or drug problem, he/she will be granted a leave of absence from the LIRR for the minimum time recommended by the DAC to complete a primary education, counseling, or treatment program and establish control over the employee's drug or alcohol abuse problem.
 - d. A referred Regulated Service Employee will be returned to service on the recommendation of the DAC upon compliance with any recommended return-to-service requirements and the successful completion of a return-to-duty medical examination if required under the Regulated Service Employee's applicable collective bargaining agreement or LIRR policy. Approval to return to service will not be unreasonably withheld.
4. Waiver of Confidentiality – Locomotive Engineers, Conductors, or Candidates for Certification – Per Section VIII.D. below, the policy of confidentiality for certified Locomotive Engineers, certified Conductors, or Candidates for Certification in a referral program as referenced in 49 CFR 219 Subpart K is waived to the extent that the LIRR shall receive from the DAC official notice of the Substance Abuse disorder and shall suspend or revoke the certification as appropriate if the person at any time refuses to comply with the recommended course of counseling or treatment.

Waiver of Confidentiality – Regulated Employees – Per Section VIII.D below, the policy of confidentiality for Regulated Employees in a referral program as referenced in 49 CFR 219 Subpart K is waived to the extent that the LIRR shall receive from the DAC official notice of the Substance Abuse disorder if the employee at any time refuses to cooperate in a DAC's recommended course of counseling or treatment.

5. Consistent with 49 CFR 219.1001(d)(2), the LIRR is not required to adhere to a voluntary, co-worker, or non-peer referral program when the referral is made for the purpose, or with the effect, of anticipating or avoiding the imminent and probable detection of a violation of any Federal or LIRR rule, policy, or procedure by a supervising employee.

VIII. CONFIDENTIALITY

- A. No Supervisor or employee may disclose to any individual any drug and/or alcohol use or testing information concerning any other employee, unless: such disclosure is necessary for compliance with this Policy or applicable federal law/regulations; or the employee has signed a release authorizing the disclosure of such confidential information.
- B. All records maintained in the course of carrying out the procedures described in this Policy and under federal drug and alcohol testing laws must be maintained in a separate, locked

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file pursuant to the LIRR Confidentiality & Security of Personal Identifying Information Policy, EMPL-007.

- C. If an employee discloses the information or records described above to any other individual for any reason, except as permitted above, the employee may be subject to administrative or disciplinary action, up to and including dismissal.
- D. Consistent with §§240.119(e) and 242.115(g) of federal regulations, for a certified Locomotive Engineer, certified Conductor, or a candidate for Engineer or Conductor certification, confidentiality is waived (to the extent the railroad receives from a DAC official notice of the active drug abuse disorder and suspends or revokes the certification, as appropriate) if the employee at any time refuses to cooperate in a recommended course of counseling or treatment.

Consistent with §§219.1005 of federal regulations, for a Regulated Employee, confidentiality is waived if the employee at any time refuses to cooperate in a recommended course of counseling or treatment.

IX. RELATED POLICIES

MED-002 - Americans with Disabilities Act (ADA)
LEAVE-003 - Family and Medical Leave Act (FMLA)
MED-001 - Medical Assessment Policy
EMPL-007 – Confidentiality & Security of Personal Identifying Information Policy

X. ATTACHMENTS

Attachment A – Titles Designated as MOW/RWP Employees and titles which may be designated as MOW/RWP Employees
Attachment B – Federal and LIRR Drug Panels
Attachment C – Guidance for Regulated Service Employees about 49 CFR Part 219

XI. REVISION TRACKING

June 2007

February 2008

April 2009

June 2014 - The Policy was scheduled for review per CP&P BPM-001 – Issuance of Corporate Policies and Procedures. Updated the reference number to the Drug-Free Workplace Act from 41 U.S.C. § 701 to 41 U.S.C. § 8102.

June 2017 - The Policy was revised in compliance with 49 CFR Part 219; delineates when action is/may be taken under federal authority and under LIRR authority; adds a requirement that arrests/convictions by Regulated Service Employees, Commercial Drivers and Safety Sensitive Employees for violating drug/alcohol statutes in or out of the workplace must be reported pursuant to the Policy; and adds, as an attachment, information about drug testing panels under Federal/LIRR authority.

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- March 2018** - The Policy was revised in further compliance with 49 CFR Part 219, including §219.23 by adding: Attachment A, titles of MOW/RWP Employees and titles which may be designated as MOW/RWP Employees; and Attachment C, "Guidance for Regulated Service Employees about 49 CFR Part 219." Additional information was added to Section VII. of the Policy regarding Referral Program provisions and to Section VI.C. to clarify testing authority for test types. A reference to federal regulation was added to Section IV. to define a refusal to test.
- March 2020** - This Policy was revised to reflect changes in medication reporting requirements for FRA Regulated employees and CDL drivers; to distinguish between consequences for engaging in prohibited conduct and for non-reporting violations; to clarify the definition of Return to Duty testing; to reflect changes in Federal and LIRR Drug Panels (Attachment B).
- Dec. 2020** - This Policy was revised to reflect a change in the timeframe for consequences for engaging in prohibited conduct; to reflect a change in EAP's confidentiality provision for Regulated Service employees.
- March 2022** - This Policy was revised to reflect the addition of Mechanical Employees (MECH) to the Regulated Service Employees classification per 49 CFR 219. References to this classification were updated in the main body of the policy and in Attachment C. In addition, the Guidelines for Reasonable Cause testing for Regulated Service Employees have been updated to reflect changes in 49 CFR 219.

Guidance for Regulated Service Employees about 49 CFR Part 219¹**I. Introduction**

Regulated Service Employees are subject to drug/alcohol testing under federal authority as provided in the Federal Railroad Administration (FRA)'s regulations in 49 CFR Part 219, <https://www.ecfr.gov/>. The general purpose of this program is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol and/or drugs.

Regulated Service Employees are, like all LIRR employees, subject to drug/alcohol testing under LIRR authority as provided in the LIRR Alcohol and Substance Abuse Policy, MED-005 (sometimes referred to as the Policy), <http://www.lirr.org/CorporateDocs/Policies/HR/MED-005.pdf>.

Note: In some instances, drug/alcohol testing, prohibited conduct, and the consequences for engaging in prohibited conduct, may be stricter and/or broader under the Policy than under 49 CFR Part 219.

II. When an Employee is designated as a Regulated Service Employee

There are two employee classifications that come under the heading of "Regulated Service" in 49 CFR Part 219.

A. The first classification, Covered Service Employees, refers to employees who perform work under the Hours of Service laws or who are subject to performing such service. The titles of employees who generally perform Covered Service are listed in Section III.B.1.a. of the Policy at page 2. Covered Service Employees have been subject to drug/alcohol testing under 49 CFR Part 219 for many years.

Note: Covered Service does not include any period when the employee is relieved of all responsibilities and is free to come and go without restriction.

B. Effective June 12, 2017, FRA added a **second classification** of employees to its federal drug/alcohol testing program: employees who perform Maintenance of Way (MOW) activities.

- LIRR refers to this employee classification as Maintenance of Way/Roadway Worker Protection (MOW/RWP) Employees. The duties performed by employees in this classification are described in Section III.B.1.b. of the LIRR Alcohol and Substance Abuse Policy at Page 2. The titles of employees designated as MOW/RWP Employees and who may be designated as MOW/RWP Employees are listed in Attachment A to the Policy.

¹ Per 49 CFR §219.23, this Guidance is an educational material provided to Regulated Service Employees as Attachment C to the LIRR Alcohol and Substance Abuse Policy, MED-005, <http://www.lirr.org/CorporateDocs/Policies/HR/MED-005.pdf>.

