



CITY OF LAS VEGAS

1700 N. GRAND AVE. • LAS VEGAS , NEW MEXICO 87701-4731 • 505-454-1401 • FAX 505-425-7335

ALFONSO E. ORTIZ, JR.

Mayor

**CITY OF LAS VEGAS
SPECIAL CITY COUNCIL AGENDA
October 27, 2015–Tuesday– 10:00 a.m.
City Council Chambers
1700 N. Grand Ave**

(The City Council shall act as the Housing Authority Board of Commissioners on any matters on the Agenda concerning the Housing Department.)

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **MOMENT OF SILENCE**
- V. **APPROVAL OF AGENDA**
- VI. **PUBLIC INPUT (not to exceed 3 minutes per person and persons must sign up at least fifteen (15) minutes prior to meeting.)**
- VII. **BUSINESS ITEMS**

1. Approval/Disapproval of Resolution 15-53, Repealing and Replacing all previous resolution and adopting a City of Las Vegas (zero tolerance) Drug and Alcohol Policy and DOT Compliance Plan.

Casandra Fresquez, City Clerk A presentation was given to Mayor and Council a few years ago recommending a revision to the City of Las Vegas; Drug and Alcohol Policy to include a zero tolerance policy. After much discussion, Mayor and Council determined it was in the City's best interest to move forward with a zero tolerance drug and alcohol policy.

The City retained an independent contractor to develop a drug and alcohol policy that would be in compliance with all state and federal pipeline safety regulations.

TONITA GURULE-GIRON
Councilor, Ward 1

VINCE HOWELL
Councilor, Ward 2

JOSEPH "JOEY" HERRERA
Councilor, Ward 3

DAVID L. ROMERO
Councilor, Ward 4

VIII. EXECUTIVE SESSION

THE COUNCIL MAY CONVENE INTO EXECUTIVE SESSION IF SUBJECT MATTER OF ISSUES ARE EXEMPT FROM THE OPEN MEETINGS REQUIREMENT UNDER § (H) OF THE OPEN MEETINGS ACT.

- A. Personnel matters, as permitted by Section 10-15-1 (H) (2) of the New Mexico Open Meetings Act, NMSA 1978.**
- B. Matters subject to the attorney client privilege pertaining to threatened or pending litigation in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978.**
- C. Matters pertaining to the discussion of the sale and acquisition of real property, as permitted by Section 10-15-1 (H) (8) of the Open Meetings Act, NMSA 1978.**

IX. ADJOURN

ATTENTION PERSONS WITH DISABILITES: The meeting room and facilities are accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office prior to the meeting so that arrangements may be made.

ATTENTION PERSONS ATTENDING COUNCIL MEETING: By entering the City Chambers, you consent to photography, audio recording, video recording and its/their use for inclusion on the City of Las Vegas Web-site, and to be televised on Comcast.

NOTE: A final agenda will be posted 72 hours prior to the meeting. Copies of the Agenda may be obtained from City Hall, Office of the City Clerk, 1700 N. Grand Avenue, Las Vegas, N.M 87701

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 10/20/15

DEPT: Human Resource

MEETING DATE: 10/27/15

ITEM/TOPIC: Drug and Alcohol Policy and DOT Compliance

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution 15-53, Repealing and Replacing all Previous Resolutions and Adopting a City of Las Vegas (zero tolerance) Drug and Alcohol Policy and DOT Compliance Plan.

BACKGROUND/RATIONALE: A presentation was given to Mayor and Council a few years ago recommending a revision to the City of Las Vegas' Drug and Alcohol Policy to include a zero tolerance policy. After much discussion, Mayor and Council determined it was in the City's best interest to move forward with a zero tolerance drug and alcohol policy.

The City retained an independent contractor to develop a drug and alcohol policy that would be in compliance with all state and federal pipeline safety regulations.

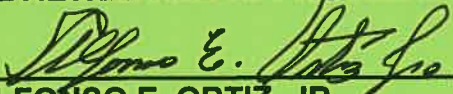
STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.


SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:


ALFONSO E. ORTIZ, JR.
MAYOR


ELMER J. MARTINEZ
CITY MANAGER

ANN MARIE GALLEGOS
FINANCE DIRECTOR
(PROCUREMENT)

PURCHASING AGENT
(FOR BID/RFP AWARD)

DAVE ROMERO
CITY ATTORNEY
(ALL CONTRACTS MUST BE
REVIEWED)
Approved to form 1-26-15

CITY OF LAS VEGAS
Resolution No. 15-53

**A RESOLUTION REPEALING AND REPLACING ALL PREVIOUS
RESOLUTIONS AND ADOPTING A CITY OF LAS VEGAS (ZERO
TOLERANCE) DRUG AND ALCOHOL POLICY AND DOT
COMPLIANCE PLAN**

WHEREAS, the City of Las Vegas is committed to the safety, health and well being of all employees and the individuals with whom the employees come in contact; and

WHEREAS, city employees are expected to report to work alcohol and drug free and are expected to engage in activities that are appropriate for the work environment and do not compromise the City's integrity or interest in maintaining a safe, secure, alcohol and drug free work place; and

WHEREAS, this objective additionally enhances compliance with federal and state regulatory entities and the Drug-Free Workplace Act of 1998 as amended; and

WHEREAS, the City Council had an opportunity to discuss and provide input on the drug and alcohol policy and determined it would be in the City's best interest to provide a zero tolerance drug and alcohol policy; and

NOW, THEREFORE BE IT RESOLVED THAT the Governing Body of the City of Las Vegas hereby approves the City of Las Vegas (zero tolerance) Drug and Alcohol Policy and DOT Compliance Plan and directs its distribution to all employees.

PASSED, APPROVED AND ADOPTED by the City of Las Vegas Governing Body this _____ day of _____, 2015.

Alfonso E. Ortiz, Jr.
Mayor

ATTEST:

Casandra Fresquez, City Clerk



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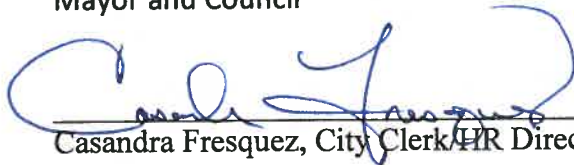
ALFONSO E. ORTIZ, JR.

Mayor

MEMORANDUM

TO: Mayor and Council

FROM:


Casandra Fresquez, City Clerk/HR Director

DATE: October 23, 2015

RE: City of Las Vegas Drug and Alcohol Policy

A few years ago a presentation was made by me and the City's Attorney regarding the City of Las Vegas Drug and Alcohol Policy. During that presentation we had a discussion about the current City of Las Vegas Drug and Alcohol Policy and asked for input from Mayor and Council.

After much discussion, the Governing Body determined that it would be in the City's best interest to move forward with a zero tolerance drug and alcohol policy and therefore gave that direction.

During September of 2013, the City of Las Vegas received a letter from New Mexico Public Regulation Commission (PRC) notifying the City of probable violations of the pipeline safety regulations. PRC recommended that the City retain an independent contractor to develop a policy that would include the provisions listed in their findings.

The City retained a professional contract with White Sands Drug and Alcohol Compliance in December of 2013. The drug and alcohol policy has since been completed and reviewed by Human Resource, the City's attorney and the City's agent of record, HUB International who has an HR services division.

At this time, the Human Resource Department is requesting approval of the City of Las Vegas (zero tolerance) Drug and Alcohol Policy and DOT Compliance Plan.

TONITA GURULE-GIRON
Councilor, Ward 1

VINCE HOWELL
Councilor, Ward 2

JOSEPH "JOEY" HERRERA
Councilor, Ward 3

DAVID L. ROMERO
Councilor, Ward 4

CITY OF LAS VEGAS

ZERO TOLERANCE DRUG AND ALCOHOL POLICY AND DOT COMPLIANCE PLAN

THIS POLICY COVERS

- **DOT - PHMSA (PIPELINE) COVERED EMPLOYEES**
- **ALL NON-DOT CITY OF LAS VEGAS EMPLOYEES**
- **DOT-FMCSA COVERED EMPLOYEES**

**Original: October 27, 2015
Resolution # 15-53**

Approved

Note: The policy serves as a DOT anti-drug plan as well as an alcohol misuse prevention plan sets forth the requirements of 49 CFR Parts 199 and Part 40. This Policy does not contain every regulatory detail, therefore, IF THERE IS ANY QUESTION, CONFLICT, OR DISCREPANCY IN THE POLICY AND DOT REGULATIONS AS CODIFIED AT 49 CFR Part 40 AND Part 199 THE DOT REGULATIONS WILL PREVAIL.

