



**City of Commerce, California
Human Resources Policy and Procedure Manual**

SUBJECT: SUBSTANCE ABUSE POLICY FOR COMMERCIAL DRIVERS

POLICY:

The City of Commerce - Transportation Department (hereinafter referred to as "CTD") is dedicated to providing safe, dependable and efficient transportation services to our customers. We recognize that the use of illegal drugs and misuse of alcohol by our safety-sensitive employees could pose a significant risk to public safety, as well as the employee's health and well-being. In view of this, the City has adopted this Policy ("Policy" herein) to:

1. Create a work environment free from the adverse effects of drug abuse, alcohol misuse, and use of impairing prescription or over-the-counter drugs;
2. Deter and detect employees' use of illegal drugs and misuse of alcohol;
3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;
4. Encourage employees to seek professional assistance anytime personal problems, including drug or alcohol dependency, adversely affect their ability to safely perform their assigned duties; and
5. Discipline employees who violate the Policy, up to and including termination.

PURPOSE:

The purpose of this Policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the safety and health risks posed by the misuse of alcohol and use of prohibited drugs. This Policy is intended to comply with all applicable State and Federal regulations governing workplace anti-drug use and alcohol misuse programs in the transportation industry. They include the regulations promulgated by the U.S. Department of Transportation ("DOT") and the Federal Transit Administration ("FTA"), and include the following: DOT 49 CFR Part 40, as amended ("Procedures for Transportation Workplace Drug and Alcohol Testing Programs") (hereinafter referred to as "Part 40"); FTA 49 CFR Part 655 ("Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations") (hereinafter referred to as "Part 655"); DOT 49 CFR Part 29 ("Drug-Free Workplace Act of 1988"); and California Government Code Sections 8350 et seq. ("Drug-Free Workplace Act of 1990"). This Policy incorporates the requirements of above regulations for safety-sensitive employees.

NOTE: Additional requirements and/or disciplinary actions established solely under CTD authority are entered in **bold-faced type**. Requirements of the Drug-Free Workplace Act (DFWA) are in *Italics*.

1. APPLICABILITY

This Policy applies to all employees of CTD defined as “safety-sensitive” under the FTA regulations (Part 655); see also Section 8.0 herein. It applies to off-site lunch periods or breaks when an employee is scheduled to return to work or is on-call.

Visitors, invitees, and vendors also are prohibited from entering the premises and from conducting any work on behalf of the City when illegal substances are present in their system, or the odor of alcohol is present on their breath. In addition, this Policy applies to contractors who have employees performing safety-sensitive functions on City vehicles and/or property.

All positions within the City requiring a commercial driver’s license, excluding safety-sensitive positions as defined by FTA regulations (Part 655), falls under the Federal Motor Carrier Safety Administration (FMCSA) regulation, 49 C.F.R., Part 382, which mandates urine drug testing and breath alcohol testing for CDL holders. In order to obtain a unified policy, the City will implement the most stringent requirements of these regulations. The Federal law provides minimum standards for drug and alcohol testing; the City will exceed these minimum standards only where reasonable and necessary to maintain a cohesive testing program for all affected City employees.

2. PRE-EMPTION OF STATE AND LOCAL LAWS

If any conflict occurs between State and local laws and any requirement of the above-mentioned Federal regulations, the Federal regulations shall prevail. However, Federal regulations do not pre-empt provisions of State criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse, whether the provisions apply specifically to transportation employees, employers, or the public in general.

3. DEFINITIONS

Adulterated Specimen: A urine 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 normal human urine.

Alcohol Screen Device (ASD): An alcohol screening device is a breath or saliva analysis tool approved for use by the National Highway Traffic Safety Administration (NHTSA) for an initial alcohol screening test. The more sensitive Evidential Breath Test Device (EBT) is not considered an ASD by the NHTSA, but, is capable of performing the initial alcohol screening test.

Alcohol Use: The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication) containing alcohol. For purposes of this Policy, alcohol is alcohol regardless of source.

BAC: Breath Alcohol Concentration, expressed in terms of grams of alcohol per 210 liters of breath.

Breath Alcohol Technician (BAT): An individual who instructs and assists employees in the alcohol testing process and operates an Evidential Breath Testing (EBT) device.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which Part 40 requires to be canceled. A canceled test is neither a positive nor a negative test.