C. Effective March 4, 2022, FRA added a **third classification** of employees to its federal drug/alcohol testing program: employees who, on behalf of a railroad, perform mechanical tests or inspections required by parts 215, 221, 229, 230, 232, or 238 of the CFR on railroad rolling equipment, or its components. This includes employees from the following positions/areas if they are performing the work specified above: Car Repairman, Electrician, Gang Foremen, Machinist, Road Car Inspectors, Sheet Metal Workers, and Management. This classification is referred to going forward as MECH.

An employee is designated as performing Regulated Service (subject to drug/alcohol testing under federal authority) if he/she is likely to perform Covered Service ~~or~~, MOW/RWP, or MECH duties **at least four (4) times annually or an average of once a quarter.**

III. 49 CFR 219 Prohibitions²

49 CFR Part 219 §§101-103 prohibits the use/possession of alcohol or any **controlled substance**³ by a Regulated Service Employee when on duty and subject to performing Regulated Service, and provides:

- No FRA-Regulated employee may report for Regulated Service, or go or remain on duty in Regulated Service, while—
 - Under the influence of or impaired by alcohol;
 - Having 0.04 or more alcohol concentration in the breath or blood; or
 - Under the influence of or impaired by any controlled substance.
- No FRA-Regulated employee may use alcohol for whichever is the lesser of the following periods:
 - Within four (4) hours of reporting for Regulated Service; or
 - After receiving notice to report for Regulated Service.
- No FRA-Regulated employee whose alcohol test under 49 CFR Part 219 indicates an alcohol concentration of 0.02 or greater but less than 0.04 may perform or continue to perform Regulated Service for LIRR, nor may LIRR permit the FRA-Regulated employee to perform or continue to perform Regulated Service, until the start of his/her next regularly scheduled duty period, but not less than eight (8) hours following the test.
- Regulated Employees found to have violated subpart B of 49 CFR 219 will be removed immediately from Regulated Service.

² For additional information, see Section IV (Prohibited Conduct) and Section V (Consequences of Engaging in Prohibited Conduct) of the Policy at pages 4-7.

³ Section III.A.2. of the Policy at page 1 lists the FRA definition of Controlled Substances as:

All substances listed in Schedules I to V as set forth in 21 C.F.R. 802 Parts 1301-1316, or as the Schedules may be revised from time to time by publication in the Federal Register. Controlled Substances include Narcotics/Opiates, Depressants, Stimulants, Hallucinogens, and Cannabis.

Note: Under LIRR Authority:

- A positive alcohol test result of 0.02 but less than 0.04 is a violation of the Policy and may result in discipline up to and including dismissal.
- A positive alcohol test result of 0.04 or higher is a violation of the Policy and may result in discipline up to and including dismissal.
- A positive drug test is a violation of the Policy and may result in discipline up to and including dismissal.

IV. Consequences of Engaging in Prohibited Conduct Include

- Regulated Employees found to have engaged in Prohibited Conduct (as designated in subpart B of 49 CFR 219) will be removed immediately from regulated service.
- Section V.A. of the Policy at Page 7 provides that employees determined to be in violation of the Policy will be subject to dismissal. At the discretion of the LIRR, employees may be offered a suspension of no less than six (6) months without pay with the following exceptions:
 - Locomotive Engineers, Conductors, or Candidates for Certification who test positive for alcohol at a level of 0.04 or greater may be offered a suspension of no less than nine (9) months without pay;
 - An employee who refuses to test may be offered a suspension of no less than nine (9) months without pay;
 - Section V.E. of the Policy at Page 7 references consequences for non-reporting.
- A represented employee may be offered the opportunity to sign a Trial Waiver ~~and~~ a Last Chance Agreement after a first violation of this Policy and will be dismissed after a second violation.

V. Restrictions on Regulated Service Employee Use of Over-The-Counter (OTC) and Prescription Medications

- Attachment B to the Policy lists the current drug panels under federal authority and under LIRR Authority. Federal and LIRR drug panels are subject to change at any time without notice.
- Effective ~~June 12, 2017, MOW/RWP~~ March 4, 2022, MECH employees became subject to the restrictions regarding OTC and prescription medications in 49 CFR Part 219 which already applied to Covered Service Employees ~~and MOW/RWP Employees (effective June 12, 2017).~~
- All Regulated Service Employees are **prohibited** from working while taking any prescription and/or OTC medications other than those listed below unless the Medical Review Officer (MRO) determines that such usage is consistent with the safe performance of his/her duties. See Section IV.F. of the Policy at Page 5.
- The only types of medications that do not need to be reported to Medical prior to working while taking them are listed below:
 - Allergy shots;
 - Antibiotics;
 - Antifungals;
 - Asthma medications;
 - Beta-blockers;
 - Birth control pills;
 - Blood pressure medications;
 - Cholesterol medications;
 - Cough drops;
 - Ear drops;
 - Erectile dysfunction medications;
 - Joint injections;
 - Laxatives;
 - Stool softeners;

- Reflux medications;
- Topical products (i.e., creams/ointments);
- Vaccines;
- Vitamins (ex.: A, B, C, D, E);
- Over-the-counter medications that do not have a safety-related warning on their label.

Reminder: If you are considering taking a prescription and/or OTC medication(s) other than those listed above, bring this to the attention of the LIRR Medical Facility **as soon as possible during Medical's business hours (Monday through Friday, 7:30 a.m. – 4:00 p.m.) or on Saturday or Sunday from 9:00 a.m. – 12:00 p.m.** You cannot work unless the MRO has determined in advance that you can and his/her decision is final and binding.

Note: A prescription medication has to have been prescribed **for you**, not someone else.

VI. Drug/Alcohol Testing – Types of Testing

- **Types of Tests** - As a Regulated Service Employee, you are required to submit to alcohol and drug tests administered in accordance with 49 CFR 219 and are subject to the following types of drug and/or alcohol Testing under federal authority: 1) *Pre-Placement*; 2) *Reasonable Suspicion*; 3) *Post-Accident*; 4) *Random*; 5) *Follow-up*.
- A description of the circumstances when each type of drug/alcohol test under 49 CFR Part 219 can be conducted is in Section VI. of the Policy at Pages 7 – 15; this also notes additional testing that may be performed under LIRR authority.
- The LIRR does not perform Reasonable Cause testing under federal authority; all Reasonable Cause testing is performed under LIRR authority.

Steps Taken to Protect the Integrity of the Testing Process

- All federal alcohol and drug testing is performed by Breath Alcohol Technicians (BATs) and urine specimen collectors who have been certified in the requirements of 49 CFR Part 40 and strictly follow U.S. Department of Transportation (DOT) guidelines for testing.
- Employees confirm all relevant and identifying information on the Alcohol Testing Form and Chain of Custody form at the time of testing; they also witness the sealing of the urine specimen bottles and initial both bottles.
- The alcohol testing device used is calibrated on a regular basis.
- Urine specimens are sent to a laboratory certified by the U.S. Department of Health and Human Services.
- Results are reviewed by the MRO and MRO Assistant and communicated only with LIRR personnel on a need-to-know basis.

Steps Taken to Maintain Confidentiality of the Testing Process

- Medical information which the employee provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to LIRR personnel except as required in 49 CFR Part 40.
- The laboratory observes confidentiality requirements as provided in the regulations. The LIRR does not advise the laboratory of the identity of persons submitting specimens. The laboratory performing the testing must keep all records pertaining to the drug test for a period of two (2) years.
- All test results remain exclusively in the secure files of the MRO. The MRO will observe strict confidentiality in accordance with the regulations and professional standards. The MRO retains the reports of individual test results as required in 49 CFR Part 219 Subpart J.
- The LIRR's Designated Employer Representative (DER) maintains all test results reported by the MRO, both positive and negative, in secure storage. The results are retained as required in 49 CR Part 219 Subpart J. Other personnel are informed of individual test results only in the case of positive tests and only on a need-to-know basis.

