

MEMORANDUM

TO: Government Operations & Fiscal Policy Committee

FROM: Justina J. Ferber,  Legislative Analyst

SUBJECT: Executive Regulation 13-12, Amendments to Montgomery County Personnel Regulations, Employee Drug and Alcohol Use and Drug and Alcohol Testing

The Committee will consider the Executive's proposed amendments to the Montgomery County Personnel Regulations (MCPR) **to amend Section 32 – Employee Drug and Alcohol Use and Drug and Alcohol Testing - to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration (FTA) requirements that apply to County mass transit employees.** While the Personnel Regulations generally do not apply to bargaining unit employees, the underlying Federal Transit Administration regulations do apply under the MCGEO collective bargaining agreement.

This regulation adds a new circumstance No. 8 under "Observed collections are required in the following circumstances:

- * * *
- (8) Anytime the employee admits to the collector or MRO that the employee adulterated or substituted the specimen.

A new section is also added as "D" under "Collecting a new specimen from an applicant or employee after a dilute test result."

- * * *
- (D) After a dilute negative test result, if a new specimen is collected for testing this second test will be the test of record. If this second test also produces a dilute negative result, no additional tests will be conducted.

The Executive's transmittal memorandum notes that the regulation was advertised in the May 2012 issue of the *Montgomery County Register* and that the MSPB reviewed the regulation and has no objection. A fiscal impact statement indicating no fiscal or economic impact is also included at ©17-18.

ACTION

Council staff proposes the Committee recommend Council adoption of Executive Regulation 13-12 as submitted.

Attached is a draft resolution for Council adoption.

This packet contains:

	<u>Circle #</u>
Resolution	1
Transmittal Memorandum	2
Regulation 13-12, bracketed and underlined	3
Regulation 13-12, clean copy	10
Fiscal Impact Statement	17

FAFERBER\OHR\Regulations\ER 13-12 Employee Drug and Alcohol Testing GO 7-16-12.doc

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

Subject: Approval of Executive Regulation 13-12, Amendments to Montgomery County Personnel Regulations, Employee Drug and Alcohol Use and Drug and Alcohol Testing

Background

1. On June 7, 2012, the County Council received Executive Regulation 13-12 to amend Section 32 of the Personnel Regulations to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration (FTA) requirements.
2. This regulation adds a new circumstance No. 8 under "Observed collections" and a new section is also added as "D" under "Collecting a new specimen from an applicant or employee after a dilute test."
3. Executive Regulation 13-12 is processed under Method 2 and takes effect upon adoption of the Council resolution approving it or on a later date specified in the regulation.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 13-12 to amend Section 32 of the Montgomery County Personnel Regulations to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration (FTA) requirements is approved.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

EXEC REG



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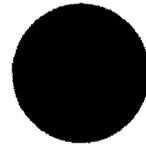
OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

June 6, 2012



Memorandum 1

TO: Roger Berliner, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Executive Regulation No. 13-12, MCPR Amendments on Employee Drug and Alcohol Use and Drug and Alcohol Testing

I am submitting Executive Regulation No. 13-12 for the Council's review and approval. This regulation amends Section 32 of the Personnel Regulations to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration requirements.

Executive Regulation No. 13-12 was advertised in the May 2012 issue of the *Montgomery County Register*. No comments were received in response to this advertisement. The proposed regulation has been reviewed by the Merit System Protection Board and the Board has no objection.

IL:sw

Attachments

RECEIVED
MONTGOMERY COUNTY
2012 JUN -7 PM 3:27



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	MCPR Amendments on Employee Drug and Alcohol Use and Drug and Alcohol Testing	Number	13-12
Originating Department	Office of Human Resources	Effective Date	

MCPR Amendments on Employee Drug and Alcohol Use and Drug and Alcohol Testing

Executive Regulation No. 13-12
Issued by: County Executive
Supersedes: Executive Regulation 9-10

Authority: Montgomery County Code, 2004, §33-7(b)
Council review: Method 1

Montgomery County Register Volume 29, Issue 5
Comment deadline: May 31, 2011

Effective date:

Summary: This regulation amends Section 32 of the Personnel Regulations to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration requirements.

Address for comments Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5154, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing regulation by proposed regulation.</i>
[Single boldface brackets]	<i>Deleted from existing regulation by proposed regulation.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing or proposed regulation by amendment.</i>
* * *	<i>Existing language unchanged by executive regulation.</i>



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Subject	MCPR Amendments on Employee Drug and Alcohol Use and Drug and Alcohol Testing	Number	13-12
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SECTION 32. EMPLOYEE DRUG AND ALCOHOL USE AND DRUG AND ALCOHOL TESTING

* * *

32-5. Prevention of Prohibited Drug Use and Alcohol Misuse by Safety-Sensitive Transit Employees under Federal Transit Administration Regulations

* * *

(c) **Safety-Sensitive Transit positions.** The following are Safety-Sensitive Transit positions if the employee must have a CDL [and] or operates, dispatches, controls, or maintains Montgomery County transit vehicles and operations:

* * *

(e) **Drug and alcohol prohibitions.**

* * *

(4) **Refusal to submit to drug or alcohol testing.**

* * *

(H) * * *

Observed collections are required in the following circumstances:

- (1) All return-to-duty tests;
- (2) All follow-up tests;
- (3) Anytime the employee is directed to provide another specimen because the temperature of the original specimen was outside of the accepted temperature range of 90°-100°F;
- (4) Anytime the employee is directed to provide another specimen because the original specimen appeared to have



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been tampered with;

- (5) Anytime a collector observes that the employee brought materials to the collection site or that the employee's conduct clearly indicates an attempt to tamper with a specimen;
- (6) Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result[.];
- (7) Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but the test had to be canceled because the test of the split specimen could not be performed[.]; and
- (8) Anytime the employee admits to the collector or MRO that the employee adulterated or substituted the specimen.