Collector: A person who instructs and assists individuals at a collection site, who receives and makes an initial inspection of the specimen provided by the individual, and who initiates and completes the Custody and Control Form (CCF).

Controlled Substances: Any drug classified by the U.S. Drug Enforcement Agency (DEA) into the five schedules or classes on the basis of their potential for abuse, accepted medical use, and accepted safety for use under medical supervision.

Designated Employer Representative (DER): An employee or employees authorized by the City to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, following a positive test; test refusal; or other policy violations.

DHHS: Department of Health and Human Services.

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

Disabling Damage: Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. "Disabling damage" does not include:

- Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- Tire disablement without other damage even if no spare tire is available.
- Headlamp or taillight damage.
- Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT: Department of Transportation; encompass all DOT agencies, including, but not limited to, FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency. For the purposes of testing under 49 CFR Part 40, the USCG (in the Department of Homeland Security) is considered to be a DOT agency for drug testing purposes.

Drug Abuse: Use of any illegal drug or controlled substance without a valid prescription, misuse of legally prescribed drugs, or use of illegally obtained prescription drugs. This includes use of prescription drugs legally prescribed to another individual.

Evidential Breath Testing (EBT) Device: A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath under DOT Part 40 and placed on the NHTSA's Conforming Products List.

FTA: Federal Transit Administration.

Invalid Drug Test: The result of a urine drug test that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Mass Transit Vehicles: Vehicles used for mass transportation or ancillary services.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory drug test results, who has knowledge of substance abuse disorders, and has the appropriate medical training to interpret and evaluate an individual's confirmed drug and/or validity test results together with the individual's medical history and any other relevant biomedical information. This individual must meet the qualification requirements under Sec. 40.121 of Part 40.

Non-Negative Specimen: A urine specimen that is reported as adulterated, substituted, positive for drug(s) or drug metabolite(s), and/or invalid.

Opioid: Are a class of drugs that include illegal drug heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription, such as oxycodone (OxyContin), hydrocodone (Vicodin), Codeine, morphine, and many others.

Positive Alcohol Test: The presence of alcohol in the body at a concentration of 0.04 BAC or greater as measured by an EBT device.

Positive Drug Test: Any urine that is chemically tested (screened and confirmed), shows the presence of controlled substances at or above the concentrations listed in Section 40.87(a) of the DOT drug testing regulation, and is verified as positive by the MRO.

Refusal to Test: Includes circumstances or behaviors such as:

- Failure to appear for any test (except a pre-employment test) at the collection site in the time allotted.
- Failure to remain at the testing site until the testing process is completed, except in pre-employment situations where leaving the site before the testing process begins is not deemed to be a test refusal.
- Failure to provide a urine, breath, or saliva specimen as required by DOT Part 40.
- Failure to permit the observation or monitoring of specimen collection when it is required.
- Failure to provide a sufficient amount of urine or breath specimen without a valid medical explanation.
- Failure or refusal to take a second test when required.
- Failure to undergo a medical evaluation when required. In the case of a pre-employment test, the individual is deemed to have refused to test only if the pre-employment test is conducted following a contingent offer of employment.
- Failure to cooperate with the testing process. (Examples: refusal to empty pockets when requested, behaving in a confrontational manner that disrupts the collection process, or failure to wash hands after being directed to do so by the collector)

- For an observed collection, failure to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if individual is wearing any type of device that could be used to interfere with the collection process.
- Possession or wearing of a prosthetic or other device that could be used to interfere with the collection process.
- Admitting adulteration or substitution of the specimen to the collector or the MRO.
- In alcohol testing, refusal to sign Step 2 of the Alcohol Test Form.
- Leaving the scene of the accident without just cause prior to submitting to a test.
- If the MRO reports a verified adulterated or substituted test result.

Note: A refusal to test is equivalent to a positive test result.

Screening Test Technician (STT): A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device, such as a breath or saliva device, other than an EBT.

Specimen Validity Testing: A test to determine if a urine specimen is adulterated, diluted or substituted.

Split Specimen: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second DHHS-certified laboratory for testing upon employee request following a verified positive or a verified adulterated or substituted test result from the primary specimen.

Subject to Duty: An employee is considered "subject to duty" under any of the following circumstances: 1) on his or her regularly scheduled duty days prior to sign-on; 2) when reporting for work, 3) during any split period between assignments, whether on or off City premises; 4) when informed in advance, while on duty, that he or she is expected to be on duty at some point in the future; and 5) when being tested under the re-entry to work provisions of this Policy.