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DRUGS AND ALCOHOL – GENERAL INTRODUCTION

I) GENERAL POLICY

It is the policy of CITY OF LAS VEGAS (hereinafter “City,” or “Employer”) to provide a work environment that is free from the use, consumption, possession, sale or distribution of illegal drugs or alcohol and from the misuse of legal drugs on the Employer’s premises, including vehicles used for City business. Accordingly, the City requires that employees and subcontractors subject to Part 40 or Part 382 of the CFR by virtue of their work will be subject to testing to determine the presence of illegal drugs, alcohol or inappropriately used legal drugs while performing City business. Consumption of alcohol during employee breaks or lunch is strictly prohibited. Employees must be fit for duty and not be under the influence of alcohol or controlled substances (without a valid prescription for the controlled substances) when the employee is present for City duty, and at all times while at work or on duty or when on the Employer premises.

a) OBJECTIVE

The objective of this policy is to provide a safe, healthful and efficient workplace for employees, business associates and the general public. To accomplish this, the City’s management will utilize reasonable measures, including drug and alcohol-testing, to maintain a work environment that is free from the adverse effects of drug and alcohol use. This objective additionally enhances compliance with federal and state regulatory entities and the Drug-Free Workplace Act of 1998 as amended.

b) SCOPE AND APPLICATION OF POLICY

All City of Las Vegas employees are subject to this policy. Certain functions performed by some employees are also regulated by the Department of Transportation, Federal Motor Carrier Safety Administration (DOT-FMCSA) (commercial drivers) and the Research and Special Projects Administration (DOT-PHMSA) (gas pipeline operations). Some City employees perform dual jobs (PHMSA/CDL). Such employees shall be tested under DOT-PHMSA if performing a safety-sensitive pipeline function at the time of an accident, or under DOT-FMCSA if performing a safety sensitive CDL function at the time of an accident.

c) DEFINITIONS

The following definitions apply to the City of Las Vegas Drug and Alcohol Policy:

1) *Accident*

(A) **Accident, for Employer** (non-DOT) employees (or DOT covered employees whose accidents do not meet DOT definitions of accidents) means an occurrence that could justify a post-accident drug and alcohol test, which results in:

- (i) A fatality (any injury which results in the death of a person at the time of the accident); and
- (ii) Injury to a person requiring medical attention; and
- (iii) Any accident involving property damage over \$500.00.
- (iv) At the discretion of the Safety Officer or his/her designee, or the Risk Management Coordinator or his/her designee.

(B) **PHMSA Accident**, for purposes of post-accident testing of **Pipeline and Hazardous Materials Safety Administration (PHMSA) (pipeline)** employees, means an incident reportable under Title 49 Code of Federal Regulations (CFR), Part 191, involving:

- (i) An event that involves the release of gas from a pipeline and:
 - (a) A death or personal injury necessitating inpatient hospitalization; or
 - (b) Estimated property damage, including cost of gas lost, of the operator, or others, or both, of \$50,000.00 or more
- (ii) An event that is significant, in the judgment of the pipeline operator, even though it did not meet the criteria of paragraphs (a) - (b) above.

2) *Actual knowledge*

Means actual knowledge by the employer that an employee has used alcohol or controlled substances based on:

- (A) The employer's direct observation of the employee (direct observation as used for this definition, means observation of alcohol or controlled substances use but does not include observations conducted for reasonable cause/suspicion testing required by DOT); or
- (B) Information provided by the driver's/employee's previous employer(s); or
- (C) A traffic citation for driving a CMV while under the influence of alcohol or controlled substances; or
- (D) An employee's admission of alcohol or controlled substance use with the exception of an employee's admission under the self-referral process; or
- (E) Having tested positive as determined by an MRO for controlled substances or having an alcohol concentration above .02 AC during a confirmation test as determined by an evidential breath-testing device.

3) ***Administrative Positive***

Is a classification applied to an employee's drug result when the employee fails to contact the MRO when requested within the regulatory time frame of 10 days. An Administrative Positive classification will have the same consequences as a confirmed/verified positive.

4) ***Administrator***

Means the Administrator of the Research and Special Programs Administration (PHMSA), Federal Motor Carrier Safety Administration (FMCSA), or any person who has been delegated such authority.

5) ***Air Blank***

Means a reading by an EBT of ambient air containing no alcohol.

6) ***Alcohol***

Means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol.

7) ***Alcohol Concentration (or Content)***

Means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

8) ***Alcohol Use***

Means the ingestion, insertion, drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication) containing alcohol.

9) ***Applicant***

As used in this policy, means an individual who has been offered employment contingent upon successful completion of pre-employment drug test.

10) ***Blind Sample(s)***

Means a freeze-dried preparation of human urine to which a single drug and/or metabolite has been added, for laboratory quality assurance/quality control purposes only.