VII. Drug Testing - What is a Refusal?

Under 49 CFR Part 40, a Regulated Service Employee will be considered to have **REFUSED A DRUG TEST** under 49 CFR Part 219 **if he/she:**

- Fails to appear for any test within a reasonable time, as determined by the LIRR after being directed to do so by the LIRR.
- Fails to remain at the testing site until the testing process is complete.
- Fails to provide a urine specimen for any drug test required. (There is a limited exception under certain circumstances for pre-employment test.)
- In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of his/her provision of a specimen under 49 CFR §§40.67(l) and 40.69(g)).
- Fails 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 (per 49 CFR §40.193(d)(2)).
- Fails or declines to take an additional drug test the LIRR or collector has directed him/her to take (per 49 CFR §40.197(b)).
- Fails to undergo a medical examination/evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d).

- Fails to cooperate with any part of the testing process. *Examples:* refusal to empty pockets when directed by the collector; behavior that disrupts the collection process; fail to wash hands after being directed to do so by the collector.
- For an observed collection, fails to follow the observer's instructions to: raise his/her clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if he/she has any type of prosthetic or other device that could be used to interfere with the collection process.
- Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- Admits to the collector or MRO that he/she adulterated or substituted the specimen.

VIII. Alcohol Testing - What is a Refusal?

Under 49 CFR Part 40, a Regulated Service Employee will be considered to have **REFUSED AN ALCOHOL TEST** under 49 CFR Part 219 **if he/she:**

- Fails to appear for any test within a reasonable time, as determined by the LIRR, after being directed to do so by the LIRR.
- Fails to remain at the testing site until the testing process is complete.
- Fails to provide an adequate amount of saliva or breath for an alcohol test.
- Fails to provide a sufficient breath specimen, and the MRO has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- Fails to undergo a medical examination or evaluation, as directed by the LIRR as part of the insufficient breath procedures outlined above.
- Fails to sign the required certification.
- Fails to cooperate with any part of the testing process.

IX. Consequences for Violations Include but are not Limited to:

- Immediate Removal from Service.
- Dismissal.
- **Reminder:** See Section V. of the Policy (Consequences of Engaging in Prohibited Conduct) at page 7 for additional information.

X. Information Concerning the Effects of Alcohol and Drug Misuse

Employment:

In the workplace, employees who misuse alcohol and other drugs often have issues including lost productivity, absenteeism, injuries, fatalities, theft, and low employee morale; employers may experience an increase in healthcare costs and legal liabilities.

Impairment in cognition, perception, and motor skills at work create a dangerous environment for the user and his or her co-workers.

Home Life:

Drug and alcohol use can also damage relationships at home. Families are often negatively impacted by the effects of drugs. They may feel helpless, angry, embarrassed or ashamed. They might even begin to exclude the individual struggling with addiction from family and social gatherings. Substance abuse often increases the likelihood of domestic violence and erratic behavior.

Health and Well-being:

Drug and alcohol abuse negatively impacts both physical and mental health. Misuse of these drugs may cause blackouts, poisoning, overdose, physical and psychological dependence, damage to vital organs such as the brain, heart, and liver and may result in death. Psychological problems as a result of the misuse of alcohol and drugs include depression, psychosis, severe anxiety, impaired judgment and coordination. Drug & Alcohol abuse are also associated with acquaintance assault and rape, DUI/DWI arrests, falls, drowning and other injuries, contracting sexually transmitted diseases including HIV, and unwanted or unplanned sexual experiences and pregnancy.

XI. Signs and Symptoms of an Alcohol or Drug Problem

Physical warning signs of drug abuse or addiction may include:

- Bloodshot eyes;
- Pupils larger or smaller than usual;
- Changes in appetite or sleep patterns;
- Sudden weight loss or weight gain;
- Deterioration of physical appearance and/or personal grooming habits;
- Unusual smells on breath, body, or clothing;
- Tremors, slurred speech, or impaired coordination.

Behavioral warning signs of drug abuse or addiction may include:

- Drop in attendance and performance at work;
- Unexplained financial problems; borrowing or stealing;
- Engaging in secretive or suspicious behaviors;
- Sudden change in friends, favorite hangouts, and hobbies;
- Frequently getting into trouble (fights, accidents, illegal activities).

Psychological warning signs of drug abuse or addiction may include:

- Unexplained change in personality or attitude;
- Sudden mood swings, irritability, or angry outbursts;
- Periods of unusual hyperactivity, agitation, or giddiness;
- Lack of motivation; appears lethargic or "spaced out";
- Appears fearful, anxious, or paranoid.

At the Long Island Rail Road, observation of any of the following criteria by a trained supervisor may result in a Reasonable Suspicion drug and/or alcohol test:

- Staggered gait/difficulty walking;
- Slurred speech;
- Drowsiness/sleepiness;

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- Odor of an intoxicant;
- Disorientation (time/place/person):
- Rapid mood swings with no apparent reason;
- Poor coordination or body control.

XII. Available Methods of Evaluating and Solving Problems

Any New York State Office of Alcoholism and Substance Abuse Services (OASAS) approved treatment facility is qualified to evaluate the individual and the impact of his or her drug and alcohol use. If needed, these facilities can suggest a treatment plan. The LIRR's Employee Assistance Program (EAP) only refers employees to OASAS approved facilities who are willing and able to provide EAP with proper documentation. The facilities must actively partner with EAP in treating the employee and returning him or her to work when sober and able to safely perform their duties.

EAP is available to employees and their family members for assistance with a wide variety of issues. EAP staff also act as the LIRR's designated Substance Abuse Professionals (SAP) and Drug and Alcohol Counselors (DACs) and can provide information concerning the effects of alcohol and drug misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol and drugs.

To contact EAP, call (347) 494-6285.

- *EAP is located at 300 Old Country Road, Suite 103, Mineola, NY 11501.*

Reminder: Information about EAP's confidential counseling and services, including Voluntary and Co-Worker Referrals, is in Section VII. of the Policy at pages 18-21.

XIII. More Questions?

- If you have questions about why you were designated as a Regulated Service Employee, contact your department.
- If you have questions about 49 CFR Part 219 after checking the regulations, <https://www.ecfr.gov/>, contact Don Eccleston, Deputy Chief Safety Officer – Compliance and Performance at (347) 494-6021.
- If you have questions about the LIRR Alcohol and Substance Abuse Policy after checking the Policy, <http://www.lirr.org/CorporateDocs/Policies/HR/MED-005.pdf>, contact Christopher M. Yodice, Assistant Director – Employee Services at (347) 494-6276.

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I. SUMMARY

Metro-North Railroad (MNR) is committed to operating and maintaining an alcohol-free and drug-free workplace to provide a safe environment for its Employees and customers. All sites at which Company business is conducted, including all vehicles used for business or commuting purposes, are to be drug and alcohol-free.

MNR policies prohibit all Employees from using or possessing alcohol during an Employee's tour of duty, while an Employee is on MNR property or while otherwise engaged in MNR business, and/or when such use would make him or her unfit to report for duty or to be on-duty. MNR prohibits the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances in the workplace. Additionally, the unlawful use of any drug or controlled substance at any time is prohibited.

MNR requires all Employees to abide by the terms of these policies as a condition of employment and/or the performance of duties. Employees who violate these policies are subject to disciplinary action, up to and including termination from employment at MNR. MNR conducts alcohol and drug testing of Employees under the circumstances required by federal regulations and/or as specified herein. Employees are encouraged to familiarize themselves with the alcohol and drug testing procedures covering their respective job titles.

MNR, in accordance with DOT (49 CFR § 40, 219, and 382) and Non-DOT (Company Authority) testing reserves the right to require or take immediate action(s) to perform Reasonable Cause and/or Reasonable Suspicion alcohol and drug testing, and to remove from safety-sensitive duties any Employee and/or Contractor performing any work related to railroad activities.

