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49 C.F.R. Parts 40,  
382, 395  
42 C.F.R. Part 2

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## DRUG-FREE WORKPLACE

### I. INTRODUCTION

The purpose of this regulation is to provide a drug and alcohol free workplace for the protection and well-being of the City, its employees, property, equipment, operations, and the public it serves. Employees are expected to report to work drug and alcohol free in order to enable safe and efficient job performance. Employees are expected to engage in activities while on-the-job, while on City premises, or in the scope and course of employment, which are appropriate for the work environment and do not compromise the City's integrity or interest in maintaining a safe, secure and drug and alcohol free workplace.

Employees being treated with a drug or controlled substance that might adversely affect their ability to perform their essential job duties shall provide a written statement from their doctor regarding their ability to safely and effectively perform these duties. Employees are not required to divulge what drug or controlled substance they are being treated with or the medical condition necessitating the need for treatment, unless the City requests this information in accordance with applicable laws.

### II. SUBSTANCES TESTED

The City will test for the following substances:

- A. Alcohol;
- B. Marijuana;
- C. Cocaine;
- D. Amphetamines;
- E. Opiates; and
- F. Phencyclidine (PCP).

### III. ALCOHOL USE

Employees are prohibited from consuming alcohol while working or while on-call. Employees are also prohibited from reporting to work under the influence of alcohol.

This regulation includes unanticipated call-in situations. If an employee cannot meet this requirement, it is his or her responsibility to tell their supervisor, or person initiating the call-in, that they cannot report to work.

Alcohol is a legal substance therefore it is not the intention of this regulation to prohibit employees from consuming alcohol when not on duty, or while participating in activities or events at City facilities while not on duty, or during the course and scope of employment when the employee's performance of duties has concluded for the day. Listed below are examples of situations in which the responsible use of alcohol by employees during the course and scope of City business may be acceptable. However, employees are expected to seek prior direction from their Department Director regarding the appropriateness of consuming alcohol in these situations.

- A. While attending seminar or conference function where alcohol is being served.
- B. While traveling on business, provided all work duties for the day have been completed.

Although alcohol use may be permitted under limited circumstances, employees are expected to use good judgment and behave in a professional and respectable manner while in the course and scope of City business. Misuse of alcohol under these circumstances is a violation of this regulation and may result in disciplinary action up to and including termination. Employees are required to abide by all terms of the vehicle usage regulation.

#### IV. RESERVATIONS

This Drug-Free Workplace regulation is not intended to replace or supersede testing, reporting, and procedures mandated by applicable laws.

Employees who are enrolled and are participating in, or have completed a supervised rehabilitation program and are no longer engaging in the use of illegal drugs or substances shall be protected from discrimination and harassment through the Americans with Disabilities Act of 1990.

This regulation is intended to carry out the City's non-DOT Drug-Free Workplace Policy. All situations will be handled in accordance with these regulations and in consultation with representatives of Human Resources. Situations not specified by policy or these regulations will be referred to and reviewed by Human Resources in consultation with the employee's Department Director or designee.

Separate provisions for commercial drivers as required by the Department of Transportation (DOT) are provided in the Commercial Drivers regulation.

#### V. EMPLOYEE ASSISTANCE PROGRAM

Any employee needing help in dealing with problems is encouraged to use the City's Employee Assistance Program (EAP) and the benefits available through the City's medical plan. Additional information regarding the City's Employee Assistance Program is available in the Employee Assistance Program regulation.

The City EAP plays an important role in preventing and resolving employee alcohol and illegal drug use by:

- A. Providing confidential counseling and assistance to employees and their qualifying family members who self-refer for treatment or whose alcohol tests have been verified positive, and monitoring the employee's progress through treatment and rehabilitation;
- B. Providing educational materials and training to supervisors and employees on alcohol and drug use issues;
- C. Ensuring the confidentiality of test results and related medical treatment and rehabilitation records which they maintain.

