

TITLE HUMAN RESOURCES DEPARTMENT
CHAPTER Substance Abuse Policy
PART 2 Commercial Driver's License Policy

1. **ISSUING AGENCY:** The Human Resources Department and the Division of Risk Management, of the Department of Finance and Administrative Services.
2. **SCOPE:** These rules have general applicability to all prospective and current employees, classified and unclassified, who hold or will hold a commercial driver's license and perform or will perform safety-sensitive job functions on any City commercial motor vehicle.
3. **STATUTORY AUTHORITY:** ROA, 1994, § 2-15-1, et seq.; Council Resolutions 65-1995 and 78-1995; 21 U.S.C. § 812; 41 U.S.C. § 701; 49 U.S.C. § 31,301; 21 C.F.R. §§ 1300.11 through 1300.15; 49 C.F.R. §§ 40, 382 and 655; ROA, 1994, § 3-1-1; ROA, 1994, § 3-2-1.
4. **DURATION:** Until revoked.
5. **EFFECTIVE DATE:** February 1, 2012, unless a later date is specified at the end of a section.
6. **PURPOSE:** The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701), and the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. § 31,301).

7. DEFINITIONS

- A. Accident.** An occurrence associated with the operation of City equipment, machinery or vehicles, if as a result (1) an individual dies; (2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or (3) one or more vehicles incurs Disabling Damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.
- B. Adulterated Specimen.** A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.
- C. Alcohol.** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including but not limited to methyl or isopropyl, contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.
- D. Alcohol Concentration.** The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.
- E. Breath Alcohol Technician (BAT).** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- F. Canceled Test.** A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be canceled. A canceled test is neither positive nor negative.
- G. C.F.R.** Any references herein to the Code of Federal Regulations (C.F.R.) shall refer to the most recent enactment, as it shall be from time to time.

H. Collection/Testing Site. A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test and for the purpose of providing breath for an alcohol test.

I. Commercial Motor Vehicle. Any self-propelled or towed vehicle used when the vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds, or the vehicle is designated to transport more than 15 passengers including the driver, or the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding.

J. Covered Employee. A City employee who is required to hold a commercial driver's license and performs safety-sensitive job functions on any City commercial motor vehicle.

K. DOT. All Department of Transportation agencies, including, but not limited to, the US Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA) and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

L. 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 communication for the employer, consistent with the requirements of 49 C.F.R. §§ 40, 382 and 655, as amended.

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

N. Disabling Damage. Damage which precludes the departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs, which 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 makes them inoperative.

O. Evidential Breath Testing Device (EBT) is a device approved by the NHTSA for the evidential testing of breath at the 0.02 and greater alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

P. HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Q. Invalid Drug Test. The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

R. Medical Review Officer (MRO). A licensed physician (medical doctor or doctor of osteopathy) who responsible for receiving and reviewing laboratory results generated by the City's drug testing program and evaluating medical explanations for certain drug test results.

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

T. Negative Drug Test Result. The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

U. Negative Alcohol Test Result. The result from an EBT test when a Breath Alcohol Concentration (BAC) of less than 0.02.

V. Non-negative Test Result. A test result found to be adulterated, substituted, invalid, or positive for drug/drug metabolites.

W. Observed Collections. Consistent with 49 C.F.R. § 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if (1)the laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the employer that there was not an adequate medical explanation for the result; (2)the MRO reports to the employer that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; (3) the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; (4) the temperature on the original specimen was out of range; (5) the MRO reports a negative-dilute result with a creatine concentration greater than or equal to 2 mg/dL but less than or equal to 5mg/dL; or (6) The test is a return-to-duty or follow-up test.

X. Positive Drug Test Result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

Y. Positive Alcohol Test Result. The result for an alcohol test that confirms an alcohol concentration of 0.02 BAC or greater.

Z. Positive Test Result. A positive drug test result, a positive alcohol test result, or both.

AA. Prohibited Drug. Drugs including marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels at or above the minimum thresholds specified in 49 C.F.R. § 40, as amended.

AB. Public Safety Employees. Sworn members of the Albuquerque Police and Fire Departments, members of the Aviation Police, Open Space Rangers, animal services personnel, transport and security officers.