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap> 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 or so divergent that they are not consistent with normal human urine.

Vehicles: Includes buses, electric buses, vans, trucks, automobiles, rail cars, trolley cars, trolley buses or vessels, non-revenue commercial motor vehicles, and vehicles used by armed security personnel.

4. EDUCATION AND TRAINING

The education and ongoing awareness component of this Policy will include display of posters, distribution to all covered employees and representatives of employee organizations of the drug and alcohol policy and other informational materials, and periodic information seminars.

Each employee will be required to sign an acknowledgment form indicating that they have received a copy of the current policy.

As required by FTA regulations, the City will provide to all safety-sensitive employees a minimum of sixty (60) minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

Supervisors or company officials who may make reasonable suspicion referrals shall receive an additional sixty (60) minutes of training on the physical, behavioral, and performance indicators of probable drug use, and at least sixty (60) minutes of training on the physical, behavioral, speech and performance indicators of probable alcohol misuse.

5. CONTACT PERSON

Any questions about this Policy or any aspect of the company's drug- and alcohol-free program should be referred to the following:

Title: Director of Transportation
Address: 5555 Jillson, Street
Commerce, CA 90640

Telephone # (323) 887-4419
Fax # (323) 887-4643

6. COVERED EMPLOYEES

FTA Positions:

As a condition of employment, safety-sensitive employees are required to submit to drug and alcohol tests administered in accordance with 49 CFR Parts 40 and 655. A refusal to submit to a test as directed will be considered to be a positive test result and the employee will be subject to all the attending consequences as stated in this Policy. (Please refer to Section 3 for specific circumstances or behaviors that are considered a refusal to test.)

As defined by the FTA, "safety-sensitive employees" include those who perform, or may be called upon to perform, the following safety-sensitive functions.

1. Operating a revenue service vehicle, even when it is not in revenue service;
2. Operating a non-revenue service vehicle when required to be operated by a Commercial Driver's License (CDL) holder;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service.

Supervisors are considered safety-sensitive only if they perform, or may be called upon to perform any of the above safety-sensitive functions. CTD has analyzed the actual job duties performed by all of its employees, and those they may be called upon to perform, and has determined that the job classifications listed below are considered "safety-sensitive" for the purposes of this Policy:

- Bus Operator I
- Bus Operator II
- Fleet Mechanic
- Transit Supervisor
- Cover Bus Operator
- Lead Fleet Mechanic
- Transportation Dispatcher
- Transit Operations Assistant
- Fleet Maintenance Manager
- Fleet Maintenance Supervisor
- Transportation Service Worker
- Transportation Parts Assistant
- Lead Transportation Service Worker

FMSCA Positions:

All positions within the City requiring a commercial driver's license, excluding safety-sensitive positions as defined above by FTA regulations falls under the Federal Motor Carrier Safety Administration (FMCSA) regulation, 49 C.F.R. Part 382, which mandates urine drug testing and breath alcohol testing for CDL holders. The City has analyzed the actual job duties performed by all of its employees, and those they may be called upon to perform, and has determined that the assigned job tasks listed below are considered for the purposes of this Policy.

- Maintenance staff who are required to operate a Dump Truck as part of their job tasks
- Park Maintenance staff who are assigned to tow the Parks & Recreation Show mobile.
- Community Services staff assigned to operate the Mobile Command Post (5th Wheel)

7. DRUGS (OR THEIR METABOLITES) TESTED FOR AND CONFIRMATORY CUT-OFF LEVELS

	<u>Confirmatory Cut-Off (ng/mL)</u>
• Marijuana	15
• Cocaine	100
• Opiates	2000
• Codeine	2000
• Morphine	2000
• Heroin	10
• Hydrocodone	100
• Hydromorphone	100
• Oxycodone	100
• Oxymorphone	100
• Amphetamines (includes methamphetamines)	250
• Phencyclidine (PCP)	25
• MDMA (Ecstasy)	250
• MDA	250

8. PROHIBITED BEHAVIORS

8.1 Illegal Drugs

The prohibited drugs listed in Section 7 are always illegal and employees are prohibited from consuming any of them at all times. Employees may be tested for illegal drugs anytime they are on duty or subject to duty.

8.2 Prescription or Over-the-Counter Medications

CTD recognizes the safety risks associated with employee use of certain prescription and over-the-counter medications that affect work performance.