The EAP will not be involved in the collection of test samples or the initial reporting of test results.

#### VI. SAFE HARBOR REFERRAL

A fundamental purpose of the City's Drug-Free Workplace Policy is to assist employees who themselves are seeking treatment for alcohol or illegal drug use. For this reason, the City will not initiate disciplinary action against any employee regarding the disclosure of his or her drug or alcohol related problem who meets all three of the following conditions:

- A. Voluntarily identifies him/herself to Human Resources as a user of alcohol and/or illegal drugs, as they apply to this regulation, prior to being identified through other means, or prior to being asked to provide a urine and/or breath sample for testing;
- B. Obtains evaluation, counseling or rehabilitation from an approved facility; and
- C. Thereafter refrains from using illegal drugs or misusing prescription drugs and/or alcohol.

This provision is not intended to allow an employee to evade disciplinary action. The key to this provision's rehabilitative effectiveness is an employee's willingness to admit their problem. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit their problem, this provision is not available to an employee who requests protection under this provision after:

- A. Being identified through other means; or
- B. Being asked to provide a urine sample for testing; or
- C. Having had a verified positive test result for alcohol and/or illegal drugs pursuant to this regulation.

Drug or alcohol related incidents that are subject to discipline and occurred prior to seeking Safe Harbor are not covered by Safe Harbor protections. An employee who requests Safe Harbor will be required to sign an agreement outlining his or her obligations under Safe Harbor.

#### VII. NEW EMPLOYEE NOTIFICATION

Applicants for safety sensitive positions will be informed about the City's drug testing program on the vacancy announcement for each applicable position. During the screening process applicants will be notified of the testing requirements for particular positions and that appointment to the position is contingent upon a negative post-offer drug test. Upon hiring, new employees will receive an electronic copy of the policy in the Employee Policy Handbook containing this regulation.

## VIII. SAFETY SENSITIVE POSITIONS

For purposes of this regulation, a sensitive position will be defined as a position in which the duties performed as a regular part of the job could reasonably expect to affect health, safety, and security of citizens.

Sensitive positions are those in which the responsibilities of the position require employees to:

- A. Qualify and maintain qualification standards to carry firearms, CODE1;
- B. Perform emergency medical, lifesaving, and/or fire suppression activities, CODE2;
- C. Supervise employees during the performance of critical incident functions which require employees to qualify to carry firearms, perform emergency medical, lifesaving and/or fire suppression activities, CODE3;
- D. Operate, maintain or inspect emergency vehicles, heavy equipment, or vehicles having a gross combination weight rating of 26,001 or more pounds and/or life saving equipment used for emergency services, CODE4;
- E. Obtain a national security clearance as a condition of employment, CODE5;
- F. Exercise custodial responsibility for illegal drugs or precursors, CODE6;
- G. When the responsibilities of the position require the person to work with minors or individuals with disabilities, CODE7;
- H. Handle hazardous materials that if mishandled, place the general public at risk of serious injury, CODE8.

These positions are characterized by critical safety or security responsibilities as related to the mission of the City. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life, and law enforcement.

## IX. TYPES OF TESTING

### A. Post-Offer Applicant Testing

Persons applying for safety sensitive positions who are given a conditional offer of employment will be subject to testing for illegal drugs. This includes current employees promoting, demoting, transferring, or being reassigned from a non safety sensitive position to a safety sensitive position.

Vacancy announcements for safety sensitive positions shall contain a statement informing all applicants that the successful candidate will be given a conditional offer of employment for the position and will be required to submit to screening for illegal drug use prior to hire. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided applicants in some other manner. In addition, each applicant will be notified that appointment to the safety sensitive position will be contingent upon a negative drug test result.

Individuals must submit to drug testing at a City approved facility within 24 hours of being sent for testing or as directed by Human Resources. No applicant shall begin work until Human Resources notifies the supervisor that the individual is cleared for work. This includes current employees going from

non sensitive positions into safety sensitive positions. Applicants shall be deemed ineligible for employment if they:

1. Fail to report for a test in a timely manner;
2. Refuse to take a test;
3. Tamper with a test specimen;
4. Receive a positive test result; or
5. Fail to provide adequate specimen volume without a verified medical explanation.