AC. Refusal to Test. A refusal to test includes, but is not limited to, the following circumstances:

- Failure to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- Failure to remain at the collection/testing site until the testing process is complete;
- Failure to provide a urine or breath specimen for any drug or alcohol test required by 49 C.F.R. § 40, as amended or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen;
- Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failure or decline to take an additional test the employer or collector has directed you to take;
- Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the "shy bladder" or "shy

- lung” procedures;
- Failure to cooperate with any part of the testing process (e.g. refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, failure to wash hands after being directed to do so by the collector)
- Verbal or written refusal to provide a breath/urine specimen;
- 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;
- Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process;
- Admission to the collector or MRO that the specimen was adulterated or substituted;
- If the MRO reports that there is a verified adulterated or substituted test result;
- Failure or refusal to sign Step 2 of the alcohol testing form.
- Failure to remain at the scene of an accident prior to submission to drug/alcohol tests without a legitimate explanation;
- Failure to refrain from consuming alcohol within eight (8) hours following involvement in an accident without first having submitted to post accident drug/alcohol tests;
- Providing false information in connection with a drug test; and
- Engaging in conduct that clearly obstructs the testing process.

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

AE. Safety-sensitive Employee. A City employee who performs the duties of a safety-sensitive position as determined by the Director of the Human Resources Department.

AF. “Safety-Sensitive Functions on a Commercial Motor Vehicle” include (a) driving; (b) time spent waiting to be dispatched; (c) inspecting, servicing, or conditioning equipment; (d) being in or on a commercial vehicle (except in a sleeper berth); (e) loading or unloading, including supervising or assistance in loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, giving or receiving receipts for a shipment being loaded or unloaded; (f) repairing, obtaining assistance, or attending a disabled vehicle.

AG. Substance Abuse Professional (SAP). A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified 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 and who is qualified to act as a SAP under 49 C.F.R. § 40.

AH. Substituted Specimen. A verified specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

AI. 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 or foreign substances were added to the urine, if the urine was dilute, or if the specimen was substituted.

AJ. Verified Negative Test. A drug test result reviewed by a medical review officer and determined not to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 C.F.R. § 40, as

amended.

AK. Verified Positive Test. A drug test result reviewed by a medical review officer and determined to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 C.F.R. § 40, as amended.

8. PURPOSE AND APPLICABILITY

A. Purpose

(1) The City of Albuquerque has adopted this policy to ensure that City services requiring the use of a Commercial Driver's License (CDL) are delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. Additionally, the City of Albuquerque declares that the unlawful manufacturing, distributing, dispensing, possessing, or using of controlled substances or misuse of alcohol is prohibited for safety-sensitive employees.

(2) The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701), and the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. § 31,301). Specifically, the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation has published 49 C.F.R. § 382, 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. The U. S. Department of Transportation (USDOT) has also published 49 C.F.R. § 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

(3) Any provisions set forth in this policy that are included under the sole authority of the City and are not provided under the authority of the above named Federal regulations are underlined.

B. Applicability

(1) This part of the City's Substance Abuse Policy applies to all City employees (full, part-time, or volunteers) who are required to hold a Commercial Driver's License (CDL), and who perform safety-sensitive functions as defined by the FMCSA. CDL holders who work for the City Transit Department are covered under Part 3 of the policy that covers safety-sensitive employees that fall under the authority of the Federal Transit Administration. Other City employees that do not have CDLs are covered under Part 1 of the City's Substance Abuse Policy. All safety-sensitive employees returning to duty after a suspension or termination, whether by decree or settlement, as well as any safety-sensitive employee returning to the workplace after any absence of ninety (90) days or more, will be required to take a drug test and have a negative result prior to the performance of safety-sensitive job functions.

(2) A safety-sensitive function is any duty related to the safe operation of a commercial vehicle including the following activities:

(a) All driving time,

(b) All times a CDL holder is waiting to be dispatched, unless the driver has been relieved from duty by the employer. This includes being on-call or available to work at a moment's notice,

(c) Inspecting, servicing, or conditioning a commercial vehicle at any time,

(d) All time being in or upon any commercial vehicle except time spent in a sleeping berth,

(e) Loading or unloading, including supervising or assisting in loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, giving or receiving receipts for a shipment being loaded or unloaded,

(f) Repairing, obtaining assistance, or attending a disabled vehicle.

