

12.0 SUBSTANCE ABUSE AND ALCOHOL

EOC is gravely concerned about the issue of substance abuse and is committed to achieving a workplace that is free of drugs and alcohol. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace. Employees who unlawfully use, possess or are under the influence of drugs and/or alcohol at work or on EOC premises present a hazard to themselves and other employees. Moreover, various state and federal laws and regulations require the Agency to adopt tough policies and a comprehensive testing program to achieve a workplace free of drugs and alcohol. The overall goal of this policy is to achieve a drug and alcohol free work environment and to avoid accidents, injuries, and fatalities. Accordingly, EOC endorses and has adopted the U.S. Department of Transportation (“DOT”) anti-drug and alcohol policies and regulations. See the Human Resources Director if you have any questions about this subject.

The Human Resources Director will serve as EOC’s Designated Employer Representative (“DER”). In any instance where the Human Resources Director is unavailable, EOC’s Chief Executive Officer shall serve as the DER for all purposes under this Policy.

12.1 General “Drug-Free” Workplace Policy

The consumption or use of any alcohol (alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol), intoxicant or unlawful drug (which includes illegal use of lawful drugs) prior to or while working is strictly prohibited. Employees are prohibited from reporting to work or working with alcohol or unlawful drugs in their system, or from working in an impaired condition as a result of using any drugs, alcohol or intoxicating substance. The use, sale or possession or trafficking of drugs, alcohol, controlled substances or related paraphernalia while on the job, while on Agency or customer property, or in Agency vehicles is absolutely forbidden. EOC reserves the right to utilize any necessary procedures for enforcing this policy, including testing of employees and inspection of EOC property and all articles and property brought onto the Agency’s premises or vehicles either by Agency personnel or law enforcement.

Employees shall not engage in “prohibited conduct” as defined in this policy. Violation of any part of this policy, refusal to cooperate with EOC efforts to enforce this policy, or any conduct that inhibits the Agency’s effective enforcement of this policy, will result in disciplinary action, up to and including discharge.

12.2 Background Checks

EOC requires background checks of all applicants/employees/contractors who will work in DOT-covered positions. This background check will include obtaining any drug and alcohol testing records for the past two (2) years. These individuals will be asked to sign consent forms for each employer they worked for in the past two (2) years. These employers will be asked to release any information regarding the participation of the

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applicant/employee/contractor in their drug and alcohol testing programs. Any information regarding positives or refusals will be dealt with on a case by case basis, but the Agency reserves the right to terminate employment, cancel an offer for employment or terminate a contract with a contractor based upon negative information obtained on the background checks received.

If information received from previous employers indicates an incomplete return-to-duty process, steps must be taken to complete the process/missing tests/evaluations if continued employment is offered. This process must be completed as soon as possible and all expenses will be borne by the employee.

12.3 Communication & Accommodations

Employees are prohibited from the use of any controlled substance while on duty, regardless of the source. The misuse or abuse of legal drugs is prohibited if it causes a positive test that cannot be medically explained and verified by the Medical Review Officer (“MRO”). Accordingly, a covered employee must notify the DER when taking any prescription or over-the-counter medications that may cause a positive test. Employees shall not report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any controlled substance, except when such use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee’s ability to safely perform such functions. The DER may require a doctor’s certification of this issue.

Additionally, if you are taking a lawful drug or medication, whether or not prescribed by a physician, that may adversely affect your ability to perform work in a safe or productive manner, you are required to report such use to your supervisor or the DER. This includes drugs that are known or advertised as possibly affecting judgment, coordination or other senses, including those that may cause drowsiness or dizziness. You should not provide any confidential medical information; only the fact that you may require accommodations regarding your possible impairment from such medications. Your supervisor, in conjunction with EOC’s Human Resources Director, will determine whether you can remain at work and whether any work restrictions or accommodations will be necessary.