Applicants who are deemed ineligible for employment under any of these circumstances may be disqualified for future City employment.

The applicant shall be informed of a positive screening result by a Medical Review Officer. Because of the contingent nature of the offer, a positive screening result or other ineligibility will automatically revoke the offer of employment.

Safety sensitive employees, including seasonal and temporary, returning to work for the City within 90 days of active paid employment with the City are not required to undergo a post-offer applicant drug test.

#### B. Reasonable Suspicion Testing

Both safety sensitive and non-safety sensitive employees will be tested for alcohol and/or illegal drugs when there is reasonable suspicion of on-duty use or impairment.

Reasonable suspicion testing may be based upon, among other things: 1) observable phenomena, including but not limited to direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol; 2) a pattern of abnormal conduct or erratic behavior; 3) arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking; 4) information provided by reliable and credible sources or which is independently corroborated; or 5) newly discovered evidence that the employee has tampered with a previous alcohol or drug test. Although reasonable suspicion testing does not require certainty, mere hunches alone are not sufficient to meet the standard for a test.

If an employee is suspected of using alcohol or illegal drugs pursuant to this regulation, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion and present them for higher level concurrence. Concurrence may be from a Department Director, Division Manager, or representative from Human Resources.

The employee shall not be allowed to operate a vehicle or perform sensitive duties until the circumstances are evaluated and the supervisor receives higher concurrence. Employees who are subject to reasonable suspicion testing shall at the City's expense be transported to and from the collection facility by cab or any other similar means of transportation. If possible, the supervisor should take a Reasonable Suspicion Test Request [See Exhibit 4.20c] with them to the collection site along with photo identification.

The appropriate supervisor will, within 24 hours, complete a Reasonable Suspicion Worksheet [See Exhibit 4.20d] identifying the physical and/or behavior signs which formed the basis to warrant the testing and forward the form to Human Resources.

#### C. Post-Accident Drug and Alcohol Testing

The City of Boise is committed to providing a safe and secure work environment. Employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to themselves or others or the overall operation of the City may be subject to drug and alcohol testing. Based on the circumstances of the accident or unsafe act, the Department Director or designee may initiate testing when such circumstances involve:

1. Death; or
2. Serious personal injury requiring immediate emergency room or urgent care center treatment; or
3. Damage to government or private property estimated in excess of \$5,000.

Note: All Boise Police personnel, including civilians, involved in a critical incident shall abide by applicable department rules.

An employee subject to post-accident testing shall remain available for such testing, or the City may consider the employee to have refused to submit for testing. An employee subject to post-accident testing shall not consume alcohol or drugs, either legal or illegal prior to the testing. Exceptions may be made for prescribed maintenance medications and/or medications administered to treat an injury related to the accident.

If a post-accident alcohol and drug test is not administered within two (2) hours of the occurrence, the supervisor shall document the reason(s) why it was not promptly administered. If more than eight (8) hours pass, then no alcohol test shall be administered and/or if more than thirty-two (32) hours pass, no drug test shall be administered. Employees who undergo post-accident drug tests should take a Post-Accident Test Request [See Exhibit 4.20b] with them to the lab. The supervisor should also notify Human Resources that a post-accident test was administered.

#### D. Random Testing

Random testing for alcohol and/or illegal drugs will be conducted on employees whose positions are designated as safety sensitive as defined in this regulation.

Random tests will be unannounced and occur throughout the calendar year. The random selections will be conducted by the designated drug testing contractor using a lottery system and Human Resources will notify the individual's supervisor or designee and provide the name of the individual selected for random testing. The employee shall not be given advance notice of the scheduled testing. Upon notification by the supervisor, employees shall proceed immediately to the testing site.