9. EDUCATION AND TRAINING

A. Every covered employee will receive a copy of the City of Albuquerque Commercial Driver's License Substance Abuse Policy and will have access to the corresponding federal regulations including 49 C.F.R. §§ 40 and 382, as amended. In addition, all covered employees will receive educational materials explaining the DOT's requirements and the City's policies and procedures to meet those requirements. In addition to this policy, the City will provide covered employees with information concerning:

- (1) the effects of drugs and alcohol on an individual's health, work, and personal life;
- (2) the signs and symptoms of a drug or alcohol problem; and
- (3) the available methods of intervention when a problem does exist.

B. Each covered employee is required to certify that he has been given a copy of this policy and other drug and alcohol information by the City. Applicants for employment are also required to execute the certification as a condition of employment. Existing covered employees who refuse to execute this required certification will be subject to discipline.

C. All supervisory personnel who are in a position to determine driver 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. Under the City's own authority, supervisory personnel will also be trained on how to intervene constructively, and how to effectively integrate an employee back into his work group following intervention and treatment.

10. PROHIBITIONS

A. Prohibited Substances. Prohibited substances addressed by Part 2 of this rule include the following.

(1) **Illegally Used Controlled Substance or Drugs:** Under the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined by 21 C.F.R. §§ 1300.11 through 1300.15 is 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 or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body at or above the minimum thresholds is a violation of this policy. Federal Motor Carrier Safety Administration (FMCSA) drug testing regulations (49 C.F.R. § 382, as amended) require that all CDL holders be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section H of this policy. Employees may also, under City Authority,

be tested for any drug or any substance identified in Schedule 1 through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined in 21 C.F.R. §§ 1300.11 through 1300.15. Illegal use of these drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty performing a safety-sensitive job function.

(2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. Except for medication containing alcohol, nothing in this Policy prohibits a driver's use of a medication legally prescribed by a licensed physician: (a) who is familiar with the driver's medical history and specific safety-sensitive duties, and (b) who has advised the driver that the prescribed medication will not adversely affect the driver's ability to operate a motor vehicle.

(a) However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel. In addition, the employee must obtain a written release from the personal physician releasing the person to perform their duties any time they obtain a performance-altering prescription.

(b) A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of prescription and/or non-prescription drugs while performing City business is prohibited.

(3) Alcohol: The use of beverages containing alcohol or substances (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing a safety-sensitive job function. An alcohol test can be performed on a covered employee under 49 C.F.R. § 382 just before, during, or just after the performance of a safety-sensitive job function. Under City authority, an alcohol test can be performed any time a covered employee is on duty.

B. Prohibited Conduct

(1) Covered employees are prohibited from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 C.F.R. § 40, as amended. An exception is allowed when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance will not adversely affect the driver's ability to drive.

(2) Covered employees are 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 for duty. The covered employee will subsequently be relieved of his on-call responsibilities and may be subject to disciplinary action.

(3) The City 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 or has used alcohol, has used a controlled substance, or has adulterated or substituted a test specimen for controlled substances.

(4) Covered employees are prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

(5) Covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he submits to the post-accident drug and alcohol test, whichever occurs

first.

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

(7) Covered employees are prohibited from possessing any amount of alcohol while on duty requiring the performance of a safety-sensitive job function, unless the alcohol is manifested and is being transported as part of a shipment.

(8) The City under its own authority also prohibits the consumption of alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is in uniform.

(9) Consistent with the Drug-free Workplace Act of 1988 (41 U.S.C. § 701) and Personnel Rules and Regulations, all covered employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including City premises, City vehicles, while in uniform or while on City business.

11. DRUG STATUTE CONVICTION

A. Consistent with the Drug Free Workplace Act of 1988 (41 U.S.C. § 701), all employees are required to notify their immediate supervisor and the Human Resources Director of the City in writing of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

12. TESTING REQUIREMENTS AND PROCEDURES

A. Testing Requirements

(1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by Federal regulations. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and random as defined in the Testing rules of this policy. All covered employees who have tested positive for drugs or alcohol on a random, or reasonable suspicion 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 following up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

(2) 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. Under City authority, an alcohol test can be performed any time a covered employee is on duty.

(3) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the City. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in the Results and Appeals Section of this policy. A test refusal constitutes a positive test result and a direct act of insubordination. Any covered employee who is suspected of providing false information in connection with a drug test, or who is 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 discipline as defined in the Results and Appeals Section of this policy. Additionally, refer to the Definitions. for all circumstances that constitute a

Refusal to Test. The City of Albuquerque has a zero-tolerance policy for testing positive for drugs and/or alcohol and for refusing to test.