Under this Policy, the appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of medications that cause drowsiness or fatigue, or those that carry warning labels which caution against the operation of machines, heavy equipment, or automobiles, is strictly prohibited while performing safety-sensitive work. Covered employees are required to notify their manager or supervisor regarding the use of such medication, and may not perform any safety-sensitive function, if their medication carries a warning label that mental functioning, motor skills or judgment may be adversely affected.

The only exception to this is if the medication is being used in accordance with the instructions of a physician who has provided a written determination that the substance will not adversely affect the employee's ability to safely perform safety-sensitive duties. The employee must then provide his or her manager or supervisor with a copy of the medical authorization. While observing confidentiality rules with regards to medical information and records, CTD will make the final determination whether or not to allow the employee to perform any safety-sensitive work, or require the employee to see a company-approved physician.

The employee is responsible for describing his or her safety-sensitive duties to the physician and obtaining appropriate medical professional information on whether or not the drug might impair his or her ability to perform his or her duties safely and effectively. If possible, employee must ask for alternative medicine/dosage/schedule that does not jeopardize safety.

A prescription is considered valid only if it is in writing and indicates the employee's name, date, the name of the substance, quantity or amount to be taken, and the period of authorization. Controlled substances obtained illegally outside the United States are not considered valid medical prescriptions. It is a violation of this Policy to use any controlled substance in a manner that is inconsistent with the prescription. Any covered employee who violates this section of the policy is subject to disciplinary action, up to and including termination.

8.3 Alcohol

Safety-sensitive employees are prohibited from consuming alcohol in any form:

- While performing safety-sensitive functions (see Section 6);
- Within four (4) hours prior to performing safety-sensitive functions;
- While they are on call; or

- Within eight (8) hours following an accident requiring a post-accident alcohol test, unless the test was completed within 8 hours.

Alcohol tests may only be conducted just before, during, and just after the employee's performance of a safety-sensitive function. If a covered employee tests positive for alcohol at a concentration equal to or greater than 0.02 but less than 0.04, the employee will be immediately removed from duty, referred to a SAP, and, subject to disciplinary action in accordance with established City disciplinary procedures. The employee will not be allowed to return to safety sensitive duties until he or she produces an alcohol test result of 0.02 or below. An alcohol test result of 0.04 or above will result in immediate removal from safety-sensitive duties, referral to a SAP, and disciplinary action as described in section 16.0 (Consequences) of this Policy.

9. TYPES OF TESTING

9.1 Pre-Employment Testing

Candidates for employment in safety-sensitive positions, or any employee transferring from a non-safety-sensitive to a safety-sensitive position, will be required to undergo a pre-employment drug test at a time and place designated by CTD. A verified negative drug test result must be received by CTD before an employee or candidate can be allowed to perform any safety-sensitive function for the first time. If a pre-employment test is canceled, the individual will be required to undergo another test and successfully pass the test.

Subject to the candidate's written consent, CTD will check on the drug and alcohol testing background of candidates and employees being considered for final selection into any safety-sensitive position within CTD. If the individual refuses to provide the written consent, he or she will not be hired into the safety-sensitive position. In addition, if the individual has had a positive pre-employment drug or alcohol test, or has refused such a test, he or she will not be hired until and unless the individual has provided a documentation of successful completion of the return-to-duty process, which includes a SAP referral, evaluation and treatment plan.

An employee who has not performed any safety-sensitive function for at least 90 consecutive calendar days (regardless of the reason) and has been out of the random pool during that period must pass a pre-employment drug test before he or she is allowed to return to safety-sensitive work.

9.2 Reasonable Suspicion Testing

Whenever a Supervisor (or other City official) has reason to believe that a covered employee has used a prohibited drug and/or engaged in alcohol misuse, reasonable suspicion testing will be conducted. The referral will be made by a trained supervisor or City official based on the specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The supervisor/official who makes the referral need not be the employee's own supervisor, as long as he or she has received training in detecting the signs and symptoms of drug use and alcohol misuse. The supervisor's observations will be documented and such documentation shall be kept in the employee's confidential drug and alcohol testing file.

A reasonable suspicion alcohol test may only be conducted if the reasonable suspicion observation is made just before, during, or just after the employee's performance of safety-sensitive function. If the alcohol test is not conducted within two hours, reason for the delay must be documented and kept in the employee's reasonable suspicion test file. All attempts to complete the alcohol test must cease after eight hours.