To ensure that all employees in sensitive positions that have been designated for testing have an equal chance of being randomly tested, a scientifically valid random process is used by the testing contractor. The annual number of random tests will be no more than ten percent (10%) of the average number of employees subject to random testing for alcohol and illegal drugs. Because the selection process is truly random, it is possible some employees will be selected multiple times while others may never be selected.

#### E. Return to Duty and Follow-up Testing

After a verified positive test result for alcohol, employees shall have a negative test result before returning to work. All employees referred through administrative channels that undergo counseling or rehabilitation program for alcohol through the EAP will be subject to unannounced alcohol testing by the City of Boise from the time they return to work for a period of at least one year following completion of such a program. Such employees shall be tested at the frequency recommended by the EAP. Such testing is distinct from testing which may be imposed as a component of a rehabilitation program.

Confirmation of or continuing participation in an alcohol rehabilitation program, as recommended by EAP, is required of an employee returning to duty. The EAP will notify Human Resources when an employee has completed a rehabilitation program. After an employee returns to work, a single positive test result for alcohol or illegal drugs or failure to successfully complete the recommended rehabilitation program will be grounds for disciplinary action up to and including termination.

### X. TEST PROCEDURES

The City's alcohol and drug testing program services shall be provided by a designated contractor and a designated collection site with collection personnel trained in accordance with U.S. Department of Health and Human Services (HHS) standards and analyzed by an independent HHS certified lab. The personnel involved in testing and processing results are not employees of the City.

#### A. Procedures for Alcohol Testing

An initial test for the presence of alcohol will be conducted using an EBT as approved by the National Highway Traffic Safety Administration (NHTSA). If the result of the first/screening EBT is an alcohol concentration of .01 or greater, a confirmatory test shall be conducted.

The confirmatory test may be conducted on the same EBT as the initial test. Before the confirmatory test is given, the employee will, as instructed by the BAT, wait a minimum of 15 minutes and not eat, drink, belch or put any object or substance into their mouth during that time.

#### B. Procedures for Drug Testing

Any individual subject to testing for illegal drugs under this plan shall be permitted to provide urine specimens in private and in a restroom stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested,

however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual has or may alter or substitute the specimen when the individual has previously been found by the City to be an illegal drug user; or has previously tampered with a sample; or facts and circumstances suggest that the individual is an illegal drug user; or is under the influence of drugs at the time of the test; or has equipment or implements capable of tampering with or altering urine samples.

If the temperature of the specimen is outside the range of 32-38 degrees C / 90-100 degrees F or shows signs of contaminants, then there is reason to believe the donor may have altered or substituted the specimen and another specimen shall be collected for testing under the direct observation of a representative from the collection facility.

Samples testing positive for illegal drugs will undergo further testing to identify the specific type of drug(s) in the specimen in accordance with HHS requirements. The cutoff levels used by the City's HHS certified lab may change and will be published in the Code of Federal Regulations and Federal Register. The applicant or employee will be contacted by the Medical Review Officer (MRO) and have the opportunity to provide an explanation of a positive result to the MRO. The MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO shall review all medical records made available by the tested employee when a verified positive test could have resulted from legally prescribed medication or some other legal substance.

Individuals will be afforded the opportunity to submit medical documentation of lawful use of an otherwise illegal drug. Evidence to justify a positive result may include, but is not limited to: 1) a valid prescription; or 2) a verification from the individual's physician verifying a valid prescription. If the MRO determines there is not justification for the positive result, such result will then be considered a verified positive test result.

The Medical Review Officer shall refer written determinations regarding all verified positive test results to Human Resources and/or the appropriate management official of a positive result when the MRO is convinced a verified positive result has been determined.

Once notified of a verified positive test result for illegal drugs, employees may within 72 hours of notification, at their own expense, request the confirmation specimen be tested by another HHS certified lab. If the MRO certifies that the second drug test is negative, an employee will be reimbursed for the cost incurred including any lost compensation.