B. Drug Testing Procedures

(1) 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 Service (HHS). All testing will be conducted consistent with the procedures put forth in 49 C.F.R. § 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 procedure, and the validity of the test result.

(2) 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 C.F.R. § 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 HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. Specimen validity testing will be conducted on all urine specimens provided for testing under FMCSA authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of the 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 GC/MS test are above the minimum thresholds established in 49 C.F.R. § 40, as amended.

(3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer (MRO). A 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 non-negative, substituted, 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 Substance Abuse Program Manager and the Department Program Coordinator. If a legitimate explanation is found, the MRO will report the test result as negative, to the City, and no further action will be taken. If a test is invalid without a medical explanation, a retest will be conducted under direct observation. If a test is a negative-dilute, a retest will not be conducted, the result of the original test will stand as the test of record.

(4) Any covered employee who questions the results of a required drug test under Testing sections of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 C.F.R. § 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. The City will ensure that the cost for the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

(5) 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 employer to retest the employee under direct observation.

(6) 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 Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will be retained for one year.

(7) Observed Collections. Consistent with 49 C.F.R. § 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

(a) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the employer that there was not an adequate medical explanation for the result; or

(b) The MRO reports to the employer that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; or

(c) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; or

(d) The temperature on the original specimen was out of range; or

(e) The MRO reports a negative-dilute result with a creatine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL; or

(f) The test is a return-to-duty or follow-up test.

C. Alcohol Testing Procedures

(1) 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). 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 C.F.R. § 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.

(2) An employee who has a confirmed alcohol concentration of 0.02 or greater will be considered a positive alcohol test and in violation of this policy. The BAT will notify the Substance Abuse Program Manager.

(3) 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 result in a cancelled test.

(4) The alcohol testing form (ATF) required by 49 C.F.R. § 40, as amended, shall be used for all FMCSA required testing. Failure of an employee to sign Step 2 of the ATF will be considered a refusal to test.

13. TESTING

A. Pre-Employment Testing.

(1) All applicants for city positions that require the performance of safety-sensitive functions requiring CDLs shall undergo urine drug testing prior to hire or transfer into a position requiring a CDL.

(a) All offers of employment for positions requiring CDLs shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a CDL position unless the applicant takes a drug test with a verified negative result.

(b) A non-CDL employee shall not be placed, transferred or promoted into a CDL position until the employee takes a drug test with a verified negative result.

(c) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test will disqualify an applicant for employment with the City for a period of one (1) year. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 C.F.R. § 40, as amended, and the approval of the city and a negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(d) 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 in accordance with Section Q herein.

(e) If a pre-employment or pre-transfer test is canceled, the City will require the applicant to take and pass another drug test.

(f) All applicants or employees being placed, transferred, or promoted from a non-covered position to a covered position are required to execute an authorization form allowing the City to obtain past drug and alcohol test results, including any refusals to test, from each company for whom the driver worked for the previous three (3) years.

(g) In instances where a covered employee is on extended leave for a period of ninety (90) days or more regardless of reason, the employee will be required to take a drug test and have a negative test result prior to the conduct of safety-sensitive job functions. A verified positive test result will result termination from City employment.

B. Reasonable Suspicion Testing

(1) All covered employees will be subject to a reasonable suspicion drug and 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, alcohol misuse or both. Reasonable suspicion referrals must be made by one supervisor who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion drug test can be performed any time a covered employee is on duty. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under City authority, an alcohol test can be performed any time a covered employee is on duty. If the alcohol reasonable suspicion test is not administered within 8 hours of the incident, the driver shall be placed out of service for 24 hours.

(2) The City shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves or others into a situation which might endanger the physical safety of those present. The impacted employee shall be placed on leave with pay status in accordance with the Personnel Rules and Regulations. An employee who refuses an instruction to submit to a drug or alcohol test or both shall not be permitted to finish his shift and shall immediately be placed on leave with pay status pending disciplinary action.