11) ***Breath Alcohol Technician (BAT)***

Means an individual who instructs and assists individuals in the alcohol testing process and operates an Evidentiary Breath Testing (EBT) device.

12) ***Collection Site***

Means a place designated by the City, where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs or where a BAT will conduct an alcohol test.

13) *Collection Site Person*

Means a person who instructs and assists individuals at a collection site and who receives the urine sample or conducts the breath test.

14) *Commerce*

- (A) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and
- (B) Trade, traffic and transportation in the United States which affects any trade, traffic and transportation described in subparagraph (A) of this definition.

15) *Employee*

Means any person employed by the City of Las Vegas, who is designated in this Policy as subject directly to the City of Las Vegas' drug and alcohol testing. As used in this policy, employee includes a post-offer applicant for employment. Employees include the following:

- (A) ***Non-Covered Employee or non-DOT Employee*** means all regular, part-time and temporary employees of the City not regulated by any DOT regulations requiring DOT drug and alcohol testing, however the City testing applies to these employees.
- (B) ***PHMSA-Covered Employee*** means an employee (or applicant) who is subject to drug and alcohol testing under the drug and alcohol testing regulations of the PHMSA; an employee who performs a natural gas pipeline operation, maintenance, or emergency response function, subject to regulation by the PHMSA. The term does not include clerical, truck driving, accounting, or other functions not subject to the PHMSA.

16) *Company Premises*

Means all areas in which the City of Las Vegas operates including, but not limited to:

- (A) Lands and property owned or leased for use by the City and all buildings or facilities located thereon; and
- (B) Equipment (inclusive of vehicles) owned or leased by the City ; and
- (C) Privately owned vehicles entering or parked on City of Las Vegas property or used on City of Las Vegas business travel; and
- (D) City of Las Vegas lockers, desks, equipment, furnishings, work space, and storage facilities; and
- (E) All the City of Las Vegas job sites.

17) *Confirmation or Confirmatory Test*

- (A) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, which provides quantitative data of alcohol concentration; or
- (B) In drug testing, a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug metabolite.

18) *Confirmed Drug Test*

Means a confirmation test result received by an MRO from a laboratory.

19) *Contract Workers*

Means employees of contractors performing work for the City of Las Vegas, whether on or off City premises, who are required to comply with the City of Las Vegas DOT and/or non-DOT drug and alcohol testing policies. The contract between the City and the contractor shall provide that tests required by the DOT and/or the City will be performed.

20) *Controlled Substances*

Used interchangeably with the term *drugs* having the meaning assigned by 21 U.S.C. 802. It includes all substances listed on Schedules I -V and incorporates any subsequent revisions to these regulations (21 CFR Part 1308).

21) *Covered Function (PHMSA GAS OPERATIONS)*

Means any operation, maintenance, or emergency-response function that is performed on a pipeline and is regulated by 49 CFR Parts 192, 193, or 195.

22) *DHHS*

Means the Department of Health and Human Services of any designee of the Secretary, Department of Health and Human Services.

23) *Direct Observation Collection*

Means a collection process where the collector is required by DOT Part 40 or this policy to directly observe the donor fill the collection cup and remain in the collection stall or within the restroom with the donor. The collector or designated representative who directly observes the collection must be the same gender as the donor.

24) *Designated Employer Representative(DER)*

Means an employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40 regulations. This DOT term is similar to the City of Las Vegas' Personnel Officer/Risk Management Coordinator or his/her designee or the Human Resource Manager or his/her designee.

25) *Dilute Specimen*

Means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

26) *DOT Agency*

Means an agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol or drug testing (49 CFR parts 199.)

27) *DOT Procedures*

Means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in 49 CFR Part 40.

28) *EAP*

Means Employee Assistance Program.

29) *EAP Consultant*

Means a contracted provider of Employee Assistance to City employees.

30) *Employer*

Means the City of Las Vegas, which owns or leases and assigns persons to operate such vehicles; or who owns/operates a pipeline facility subject to PHMSA. The term is used by DOT to mean the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers per DOT part 40.

31) *Evidential Breath Testing Device (EBT)*

Means a device approved by the National Highway Traffic Safety Administration (FMCSA) for the evidential testing of breath for detection of alcohol and placed on FMCSA's "Conforming Products List of Evidential Breath Measurement Devices."

32) *Fail a Drug Test*

Means that the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system.

33) *Initial Test*

Means Screening Test.