This Corporate Policy and Operating Procedure (Procedure), provides a general overview of the United States Department of Transportation (DOT) drug use and alcohol misuse prevention rules for the commercial transportation industries that apply to MNR and its Employees. This Procedure also sets forth rules and procedures of MNR addressing alcohol and substance abuse that are in addition to the applicable DOT rules. Regulated Service (Note: Regulated Service includes ~~both~~ Covered Employees [as defined in 49 U.S.C. Sections 21101-21108](#), and Maintenance of Way Employees, as defined in 49 CFR Part 214.7, [and Mechanical Employees as defined in 49 CFR Part 219.5](#)) Employees and Commercial Motor Vehicle Drivers are advised to consult the specific rules published by the DOT agencies for the detailed DOT agency requirements applicable to them. Regulated Service Employees should also familiarize themselves with applicable provisions of collective bargaining agreements. Materials related to drug and alcohol policies are issued regularly and are available to any Employee by accessing MNR's Intranet, or by contacting a Supervisor or the Human Resources Department.

MNR will hold any Employee who engages in the illegal use of drugs or who suffers from a drug-use or an alcohol-use disorder to the same qualification standards for employment or job performance and behavior (such as attendance) to which the Company holds its other Employees, even if unsatisfactory performance, behavior, or rule or policy infractions are related to the Employee's drug and/or alcohol use. MNR encourages all Employees to voluntarily seek assistance with alcohol and drug related problems and provides a qualified Employee Assistance Program (EAP) for all Employees.

This Procedure does not supersede the applicability and enforceability of other agreements, rules, policies and regulations. Employees must comply with all agreements, rules, policies and regulations applicable to their employment and must at all times satisfy the performance standards applicable to their employment.



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This Procedure does not supersede ~~the~~ MNR's rights and obligations set forth in the Code of Federal Regulations concerning the certification and procedures of locomotive engineers and conductors.

Nothing in this Procedure prohibits MNR from taking administrative or disciplinary action, up to and including dismissal, with or without conducting drug and/or alcohol testing, when there is a violation of, or reasonable suspicion of a violation of, this Procedure.

II. PROHIBITED EMPLOYEE CONDUCT

All sites at which MNR business is conducted, including all vehicles used for business purposes, are to be drug and alcohol-free workplaces.

1. On-Duty Use of Alcohol/Controlled Substances. All Employees are prohibited from using alcoholic beverages, intoxicants or controlled substances while subject to duty or while on-duty.
2. Possession of Alcohol. All Employees are prohibited from possessing alcoholic beverages while subject to duty or while on-duty.
3. Alcohol Prohibition at Sponsored Functions. Alcoholic beverages are prohibited at MNR sponsored functions.
4. On or Off-Duty Illegal Controlled Substance Activity, including Possession/Use. All Employees are prohibited from illegally manufacturing, distributing, selling, dispensing, possessing or using any illegally obtained controlled substance on or off-duty.
5. Possession of Drug Paraphernalia. All Employees are prohibited from possessing drug paraphernalia in the workplace.
6. Use of Medications by Safety Sensitive Employees. Safety Sensitive Employees' (as defined below in Section IV) use of prescription and/or over-the-counter (OTC) medications is subject to the following requirements:
 - a. Prescriptions
 1. The use of any ~~orally administered~~ prescription medication is required to be brought to the attention of a MNR Medical Review Officer (MRO) or designee by the Employee before performing service. Safety Sensitive Employees have an obligation to provide such notice as soon as practicable after receiving the prescription from the Employee's licensed medical professional. Each department with safety-sensitive Employees must designate alternative point(s) of contact to receive such notice in the event the Medical Office is closed or the MRO is otherwise unavailable, and, upon receipt of such notice, the point of contact should confer with the Human Resources Department regarding appropriate next steps to determine the Employee's suitability for service.
 2. Prior to obtaining a prescription from his or her licensed medical practitioner, a Safety Sensitive Employee is expected to advise the licensed medical practitioner of the safety-sensitive classification of his or her job title and of his or her safety-sensitive duties.



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3. The MRO or designee, is required to make a determination regarding the risk, if any, created by the Safety Sensitive Employee's use of the prescribed medication while under the influence of such medication and to advise the Employee whether he or she should refrain from reporting for duty (or from continuing to perform his or her duties) while using or under the influence of such medication. Such a determination of the MRO or designee is final and binding.

~~3.4.~~ Performance of service by Safety Sensitive Employees while using or under the influence of a prescription medication in violation of these procedures is prohibited. Safety Sensitive Employees who fail to comply with these procedures are subject to discipline, up to and including dismissal. See the accompanying OHS issued document for safe prescription drug use guidelines.

b. OTC Medications

1. The use of certain ~~orally administered~~ OTC medications, whether at the suggestion of a licensed medical professional or otherwise, may also have an adverse and unacceptable impact upon the Safety Sensitive Employee's performance of his or her job-related responsibilities. See the accompanying OHS issued document for safe OTC drug use guidelines.
2. With respect to any ~~orally administered~~ OTC medication that does not appear in the safe OTC drug use guidelines, Safety Sensitive Employees are required to follow the notice and authorization procedures set forth above under Section II.6(a) (1) and (3). Any questions regarding the possible impact of an OTC medication should be directed to the MRO.
3. In the event a Safety Sensitive Employee, while using such an OTC drug that does not appear in the safe OTC drug use guidelines, experiences drowsiness, fatigue, or other side effects that create concern regarding the safety impacts of use of such OTC drug by the Safety Sensitive Employee in connection with the performance of his/her safety-sensitive duties, s/he must contact his or her Supervisor or the employer's MRO immediately and follow his or her direction as to the Safety Sensitive Employee's fitness for duty for the shift they are working or next scheduled to work, and obtain advance authorization and review under Section II.6.(a) (1) and (3) of the use of such OTC drug in connection with any future report to duty while using or under the influence of such OTC drug.
4. Safety Sensitive Employee performance of service while using or under the influence of an OTC medication in violation of these requirements is prohibited.

Refusal to Test, Cooperate or Intentional Interference with Procedure. All Employees are prohibited from refusing to cooperate or from intentionally interfering with MNR's efforts to enforce this Procedure or related federal regulations, including, but not limited to, refusing to submit to a drug and/or alcohol test conducted pursuant to this Procedure or federal regulations, or tampering with the integrity of a breath or urine sample in connection with such tests.

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III. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