(3) When an employee reports to the Employee Health Center for treatment or examination and the health care provider has a reasonable suspicion that the employee has current drug or alcohol use or is a substance abuser, the health care provider shall notify the DER who shall refer the employee to the SAP for substance abuse testing and assessment. The DER shall notify the employee's department director or his designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

(4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his chain of command, an Employee Assistance Program (EAP) counselor, or a provider of medical services under contract to the City, the employee shall be referred to the DER who shall refer the employee to the SAP for substance abuse testing and assessment. The DER shall notify the employee's department director or his designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

(5) A written record of the observations which led to a drug and alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation within 24 hours of the observation or prior to the release of the test results, whichever is earliest. This written record shall be submitted to the Substance Abuse Program Manager and the MRO and shall be attached to the forms reporting the test results.

(6) An employee who submits a breath and/or urine sample for a reasonable suspicion drug and alcohol test which is determined to be a verified positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

C. Post-Accident Testing

(1) All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a City vehicle requiring a CDL, or other heavy equipment or machinery such as backhoes, loaders, or graders that results in a fatality. In addition, a post-accident test will be conducted whether or not the driver receives a citation for a moving violation if the accident results in either (a) injuries requiring immediate transportation to a medical treatment facility; or (b) one or more vehicles incurs disabling damage.

(a) As soon as practicable following an accident as defined in this policy, the employee's supervisor investigating the accident will notify the driver of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

(b) The supervisor shall ensure that an employee required to be tested under this section is tested as soon as practicable and within eight (8) hours of the accident for alcohol and within 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

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

(d) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location, if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

(e) 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.

(f) In the rare event the City is unable to perform an FMCSA 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 or local law enforcement officials in lieu of the FMCSA test. The State or local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

(g) An employee who submits a breath and/or urine sample for a post-accident drug and alcohol test which is determined to be a verified positive test result or a refusal to test will be terminated from City employment.

D. Random Testing

(1) 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 covered employees.

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

(b) The number of employees randomly selected for drug and alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The random test rate for drugs will be the FMCSA annual minimum random testing rate as set in the Federal Register as per 49 C.F.R. § 382.305(f), unless that rate is less than twenty-five percent at which, under City Authority, the test rate will be twenty-five percent of the number of covered employees in the pool. The random testing rate for alcohol established by the City will equal the random test rate for drugs.

(c) 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.

(d) Safety-sensitive employees covered by the Federal Motor Carrier Safety Administration regulations will be included in one random pool maintained separately from other testing pools within the City.

(e) 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. However, under City authority, an alcohol test can be performed any time a covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.

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

(g) An employee who submits a breath and/or urine sample for a random drug and alcohol test which is determined to be a positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

E. Return-to-Duty Testing

(1) All covered employees who test positive on a drug, alcohol, or drug and alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty the provisions of this section apply. All covered 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 Substance Abuse Professional before returning to work. For an initial positive drug test a Return to Duty drug 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 properly followed and the SAP has a reasonable level of assurance that the individual will stay drug and alcohol free. The SAP should schedule the return-to-duty test only when the employee is known to be drug and alcohol-free and there is no risk to public safety. An employee who submits a breath and/or urine sample for a return-to-duty drug and alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment. Return-to-duty testing is conducted when an employee is off duty. All return-to-duty testing will be conducted under direct observation.

F. Follow-up Testing

(1) All covered employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty, the provisions of this section apply. Covered 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 reasonable suspicion, post-Accident, random, and return-to-duty testing program. An employee who submits a breath and/or urine sample for a follow-up drug and alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment. All follow-up testing will be conducted under direct observation.

14. RESULTS AND APPEALS

A. Result of Drug/Alcohol Test

(1) Any covered employee that refuses a test or has a positive drug test result, or a positive alcohol test result will be removed from his safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

(2) A positive drug and/or alcohol test or a refusal to test will also result in disciplinary action as specified herein.

(a) All testing results shall be reported by the City's HHS certified laboratory to the Medical Review Officer or his designee. If the test results are negative, the Medical Review Officer or designee will notify the appropriate parties to that effect.

(b) If the City's HHS certified laboratory reports the results as non-negative, the City's Medical Review Officer shall determine the validity of the results and provide the impacted employee with the opportunity to discuss the test result. If the Medical Review Officer finds a valid medical explanation (i.e., prescription, medical treatment) for the non-negative test result, the MRO will verify and report this test to the Substance Abuse Program Manager and the Department Program Coordinator as negative and no action will be taken. If the Medical Review Officer's assessment finds no valid medical explanation for the non-negative result, he will verify the test as positive or refusal to test and copies of the testing records shall be provided to the Substance Abuse Program Manager and the Department Program Coordinator.