34) *Invalid Drug Test*

Means the result of a drug test for a urine specimen that contains an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous (normal human byproduct) substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

35) *Medical Review Officer (MRO)*

Means the individual responsible for receiving laboratory results generated from the City of Las Vegas substance abuse program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's biomedical information. The MRO also reviews all negative tests for the City and reviews and evaluates issues of tampering or adulteration.

36) *Monitored Collection*

Means a drug test collection procedure where the collector is required by DOT or this policy and which requires the collector or other designated representative to be in the collection restroom where the donor is providing a urine sample. The collector/representative does not directly observe the donor when he/she provides the sample, however the collector/representative will listen for sounds that indicate the donor is attempting to tamper with the specimen. A monitored collection is mandated by DOT under certain situations and provides more donor privacy than a "Directly Observed Collection."

37) *FMCSA*

Means Federal Motor Carrier Safety Administration.

38) *Operator*

Means a person who owns or operates pipeline facilities subject to part 192, 193, or 195.

39) *Pass a Drug Test*

Means that initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.

40) *Performing a DOT covered function*

Means any period in which an employee is actually performing, ready to perform, or immediately available to perform such covered functions involving a natural gas facility.

41) *Performing a Safety-Sensitive function*

Means a driver is considered to be performing a safety-sensitive function during any period in which he/she is ready to, is actually, or is immediately available to perform any safety-sensitive functions.

42) Pipeline

Means all parts of the physical facilities through which product moves in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.

43) Pipeline Facilities

Means pipeline, rights-of way, and equipment, facility or building used in the transportation of products.

44) Positive Rate

Means the number of positive results for random controlled substances tests plus the number of refusals of random controlled substances tests conducted under the City of Las Vegas or DOT regulations divided by the total of random controlled substances tests conducted plus the number of refusals of random tests required.

45) Prohibited drug

Means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812) as amended: NEED 10 PANEL DRUGS>>>>>>

46) Random Selection Process

Means a system of drug and/or alcohol testing imposed without individualized suspicion that a particular individual is using illegal drugs or alcohol, and is a statistically random sampling of employees based on social security numbers.

47) Reasonable Cause or Reasonable Suspicion

Means the actions, appearance, or conduct of an employee on duty that is indicative of the use of a controlled substance or alcohol.

48) Refusal to Submit to an Alcohol or Controlled Substance Test

Means an employee:

- (A) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this policy; or
- (B) Fails to attempt to provide a breath specimen for any test required by DOT or the City ; or
- (C) Fails to provide an adequate urine sample for controlled substance testing without a valid medical explanation after he/she has received notification requiring urine testing in accordance with the provisions of this policy; or
- (D) Fails to cooperate with any part of the testing process, refusal to complete, initial, or sign any paperwork, falsifying paperwork, and refusal to provide photographic identification; or
- (E) Fails to remove outer clothing (e.g., coveralls, jacket, etc.) or failure to leave purses, briefcases, or other personal belongings as directed by the collector; or
- (F) Declines to permit the observation or monitoring of the employee's provision of a specimen under "Monitored Collection" procedures; or
- (G) Fails to report for a drug/alcohol test 30 minutes or more after the scheduled time without a valid and verifiable reason; or
- (H) Fails to remain at the testing site until the testing process is complete; or
- (I) Fails to take or decline to take a second test that the City or the collector has directed the employee to take; or
- (J) Fails to undergo a medical examination/evaluation as directed by the MRO as part of the verification process or as directed by the DER for lack of adequate breath for an alcohol test or lack of adequate urine for a drug test; or
- (K) Fails to sign the alcohol test form during step 2.

49) *Return-to-Duty Agreement*

Means a document that all City employees under this policy must sign after having self identified. Signing the agreement is a condition of continued employment and if violated may be grounds for disciplinary action up to and including termination.

50) *Return-to-Duty Test*

Means a controlled substance or alcohol test conducted after the employee has been released to duty by the Substance Abuse Professional. The return-to-duty test is conducted with the sole purpose to determine if the employee can meet acceptable levels of controlled substances and/or alcohol as defined by DOT and this Policy. Also see definition 68, "Unacceptable Levels."

51) *Return-To-Duty Process*

Means the process an employee must complete as required by the City of Las Vegas Policy and/or DOT regulations that includes:

- (A) Being assessed by a SAP and subsequently released back to duty by the SAP; and
- (B) Having successfully completed any treatment as determined and prescribed by the SAP; and
- (C) Taking a return-to-duty drug and/or alcohol test with results deemed acceptable by DOT and/ or this policy; and
- (D) Being subject to follow-up testing as required by the SAP.