#### C. Test Refusal

Employees will be considered to have refused testing if they:

1. Refuse to test; or
2. Fail to report for a required test at the scheduled time; or
3. Engage in conduct that clearly obstructs the testing process; or

4. Tamper with the test;
5. Fail to provide adequate breath or specimen volume without a verified medical explanation.

Employees who refuse to be tested, as described in the test procedures, when so required, shall be subject to the full range of disciplinary consequences up to and including termination. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the test when required.

#### D. Deferral of Testing

An employee selected for random drug and alcohol testing may obtain a deferral of testing if Human Resources concurs that a compelling need necessitates a deferral on the grounds that the employee is:

1. In a leave status (sick, annual, compensatory, administrative or leave without pay); or
2. In official travel status away from the test site or about to embark on official travel scheduled prior to testing notification.

An employee whose random drug and alcohol test is deferred will be subject to an unannounced test within the following 60 days.

### XI. FINDINGS AND ADMINISTRATIVE ACTION:

An employee may be found in violation of this regulation on the basis of any appropriate evidence including, but not limited to: 1) direct observation of prohibited alcohol use or illegal drug use including misuse of prescription medication; or 2) evidence obtained from an arrest or criminal conviction that is related to the workplace, or affects the employee's ability to perform job duties; or 3) a verified positive test result; or 4) an employee's voluntary admission, unless the employee is meeting the requirements as outlined under the Safe Harbor Referral; or 5) test refusal.

#### A. Mandatory Administrative Action

Administrative action is not required for an employee who voluntarily admits to alcohol use in violation of this regulation or illegal drug use through the safe harbor provision of this regulation, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs and using alcohol in violation of this regulation. The safe harbor provision is not intended to allow an employee to evade disciplinary action.

Any employee receiving a verified positive test for illegal drugs, including misuse of prescription medication, shall be terminated.

When an employee is found to be in violation of the alcohol provisions of this regulation, mandatory administrative action will result, such as referral to EAP and disciplinary action, including the full range of consequences, up to and including termination. The severity of the action chosen will depend on the circumstances of each case. The facts and circumstances leading to a reasonable suspicion test will be taken into account in determining disciplinary consequences.

Any rehabilitation recommended will be a condition of continued employment and the cost of rehabilitation will be the responsibility of the employee. The employee remains responsible for successful completion of a treatment program, and assertions regarding the effectiveness of a program shall not constitute either an excuse for continuing to misuse alcohol or a defense to disciplinary action if the employee does not complete treatment.

The City may initiate action to dismiss an employee for 1) refusing to obtain counseling or rehabilitation through an EAP or a state licensed facility; and/or 2) not refraining from misuse of alcohol after a first finding of such use.

#### B. Effects of Positive Alcohol Testing Results

In addition to the mandatory administrative actions outlined in the previous section, any employee with a breath alcohol test which results in a reading as set out below shall be subject to the following:

1. Employees testing .01 or greater may be subject to discipline up to and including dismissal.
2. If the results of the test are .01 or greater but less than .04 alcohol concentration the employee shall be removed from the work site and, if retained, may be required to go to EAP for assessment. The employee may not return to duty for the remainder of the scheduled work day and may be required to have a negative test result before returning to work. The decision to return the employee to duty shall be at the discretion of the Department Director or designee in concurrence with Human Resources.
3. If the results of the test show an alcohol concentration of .04 or greater, the employee shall be subject to the same conditions as set out in above, and in addition, within two (2) business days of the test the employee shall be evaluated through the EAP.
4. Any employee receiving a verified positive test for alcohol .01 or greater shall be placed on leave without pay unless the employee notifies his/her supervisor of his/her desire to use accrued vacation or accrued compensatory leave.