Employees who currently suffer from a substance abuse problem are strongly encouraged to get help now. EOC has assistance available to employees for substance abuse and other problems through its Employee Assistance Program (“EAP”). EOC will accommodate employees who voluntarily seek rehabilitation by allowing reasonable unpaid time off for an inpatient rehabilitation program. A medical certification from your physician may be required. While EOC is supportive of employees who try to correct such problems, no situation will excuse violations of law or Agency policy such as theft, sale of controlled substances, falsifying Agency documents, or other deliberate, harmful or unlawful conduct. Asking for a referral to the EAP after a positive drug or alcohol test will not be considered “voluntarily” seeking rehabilitation.

Employees convicted of a criminal drug statute violation occurring in the workplace are required to notify EOC within five (5) days of the conviction. Such employees will

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either be terminated from employment or required to participate in a substance abuse rehabilitation program approved by EOC's EAP, at EOC's discretion.

12.4 Drug and Alcohol Testing

In order to achieve a workplace free of alcohol and drugs, EOC will implement a program of drug and alcohol testing. For all positions, EOC reserves the right to require pre-employment testing; such testing is currently required for all employees hired as drivers and for employees in positions designated as "safety sensitive." Additionally, all employees are subject to testing where there is a reasonable suspicion that the individual is not fit for duty as a result of drugs or alcohol, or that the individual is using drugs or alcohol in violation of EOC policy.

Any employee involved in a workplace accident may be sent for post-accident testing, in accordance with standards set forth in EOC procedures. Employees returning from a substance abuse rehabilitation program will be subject to random, follow-up testing. And finally, any employee who is returning to work after an absence may be subject to testing if it falls within the Agency's specified time frame of length of absence or length of time out of the testing pool (such testing to be done in accordance with EOC's "pre-employment" testing standards and will be referred to as "pre-employment" testing). No employee may be tested without the approval of the DER.

All employees covered by DOT regulations will be subject to random testing in accordance with such regulations and the procedures and standards set forth by EOC. Additionally, all employees holding "safety-sensitive" positions as designated by EOC will be subject to random testing in accordance with the procedures and standards set forth by EOC. In testing "safety-sensitive" employees, EOC will use the DOT guidelines of "testable position" for its required testable time frames and job categories. Employees who are in safety-sensitive positions will be notified in writing of this status.

If an after-hours test is required or if utilizing the regular clinic is not available, a test may be performed on-site by a trained collector. If a situation should arise in where a direct observation is required, a same sex individual will participate in the testing process.

12.4.1 Notification of Testing

As to any type of testing, EOC will notify the employee of his/her being selected for testing. Once notified, testing must be done as soon as possible, and the notified employee must proceed directly to the designated collection site. When EOC has directed an employee to be tested, the time spent by the employee traveling to and from the testing site and participating in the testing will be treated as time worked. All employees sent for testing must submit a photo driver's license to the specimen collector.

When notified of selection for testing, every action the employee takes must lead to his/her arrival at the collection site and participation in the test. Any activity that does not directly lead to submitting a specimen (including loading, unloading, accepting a new dispatch, making a delivery, completing required paperwork,

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inspecting a vehicle, etc.) should be put-off until after the specimen is collected. Only activities that are absolutely necessary for protecting the safety of the employee or others will be permitted; any activity other than reporting directly to the collection site should be approved in advance by the employee's direct supervisor. Any contrary conduct or other conduct that might delay the collection may be considered a refusal to test in violation of Federal Regulations and this policy.

If the test is due to a reasonable suspicion that the employee has violated EOC's substance abuse policy, the employee must not drive him/herself to the testing site; someone will be assigned to drive the employee.

12.4.2 Refusal to Test & Consequences

An employee who refuses to submit to required drug or alcohol testing shall be prohibited from performing or continuing to perform safety-sensitive functions, and a refusal to test shall constitute a verified positive test. Refusal to submit to the types of drug and alcohol tests employed by EOC will be grounds for refusal to hire applicants and to terminate employment of existing employees.

