



Agenda Item No. 1

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of March 9, 2007

From: Larry Daniel, Director of Human Resources
Teri W. Mantony, Deputy General Manager, Administration and Development
Celia G. Kupersmith, General Manager

Subject: **APPROVE ACTIONS RELATIVE TO THE DISTRICT'S EMPLOYEE
DRUG AND ALCOHOL TESTING PROGRAM AND RELATED
POLICIES**

Recommendation

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve the following actions relative to the District's Drug and Alcohol Testing Program and related policies:

1. Amend the level for random drug testing from 50 percent to 25 percent for District employees subject to the Federal Transit Administration's regulations for drug and alcohol testing, in accordance with minimum testing levels specified by the Federal Transit Administration's regulations (49 CFR Part 655) as amended in a notice published in the Federal Register (Volume 72, No. 5, Pages 1057 – 1058) on January 9, 2007; and,
2. Authorize the General Manager to modify the Drug and Alcohol Testing Program and related policies in the future, to comply with amended federal regulations, subject to a review and analysis as provided in the guidelines, with the understanding that any provision/change which exceeds the minimum standard required by law will be subject to approval by the Board of Directors.

This recommendation will be presented to the Board of Directors at its March 9, 2007, meeting for appropriate action.

Summary

At the December 16, 1994, Board of Directors meeting, Resolution No. 94-280 authorized adoption of a District Substance Abuse Policy as mandated by the Federal Transit Administration (FTA) and in accordance with 49 CFR Part 653 and Part 654. It was understood at that time of adoption that minor clarifications to the policy and implementation procedures were subject to the District's various bargaining units. Initial random testing rates were specified

to be 50 percent for specified drug categories, and 25 percent for alcohol, as defined as the minimum level in the regulations.

On September 29, 2000, the Board authorized, in Resolution 2000-183, that the random level for alcohol testing be reduced from 25 percent to 10 percent, the minimum testing level required by the federal regulations. The resolution also included some formatting and content changes as well as specification of new opiate testing thresholds mandated under the regulations.

On January 9, 2007, the Federal Transit Administration published its new minimum testing levels for random drug testing to be reduced from 50 percent to 25 percent in the Federal Register as cited above. The notice stated that the positive rate for random drug testing had been declining every year since 2002, and the positive testing rate had remained below 1 percent. The random alcohol testing violation rate was also stable. These results were significant to the transit industry because the FTA random level of testing is based on the industry-wide drug positive rate and alcohol violation rate.

The FTA has also stated that the 25 percent rate should be considered a minimum testing rate, and it is the option of the transit employer to adopt the new lower rate. The employer has the discretion to retain a higher rate if desired. Factors to consider in adjusting the rate include the agency's own positive test rate, the number of tests needed to procure quality testing services, and the size of the random pool. The District also has other factors to consider.

First, the Memorandum of Understanding with Amalgamated Transit Union Local No. 1575 (ATU) states that random testing levels will be carried out only as required by the federal regulations. While it does specify a 50 percent random drug testing level, and a 10 percent random alcohol testing level in the current policy, the acknowledgement that testing levels are to be established "only as required" by the regulations, has been interpreted to mean that testing will not exceed the federal minimum. The District's other safety-sensitive employees are covered under a separate policy which does not include this same provision, thereby leaving the District an option whether or not to change the testing threshold at this time.

Second, many of the safety-sensitive employees in the Ferry Division are subject to U.S. Coast Guard (USCG) testing requirements, and the USCG has maintained its random drug testing rate at the 50 percent level. The new FTA minimum threshold cannot be applied to these employees covered under USCG regulations.

A breakdown of employees subject to testing in the various categories as of March 1, 2007, follows:

	<u>DOT/FTA</u>	<u>USCG</u>
Ferry Division	14	67
Bus Drivers	271	
Others	133	

Routine updates and clarifications to District policies are ongoing. This includes updating title changes relative to safety-sensitive positions, including safety-sensitive positions that were

created since the last written policy review, updating the policies to reflect current federal regulation numbers, including new language from the regulations that was developed to clarify certain provisions/sections. These changes have been made under General Manager authority as adopted in Board Resolution No. 2002-110 and approved on August 23, 2002, which permits the General Manager to make necessary revisions to the *Human Resources Guide* to conform to federal, state and local laws and regulations, and in cases where there is no significant cost impact to the District nor any discretion in the matter.

Fiscal Impact

There is no fiscal impact associated with this report.