#### G. Other Alcohol and/or Drug-Free Workplace Requirements

Any employee who admits to violating a criminal drug statute, or is convicted of violating a criminal alcohol or drug statute that is related to the workplace or affects the employee's ability to perform job duties will be subject to disciplinary action up to and including termination and/or be required to complete a City approved rehabilitation program. A conviction, a plea of guilty, a plea of no contest, receiving a suspended imposition of a sentence, and a withheld judgment will all be considered the same as a conviction.

## XII. RECORDS AND REPORTS

The employee's privacy shall be maintained. All testing information specifically relating to individuals pursuant to this program and any intervention steps, including referral for treatment, counseling or rehabilitation programs, is confidential and should be treated as such by everyone authorized to review or compile program records.

In order to efficiently implement this requirement and to make information readily retrievable, Human Resources or the City's drug testing service provider shall maintain records relating to testing, suspicion of tampering, and any other authorized documentation necessary to implement this regulation.

All records and information of personnel actions taken on employees with verified positive test results should be forwarded to the Human Resource Office. Such information shall remain confidential, in a locked file cabinet, with only authorized individuals who have a need-to-know having access to them.

The results of a test for alcohol or illegal drugs of a City employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be 1) to the Medical Review Officer; 2) to the EAP in which the employee is receiving counseling or treatment or is otherwise participating; 3) to Human Resources and/or to any supervisory or management official within the City having authority to process or take adverse personnel action against such employee; or 4) pursuant to the order of a court of competent jurisdiction or where required by the City of Boise to defend against any challenges of adverse personnel action.

Test results with all identifying information removed may be used for data collection and other activities necessary to comply with testing requirements. Employees who are the subject of a test for alcohol or illegal drugs shall have access to the results of their alcohol or drug tests.

## XIII. ROLES AND RESPONSIBILITIES:

EMPLOYEES are expected to report to work drug and alcohol free in order to enable safe and efficient job performance. Employees are expected to engage in activities while on-the-job, while on City premises, or while in the scope and course of employment, which are appropriate for the working environment and do not compromise the City's integrity or interest in maintaining a safe, secure and drug-free workplace.

SUPERVISORS are expected to 1) attend training sessions on alcohol misuse and illegal drug use in the workplace; 2) when reasonable suspicion is confirmed, initiate an alcohol/drug test as described in this regulation; 3) refer employees to the EAP for assistance in obtaining counseling and rehabilitation upon a finding of alcohol misuse; 4) initiate appropriate disciplinary action upon a finding of alcohol or illegal drug use; 5) in conjunction with Human Resources, assist higher-level supervisors and the EAP Administrator in evaluating employee performance and/or personnel problems that may be related to alcohol misuse or illegal drug use; and 6) ensure confidentiality of all information regarding employee testing, disciplinary action and rehabilitation.

DEPARTMENT DIRECTORS shall 1) implement the Drug-Free Workplace policy within their respective department, and ensure that it is efficiently and effectively accomplished in accordance with this program and all other applicable regulations; 2)

in conjunction with Human Resources and the EAP assist in determining appropriate action for employee performance and/or personnel problems that may be related to alcohol or illegal drug use; 3) attend training sessions on alcohol and illegal drug-use in the workplace and encourage supervisors and employees to attend training on these issues; and 4) ensure that all information regarding employee testing, disciplinary action and rehabilitation remains confidential.

HUMAN RESOURCES shall 1) direct and implement this program to ensure it is administered consistently among employee groups and in accordance with all of the provisions of this regulation; 2) consult with the Department Director or designee in determining appropriate action for situations related to this program; and 3) ensure that all records and information of personnel actions taken on employees with verified positive test results remain confidential and only shared with individuals having a need-to-know.