A refusal to test is defined as any conduct that would delay or obstruct the proper administration of a test, including any lack of cooperation at the laboratory conducting the testing, such as or failing to remain at the testing site until the testing process is complete, failing to sign required forms, or behaving in a confrontational or disruptive manner. A delay in providing a urine, breath or saliva specimen could be considered a refusal. If the employee declines to take a test ordered/required by EOC or the Medical Review Officer ("MRO") this would be considered a refusal to test. If the employee fails to undergo a medical exam or evaluation as directed by the MRO as part of the verification process, or as directed by the DER pursuant to DOT regulations, this would be a refusal to test. If the employee refuses to take a DOT-required re-collection of a specimen, even if by direct observation (if required), it would be considered a refusal to test. If the individual cannot provide a sufficient urine specimen or adequate breath/saliva he/she will be evaluated by a physician of EOC's choice. If the physician cannot find a legitimate medical explanation for the inability to provide a specimen (urine, breath or saliva), it will be considered a refusal to test. It will also be treated as a refusal to test where the MRO has reported that the individual has a verified adulterated or substituted test sample.

12.4.3 Consequences of Positive Test: "Zero Tolerance"

EOC has a "zero tolerance" policy toward substance abuse. Any positive drug or alcohol test for a job applicant will result in the withdrawal of an employment offer. Employees who test positive for unlawful drugs will be terminated from employment and be provided with a list of local Substance Abuse Professionals ("SAP") for their personal assistance, if desired.

The DOT regulations provide that covered employees with a verified blood alcohol concentration of at least .02 and not greater than .04 must be removed from safety-sensitive positions, but that the employer is not required by the regulations to terminate their employment. However, EOC has adopted a "zero tolerance" policy regarding the use of alcohol while on duty or just before reporting for duty.

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Therefore, acting on its own authority, EOC will terminate the employment of **any** employee who is tested for alcohol under this policy and has a verified blood alcohol concentration of .02 or greater. EOC will also provide such employees with a list of local SAPs for their personal assistance, if desired.

EOC has an Employee Assistance Program (“EAP”) available to its employees who come forward with a substance-abuse problem and need assistance in resolving it. In such cases, EOC will provide reasonable accommodations for the employee’s efforts, such as a leave of absence to obtain treatment; this may include a return-to-duty/last-chance agreement . EOC will require the employee to undergo Return-to-Work Testing.

12.4.4 Reasons for Testing

EOC has implemented six circumstances for drug and/or alcohol tests: (1) pre-employment testing, (2) post-accident testing, (3) random testing, (4) reasonable suspicion testing, (5) return-to-duty testing and (6) follow-up testing.

• Pre-Employment Testing

For all positions, EOC reserves the right to require pre-employment testing; such testing is currently required for all employees hired for DOT-covered positions and for employees in positions designated as “safety sensitive.” Such prospective employees are required to undergo testing for drug use as part of their pre-employment medical evaluation to determine fitness for duty. A prospective employee whose pre-employment test is canceled will be required to take another pre-employment drug test with a verified negative result prior to starting the DOT-covered or safety-sensitive position. Prospective employees who fail to pass a pre-employment drug test will be ineligible for employment.

A prospective employee for a DOT-covered position will be required to undergo a pre-employment test, regardless of whether s/he is coming directly from another DOT-regulated position in which s/he has recently been tested. However, a prospective employee who has previously failed a DOT drug test must have evidence of successfully completing a referral, evaluation and treatment plan prior to commencing a DOT-covered or safety-sensitive position.

Current employees who are being reassigned, promoted or transferred to a DOT-covered or safety-sensitive position will be treated as “prospective employees” subject to pre-employment testing under this policy. Moreover, a current employee who is presently in a DOT-covered or safety-sensitive position who has not performed a safety-sensitive function for at least thirty (30) consecutive days and has been removed from the random testing pool during that time must submit to a pre-employment drug screen with a verified negative result prior to returning to safety-sensitive functions.

Prospective employees for DOT and/or safety-sensitive positions are to be informed as early as possible and reminded during the interview process that all job offers, if extended, will be contingent upon results of medical evaluations that will include testing for illegal drugs. All applicants should also be informed that

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the Agency maintains a drug and alcohol free workplace and has a program for testing existing employees.