(c) Upon notice of a positive drug and/or alcohol test result, or a refusal to submit to a test, the Department Director or designee shall ensure that the employee ceases performing any safety-sensitive function and shall place the employee on paid administrative leave and notify the Director of Human Resources.

(d) The first instance of a verified positive test result from a sample submitted under the pre-employment, random, reasonable suspicion, or post Accident drug and alcohol test provisions herein shall result in termination from City employment.

(e) Refusal to test shall be considered a positive test result and a direct act of insubordination and shall result in termination.

(f) The employee shall be immediately referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider.

(g) A Voluntary Referral or participation in the City Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City.

(h) Failure of an employee to report in writing to their immediate supervisor and the Human Resources Director within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in disciplinary action, up to and including termination.

B. Grievance And Appeal

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(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination that is subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance or applicable collective bargaining agreements. The consequences specified by 49 C.F.R. § 382, as amended, for a positive test or test refusal are not subject to a grievance.

15. PROPER APPLICATION OF THE POLICY

A. The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

16. INFORMATION DISCLOSURE

A. Drug and alcohol testing records shall be maintained by the Substance Abuse Program Manager or designee and, except as provided below or by law, the results of any drug or alcohol test shall not be disclosed without express consent of the tested employee.

B. 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 follow-up testing plans.

C. Records of a positive drug test result, positive alcohol test result, or a refusal to test shall be released to the employee's department director or designee.

D. Records will be released to a subsequent employer only upon receipt of a written request from the employee.

E. Records of an employee's drug and 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 drug and alcohol test. The records will be released to the decision maker in the proceeding. The information will only be released with binding stipulation that the decision maker will make it available only to parties in the proceeding.

F. Records will be released to the National Transportation Safety Board during an Accident investigation.

G. Records will be released to the DOT or any DOT State or local agency with regulatory authority over the employer or any of its employees.

17. INCORPORATION AND ENFORCEABILITY

A. Incorporation. This policy incorporated by reference the cited federal law and regulations as in effect at the time this policy is issued and this policy shall be deemed automatically modified by any

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amendment or modification to the cited federal law and regulations. Employees shall be given notice of the changes in the cited federal law and regulations.

B. Enforceability. The invalidity or unenforceability of any provision of this policy shall not affect any other provision hereof, and the policy shall be construed in all respects as if such invalid or unenforceable provision was omitted. If this policy in its entirety or a material portion of it is invalidated, then, and in that event only, the City's Substance Abuse Policy shall be as described in Administrative Instruction 7-1-2 as amended February 17, 2011.

History:

This Policy was adopted by the City of Albuquerque Chief Administrative Officer pursuant to City Council Bill R-237 on April 17, 1995.

The City enacted a Substance Abuse Policy in 1999; revised February 6, 2006 (retroactive to January 1, 2006); the Second Judicial District Court invalidated the discipline portions of the 2006 policy in *New Mexico Transportation Union v. City of Albuquerque*, No. CV-2005-0129; Administrative 7-1-2) effective November 3, 2009 (2-8-11, 2-17-11).

PART 2
Appendix A
SYSTEM CONTACTS

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s). Names and contracted vendors are as of the date of adoption and may change from time to time without a formal amendment of the rule.

City Substance Abuse Program Manager:

Name: Lori Cruz
Title: Manager of the Substance Abuse Program
Address: 1 Civic Plaza NW, 9th Floor Albuquerque, NM 87103
Telephone Number: (505) 768-3080

Medical Review Officer

Name: Dr. William Prickett
Title: Medical Review Officer
Address: 400 Marquette NW, Room B-06 Albuquerque, NM 87103
Telephone Number: (505) 768-4630

Substance Abuse Professional

Name: Adam Stern
Title: Substance Abuse Professional
Address: The Solutions Group
1240 Pennsylvania NE, Suite C Albuquerque, NM 87110
Telephone Number: (505) 254-3555

HHS Certified Laboratory: Primary Specimen

Name: SED Medical Laboratories
Certifying Scientist: Director of Toxicology: Martin Brady
Address: 5601 Office Blvd, N.E.
Albuquerque, NM 87109-5816
Telephone Number: (505) 727-6300

HHS Certified Laboratory: Split Specimen

Name: Medtox
Address: 402 West County Rd, Suite D
Saint Paul, MN 55112
Telephone Number: (800) 832-3244