

Policy:	<b>Drug &amp; Alcohol Testing</b>
Adopted:	M2007-0143
Effective:	10/1/2007
Revised:	08/31/09

**Purpose** To comply with the requirements of Department of Transportation (DOT) 49 CFR Part 40 and Federal Transit Authority (FTA) 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result and sets standards for the collection and testing of urine and breath specimens.

**Policy** It is the policy of the city to establish programs designed to ensure worker fitness and to protect employees, passengers, and the public from the risks posed by the misuse of alcohol and use of prohibited drugs.

**Applicability** This policy applies to all safety-sensitive employees (full-or part-time) when performing any city related business. A safety-sensitive function is any duty related to the safe operation of equipment, vehicles, maintenance of vehicles or equipment, persons controlling the movement of vehicles and/or equipment, and any other employee who is required to hold a Commercial Drivers License. Supervisors are only safety-sensitive if they perform one of the above functions.

**Definitions** *Accident.* An occurrence associated with the operation of a revenue service vehicle or service vehicle even when not in service or which requires a Commercial Drivers License to operate, if as a result:

- ◆ An individual dies;
- ◆ An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- ◆ One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle.

*Adulterated specimen.* A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

*Alcohol.* The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, or medication.

*Alcohol Concentration.* Expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

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*Canceled Test.* A drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither positive nor negative.

*Commercial Driver's License (CDL)* The Federal standard requires States to issue a CDL to drivers according to the following license classifications:

Class A – Any combination of vehicles with a GVWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

Class B – Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.

Class C – Any single vehicle, or combination of vehicles, that does not meet the definition of Class A or Class B, but is either designed to transport 16 or more passengers, including the driver, or is placarded for hazardous materials.

*Covered Employee.* Any employee who holds a Commercial Driver's License and performs a safety-sensitive function (operating and/or maintaining) including an applicant or transferee who is being considered for hire into a safety-sensitive function.

*Designated Employer Representative (DER).* An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40 & 655, as amended.

*Department of Transportation (DOT).* Department of the federal government which includes the US Coast Guard, Federal Transit Administration, Federal Railroad Administration, Federal Highway Administration, Federal Motor Carrier Safety Administration, Research and Special Programs, and the Office of the Secretary of Transportation.

*Dilute specimen.* A specimen with creatinine and specific gravity values that are lower than expected for human urine.

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*Disabling damage.* Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that make them inoperative.

*Evidentiary Breath Testing Device (EBT).* A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the NHTSA conforming product list.

*Medical Review Officer (MRO).* A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

*Negative Dilute.* A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative test result.* A verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40 & 655, as amended. An alcohol concentration of less than 0.02 BAC is a negative test result.

*Non-negative test result.* A test result found to be adulterated, substitute, invalid, or positive for drug metabolites. Non-negative results are considered a positive test or refusal to test if MRO cannot determine legitimate medical explanation.

*Performing a safety-sensitive function.* A covered employee is considered to be performing a safety-sensitive function including any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

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*Positive test result.* A verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

*Prohibited drug.* Marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

*Revenue Service Vehicles.* All transit vehicles that are used for passenger transportation service or that require a CDL to operate. Includes all ancillary vehicles used in support of the transit system.

*Safety-sensitive functions.* (a) the operation of a transit revenue service vehicle even when the vehicle is not in revenue service; (b) the operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL); (c) maintaining a revenue service or non-revenue service vehicle or equipment used in revenue service; (d) controlling the movement of a revenue service vehicle; and (e) carrying a firearm for security purposes.

*Substance Abuse Professional (SAP).* A licensed physician (medical doctor or doctor of osteopathy) or state licensed or certified family and marriage therapist, psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

*Substituted specimen.* A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

*Verified negative test.* A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (DHHS).

*Verified positive test.* A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as amended.

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*Validity testing.* The evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants of foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

**Education & Training** Every covered employee will receive a copy of this policy and will have access to the corresponding federal regulations. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training includes manifestations and behavioral cues that may indicate prohibited drug use.

All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

**Prohibited Substances** Prohibited substances addressed by this policy includes the following:

Illegally Used Controlled Substances are prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration of the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and the use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which can cause drug or drug metabolites to be present in the body above the minimum thresholds, is a violation of this policy.

Federal Transit Administration drug testing regulations (49 CFR Part 655) and the Department of Transportation (49 CFR Part 40) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Testing Requirements of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

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*Legal Drugs:* The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited.