The Third Party Administrator (“TPA”) will provide results to EOC’s DER, who will notify the hiring manager of whether or not the applicant is eligible for employment. The DER will inform the applicant of the results. Only the applicant and responsible EOC employees having a need to know are to be informed of the results.

• **Random Testing**

All employees in DOT-covered positions will be subject to random testing in accordance with requirements imposed by the DOT regulations. Pursuant to legal requirements, a specified percentage of all DOT-covered employees must be tested during each calendar year. EOC also conducts a separate random drug and alcohol testing program with respect to its safety-sensitive employees. Employees covered by these requirements will receive specific information identifying their safety sensitive functions that bring them within this policy. The same percentage of employees in safety-sensitive positions will also be tested, following the same guidelines as govern the DOT-covered testing. The name of every DOT-covered employee and other safety-sensitive employee will be included in every random selection pool; however DOT-covered employees will be in a separate pool apart from the other safety-sensitive employees.

EOC will submit the names of all DOT-covered employees to the independent TPA for inclusion in its DOT random selection system/pool, which may include DOT-covered individuals from other companies. All safety-sensitive employees will be placed into a separate, general random-testing pool, which may include individuals from other companies. All testing pools are maintained by the independent TPA without EOC participation or influence. The name of every testable employee will be included in every random selection pool. By its very nature, random selection may result in individual employees being selected more than once a calendar year, or even in successive selections. Similarly, some employees in the selection pool may not be selected at all during a given calendar year.

Random selections will be reasonably spread throughout the year with an established percentage of the testable positions in each total pool being tested during each calendar year for illegal drugs. An established percentage of the pool will also be tested for alcohol use each calendar year. The percentages to be tested will be based on current DOT standards required for commercial drivers, and will also be used as EOC’s guideline for other safety-sensitive employees. The percentages to be tested are established each year by the DOT and may be as high as 50% of the average number of total individuals in each pool. The percentages set for drug testing are generally different than the percentages set for alcohol testing. Testing for alcohol will be done while the selected employees are performing safety-sensitive functions, or just before or just after such functions are performed. Drug testing may be done at any time.

• **Post-Accident Testing**

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All accidents must be reported to EOC immediately. If a motor vehicle accident involves loss of human life, a drug and alcohol test shall be conducted on each surviving employee operating the vehicle at the time of the accident. EOC shall also test any other employee whose performance could have contributed to the accident, as determined by EOC using the best information available at the time of such decision.

In cases not involving a fatality, a drug and alcohol test will be performed on all employees involved in any accident where: (a) there is a reasonable cause to believe that the employee may have contributed to the cause of the accident; (b) the employee involvement/contribution to the cause cannot reasonably be ruled out; (c) the accident qualifies as an "accident" per DOT regulations; or (d) the employee requests post-accident testing. In addition to any accident EOC may deem significant and appropriate for testing, testing shall occur whenever there is disabling damage to a vehicle that requires **any** vehicle to be towed or any EOC vehicle to be removed from service.

Any post-accident drug or alcohol test must be performed as soon as possible following the accident. If no alcohol collection can be made within two hours, a report shall be made as to why the alcohol test was not obtained. If no alcohol collection can be made within eight (8) hours, attempts to collect a breath or saliva sample shall cease. If no urine collection can be obtained for purposes of post-accident drug testing within thirty-two (32) hours, attempts to make such collection shall cease. Again, EOC shall make a report as to why such tests were not obtained.

In the event that federal, state, or local officials conduct any tests of breath, saliva, urine or blood to determine the presence of alcohol and controlled substances following an accident, these tests shall be considered to meet the requirements of this section, provided the tests conform to applicable, federal, state, or local requirements. The employee will sign a release allowing EOC to obtain the test results from federal, state, or local officials, if such a release is required for EOC to obtain such results.

In the event an employee is so seriously injured that he/she cannot provide a specimen at the time of the accident, the employee must provide necessary authorization for EOC to obtain hospital records or other documents that would indicate whether there were controlled substances or alcohol in the employee's system at the time of the accident. In the absence of such an authorization or other necessary release, EOC will make any necessary determinations based on the information available, including any inferences to be drawn from the lack of medical information.