1. Discipline/Dismissal. Employees violating this Procedure are subject to discipline, up to and including dismissal. MNR is not required to conduct drug and/or alcohol testing before taking disciplinary action, up to and including dismissal, for a violation of this Procedure.
2. Reasonable Cause Testing: Refusal or Detection of Prohibited Substance. When there is Reasonable Cause (as set forth below in Section VII), an Employee must take a breath, and/or urinalysis test in accordance with FRA regulations, or MNR Policies and Procedures. Employees who are requested to take a breath, and/or urinalysis test and refuse will be subject to dismissal. The detection of a prohibited substance, resulting from any required toxicological test, will constitute a violation of this Procedure.
3. Reasonable Suspicion Testing: Refusal of Test or Detection of Prohibited Substance. When there is Reasonable Suspicion (as set forth below in Section VII) that an Employee has used alcohol, intoxicants or a controlled substance while on-duty or while on-duty is under the influence of same, the Employee may be required to take a breath, and/or urinalysis test in accordance with FRA regulations or MNR Policies and Procedures. Employees who are requested to take a breath, and/or urinalysis test and refuse will be subject to dismissal. The detection of a prohibited substance, resulting from any required toxicological test, will constitute a violation of this Procedure.
4. Workplace Violation of Criminal Drug Statute. Under the federal Drug-Free Workplace Act, 41 USC §701, et seq., Employees convicted of violating a criminal drug statute in the workplace, must report the conviction to MNR's Human Resource Department – Planning & Administration Division located at 420 Lexington Avenue, 12th Floor within five (5) days of the conviction. Employees convicted of such a violation or who fail to report such a conviction may be subject to disciplinary action, up to and including dismissal. An Employee who has been convicted of such a violation must contact Metro-North's EAP Department to arrange for an in-person evaluation. No Employee will be permitted by MNR to return to duty following such a conviction without first receiving a written authorization from MNR's Occupational Health Services department ("OHS") to return to duty.
5. Off-Duty Misconduct. Employees may be subject to disciplinary action, up to and including dismissal, if MNR is notified of off-duty misconduct that can be established relating to alcohol and/or drug abuse (for example, a drug or alcohol related conviction) or the Employee's illegal manufacturing, distribution, dispensing, or possession of controlled substances. In accordance with MNR's Corporate Policy and Operating Procedure: 21-028, any person employed by MNR who is arrested and charged with a felony or misdemeanor (for example, Driving While Impaired) must notify MNR within 48 hours. This notification must be made in writing to the Human Resources Department – Planning & Administration division located on the 12th Floor, 420 Lexington Ave. The Employee must provide a copy of the court document setting forth the felony or misdemeanor charges within 5 days of receipt to Human Resources, Planning & Administration division. An Employee who has been convicted of a felony or misdemeanor that is drug or alcohol related must contact EAP to arrange for an in-person evaluation. Such an Employee may not return to work prior to receiving a return to duty evaluation with OHS and receiving written authorization to return to work.
6. Return to Duty. Any Employee who has engaged in conduct in violation of this Procedure must pass a drug and/or alcohol test to return to his/her position. The Employee may not return to active duty until the negative drug and alcohol results are received by MNR. In addition, that Employee may be subject to unannounced follow-up drug and/or alcohol testing as directed under federal laws and



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regulations, or as a condition of the discipline, as described under Section V.5.

7. Past or present involvement in a rehabilitation program, EAP, or with other treatment practitioners cannot serve as a defense nor mitigate the circumstances of alleged violations of Company rules, policies or laws.

IV. EMPLOYEE CLASSIFICATIONS RELEVANT TO TESTING PROGRAM

Regulated Service Employees - 49 CFR Parts 40, 219, and 382:

1. Covered Service Employees - Applies to all ~~covers~~ Employees who perform work regulated by the Federal Hours of Service Laws (49 U.S.C. §§ 21101-21108). the following titles: A. Locomotive Engineers; B. Conductors and Assistant Conductors; C. Rail Traffic Controllers; Yardmasters; D. Signal Foreman, Assistant Signal Foreman, Signal Maintainer, Signal Inspector, Signalman, Assistant Signalman, and Signal Helper; (while performing work covered by the Hours of Service Act), and E. Mechanical Department Electricians (while performing work covered by the Hours of Service Act).
2. Maintenance of Way/Roadway Work Protection Employees (MOW/RWP Employees) -- Applies to all Employees who perform duties as Maintenance of Way workers as described in 49 CFR Part 214.7, including Covers the following titles [representative list]: A. Track Workers; B. B&B employees; C. Track Inspectors; Power Employees; D. Welder; E. Track Supervisors; F., Conductor Flags and any Employees whose duties include inspection, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track and flagmen and watchmen/lookouts, as defined in 49CFR 214.7.
3. Mechanical Employees – Applies to Employees who perform mechanical duties as defined in 49 CFR Part 219.5, which covers any Employee who performs mechanical tests or inspections required by parts 215, 221, 229, 230, 232, 238, or 299 of this chapter on railroad rolling equipment, or its components.

CDL Drivers (Commercial Driver's License): Employees who occupy a job title that MNR has determined requires a commercial driver's license (CDL) issued by a state authorizing operation of a commercial motor vehicle described in 49 CFR § 382.107 are classified as Commercial Drivers. Commercial Drivers are required to comply with this Procedure and with the alcohol and drug prohibitions and provisions in 49 CFR § 382 of the Federal Motor Carrier Safety Administration ("FMCSA") regulations. This category includes non-agreement Employees performing service as Commercial Drivers.

Safety-Sensitive ("SS") Employees: Safety Sensitive Employees are those Employees who perform service in job titles which the Company has determined involve tasks so fraught with risks of injury that even a momentary lapse of attention can have disastrous or irremediable consequences to the Employee or others. A list of the job titles the Company has designated as Safety-Sensitive is maintained by the Human Resources Department. Job titles of Regulated Service Employees and Commercial Drivers are included within the Safety Sensitive classification. This definition also includes agreement and non-agreement Employees in other job titles designated as Safety-Sensitive.

Non-Safety-Sensitive ("Non-SS") Employees: Employees who do not perform service in job titles



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classified as Covered Employee, Commercial Driver, or Safety-Sensitive Employee. ~~Such employees~~Such Employees perform low risk tasks where non-performance of those tasks would not present immediate danger to Employees or others.

Other Defined Employees under the Procedure:

1. Peer or Co-Worker: Any Employee or union representative who is not the Supervisor of an Employee suspected of being in violation of this Procedure.
2. Supervisor: An officer, manager, or other Employee of the Company who is responsible for supervising or monitoring the conduct or performance of one or more Employees. This definition includes both agreement and non-agreement Supervisors.
3. Medical Review Officer ("MRO"): A licensed physician designated by Metro-North to receive laboratory results produced by the laboratory retained by the Company, to evaluate drug and/or alcohol tests, and to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. An MRO may also be a licensed physician assigned to assess the safety risks of use of prescription and/or OTC medications by Safety Sensitive Employees.
4. Substance Abuse Professional ("SAP"): A person who evaluates Employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. The SAP must meet the requirements of 49 CFR § 40.281. For purposes of this Procedure, the Company's EAP Counselor is the "SAP."
5. Drug and Alcohol Counselor ("DAC"): means a person who meets the credentialing and qualification requirements described 49CFR § 242.7.
6. Designated Employer Representative ("DER"): An Employee authorized by the employer to take immediate action(s) to remove Employees from safety-sensitive duties, or cause Employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The "DER" also receives test results and other communications for the employer, consistent with the requirements of 49 CFR § 40.

V. ADDITIONAL DEFINITIONS

1. ACCIDENT/INCIDENT: An event or occurrence related to MNR train operations that is required to be reported, including: fatality, injury, or illness; collision, derailment, and similar events involving the operation of on-track equipment that resulted in monetary damage in excess of the current reporting threshold; and impact between rail on-track equipment and highway users at crossings, if a human factor event occurs.
2. WORKPLACE: any location that MNR business is conducted, whether on or off MNR property.
3. SUBSTANCES:

~~a.~~ ALCOHOL: The intoxicating agent in beverage alcohol, ethanol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

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e-b. CONTROLLED SUBSTANCES: All substances listed in Schedules I to V as set forth in 21 CFR Part 1308, and referenced in the DOT guidelines (49 CFR Part 40). In addition to these controlled substances, MNR reserves the right to test for additional controlled substances, included below, but not limited to the following list:

- i. Narcotics/Opiates – Opium, Morphine, Codeine, Heroin, Hydromorphone, Meperidine (Demerol), Methadone, Oxycodone, Hydrocodone, Suboxone,
- ii. Depressants – Chloral Hydrate, Barbiturates, Benzodiazepines, Methaqualone (Qualudes), Glutethimide (Doriden),
- iii. Stimulants – Cocaine, Amphetamines, Phenmetrazine (Preludin), Methylphenidate (Ritalin), Methamphetamine
- iv. Hallucinogens – LSD, Mescaline and Peyote, Amphetamine Variants, Phencyclidine (PCP), Phencyclidine Analogies
- v. Cannabis – Marijuana, Tetrahydrocannabinol (THC), Hashish and Hashish Oil

e-c. DRUG: Any substance other than alcohol that has known mood or function-altering effects on humans, including but not limited to, controlled substances.

d. INTOXICANT: Any agent that produces intoxication, such as a drug or toxic substance or alcoholic beverages.

e. OVER-THE-COUNTER (OTC) DRUGS: Medications that do not require a prescription and that can be purchased from pharmacies or other retail establishments.

f. PRESCRIPTION DRUGS: Medication prescribed by licensed medical personnel or dentists for a specific course of treatment.