To ensure the safety of the employee, the public and co-workers, when an employee has reasonable suspicion or information that a co-worker or subordinate has consumed or is under the influence of drugs/alcohol while at work, they must immediately report their suspicion and/or information to their Department Head and/or Supervisor for further impairment assessment. Whenever a manager or supervisor observes, or is advised of, a health or safety risk as a result of possible intoxication, they should contact their Department Head or designee and the Human Resources Department to carry out an assessment.

All impairment assessments must be conducted by the Department Head or designee and concurred by the Human Resources Department, who have been properly trained and are considered to be competent to conduct the impairment assessment. The employee has the right to representation during these assessments.

If an impairment assessment is conducted and the employee is deemed fit to continue duties, no further testing is required.

Upon concurrence of the Human Resources Department that an employee is reasonably deemed to be impaired, the employee shall be transported immediately to a medical facility to be examined by a physician and take the appropriate test for drug or alcohol use. The examination shall be conducted while the employee is "on the clock". The City shall bear the expense of the examination, and shall provide transportation to and from the medical facility and the employee's work station. The supervisor shall use good judgment and at their discretion may request assistance from another staff to assist them when transporting an employee who is reasonably believed to be under the influence of drugs/alcohol. A Supervisor shall contact the Transportation Department if a vehicle is required for transport.

The employee will be placed on paid administrative leave pending the results of the drug/alcohol test. The employee shall not be allowed to drive himself/herself home. Either the employee may arrange for someone to transport him/her to their home or the supervisor and one other employee may transport the employee home. If the employee refuses to be transported home and insists on operating a motor vehicle, then the supervisor will be responsible for calling the appropriate contacts including law enforcement to report the circumstances, in order to prevent the employee from driving away in a car and to protect the employee and the public. If an employee gets behind the wheel of any vehicle and proceeds to activate the vehicle after being admonished not to do so, said action will be deemed insubordination and grounds for immediate termination.

Failure to submit to an examination and test, when so ordered by the department head or designee, will be considered insubordination, and grounds for immediate termination. If the examination shows that the employee is under the influence of drugs and or alcohol, or over-the-counter medications in excess of prescribed dosages, the City's drug and alcohol policy has been violated and the employee shall be subject to immediate termination.

An employee whose drug test and/or alcohol test produces a negative result shall be promptly returned to his or her regular work.

9.3 Post-Accident Testing

Any covered employee operating a mass transit vehicle at the time of an accident shall be required to submit to drug and alcohol tests as soon as practicable after the accident. For purposes of this Policy, "accident" is defined as an accident involving a mass transit vehicle where the result is:

- An individual dies;
- An individual suffers a bodily injury and immediately receives medical treatment away from the scene;
- The mass transit vehicle (if bus, electric bus, van, or automobile) or any other vehicle(s) involved in the accident suffers a disabling damage as a result of the accident and is transported away from the scene by a tow truck or other vehicle; or
- The mass transit vehicle (if rail car, trolley car, trolley bus, or vessel) is removed from revenue service.

9.4 Fatal Accidents

Whenever there is a loss of human life, any surviving employee operating the company vehicle at the time of the accident shall be tested for drugs and alcohol. Any other safety-sensitive employee not in the vehicle but whose performance could have contributed to the accident also shall be tested.

9.5 Non-Fatal Accidents

Following non-fatal accidents, the employee operating the vehicle at the time of the accident shall be tested unless his or her performance can be completely discounted as a contributing factor to the accident. Any other safety-sensitive employee whose performance could have contributed to the accident also shall be tested.

9.6 Other Post-Accident Testing Requirements

Employees involved in an accident that requires testing must remain readily available for testing, including notifying CTD of their location if they leave the scene of the accident before testing to obtain emergency medical care, or to obtain assistance in responding to the accident. They will be considered to have refused to submit to testing if they fail to do so. This requirement should not be construed to delay the necessary medical attention for injured people following the accident.

Employees are prohibited from using alcohol for eight (8) hours following an accident or until the post-accident testing is completed, whichever occurs first. Every effort will be made to conduct alcohol testing within two (2) hours after the accident. In the event the alcohol test is delayed beyond two hours, CTD will prepare and maintain a record stating the reason(s) for the delay. If an alcohol test is not administered within eight hours following the accident, CTD will cease all efforts to administer the test and document the reason for the inability. In the event a drug test is not administered within 32 hours from the time of the accident, CTD will cease all attempts to administer the drug test.