Employees involved in an accident must remain readily available for a period for 32 hours after the accident or until required drug and alcohol tests are administered, whichever comes first. Remaining readily available for testing requires that the employee notify EOC or its designated representative of his/her location and applicable contact information; the employee must also keep such means of contact open. An employee who is subject to post-accident testing who

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fails to remain readily available for such testing prior to the submission to such test may be deemed by EOC to have refused to submit to testing. Nothing in this policy shall be construed to require the delay of necessary medical attention for the injured following any accident or to prohibit the employee from leaving the scene of an accident for the period necessary to obtain necessary emergency medical care.

• Reasonable Suspicion Testing

Employees will be subject to testing under this provision when EOC has a reasonable suspicion that the particular employee has used a prohibited drug and/or alcohol in violation of this policy. Reasonable suspicion for requiring an employee to submit to drug and/or alcohol testing shall be deemed to exist when the employee manifests physical or behavioral symptoms or reactions commonly attributed to the use of controlled substances or alcohol. This will be based on specific contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the particular employee. Such employee conduct must be witnessed by at least one supervisor (or two supervisors if required by federal regulations) trained in compliance with this program regarding reasonable suspicion testing.

EOC may direct an employee to undergo reasonable suspicion testing for alcohol when the applicable observations are made while the employee is performing safety-sensitive functions, or just before the employee starts or just after the employee has stopped performing safety-sensitive functions.

All “reasonable suspicion” drug and alcohol testing will be designated as “reasonable suspicion” testing in all paperwork at the collection site and kept by the Agency.

If an employee is directly observed to be using and/or consuming alcohol or a controlled substance in violation of this policy, such conduct shall constitute a direct violation of EOC’s policies without any drug or alcohol test being conducted. This is because such alcohol or drug use is not merely suspected; such conduct was witnessed.

• Return to Work Testing

As a separate matter, any employee returning from a substance abuse rehabilitation program, regardless of the length of absence, must submit to a full return-to-duty drug and/or alcohol test with a verified negative test result. Such employee must also have a written release from the treating substance abuse professional (“SAP”) prior to returning to his/her safety-sensitive position. Such employee may also be subject to “follow-up” testing as directed by the SAP, as set forth below.

• Follow-up Testing

Any employee returning from a substance abuse rehabilitation program, regardless of the length of absence, must submit to a full return-to-duty drug

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and/or alcohol test, as set forth above. Such employee must also have a written release from the treating substance abuse professional (“SAP”) prior to returning to his/her safety-sensitive position. Such employee is also subject to “follow-up” testing as directed by the SAP. Follow-up testing is separate from and in addition to EOC’s reasonable suspicion, post-accident, and random testing procedures. Follow-up testing shall be randomly timed and in accordance with the instructions of the treating SAP.

Follow-up testing may continue for a period of up to 60 months following the employee’s return to duty, depending upon the recommendations of the SAP. Moreover, the employee shall cooperate with EOC’s efforts to monitor the employee’s compliance with any other recommendations of the SAP with respect to the employee’s continuing sobriety. This may include a return-to-duty/last-chance agreement, ongoing certifications by the SAP or other monitoring. The costs of any SAP evaluation and/or prescribed treatment/testing shall be borne by the employee. The employee will not be permitted to return to safety-sensitive duties until s/he has obtained a written return-to-work authorization form from the SAP.

12.4.5 Testing Process

• Drug Testing

Drug testing will be performed through urinalysis and/or saliva swab, and will test for the presence of drugs and/or metabolites of the following families of controlled substances: (1) marijuana, (2) cocaine, (3) opiates, (4) amphetamines and (5) phencyclidine (“PCP”).

The urinalysis procedure starts with the collection of a split urine specimen. The employee must provide at least 45 ml of urine under the split-sample method of collection. At least 15 ml shall be poured into a second bottle, and at least 30 ml shall remain in the primary specimen bottle. If the individual is unable to provide such a quantity of urine, “shy bladder” procedures will then commence, and will be handled in the manner set forth in the DOT regulations.