4. RESOURCES:

a. Employee Assistance Program (“EAP”): A confidential counseling program provided by the Company where licensed professionals assist Employees and their immediate family members with various work/life issues. Each EAP counselor is a certified Substance Abuse Professional (“SAP”) qualified to evaluate and counsel persons affected by alcohol and/or substance abuse problems and to provide the appropriate treatment and follow-up recommendations. Additionally, the EAP provides alcohol and substance abuse awareness training to Company managers and Supervisors.

b. MNR Reasonable Suspicion Signs and Symptoms Training: MNR– training course which provides instruction on the requirements of federal regulations, company policies and procedures, and rules regarding drug and alcohol use and testing.

5. VERIFIED POSITIVE TEST RESULT:

a. For a drug test: a test result that was positive on an initial immunoassay test, confirmed by a gas chromatography/mass spectrometry assay and reviewed and verified as positive by an MRO in accordance with the procedures set forth in 49 CFR § 40 – “Procedures for Transportation Workplace Drug and Alcohol Testing Programs”.

b. For an alcohol breath test: an initial breath test performed on a DOT-approved “Evidential



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Breath Testing” device, with a result of .02% or higher, confirmed by a second breath test conducted within the prescribed time limit. A reading of .04% or higher constitutes a Federal positive test for a Regulated Service Employee. A result .02-.039 ~~greater but less than .04~~ constitutes a positive test result under MNR Company Authority. Any result under .02 does not currently constitute a Federal violation or a violation of this policy Procedure.

6. DEFINED TYPES OF DRUG/ALCOHOL TESTING:

a-c. PRE-EMPLOYMENT/PRE-PLACEMENT TESTING: a drug test for those transferees or job applicants who have received offers to perform service for the Company in a job title classified as: a Regulated Service Employee (Covered Employee, Maintenance of Way or Mechanical Employee) Commercial Driver, or Safety-Sensitive Employee. No Employee may perform service as a Regulated Service Employee Covered, Commercial Driver, or Safety-Sensitive Employee before successfully passing a pre-placement drug test scheduled and administered under the direction of MNR’s Human Resources Department.

REASONABLE SUSPICION TESTING: a drug and/or alcohol test that must be based on specific, current, articulable observations of the appearance, behavior, speech, or body odors that are usually associated with drug and/or alcohol use that leads the Supervisor to believe that the Employee is unable to perform their essential job duties. All Employees are subject to drug and/or alcohol testing when reasonable suspicion exists. Section VII.2, 3 and 4 below provides additional detail concerning Reasonable Suspicion Testing in the contexts of (i) Company Authority Testing; (ii) ~~Covered~~Regulated~~Covered~~ Service Employee-Federally Mandated Testing; and (iii) Commercial Driver Federally Mandated Testing.

b-d. REASONABLE CAUSE TESTING: a drug and/or alcohol test following an accident/incident as defined in Section VII. 5 and 6 of this Procedure and definitions in the Code of Federal Regulations. The Company will test any Employee for drugs and/or alcohol following an accident/incident meeting specific criteria and/or when a Supervisor has a reasonable belief, based on specific, articulable facts, that the Employee’s acts or omissions contributed to the occurrence or the severity of the accident/incident. ~~for~~ a rules violation. This testing will be conducted under Company Authority. MNR reserves the right to conduct reasonable cause testing under Non-DOT testing with criteria defined further in the policy.

e-e. POST-ACCIDENT TESTING: a drug and/or alcohol test after an accident that meets specific criteria set forth in 49 CFR § 219 and § 382.

e-f. RANDOM TESTING: a drug and/or alcohol test performed randomly under applicable Federal regulations and in accordance with the procedures set forth in MNR’s Plan for Random Selection for and Scheduling of Random Drug and Alcohol Testing (the “Plan”) and can also result from Company Authority Testing. ~~Covered Employee~~Regulated ~~Covered~~Service ~~ed~~ Employees and Commercial Driver Employees are subject to Random Testing. All Employees associated with random testing must ensure that all paperwork and associated materials must bear handled in a confidential manner.

e-g. RETURN-to-DUTY TESTING: a drug and/or alcohol test performed if a Regulated ServiceCovered, Commercial Driver or Safety-Sensitive Employee has been absent from work for any reason for 14 days or more (or a lesser time period specified in a collective bargaining



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agreement). ~~This will apply to employees in a DOT covered position or safety sensitive position that return to duty after a positive drug and/or alcohol test.~~ Directly observed testing, as mandated and described in 49 CFR Part 40 ("Direct Observation Procedures"), will apply to ~~these and all unannounced follow-up tests.~~ Employees returning to duty after having previously failed a drug and/or alcohol test. The observer will be of the same gender as the Employee being tested.

f.h. FOLLOW-UP TESTING: an unannounced drug and/or alcohol test performed under applicable Federal regulations and at the direction of the SAP/DAC, after an Employee has engaged in conduct in violation of the CFR, and/or this Procedure.

VI. SUMMARY OF EMPLOYEE CLASSIFICATIONS SUBJECT TO VARIOUS TYPES OF DRUG AND ALCOHOL TESTING:

MNR Employees are subject to drug and/or alcohol testing as required or authorized by this Procedure and/or by applicable federal regulations.

A. FEDERALLY MANDATED TESTING

Federal regulations require Metro-North to conduct drug and alcohol testing under identified circumstances, as summarized below. (Definitions of each of the types of identified circumstances are contained in Section V.4 above and further details provided in Section VII.)

1. Regulated Service Employees - As set forth in 49 CFR § 219, the FRA requires MNR to conduct drug and/or alcohol testing of Regulated Service Employees in the following defined situations:
 - a. Pre-employment (including transfers to Regulated Covered Service)
 - b. Reasonable Suspicion,
 - c. Post-Accident,
 - d. Random,
 - e. Return to Duty ~~, and~~ (after completion of SAP ~~program~~)evaluation.
 - f. Follow-up.
2. Commercial Drivers - As set forth in 49 CFR § 382, the FMSCA requires MNR to conduct drug and/or alcohol testing of Commercial Drivers in the following defined situations:
 - a. Pre-employment (including transfers to Commercial Driver positions)
 - b. Reasonable Suspicion,
 - c. Post-Accident,
 - d. Random,
 - e. Return to Duty ~~, and~~ (after completion of SAP ~~program~~)evaluation.
 - f. Follow-up.

B. COMPANY AUTHORITY TESTING ~~Non-~~NON~~DOT:~~

In addition, MNR pursuant to this Procedure may determine to conduct drug and alcohol testing in defined circumstances, as stated herein ("Company Authority Testing").

1. All Metro-North Employees (without regard to Employee Classification) ~~)-~~ - Pursuant to this



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Procedure, MNR may conduct Company Authority drug and/or alcohol testing of any Metro-North Employee, without regard to the Employee's job classification under Section IV, in the following defined circumstances:

- a. Reasonable Suspicion,
- b. Reasonable Cause, or
- c. Follow-up.
- d. ~~Random~~

2. ~~Safety Sensitive Employees~~ - In addition to the circumstances set forth above for Company Authority testing relating to Metro-North Employees generally, Metro-North may conduct Company Authority testing of Safety-Sensitive Employees in any of the following defined circumstances:

- a. Pre-placement,
- b. Periodic Physical Examination,
- c. Return-to-Duty Physical Examination.

MNR may from time to time, under its own discretion, designate certain categories of Safety Sensitive Employees for random testing.