If CTD is unable to perform post-accident tests within the required period of compliance, CTD may use the post-accident test results administered by State or local law enforcement personnel under their own authority, provided the test results are obtained by CTD.

Following a post-accident test, the employee is not allowed to perform any safety-sensitive function until the company has received negative test results. While awaiting test results, the employee shall remain on paid status in accordance with the employee's regular work schedule. An employee whose drug test and/or alcohol test produces a negative result shall be promptly returned to his or her regular work.

9.7 Random Testing

Safety-sensitive employees are required to undergo random drug and alcohol tests to deter use of prohibited drugs and misuse of alcohol. The random selection will be conducted using a scientifically valid method, such as a random number table or a computer-based random number generator which gives each covered employee an equal chance of being selected every time a selection is made.

As is the nature of the random method, it is possible that some employees will be selected several times in one year, and other employees not for several years. Management does not have any discretion on who will be selected.

A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before, or just after the performance of such functions. Random testing for drugs may occur anytime the employee is on duty.

Every effort will be made by CTD to spread random testing reasonably throughout the calendar year, all days of the week, and all hours when safety-sensitive functions are performed. The testing dates and times are unannounced and employees are required to immediately proceed to the designated collection site following notification.

CTD will conduct random drug and alcohol tests at a minimum annual percentage of covered employees as required by the FTA. The rates are subject to change on an annual basis, depending on the industry-wide positive rate determined by the FTA from the annual Management Information Systems ("MIS") reports submitted by covered employers.

9.8 Return-to-Duty Testing

CTD has a "zero tolerance" policy. In the unusual event that an employee who has refused a required test, has a verified positive, adulterated or substituted drug test result, or tests positive for alcohol at 0.04 or greater, is allowed to return to safety-sensitive duties, he or she must first complete the return-to-duty process. This includes evaluation by a SAP, successful completion of the rehabilitation, treatment or education program outlined by the SAP, and obtaining a verified negative return-to-duty drug test and/or alcohol test under 0.02.

Under the City's own authority, employees who are allowed to return to work after a policy violation will be required to sign a Re-entry Agreement (See Appendix A).

9.9 Follow-Up Testing

In addition to the Return-to-Duty test described in Section 11.5, an employee who previously tested positive, or refused to take a required test (including MRO reports of adulteration or substitution), shall be subject to follow-up testing for drugs and/or alcohol, as prescribed by the SAP, for a minimum period of 12 months, up to a maximum of five years. As mandated by the FTA, the employee shall undergo at least six follow-up tests during the first 12 months of his or her return to work. Although they are both unannounced, follow-up testing is apart and separate from random testing. The duration and frequency of testing will be designated by the SAP, but the actual follow-up testing dates will be decided by the employee's manager or supervisor.

10. DRUG & ALCOHOL TESTING PROCEDURES

All DOT drug and alcohol tests required under this Policy will be administered in accordance with the "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (Part 40), as amended.

Prior to the test, the employee must present a photo ID (e.g., driver's license or employee ID) for proper identification. Throughout the testing process, the privacy of the employee will be protected and the integrity and validity of the process will be maintained. The drug testing procedure will include a split specimen collection method and a federal Custody and Control Form with a unique identification number to ensure that the correct test result is attributed to the correct employee. An initial screening test using an immunoassay technique will be performed. If the specimen is positive for one or more of the drugs tested, then a confirmation test will be performed using the state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. If the test is confirmed positive, the MRO will conduct a verification process, which includes giving the employee an opportunity to provide a valid medical explanation for the positive test result.

Additionally, the laboratory will conduct specimen validity testing to determine if a urine specimen has been adulterated, substituted, or diluted. If the MRO reports a "negative-dilute" test result, CTD will direct the employee to take a second test with no advance notice and depending on the creatinine level reported by the laboratory to the MRO, the second collection may be directly observed. Should the second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

If the laboratory reports to the MRO an "Invalid Result" or "Rejected for Testing" (because of a fatal or uncorrectable flaw), a recollection may be required by the MRO, and depending on the circumstances, the recollection may be directly observed.