52) *PHMSA*

Means the Pipeline and Hazardous Materials Safety Administration.

53) *PHMSA-Covered Employee*

Means an employee who is subject to drug and alcohol testing under the drug and alcohol testing regulations of the PHMSA; an employee who performs a natural gas pipeline operation, maintenance, or emergency response function subject to regulation by the PHMSA.

54) *Safety-Sensitive Function:*

- (A) For *PHMSA* means any operation, maintenance, or emergency response function that is performed on a pipeline and is regulated by the PHMSA under Federal Regulation.
- (B) Means a position designated as such by the City, including a supervisory or managerial position in which impairment by drug and/or alcohol use would constitute an immediate and direct threat to public health or safety, and more particularly the following positions:
 - i) Positions involving the operation of heavy equipment if such positions are so classified in the applicable job descriptions.
 - ii) Positions requiring the carrying of firearms.
 - iii) Positions which include access to drugs.
 - iv) Positions which require a valid Commercial Driver's License.
 - v) Positions which have the direct responsibility for the life and safety of children under the age of 18; including but not limited to the Recreation Department, Library, Senior Center and the Museum.
 - vi) Positions which require confidentiality.

55) *Screening Test or Initial Test* means:

- (A) In alcohol testing, an analytical breath-testing procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen; and
- (B) In drug testing, an immunoassay screening test to eliminate negative urine specimens from further laboratory analysis or to identify a specimen that requires additional testing for the presence of drugs.

56) Service Agents

Means any drug and alcohol testing service provider other than an employee of the company such as collectors, drug testing laboratories, MRO's, SAP's, or third party administrators, etc who provides services specified under DOT Part 40.

57) Split Sample Method

Means a urine specimen collection, testing and storage method used by the City which utilizes at least a 45 mL collection container and two bottles:

- (A) A 30-mL primary specimen bottle to contain a primary specimen to be used by the testing laboratory for testing purposes; and
- (B) A 15-mL split sample specimen bottle used by the testing laboratory to store a split specimen to be tested by a second laboratory as requested by the employee.

58) Stand-down

Means the practice of temporarily removing a DOT (PHMSA) employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed-positive test result for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result. Employees who request a test of the split specimen when an MRO has already verified the original specimen as being positive is not a stand-down.

59) State Agency

Means an agency of any of several states, including the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.). In New Mexico, one such State Agency is the Public Regulation Commission (PRC), Pipeline Safety Bureau.

60) Substance Abuse Professional(SAP)

Is a licensed physician (medical doctor or doctor of osteopathy), or a 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 & Other Drug Abuse) with knowledge of and clinical experience in the diagnosis/treatment of alcohol and controlled substance-related abuse, addictions or disorders.

61) Substituted Specimen

Means a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

62) Testing Positive means:

- (A) In drug testing, a urine sample indicating the presence of drugs as determined by a Federally certified laboratory that is at or above an unacceptable confirmation level as indicated in this policy (the table below) and which is verified by an MRO; and
- (B) In alcohol testing, having a breath sample that indicates the presence of alcohol that is at or above .02 for DOT covered employees or for DOT-CDL drivers. For non-DOT employees, the presence of alcohol that is at or above .04.

63) Unacceptable Levels

Means the detection of drug or alcohol levels at or above these limits for all employees which will result in a positive test result:

The following constitutes a verified positive controlled substance test result:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
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Marijuana metabolites	50 ng/mL	THCA1	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoyllecgonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine2	2000 ng/mL	Codeine	2000 ng/mL.
		Morphine	2000 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines3			
AMP/MAMP4	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine5	250 ng/mL.
MDMA6	500 ng/mL	MDMA	250 ng/mL.
		MDA7	250 ng/mL.
		MDEA8	250 ng/mL.

*25 ng/ml if immunoassay specific for free morphine

*= A confirmation alcohol test result of 0.02 AC or greater but less than 0.04 AC (0.02-0.039 AC):

- DOT does not consider this level as "Prohibited Conduct." The City of Las Vegas' policy considers test results in this range to be a positive test result under the City of Las Vegas' authority and such positive has the same consequences in this policy as a confirmed/verified positive.
- DOT employees must not perform DOT regulated work as required by DOT. The City disallows any work and requires this time to be without pay.
- No Return to Duty Test or a Substance Abuse Professional required.