3. ~~Regulated Service Service Employees; Commercial CDL Drivers~~ - In addition to the circumstances set forth above for Company Authority testing relating to All Metro-North Employees generally (see B.1) and Company Authority testing of Metro-North Safety Sensitive Employees (see B.2), Metro-North may conduct Company Authority testing of Regulated ~~Service Service~~ Employees or Commercial Drivers in any of the defined circumstances in which federally mandated testing would apply to such Employee classification.

VII. CIRCUMSTANCES WHEN TYPES OF TESTING WILL BE PERFORMED

1. Pre-Employment/Pre-Placement

- a. The Human Resources Department will schedule a pre-placement drug test for those applicants or transferees who have received offers to perform service for MNR as (1) Regulated ~~Service Service~~ Employees, (2) ~~Commercial~~ CDL Drivers, or (3) Safety-Sensitive Employees.
- b. No Employee may perform service as a (1) ~~Regulated Service Covered~~ Employee, (2) ~~Commercial~~ CDL Driver, or (3) Safety-Sensitive Employee before passing a drug test administered by OHS.

2. Reasonable Suspicion – Company Authority

- a. All Employees are subject to drug and/or alcohol testing where Reasonable Suspicion exists.
- b. For all Employees, the decision to conduct the test must be based on specific, current, articulable observations of the appearance, behavior, speech, or body odors of the Employee. Testing should occur when the Supervisor reasonably suspects that an Employee has used either drugs or alcohol on duty or is working under the influence of drugs or alcohol by observing one or more of the following criteria (these criteria are applicable as well to the direct observation necessary



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- for a Supervisor to corroborate and investigate a co-worker report):
- i. Staggered gait, difficulty walking
 - ii. Slurred speech
 - iii. Drowsiness/sleepiness
 - iv. Odor of an intoxicant
 - v. Disorientation (time/place/person)
 - vi. Rapid mood swings for no apparent reason
 - vii. Poor coordination or body control
 - viii. Bizarre behavior
 - ix. Direct observation of use of an intoxicant or controlled substance.
- c. At least one Supervisor who has completed ~~SAFE~~-MNR Reasonable Suspicion ~~Training~~-Signs and Symptoms Training ~~(Signs & Symptoms)~~ must make the required observations before sending an Employee for alcohol testing. In the case of sending an Employee for drug testing, at least one Supervisor must make the required observations and a second Supervisor, after conferring, must agree on the articulable symptoms being conveyed. In the event that the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the ~~DER or the Program Manager~~ or DER of the Random Testing with the information. ~~or the Program Manager of the Random Testing Program.~~
- d. Documentation: Within a reasonable time (in most cases, the time for completion and submission of the documentation should not exceed **24 hours**) following a Supervisor's determination of Reasonable Suspicion, the Supervisor must document the date, time, and place, as well as a description of the observed behavior, and send a copy of such documentation to the DER or Program Manager.
- ~~d.e.~~ During Off Hours, in the event a basis exists for a Reasonable Suspicion Test, the Supervisor on duty is to call the Operations Control Center at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Supervisor must articulate the signs and symptoms ~~he~~ they have observed. The Chief RTC will promptly call the Alcohol and Drug Technician on-duty and dispatch them to the field location. If there are any problems or issues, ~~the Program Manager, or DER or Program Manager of Random Testing~~ should be immediately contacted.
3. Reasonable Suspicion – Regulated Service Employees subject to FRA Regulations
- a. When Reasonable Suspicion exists with respect to a Regulated Service Covered Employee, drug and/or alcohol testing is mandatory under 49 C.F.R. § 219 (also mandatory for ALL Employees).
 - b. Alcohol Test: At least one Supervisor who has completed ~~SAFE~~-MNR Reasonable Suspicion Signs and Symptoms Training must make the required observation before sending a ~~Covered~~ Regulated Service Covered Employee ~~Employee~~ for an alcohol test The Supervisor who makes the determination may not conduct the testing on the suspected Employee.⁴ In the event that the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the ~~Program Manager or DER or Program Manager of Random testing with the information.~~



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- c. Drug Test: At least two Supervisors, one of whom has completed ~~SAVE~~-MNR Reasonable Suspicion Signs and Symptoms Training, must make the required observation before sending the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the ~~Program Manager or~~-DER or Program-Manager of Random Testing with the information.
- d. The Company must make diligent efforts to conduct a drug and/or alcohol test within two hours of the initial observation of the Regulated Service Covered Employee. If testing is not conducted within two hours, the Supervisor must provide the ~~Director of Operating Rules~~-DER or Program Manager of Random Testing with documentation as to the reason why the test was not promptly conducted. Absolutely no testing may be performed after the expiration of eight hours from the time of observation.⁴
- e. Regulated Service Employees may not be tested after they have been removed from service.

~~§219.300 3(b)(1) With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with §219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.~~

~~§219.300 3(b)(2) With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with §219.11(g).~~

4. Reasonable Suspicion – Commercial Drivers subject to FMCSA Regulations

- a. A Commercial Driver may not be subjected to any testing under the FMCSA regulations unless the Supervisor's observation is made just before, during, or just after the time the Commercial Driver is performing safety-sensitive functions.
- b. Alcohol Testing: At least one Supervisor who has completed ~~SAVE~~-MNR Reasonable Suspicion training must make the required observation before sending a Commercial Driver for a test. The Company must make all reasonable efforts to conduct alcohol testing within two hours of the observed behavior. If testing is not conducted within two hours, the Supervisor must provide the ~~Director of Operating Rules~~-DER or Program Manager of Random Testing with documentation as to why the test was not promptly administered. Absolutely no alcohol testing may be performed after the expiration of eight hours from the time of observation. In the event, that the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the DER with the information.
- c. Drug Testing: At least one Supervisor who has completed ~~SAVE~~-MNR Reasonable Suspicion training must make the required observation before sending a Commercial Driver for a test. ~~The Company must conduct a drug test within 8~~ 24 hours of the observed behavior. ~~If testing is not conducted within 24 hours, the supervisor must provide the Director of Operating Rules with documentation as to why the test was not promptly administered.~~ If testing is not conducted within two hours, the Supervisor must provide the ~~Director of Operating Rules~~-DER or Program Manager of Random Testing with documentation as to why the test was not promptly administered.



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Absolutely no 1 testing may be performed after the expiration of eight hours from the time of observation. In the event, that the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212- 340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the DER with the information.

5. Reasonable Cause – Company Authority for Safety-Sensitive Employees

- a. The Company may test any Safety-Sensitive Employee for drugs and/or alcohol following an incident, accident, or rules violation giving rise to Reasonable Cause testing of Regulated Service Employees as set forth in Section VII–6, below.
- b. The Company may also test any Employee for drugs and/or alcohol following an accident involving a motorized vehicle where the accident was not due to mechanical failure or the negligent action of a motorist other than the Safety-Sensitive Employee and the Safety- Sensitive Employee was driving a motorized vehicle involved in an accident which (1) results in the loss of human life or (2) causes bodily injury to himself or others requiring medical attention away from the scene or (3) results in a vehicle ~~being transported away from the scene~~, receiving any type of damage. ~~(4) damage to property whether it be MNR property or private property.~~

~~3§219.305 (b) If a test required by this subpart is not administered within two hours following a determination made under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not administered within that time period. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the specimens within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager record stating the reasons the test was not administered within that time period. If an alcohol or drug test required by this subpart is not administered within eight hours of a determination made under this subpart, the railroad must cease attempts to administer the test and must record the reasons for not completing it.~~

6. Reasonable Cause – DOT or FRA Regulations

- a. Accident or Incident - The Regulated Service Employee has been involved in an accident or incident reportable under 49 C.F.R. § 225, and a Supervisor has a reasonable belief, based upon specific, articulable facts that the Employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or
- b. Rule Violation⁵ ~~-- An The~~ Employee who has been directly involved in one or more of the following operating rule violations or errors: as set forth in 49 CFR 219.403 must submit to toxicology testing under federal regulations. A Supervisor must contact the DER for specific instructions following a rule violation or error that meets the requirements of this section.
 - i. ~~Non-compliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves:~~
 - a. ~~Occupancy of a block or other segment of track to which entry was not authorized;~~
 - b. ~~Failure to clear a track to permit opposing or following movement to pass;~~
 - c. ~~Moving across a railroad crossing at grade without authorization; or~~
~~Passing an absolute restrictive signal or passing a restrictive signal without stopping (if~~