* * *

(g) **Types of drug and alcohol testing.**

* * *

(5) **Return-to-duty testing.**

(A) **After prohibited drug use or refusal to take a drug test.**

If the County does not dismiss or terminate an employee who refuses to submit to a drug test or has a verified positive drug test result, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:



MONTGOMERY COUNTY EXECUTIVE REGULATION

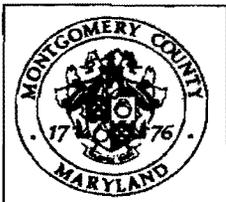
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- (i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation and refers the employee for appropriate education and treatment.
- (ii) a Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations; the employee takes a return-to-duty alcohol test with a verified negative result; and
- (iii) the employee takes a return-to-duty drug test under direct observation [if required] with a verified negative result; and
- (iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(B) **After prohibited alcohol use or refusal to take an alcohol test.** If the County does not dismiss or terminate an employee who engages in prohibited alcohol use or refuses to submit to a required alcohol test, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:

- (i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation and refers the employee for appropriate education and treatment;
- (ii) the Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has



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actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;

(iii) the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; and

(iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty drug test under direct observation [if required] with a verified negative result.

(6) **Follow-up testing.** The County must ensure that an employee who returns to duty after a required evaluation by a Substance Abuse Professional under Section 32-5(j)(2) is subject to unannounced follow-up drug testing, alcohol testing, or both, as follows:

(A) the employee must take at least 6 unannounced follow-up tests during the first 12 months after the employee returns to duty and is subject to follow-up testing for a period of one to 5 years;

(B) the Substance Abuse Professional must determine, based on the Substance Abuse Professional’s assessment of the employee’s unique situation and recovery progress, the frequency and duration of follow-up testing beyond the minimums that will deter or detect a relapse;

(C) the County must conduct the collection process for return-to-duty drug testing under direct observation [if required]; and



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(D) follow-up testing, performed under direct observation [if required], is in addition to random, post-accident, reasonable suspicion, and return-to-duty testing.

* * *

(h) **Retesting of employees; collecting a new specimen after a dilute test result.**

* * *

(3) ***Collecting a new specimen from an applicant or employee after a dilute test result.***

* * *

(B) If the MRO reports a dilute negative test result that requires collection of another specimen for testing, the County must immediately notify the applicant or employee of the need to collect another specimen and that it must be provided within no more than 48 hours from the time of notification. If the employee is on duty, the employee must be accompanied to the collection site immediately for collection of the second specimen. If the applicant or employee fails to report for specimen collection within 48 hours and has not provided a valid reason for the delay, the County must treat it as a refusal to test.

(C) The MRO will direct whether the new specimen is to be collected under direct observation or not.

(D) After a dilute negative test result, if a new specimen is collected for testing this second test will be the test of record. If this second



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test also produces a dilute negative result, no additional tests will be conducted.

* * *

Approved: Isiah Leggett
Isiah Leggett, County Executive

4/13/12
Date

Approved as to form and legality:

David Stevenson 4/13/12
Office of the County Attorney Date



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- (i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation and refers the employee for appropriate education and treatment.
 - (ii) a Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations; the employee takes a return-to-duty alcohol test with a verified negative result; and
 - (iii) the employee takes a return-to-duty drug test under direct observation with a verified negative result; and
 - (iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
- (B) **After prohibited alcohol use or refusal to take an alcohol test.** If the County does not dismiss or terminate an employee who engages in prohibited alcohol use or refuses to submit to a required alcohol test, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:
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- (iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty drug test under direct observation with a verified negative result.

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- (B) the Substance Abuse Professional must determine, based on the Substance Abuse Professional’s assessment of the employee’s unique situation and recovery progress, the frequency and duration of follow-up testing beyond the minimums that will deter or detect a relapse;
- (C) the County must conduct the collection process for return-to-duty drug testing under direct observation; and



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(D) follow-up testing, performed under direct observation, is in addition to random, post-accident, reasonable suspicion, and return-to-duty testing.

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(h) **Retesting of employees; collecting a new specimen after a dilute test result.**

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test also produces a dilute negative result, no additional tests will be conducted.

* * *

Approved: 
Isiah Leggett, County Executive

6/6/2012
Date

Approved as to form and legality:

David Stevenson 4/13/12
Office of the County Attorney Date

Fiscal Impact Statement
Executive Regulation 13-12 – Drug and Alcohol Use and Testing

1. Executive Regulation Summary

This regulation amends Section 32 of the Personnel Regulations to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration requirements.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

This regulation has no fiscal impact. The amendments are technical in nature and affect County transit employee drug and alcohol testing guidelines.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See item #2 above.

4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.

Not applicable. This regulation does not authorize future spending.

6. An estimate of the staff time needed to implement the regulation.

Not applicable.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.

Not applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a regulation is likely to have no fiscal impact, why that is the case.

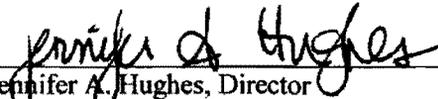
This executive regulation has no fiscal impact on the County. These technical amendments are necessary for the County to comply with Federal Transit Administration requirements.

12. Other fiscal impacts or comments.

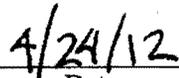
If the County is not in compliance with FTA requirements, the County would not be eligible for transportation grants from the Federal government and the state of Maryland. This would have a significant fiscal impact. Further analysis is needed to determine the scope of the fiscal impact in the event of non-compliance.

13. The following contributed to and concurred with this analysis:

Stuart Weisberg, Office of Human Resources
Helen P. Vallone, Office of Management and Budget
Naeem Mia, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget



Date