** = A confirmation alcohol test result that is 0.04 AC or greater:

- All employees tested at this level (0.04 or greater) are classified as a City of Las Vegas positive under this policy.
- The Return-To-Duty Process is required when an employee has self identified.
 - In order for a DOT employee to return to DOT defined work, the employee must complete the DOT return-to-duty process as defined in Part 50.
 - Non-DOT employees must complete the Return-To-Duty process defined in this policy.

69. *Verified test*

Means a drug test result or validity testing result from an HHS certified laboratory that has undergone review and final determination by the MRO.

COMPANY-WIDE TESTING PROGRAM

1) Managers and/or Safety Officer and/or Risk Management Coordinator and/or Human Resource Manager Responsibility

Management is the key to making any drug and alcohol testing program work smoothly and properly. It is the responsibility of all management to read and understand the City of Las Vegas drug and alcohol testing policy. All management and/or their designees, have the task and authority to:

- (A) Notify an employee to present him/herself for any required drug/alcohol test;
- (B) Monitor and **enforce** the dates and times of random testing notices;
- (C) Transport any employee suspected of using drugs/alcohol to a collection facility;
- (D) After an accident that requires drug/alcohol-testing, transport any employee to a collection facility unless injuries prevent such transfer within 8-hours of the accident. In such case, determine if collections are possible at the treatment facility.
- (E) Remove any employee from his/her work function who refuses to test or hampers the testing procedures.
- (F) Change an employee's status to "no-pay" when notification of a positive determination is received.

- (G) Assure that employees who test positive understand that they shall be TERMINATED under this "Zero Tolerance" drug and alcohol policy.

2) **When Testing Will Occur**

- (A) The City of Las Vegas will conduct testing under the following circumstances:

- (i) Pre-employment testing
- (ii) Random testing
- (iii) Post-accident testing
- (iv) Reasonable suspicion testing
- (v) Return-to-duty testing
- (vi) Follow-up testing

3) **General Administrative information about the specific tests applicable to ALL employees**

(A) **Pre-employment Testing**

- (i) All applicants for regular full-time, part-time, and temporary positions must consent to a pre-employment drug-screening test. Any confirmed positive test will disqualify the applicant from employment with the company.
- (ii) An offer of employment extended to each prospective employee is contingent upon completion of a satisfactory pre-employment drug test. Applicants who refuse a pre-employment test or have a positive test result will not be eligible for employment with the City.
- (iii) Before transferring to a DOT covered position, an employee must consent to and successfully pass a DOT pre-employment drug test. The City will not offer DOT positions to transferring employees who refuse a DOT pre-employment test or who have a positive test result.
- (iv) Employees will be allowed 30 minutes from notification, plus travel time, to get to the collection facility.
- (v) Applicants for DOT regulated (gas pipeline related or operation of a commercial motor vehicle) job functions who test negative but have the laboratory and/or MRO designate the test result as dilute will be required to undergo a re-collection as allowed by DOT Part 40.197.

(B) **Random Testing**

- (i) The City of Las Vegas' DER who conducts the random selections will notify the employees' supervisor of the employees to be tested. It is preferred that the supervisor notifies the employee of testing. However, any of these designated positions (including a supervisor's designee) may instruct the employee to report to the designated collection/testing facility. Notification must be made so that advance notice to the employee is minimized. It is imperative that the person providing the notification stresses the importance of the time limit and requirement to report to the facility. Employees will be allowed 30 minutes from notification, plus travel time, to get to the collection facility.
- (ii) Each City of Las Vegas employee is assigned to only one testing pool and is not entered into multiple testing pools. Random testing is based on the listed percentages applied to specific testing pools noted below:
 - (a) Company employees (non-DOT) are randomly selected for urine drug testing at an annual minimum ratio of 0%;
 - (b) DOT-PHMSA (pipeline) employees are randomly selected for urine drug testing at an annual minimum ratio of 25%
 - (c) To calculate the total number of covered employees' eligible for random testing throughout the year, as an operator, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. All covered employees are to be in an employer's random testing pool.
- (iii) Actions to take after the employee has been tested are based on the type of test administered:
 - (a) **Instant response screen (non-DOT testing applications only):**
 1. If negative, the employee may return to work immediately.

2. If non-negative, the supervisor or his/her designee arranges to have the employee taken home. The employee's pay continues until the lab result is received. If the result is positive, the employee is processed per the disciplinary action subparagraph 7 that follows.