Where the specimen is being collected pursuant to a DOT-required physical exam and the employee is required to disrobe for that exam, the specimen may be collected while the employee is wearing a hospital/examination gown. Any individual subject to testing under this policy shall be permitted to provide the specimen in private. Urine specimen collections will be made in a rest-room stall or similar enclosure so that the individual is not observed while providing the sample. If the collection staff suspects tampering of a specimen, the employee may be required to provide a second sample under direct observation.

Urine specimens will be submitted to a certified laboratory for testing. The certified laboratory will perform initial screenings on the primary bottle of the split specimen. In the event that the primary specimen tests positive, a confirmation test of that specimen will be performed before being reported by the laboratory to the Medical Review Officer (“MRO”) as a positive. The second bottle of the split specimen will be retained at the laboratory.

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An individual testing positive by urinalysis may make a timely request of the MRO to have the second bottle of the split specimen re-tested. The second bottle of the initial specimen must be tested by a different certified lab than the lab that tested the initial specimen. The individual making the request for a test of second bottle of the original specimen will be asked to prepay all costs associated with the test, or make arrangements for payment by other means.

The request for testing of the second bottle of the split specimen is timely if it is made to the MRO within 72 hours of the individual being notified by the MRO/EOC of a positive test result. If the individual has not contacted the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances that unavoidably prevented the employee from contacting the MRO. If the MRO concludes that there is a legitimate explanation for the individual's failure to contact the MRO within 72 hours, the MRO shall direct that the testing of the second bottle of the split specimen be performed. If the second bottle of the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DER and the individual.

• **Alcohol Tests**

EOC will perform alcohol screening tests by breath or saliva. The employee shall report to the site of an alcohol test as notified by EOC. All alcohol tests will be performed just prior to, during, or just after the performance of safety-sensitive duties. If an Evidential Breath Testing Device ("EBTD") is administered it will at all times be operated by a certified Breath Alcohol Technician ("BAT") or a Screening Test Technician ("STT"). The individual shall follow all instructions given by the BAT or STT. If EBTD or a saliva test indicates a prohibited level of alcohol, the individual will be retested by using an EBTD between fifteen and thirty minutes after the first test, in order to confirm the results.

If the first test indicates blood alcohol concentration of less than .02, no further testing is required and the result will be treated as a negative result. If blood alcohol concentration on the first test is .02 or greater, a confirmation test is required. When a confirmation test is required, any actions taken will be based on the confirmation test results. In the event that an employee, on the basis of a confirmed test, has a blood alcohol content of .02 or greater, the employee shall be immediately removed from safety-sensitive duty and is then subject to termination of employment.

Substitute employees are prohibited from using alcohol during any period they are to be available for duty. At the time the substitute employee is called for duty, s/he will be given an opportunity to acknowledge his/her use of alcohol and unfitness for duty at that time. If the employee acknowledges the use of alcohol but claims the ability to perform his/her duties, the employee will be required to take an alcohol test prior to performing required duties.

• **Dilute Specimens (Negative and Out of Range)**

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EOC will retest all negative-dilute specimens. This means that any test that returns from the laboratory with a negative-dilute result will require a new urine drug test collection to immediately be performed. The requirement of this re-test is not pronouncing guilt upon the intended party, it strictly means that EOC will not accept a dilute-negative result without first obtaining a second test. The result of the second test is the final test. Except as stated below, the sample for this re-test is not done under direct observation; however special security provisions may be implemented to ensure a genuine sample.

NOTE: If a test results with a creatinine concentration of 2 mg/dL or above but greater than or equal to 5 mg/dL the MRO will report the test result as dilute. This test will now require an immediate re-collection under direct observation. For DOT-covered employees, this is a federally mandated requirement and is not at the discretion of the employer; safety-sensitive employees will be subject to the same process. Similarly, if collection staff suspects tampering of a specimen, the employee may be required to provide a second sample under direct observation.