The following three circumstances have been added to the list of "fatal flaws":

- A. No Chain of Custody Form (CCF) received by the laboratory with the urine specimen.
- B. In cases where a specimen has been collected, there was not specimen submitted with the CCF to the laboratory.
- C. Two separate collections are performed using one CCF.

Tests for alcohol concentration will be conducted using an alcohol screening device and an evidential breath testing (EBT) device if the screen test is at 0.02 BAC or greater. A DOT Alcohol Testing Form will be used and a unique sequential number will be assigned to each test.

Detailed drug and alcohol specimen collection procedures are available upon request from the Contact Person identified in Section 5 of this Policy.

11. DIRECTLY OBSERVED URINE SPECIMEN COLLECTION

Under the following circumstances, the employee will be directed to undergo an immediate urine specimen collection under direct observation with no advance notice:

- If the laboratory reported to the MRO that a specimen is invalid and there was no adequate medical explanation for the result;
- If the MRO reported that the original positive, adulterated, or substituted test result had to be canceled because the split specimen testing could not be performed;
- If the drug test is a return-to-duty or a follow-up test;
- If the collector observes materials brought to the collection site or employee conduct that clearly indicates an attempt to tamper with a specimen;
- If the temperature on the original specimen was out of range;
- If the original specimen appeared to have been tampered with; or
- If the previous specimen was negative dilute with creatinine between 2 to 5 mg/dl.

The observer shall be the same gender as the employee, but need not be a trained collector. Prior to the collection, the observer must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; lower clothing and underpants; and to turn around to show the observer that he or she is not wearing any type of prosthetic or other device that could be used to interfere with the collection process.

If none is observed, the employee may return clothing to its proper position for observed urination. The observer is responsible for ensuring that the specimen goes from the employee's body into the collection container. If the employee declines to allow a directly observed collection when required or permitted under this Policy, it is considered a refusal to test.

12. MONITORED URINE SPECIMEN COLLECTION

Under those circumstances when a multi-stall restroom has to be used for urine specimen collection and the facility cannot be adequately secured, the collector will conduct a monitored collection. The monitor shall be the same gender as the employee, unless the monitor is a medical professional. The monitor will not watch the employee void into the collection container. However, if the monitor hears sounds or observes attempts to tamper with a specimen, an additional collection under direct observation will be ordered. If the employee declines to permit a collection authorized to be monitored, it is considered a refusal to test.

13. SPLIT SPECIMEN TESTING

After notification by the MRO of a verified positive drug test or refusal to test because of adulteration or substitution, the employee has 72 hours to request (verbally or in writing) a test of the split specimen.

(Note: Effective 8/25/08, there is no split specimen testing allowed for an invalid test result.) After 72 hours have passed, the request can be considered only if the employee can present to the satisfaction of the MRO information that unavoidably prevented the employee from making a timely request.

Following the employee's timely request, the MRO shall send a written request to the primary laboratory to forward the split specimen to a second DHHS-certified laboratory for testing without regard to the cut-off concentration. If the second laboratory fails to reconfirm the substance detected in the primary specimen or the adulterant identified, or if the split specimen is unavailable for testing, the test shall be canceled.

The MRO shall report the cancellation and the reasons for it to the DOT, the DER, and the employee. In the case of the split specimen being unavailable, the employee shall be directed, with no advance notice, to submit another specimen under direct observation.

14. MRO VERIFICATION OF PRESCRIPTIONS

When a tested employee is taking a prescribed medication, after verifying the prescription and immediately notifying the employer of a verified negative result, the MRO must then (after notifying the employee) wait Five (5) business days to be contacted by the employee's prescribing physician before notifying the employer of a medical qualification issue or significant safety risk. Specifically, in cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO.

The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327.

15. CONSEQUENCES

As required by FTA regulations, any safety-sensitive employee who has a verified positive drug and/or alcohol test result, or refuses to submit to a drug or alcohol test (including adulteration or substitution) shall be:

1. Immediately taken out of safety-sensitive duty;
2. Referred to a SAP for evaluation, education or treatment and provided educational materials.

FTA regulations allow individual employers to determine the discipline to be imposed on employees who violate the Federal regulations or employer policy. Under the City of Commerce Substance Abuse Policy for Commercial Operators, employees who test positive for drugs or alcohol at 0.04 or above, or refuse a required test, are subject to immediate termination. Such disciplinary action will follow the FTA required actions outlined above.