EAP is expected to 1) provide assessment, short-term counseling and referral services, and monitor the progress of employees while in treatment; 2) when requested, work with Human Resources to provide educational materials and training to managers, supervisors, and employees on alcohol and illegal drugs in the workplace; 3) when requested assist supervisors with performance and/or personnel problems that may be related to alcohol or illegal drug use; 4) monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; 5) ensure that training is offered to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using alcohol or illegal drugs;

COLLECTION FACILITY is expected to 1) provide specimen collection and alcohol testing as outlined in this regulation; 2) maintain an accurate record keeping system which includes safeguards against the unauthorized release of information, proper chain of custody documentation, protection of the privacy of the employee and the overall program effectiveness; 3) work with Human Resources to provide educational materials and training to managers, supervisors, and employees on alcohol and illegal drugs in the workplace; 4) ensure all collection personnel are appropriately trained and maintain certification standards as required by National Highway Traffic Safety Administration( NHTSA) and/or Substance Abuse and Mental Health Services Administration (SAMHSA); and 5) ensure all collection of specimens are conducted in accordance with SAMHSA procedures and/or NHTSA specifications;

MRO shall 1) receive all laboratory test results; 2) assure that an individual who has tested positive has been afforded an opportunity to discuss the test result in accordance with test procedures outlined in this program; 3) consistent with confidentiality requirements, refer written determinations regarding all verified positive drug test results to Human Resources and/or the appropriate management official, including a verified positive drug test result form indicating that the positive result has been verified, together with all relevant documentation; and 4) confirm to Human Resources whether an individual who has been tentatively selected for employment with the City has obtained a verified positive test result.

#### XIV. DEFINITIONS:

**Administrative Action:** For an alcohol violation may include referral to EAP and/or disciplinary action including a range of consequences such as written reprimand,

suspension, etc. up to and including termination. For a drug violation the employee will be terminated.

**Adulterant:** Adulterating substance or agent aimed to corrupt, debase, or make impure.

**Alcohol:** Ethyl alcohol (ethanol) in a beverage or medication.

**Breath Alcohol Technician (BAT):** An individual employed by the collection facility that is trained and certified in the use of a U. S. Department of Transportation approved evidential breath testing device.

**Employee Assistance Program (EAP):** A contract-based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

**Evidential Breath Testing Device (EBT):** An instrument reliable in measuring alcohol concentration in breath that meets the National Highway Traffic Safety Administration specifications, and is included in the conforming products list of evidential breath testing devices.

**Medical Review Officer:** An independent licensed physician responsible for receiving laboratory results generated from the City's Drug-Free Workplace Program who has knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other biomedical information.

**Illegal Drugs:** A controlled substance included in Schedule I or II, as defined by section 802 (6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term illegal drugs does not mean the use of a controlled substance in the prescribed dosage amount pursuant to a valid prescription or other uses authorized by law. However misuse of a controlled substance is considered an illegal drug in violation of this regulation.

**Precursors:** A biochemical substance which can be processed or synthesized into one of the categories of drugs to be tested under this regulation.

**Random Testing:** A system of drug and alcohol testing imposed without individualized suspicion that a particular individual is using illegal drugs or alcohol, and a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

**Return-to-Duty Agreement:** An agreement between the City and an employee which allows an employee continued employment under stringent guidelines prohibiting use of drugs and alcohol. An employee's failure to meet the terms of the agreement, which includes successfully passing tests for alcohol and/or illegal drugs, shall result in termination.

**Sensitive Position:** Employment position within the City which has been designated for pre-employment and random testing in accordance with this regulation.

**Supervisor:** An employee having authority to hire, direct, assign, promote, reward, transfer, layoff, discipline, conduct evaluations, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment.

**Unannounced Test:** A test for alcohol and/or illegal drugs previously scheduled and announced only to the employee just prior to the scheduled time, allowing only appropriate time for the employee to immediately proceed directly to the scheduled testing site.

**Verified Positive Test Result for Alcohol:** The presence of alcohol in the breath at a level of .01 or greater as measured by an evidential breath testing device and administered by a trained and certified Breath Alcohol Technician.

**Verified Positive Test Result for Drugs:** A test result that was positive on an initial FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmation tests approved by the U.S. Department of Health and Human Services), and reviewed and verified by the Medical Review Officer in accordance with this policy and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.