12.4.6 Test Results & Confidentiality

EOC has retained the services of a qualified Medical Review Officer (“MRO”), who is a licensed physician experienced in substance abuse. All laboratory results shall be reported by the laboratory to the MRO. Negative test results shall be reported as such by the MRO to EOC. Before reporting a positive test result to EOC, the MRO will attempt to contact the applicant/employee to discuss the test result. EOC is prohibited from standing-down a DOT-covered employee before the MRO has completed the verification process, except where there is a waiver from a DOT agency. Other safety-sensitive employees may be removed from safety-sensitive functions while verification of test results is pending.

If the MRO is unable to contact the applicant/employee directly, or if the individual fails to return calls to the MRO, the MRO will contact EOC’s DER, who shall in turn contact the applicant/employee and direct that individual to contact the MRO. Upon being so directed, the individual shall contact the MRO immediately or, if after the MRO’s business hours and the MRO is unavailable, at the start of the MRO’s next business day. If the individual fails to contact the MRO within five (5) days after being requested to do so, the individual’s test will be verified as positive.

The MRO must review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive test result may include, but is not limited to a valid prescription or verification from the individual’s physician verifying a valid prescription. Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary. A determination will be made as to whether a result is positive or negative in the MRO’s sole discretion. If the MRO determines there is no justification for a positive test result, the result will then be considered a verified positive test result. If the MRO deems the positive result to be justified by acceptable and appropriate medical or scientific documentation to account for the result other than intentional ingestion of

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controlled substances, then the result will be treated as a negative test result for all purposes.

Pursuant to law, individual test results for applicants and employees will be released to EOC and the Third Party Administrator (“TPA”), and will be kept strictly confidential unless consent for the release of the test results has been obtained. Any individual who has submitted to drug testing in compliance with this policy is entitled to receive the results of such testing upon timely written request.

Employees who test negative for drug and/or alcohol use shall receive a memorandum from EOC confirming this. At the employee’s request, a copy of the memorandum will be placed in the employee’s personnel file. Otherwise, all laboratory reports, test results and rehabilitation reports shall not appear in an employee’s general personnel folder. Information of this nature will be treated as confidential medical information, which will be kept securely in a separate folder. Such information will be disclosed to EOC management only on a strictly need-to-know basis, and to the subject employee upon request.

12.5 Prohibited Conduct & Consequences

In addition to other conduct specifically prohibited herein, by federal regulations or by EOC policy, the following conduct shall be prohibited:

- ◆ No employee shall report for duty, perform any safety-sensitive function, or remain on duty while having an alcohol concentration of .02 or greater.
- ◆ No employee shall be on EOC’s premises, at any work site, be on duty or operate safety-sensitive equipment while the employee possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. No employee shall be on duty or operate safety-sensitive equipment while the employee possesses any controlled substance, except when that substance is prescribed for the employee by a physician.
- ◆ No employee shall use alcohol while performing his or her duties with any measurable amount of alcohol in his/her system. No DOT-covered or safety-sensitive employee shall use alcohol if the employee is performing, about to perform or is immediately available to perform any safety-sensitive function.
- ◆ No employee shall drive or perform any other safety-sensitive functions within four (4) hours after using any amount of alcohol.
- ◆ No employee required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test or is released from having to take an alcohol test, whichever occurs first.
- ◆ No employee shall refuse to submit to an alcohol or drug test pursuant to these guidelines.
- ◆ No employee shall report for duty or remain on duty when the employee uses any controlled substance, except when use is pursuant to the instructions of a physician who has advised the employee that the substances does not adversely affect the

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employee's ability to perform his or her duties safely, and the employee so notified the DER. The employee may be required to provide a doctor's certification of fitness for duty under such circumstances.

- ◆ No employee shall facilitate or assist any employee in violating any aspect of this policy or engaging in any prohibited conduct. Failing to report to the DER any conduct generally understood as prohibited by or in violation of this policy may be treated as facilitating the conduct.
- ◆ No employee shall engage in any form of retaliation against employees who report violations of this policy or cooperate in the implementation of this policy.