*Alcohol:* The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 40 & 655, as amended just before, during, or just after the performance of safety-sensitive job functions.

#### **Prohibited Conduct**

All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report to duty. The covered employee will subsequently be relieved of their on-call responsibilities.

The City of Northfield shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.

Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.

No covered employee shall consume alcohol for eight (8) hours following an involvement in an accident or until they submit to the post-accident drug/alcohol test, whichever occurs first.

No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

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### **Testing Requirements**

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40, as amended. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and randomly as defined in this policy. All covered employees who have tested positive for drugs or alcohol on a random, reasonable suspicion, or post-accident will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

A drug test can be performed any time a covered employee is on duty. An alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function.

All safety-sensitive employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment. Any safety sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline (discipline is described in the violation section of this policy). Employees who are suspected of providing false information in connection with a drug test, or are suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employee's removal from duty and subject to discipline (discipline is described in the violation section of this policy). Refusal can also include an inability to provide sufficient urine specimen or breath sample without a valid medical explanation, as well as verbal or written declaration, obstructive behavior, physical absence resulting in the inability to conduct the test within the specified time frame, or refusing to undergo observed testing when requested by the collector or the MRO.

### **Drug Testing - Procedures**

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedures, and the

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validity of the test result.

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a DHHS certified laboratory. Specimen validity testing will be conducted on all urine specimens provided for under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GS/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the DHHS certified laboratory will be reported to a Medical Review Officer (MRO). An MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records, as appropriate, to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM and no further action will be taken. If the test is invalid without a medical explanation, a retest will be conducted under direct observation.

Any covered employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second DHHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be

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conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Employees do not have access to a test of their split specimen following an invalid result.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct the City to retest the employee under direct observation.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the MRO. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

The City will guarantee that the cost for the split specimen test is covered in order for a timely analysis of the sample. If the result of the split specimen is a negative the City will bear the cost of the split sample testing. If the specimen split tests positive, the City will seek reimbursement for the cost of the split sample test from the employee.

**Drug Testing -  
Observed Collections**

Consistent with 49 CFR Part 40, as amended, observed collections are required in the following circumstances:

- Anytime the laboratory reports to the MRO that a specimen is invalid, the MRO reports that there was not an adequate medical explanation for the result;
- Anytime the original specimen was positive, adulterated, or substituted test results had to be cancelled because the test of the split specimen could not be performed;
- Anytime the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;

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- Anytime the temperature on the original specimen was out of the accepted temperature range of 90°F – 100°F ; or
- Effective August 31, 2009:
  1. All Return-to-Duty Tests
  2. All Follow-up Tests

The employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collector, by turning around that they do not have a prosthetic device.

### **Alcohol Testing**

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing Device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device, which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

A safety-sensitive employee who has confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The employee will be immediately removed from safety-sensitive duties, will be referred to a SAP for evaluation and will be subject to discipline. Discipline is described in the violation section of this policy.

A test result for an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, however the employee shall still be removed from duty for at least eight hours and subject to discipline. Discipline is described in the violation section of this policy.

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An alcohol concentration of less than 0.02 will be considered a negative test.

The City affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not be a canceled test.

### **Pre-Employment Testing**

All applicants for covered safety-sensitive positions shall undergo urine drug testing prior to hire or transfer into a covered position that requires the performance of a safety-sensitive function.

- All offers of employment of covered positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a covered position unless the applicant takes a drug test with verified negative results.
- A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results.
- If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40, as amended, and a negative pre-employment drug test will be required prior to further consideration for employment.
- When an employee, being placed, transferred, or promoted from a non-covered position to a covered position, submits a drug test with a verified positive result, the employee shall be subject to disciplinary action. Discipline is described in the violation section of this policy.
- If a pre-employment/pre-transfer test is canceled, applicant will be required to take and pass another pre-employment drug test.
- In instances where a covered employee is on extended leave for a period of 90 days or more and is taken out of the random testing pool, the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
- Applicants are required to report previous DOT covered employer drug and alcohol test results. Failure to do so will result in the employment offer being rescinded.

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**Reasonable Suspicion Testing**

All safety-sensitive employees will be subject to a reasonable suspicion drug and/or alcohol test when there are reasons to believe that drug or alcohol use is impacting job performance and safety.

Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by at least one supervisor who is trained to detect the signs and symptoms of drug use and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in their work performance due to possible prohibited substance abuse or alcohol misuse.

A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. A reasonable suspicion drug test can be performed any time the covered employee is on duty. Examples of reasonable suspicion include, but are not limited to, the following:

- Physical signs and symptoms consistent with prohibited substance use or alcohol misuse.
- Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substance.

An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action. Discipline is described in the violation section of this policy.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation prior to the release of the test results. This written record shall be attached to the forms reporting the test results and retained in the Human Resources office.

**Post-Accident Testing**

All safety-sensitive employees will be required to undergo urine and breath testing if they are involved in an accident that results in a fatality. This includes all surviving covered employees that are operating the vehicle/equipment at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident. In addition, a post-accident test will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment

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facility, or one or more vehicles/equipment incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident. The accident definition may include some incidents where an individual is injured even though there is no vehicle/equipment collision.

As soon as practicable following an accident, as defined in this policy, the supervisor/manager investigating the accident will notify the employee operating the vehicle/equipment and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the accident.

The appropriate supervisor/manager shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than 8 hours after the accident for alcohol, and within 32 hours for drugs. If a drug or alcohol test is not performed within two hours of the accident, the supervisor/manager will document the reason(s) for the delay. If the alcohol test is not conducted within 8 hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until they undergo a post-accident alcohol test.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor/manager of their location if they leave the scene of the accident prior to submission to such test, 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 the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that the city is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the city may use drug and alcohol post-accident test results administered by state and local law enforcement officials in lieu of the FTA or DOT test. The state and local law enforcement officials must

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have independent authority for the test and the employer must obtain the results in conformance with state and local law.

### **Random Testing**

All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year.

The number of safety-sensitive employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations identified in 49 CFR Part 655.45(b).

Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.

Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety-sensitive duty. Tests can occur during the beginning, middle, or end of an employee's shift.

Employees are required to proceed immediately to the collection site upon notification of their random selection.

### **Return-To-Duty Testing**

All safety-sensitive employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the SAP before returning to work. For an initial positive drug test a return-to-duty test is required and an alcohol test is allowed. For an initial positive alcohol test a return-to-duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. Before scheduling the return to duty test, the SAP must assess the employee and determine if the required treatment has been completed. The SAP should schedule the return-to-duty test only when the

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employee is known to be drug- and alcohol-free and there is no risk to public safety.

**Follow-Up Testing**

Safety-sensitive employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

**Result of a Negative Dilute Drug Test**

When a negative dilute drug result of 2-5 mg/dL is reported by the Medical Review Officer the employee will be required to undergo another test. The MRO will direct the test to be conducted under observation. Should the second test result in a negative dilute result, the test will be considered negative and no additional testing will be required unless directed to do so by the MRO.

A drug test with the result of a negative dilute (dilute level >5 mg/dl) will be tested. Collection will be unobserved. The result of the second test will be the test of record. No additional testing will be conducted unless directed to do so by the MRO.

**Behavior Constitutes a Test Refusal**

As noted below, refusal to submit to a drug/alcohol test shall be considered a positive test result.

<b>Behavior that Constitutes a Test Refusal</b>	<b>Drug</b>	<b>Alcohol</b>
1) Failure to appear for a test in the time frame specified by the employer**	X	X
2) Failure to remain at the testing site until the testing process is complete**	X	X
3) Failure to provide a urine specimen, saliva, or breath specimen, as applicable.	X	X
4) Failure to permit the observation or monitoring of specimen donation when so required	X	X
5) Failure to provide sufficient amount of urine or volume of breath without a valid medical explanation for the failure.	X	X
6) Failure to take an additional test when directed by the employer or collector	X	X

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7) Failure to undergo a medical exam when directed to do so by the MRO or employer.	X	X
8) Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).	X	X
9) For an observed collection, failure to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.	X	
10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.	X	
11) Admit to the collector or MRO that you adulterated or substituted the specimen	X	
12) Failure to sign the certification on Step 2 of the Alcohol Test Form.		X
13) Failure to refrain from the use of alcohol for eight (8) hours following an accident without first having submitted to post-accident drug and alcohol testing.		X
14) Failure to remain readily available for a post-accident, including notifying a supervisor of their location if they leave the scene of the accident prior to submission to such test.	X	X

\*\*For pre-employment tests only, failure to appear, aborting the collection before the test commences, or failure to remain at site prior to commencement of test is NOT a test refusal.