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~~required);~~

- ~~ii. — Failure to protect a train as required by a rule consistent with 49 C.F.R. § 218.37 (including failure to protect a train that is fouling an adjacent track);~~

~~Operation of a train at a speed that exceeds the maximum authorized speed by at least ten miles per hour or by 50 percent of such maximum authorized speed, whichever is less;~~

- ~~iv. — Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch. Failure to apply or stop short of derail as required; Failure to secure a hand brake or failure to secure sufficient hand brakes;~~

~~Entering a crossover before both switches are lined for movement; or~~

- ~~vi. — In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.~~
- ~~vii. — MNR reserves the right to conduct Non-DOT testing when an MNR employee's actions or lack of action may have contributed to an incident/accident (i.e., motor vehicle accident or any other type of motorized vehicle/equipment)~~

- c. The Company must make diligent efforts to conduct the drug and/or alcohol test within two hours of an accident or incident. If testing is not conducted within two hours, the Supervisor must provide the **Director of Operating Rules-DER** with documentation as to the reason why the test was not promptly conducted. Absolutely no testing may be performed after expiration of eight hours from the time of the accident or incident. If testing under Company Authority (Non-DOT) MNR will always attempt to mirror the Federal regulations, however, MNR reserves the right to extend the testing window if the Supervisor has **put in writing the reasons for the delay a** documented **the** reason why the delay occurred.

- d. Regulated Service Employees may not be tested after they have been removed from service.

- e. Documentation - The Supervisor must make every effort to comply with the testing windows as described under federal testing guidelines.

7. Post-Accident Testing

- a. Regulated Service Employees: The FRA regulations on the control of alcohol and drug use require toxicological testing after accidents that meet specific criteria set forth in 49 C.F.R § 219, Subpart C. In the event of such an accident, a Supervisor must contact the DER **and Director of Regulatory Oversight** for specific instructions.
- b. **Commercial** CDL Drivers: The FMCSA regulations on the control of alcohol and drug use require toxicological testing after accidents and incidents that meet specific criteria set forth in 49C.F.R. § 382.303. In the event of an accident, a Supervisor must contact the DER **or the Director of Regulatory Oversight** for further instructions.

8. Random Testing

- a. Regulated Service Employees: Random testing of Regulated Service Employees is performed by the Company under applicable FRA regulations and/or Company Authority and in accordance



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with the procedures set forth in Metro-North's 219 Compliance Plan ~~for Random Selection and Scheduling of Random Drug and Alcohol Testing (the "Plan")~~. These procedures will adhere to confidentiality standards in accordance with Federal regulations. A copy of the Plan is available for inspection ~~in~~ with the DER or the Director of Regulatory Oversight.

- b. ~~Commercial~~ CDL Drivers: Random testing of ~~Commercial~~ CDL Drivers is performed by the Company under applicable FMCSA regulations and in accordance with the Plan.

9. Follow-up Testing

- a. An Employee who has engaged in conduct in violation of the FRA (as described in §219.104) regulations, the FMCSA regulations and/or this Procedure must pass a drug and/or alcohol test in order to return to his or her position.

~~b.~~ In addition, such an Employee is subject to unannounced follow-up drug and/or alcohol ~~e-b.~~ testing as directed by federal rules and regulations and the Company's Medical OHS and/or EAP.

10. Periodic Physical Examination Testing

Covered, Commercial Drivers and Safety-Sensitive Employees whose positions require periodic physical examinations will be subjected to drug testing as part of those examinations.

11. Return-to-Duty Physical Examination Testing

Covered, Commercial Drivers and Safety-Sensitive Employees who have been absent from work for any reason for 14 days or more will be subjected to drug and/or alcohol testing as part of a return-to-duty physical examination.

VIII. TEST PROCEDURES AND RETESTS

The Company and vendors hired by the Company to perform testing shall follow the procedures established by the Department of Transportation ("DOT") for all drug and alcohol testing conducted under this Procedure. These procedures are set forth in 49 C.F.R. Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

IX. CONFIDENTIALITY

1. No Supervisor or Employee may disclose to any individual any drug or alcohol use or testing information concerning any other Employee, unless such disclosure is necessary for compliance with this Operating Procedure or federal law and regulations or unless the Employee whose records are at issue executes a release specifically authorizing the disclosure of such information.
2. All records maintained while carrying out the procedures described in this Procedure and under federal drug and alcohol testing laws must be maintained in a separate, dedicated, secure location.
3. If any Employee discloses the information or records described above to any other individual for



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any reason, that Employee may be subject to administrative or disciplinary action, up to and including dismissal.

3.4. Referrals:

- a. Self-Referral – An Employee will be considered a “voluntary self-referral” from the time he/she seeks assistance through the EAP. All information and subsequent counseling and/or treatment in the case of a voluntary self-referral shall remain confidential and seeking assistance as a Voluntary Self-Referral will not impact an individual's employment status, except in circumstances as provided below.
 - i. If the self-referring Employee has been or is charged with conduct deemed sufficient to warrant discipline, disclosure limited to the Employee's compliance or non-compliance with EAP recommendations shall be subject to disclosure and may be taken into account in determining discipline and any employment consequences arising in connection with such discipline.
 - ii. If the self-referring Employee is employed in a job title that is classified as Covered Service or is otherwise Safety Sensitive and in the EAP's professional judgment, a self-referring Employee appears to be a threat to the safety of the traveling public or his or her co-workers, MNR, upon the recommendation of EAP, can take protective action which may include removing the Employee from service until the treatment recommendations are met. If an Employee refuses to comply with the recommended course of treatment, MNR can suspend or revoke the Employee's certification.
- b. Co-Worker Referral – a report by a co-worker to a Supervisor that an Employee was apparently unsafe to work with or was, or appeared to be, in violation of this Procedure. The name of the reporting co-worker will be kept confidential and that individual will not be called as a witness should a subsequent administrative or disciplinary action be required. If the Employee who is the subject of a Co-Worker Referral is referred to EAP, accepts that referral and follows EAP's recommendation(s), disciplinary action may be held in abeyance.

4.5. The collection and testing process will be in accordance with Federal regulations. The Employee will always be tested in a setting where ~~aural and visual~~ privacy is maintained. MNR will always attempt to mirror Federal regulations with Non-DOT testing whenever possible.

X. ADMINISTRATION

The Vice President of Human Resources is responsible for interpreting and administering this Procedure.

*This Procedure sets forth only guidelines and does not constitute a contract, express or implied. Metro-North expressly reserves the right to change or cancel this Procedure at its sole discretion at any time. **Any exceptions to this Procedure must be approved by the President.***

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REVISION TRACKING

March 2017 – Update of reporting time for arrest notification (MTA Board Approved).

March 2018 – 2017 FRA expansion of Employee titles subject to random testing (MTA Board Approved).

March 2019 – Inclusion of Contractor related testing language.

~~March 2021 – March 2021 – correction to the language of FRA & FMCSA, as some references are not included. Further clarification that MNR performs Non-DOT “For Cause” testing beyond defined FRA scope of testing. Included Conductor Flags under M of W regulated testing.~~

March 2024 – Updated to include Mechanical Employees under Regulated Service. Administrative changes were made to align Policy with Federal regulations, and to be consistent with MNR Policy for Non-DOT testing. Rule Violation under “Reasonable Cause – DOT or FRA Regulations” section has been expanded to be all inclusive in accordance with CFR-219-301.