In addition, under City authority, any covered employee who tests non-negative for alcohol between 0.02 and 0.04 for the first time will be immediately removed from duty, referred to a substance abuse counselor, and subject to disciplinary action in accordance with City Disciplinary Policy and Procedures. The employee will not be allowed to return to safety sensitive duties until he or she completes the education and/or treatment requirements prescribed by the substance abuse counselor. If the employee again tests non-negative for alcohol at 0.02 or above, under any circumstance, he or she will be subject to immediate termination. Any requirement for an employee to be retested or to see a substance abuse counselor will be done on the employee's own time.

16. REFERRAL, EVALUATION AND TREATMENT

If an employee (including an applicant) tests positive for drug(s) or alcohol or refuses to submit to a test when required, CTD shall advise the individual of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse and document such referral. He or she shall be given the name, address and phone number of a Substance Abuse Professional (SAP) acceptable to the City. For existing employees, CTD will pay for the cost of the initial evaluation as long as the employee meets with the SAP within 30 days of referral. All other costs related to the SAP recommendation, such as rehabilitation, treatment and/or education, shall be the responsibility of the employee.

17. CONFIDENTIAL AND ACCESS TO FACILITIES AND RECORDS

Employees have a right to examine their own drug and alcohol testing records, provide information to dispute the results, and have access to any pertinent data such as EBT calibration or drug testing laboratory certification. They also have a right to obtain a copy of their own drug and/or alcohol testing results by submitting a written request to the Contact Person identified in Section 5 of this Policy.

CTD will do everything possible to safeguard the confidentiality of drug and alcohol testing records and medical information obtained in accordance with this Policy. Individual test results or medical information will be released to third parties (e.g., previous employers or union representatives) only with the employee's specific written consent, or to those parties authorized by the DOT or FTA to receive such information without the employee's consent. Specific written consent applies only to a particular piece of information released to a particular person or organization at a particular time. Blanket releases are specifically prohibited by DOT.

The employee's written consent is not required in administrative or legal proceedings such as:

- A lawsuit, grievance, or administrative proceeding brought by, or on behalf of the employee, resulting from a positive drug or alcohol test or a refusal to test; or
- A criminal or civil action resulting from an employee's performance of safety-sensitive duties where the alcohol or drug test information is deemed relevant.

Access to the CTD facilities and drug and alcohol program records also must be provided, without the employee's consent, to DOT or FTA agency representatives; the National Transportation Safety Board as part of an accident investigation; or a Federal, state or local safety agency with regulatory authority over CTD or the employee.

18. DRUG FREE WORKPLACE ACT OF 1988 (DFWA) REQUIREMENTS

Under the DFWA, employees are prohibited from the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace. Employees are required to notify management in writing of any criminal drug statute convictions he/she receives for a violation occurring in the workplace, no later than one (1) working day after such a conviction. Within ten (10) calendar days of receiving such notice, the City shall provide written notification of the conviction to the FTA. Within thirty (30) calendar days of receiving notice of the conviction, the City shall take appropriate disciplinary action, or require the employee to participate and successfully complete a drug rehabilitation program. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

Appendix A

Re-Entry to Work

A. After Mandatory Referral

Following successful completion of the rehabilitation and/or education program prescribed by the SAP, an employee who is given an opportunity to return to work must agree to the terms of a "Re-entry Agreement," the terms of which shall be established by the City of Commerce at its sole discretion. That Agreement may include, but is not limited to, the following:

1. A release to work statement from an approved treatment specialist, as well as from the SAP.
2. A plan, designed by the SAP, setting out after-care (if any) and follow-up testing, the frequency and duration of which shall be established by the SAP.
3. A negative return-to-duty test for drugs and alcohol.
4. A statement of expected work-related behaviors.
5. Specific agreement by the employee that violation of the Re-entry Agreement will be grounds for termination.

Failure to successfully complete a treatment and/or education program or to comply with the re-entry agreement, or any positive drug or alcohol test after re-entry shall be grounds for termination.

B. After Voluntary Referral

1. Employees who voluntarily enter a substance abuse treatment program without taking a leave of absence will not require a re-entry agreement since the employee never left work.
2. Employees who voluntarily enter a substance abuse treatment program and request a leave of absence, with or without pay, must:
 - a) Submit a release to work from the City's MRO or substance abuse counselor as designated by the City; and
 - b) Pass a non-DOT Return-to-Duty alcohol and drug test (under City authority) before being allowed to return to safety-sensitive work.