**Result of Positive Drug/Alcohol Test**

Any covered employee who tests positive for the presence of illegal drugs, tests positive for alcohol with a BAC at or above .04, or refuses to submit to testing, will be immediately removed from safety sensitive duties and referred for evaluation by a Substance Abuse Professional (SAP) in accordance with Part 40, as amended. A SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. No employee will be allowed to return to duty requiring the performance of safety-

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sensitive job functions without the approval of the SAP.

A positive drug and/or alcohol test will also result in disciplinary action. Discipline is described in the violation section of this policy.

As soon as practicable after receiving notice of a verified positive drug test result, a confirmed alcohol test result, or a test refusal, the Human Resource Director will contact the employee's supervisor to have the employee cease performing any safety-sensitive function. The employee shall be referred to a SAP for an assessment. The SAP will evaluate the employee to determine what assistance is necessary to resolve problems associated with prohibited drug use or alcohol misuse.

Refusal to submit to a drug/alcohol test shall be considered a positive test result. Discipline is described in the violation section of this policy.

#### **Violation**

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, for the first time, the employee is immediately removed from safety-sensitive duties, referred to a substance abuse professional (SAP) and subject to the City's disciplinary policy.

Following a BAC of 0.02 or greater but less than 0.04 – the employee is immediately removed from safety-sensitive duties for at least eight (8) hours and subject to the City's disciplinary policy, unless a retest results in the employee's alcohol concentration of less than 0.02.

Disciplinary action against the employee shall include:

- ❑ Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return-to-work agreement.
- ❑ Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from employment. Compliance with the return-to-work agreement means that the employee has submitted to an observed drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing.
- ❑ Refusal to submit to a periodic unannounced follow-up observed drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.

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- A periodic un-announced follow-up observed drug/alcohol test which results in a verified positive shall result in termination from employment.

The second instance of a verified positive drug or alcohol (equal to or greater than 0.04 BAC) test result including a sample submitted under the random, reasonable suspicion, return-to-duty, or follow-up drug/alcohol test provisions herein, shall result in termination from employment.

The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or vacation leave to participate in the SAP prescribed treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay until the SAP determines that the employee has successfully completed the required treatment program and releases him/her to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

**Grievance and Appeal** The consequences specified by 49 CFR Part 40, § 40.149 paragraph (a) (5) and paragraph (c) for a positive test or test refusal are not subject to arbitration.

**Information Disclosure** Drug/alcohol testing records shall be maintained by the Human Resources Director and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee:

- The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP referrals and follow-up testing plans.
- Records of a verified positive drug/alcohol test result shall be released to the Human Resources Director and the employee's direct supervisor/manager.
- Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the

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drug/alcohol test. The records will be released to the decision maker in the preceding. The information will only be released with binding stipulation from the decision maker that they will only make it available to parties in the preceding.

- Records will be released to the National Transportation Safety Board during an accident investigation.
- Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- Records will be released if requested by a Federal, state or local safety agency with regulatory authority over City or the employee.
- If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of CFR Part 40, as amended, necessary legal steps to contest the issuance of the order will be taken.
- In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulations.

**DAPM (Drug and Alcohol Program Manager) & DER (Designated Employer Representative)**

Regulations require that a single contact person be identified to answer questions for this policy. Any questions regarding this policy or any other aspect of the substance abuse program should be addressed to DAPM/DER Elizabeth Wheeler, Human Resources Director/Risk Manager at 801 Washington St, Northfield, MN 55057 Office # 507.645.3012 Fax # 507.645.3075

**On File**

The Human Resource office has the following information available for review:

- A complete copy of regulations 49 CFR Part 40, as amended, is available for review in the HR office and or on the website: [www.dot.gov/ost/dapc/NEW.DOCS/part40.html](http://www.dot.gov/ost/dapc/NEW.DOCS/part40.html)
- Medical Review Officer (MRO)
- Substance Abuse Professional (SAP)
- Consortium
- DHHS Certified Laboratory
- Employee Assistance program (EAP)

**Policy Modification Disclaimer**

This policy implementing the Federal Omnibus Transportation Employee Testing Act is based upon final federal regulations at the time of the adoption of this policy. Any revisions in the federal rules shall take precedence over this policy to the extent that the policy has not incorporated the revised rules.