Any employee who engages in prohibited conduct as set forth herein or fails to cooperate in the implementation of EOC's drug and alcohol policy will be subject to termination, except as otherwise specifically stated in this policy.

12.6 Training

All supervisors designated to determine whether reasonable suspicion exists to require an employee to undergo testing shall receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances as related to the workplace.

EOC shall provide educational materials and/or classroom training to all employees, explaining the requirements of this policy, consequences of violating the policy and its guidelines, and the employer's policies and procedures with the respect to meeting these requirements. Each employee shall sign a statement certifying that he or she has received a copy of these materials, understood the materials and had an opportunity to have any/all questions answered.

12.7 Employee Assistance Program

EOC's Employee Assistance Program ("EAP") plays an important role in preventing and resolving employees' use of controlled substances and misuse of alcohol by: demonstrating EOC's commitment to eliminating drug use and alcohol misuse; providing educational materials to supervisors and employees on drug use and alcohol misuse issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of rehabilitation.

The EAP shall be administered separately from the testing program and shall be available to all employees. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding drug use and alcohol misuse. Other than general training provided through EOC, the cost of the employee's participation in the EAP is the responsibility of the employee; however, it is possible that the employee's health insurance may cover some of the cost. The employee should be sure to confirm cost and insurance issues prior to making any financial commitments.

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EOC's DER shall maintain a list of rehabilitation, counseling and/or treatment providers. For each provider, the DER shall include the following information:

- ◆ Name, address and phone number;
- ◆ Types of services provided;
- ◆ Hours of operation, including emergency hours;
- ◆ The contact person's name and phone number;
- ◆ Fee structure, including insurance coverage;
- ◆ Client specialization; and
- ◆ Other pertinent information.

12.8 Management & DER Responsibilities

Managers and supervisors are responsible for enforcement of this policy. Managers and supervisors may request that an employee submit to a drug and/or alcohol test when a trained manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol while on the job or subject to being called.

“Reasonable suspicion” is a belief based on objective facts sufficient to lead a reasonably prudent, trained, supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so the employee's ability to perform his or her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- ◆ Slurred Speech
- ◆ Alcohol odor on breath
- ◆ Unsteady movement
- ◆ An accident involving Agency property, where it appears the employee's conduct may be at fault
- ◆ Physical altercation
- ◆ Verbal altercation
- ◆ Unusual behavior
- ◆ Possession of alcohol or drugs

EOC's Designated Employer Representative (“DER”) is responsible for answering employee questions regarding EOC's anti-drug and –alcohol policies and program, its Employee Assistance Program (“EAP”), and the substance-testing program. The DER shall be the principal contact with the laboratory and for collection activities in assuring the effective operation of the testing portion of this program, and shall receive drug and alcohol test results. The DER is also responsible for implementing, directing, administering and managing EOC's substance abuse policies.

12.9 Reports and Records

EOC shall maintain its drug and alcohol records in a secure location with controlled access according to the following minimum schedule:

- ◆ One Year: Records of negative drug or alcohol test.
- ◆ Two Years: Records related to the collection process and employee training.
- ◆ Five Years: Records of verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, employee referrals to SAP's, and copies of annual MIS reports submitted to the FTA.

An employee is entitled, upon written request, to obtain a copy of any record pertaining to his/her use of prohibited drugs or misuse of alcohol, including any records pertaining to his/her drug or alcohol tests. There will be no fee charged to the employee for this request.

EOC shall permit access to all facilities utilized for its testing program and all records regarding its program to the DOT or other agency overseeing EOC's compliance with drug and alcohol regulations. EOC shall also disclose information related to its drug and alcohol testing related to an accident when a request for information is issued by the National Transportation Safety Board as part of an accident investigation.

EOC shall obtain information on a DOT-covered employee's verified positive drug or alcohol tests within the preceding two years that are maintained by the covered employee's previous employers. Similarly, EOC shall make available a covered employee's records to a subsequent employer or specifically-identified person upon receipt of a written request from the covered employee.

EOC may disclose information pertaining to an employee to the employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this policy (including, but not limited to workers' compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).