(b) Laboratory tests (because instant screen is not available or if it's a DOT defined accident)

1. If the employee shows **no** signs or actions that would suggest drug or alcohol use (i.e. reasonable suspicion), the employee can return to duty pending the laboratory result. If the result is positive, the employee is immediately removed from duty as required by DOT and/or this policy. The supervisor or his/her designee arranges to have the employee taken home and the employee is processed per the disciplinary action subparagraph 7 that follows.

2. If the employee shows signs or actions suggesting drug or alcohol use, the employee is removed from duty without pay until the lab result is received. The supervisor or his/her designee arranges to have the employee taken home. If negative, return the employee to work. If positive, the employee is removed from duty as required by DOT and/or this policy and the employee is processed per the disciplinary action subparagraph 7 that follows.

(c) If the decision is not to test, the supervisor or his/her designee will document (post-accident form) the reasons for not testing and the employee will be allowed to continue with his or her duties. A copy of the document is to be sent to the City of Las Vegas D&A Testing Program Administrator.

(C) **Post-Accident Tests**

(i) Following an accident, the City of Las Vegas' Safety Officer or his/her designee will determine whether or not to administer post-accident drug and alcohol tests to any employees.

(ii) The City of Las Vegas Safety Officer and or his/her designee will follow the testing criteria (as noted on the post-accident documentation form and/or this policy) that apply to the employees involved in the accident (i.e., non-DOT, DOT-PHMSA as defined in definition 1.), and if testing is to take place; **test for both drugs and alcohol.**

(iii) The types of post-accident tests allowed are as follows:

POST-ACCIDENT TESTING BY FUNCTION	LABORATORY DRUG TEST REQUIRED	ALCOHOL TEST REQUIRED*	USE IMMEDIATE RESPONSE DRUG SCREEN*
COMPANY DEFINED (Non-DOT)	Yes	Yes	No
DOT-PHMSA DEFINED (Pipeline operations)	Yes	Yes	DOT PROHIBITS ITS USE

*= WHERE AVAILABLE

(iv) If the decision is to test, a supervisor, or another City representative will take the employee to the collection or testing facility. The employee is to be tested for both alcohol and drugs. The facility may be a mobile collection unit. Document the post-accident and decision information on the City of Las Vegas post-accident report and send the document to the City of Las Vegas Drug and Alcohol testing program Designated Employer Representative.

(v) If the testing facility does not have the capability for a breath alcohol test, the supervisor must document the City of Las Vegas' inability to perform the test on the "No alcohol test Form".

(vi) Actions to take after the employee has been tested are based on the type of test administered:

(a) Instant response screen (non-DOT testing applications only):

1. If negative, the employee may return to work immediately.
2. If non-negative, the supervisor or his/her designee arranges to have the employee taken home. The employee's pay continues until the lab result is received. If the result is positive, the employee is processed per the disciplinary action subparagraph 7 that follows.

- (b) Laboratory tests (because instant screen is not available or if it's a DOT defined accident)
 1. If the employee shows no signs or actions that would suggest drug or alcohol use (i.e. reasonable suspicion), the employee can return to duty pending the laboratory result. If the result is positive, the employee is immediately removed from duty as required by DOT and/or this policy. The supervisor or his/her designee arranges to have the employee taken home and the employee is processed per the disciplinary action subparagraph 7 that follows.
 2. If the employee shows signs or actions suggesting drug or alcohol use, the employee is removed from duty without pay until the lab result is received. The supervisor arranges to have the employee taken home. If negative, return the employee to work. If positive, the employee is removed from duty as required by DOT and/or this policy and the employee is processed per the disciplinary action subparagraph 7 that follows.
- (c) If the decision is not to test, the supervisor or his/her designee will document (post-accident form) the reasons for not testing and the employee will be allowed to continue with his or her duties. A copy of the document is to be sent to the City of Las Vegas D&A Testing Program Administrator.

(D) **Reasonable Suspicion Tests (Non-DOT protocol)**

- (i) If an employee is suspected of using alcohol or controlled substances, the supervisor or designee will gather all information, facts, and circumstances leading to and supporting this suspicion. Two supervisors, one of which is to be trained in detection of the possible symptoms of drug use or alcohol misuse, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. The supervisor or designee will promptly prepare a written report (Reasonable Suspicion –Direct Observation Form) detailing the circumstances that formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug/alcohol related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken. The employee **shall be taken** to an approved collection site, which may be a mobile collection facility, and a required reasonable suspicion drug **and** alcohol test shall be administered. After testing, arrange to have the employee taken home and remove the employee from duty (without pay) pending laboratory results if an instant response screen test is not used. The written report is to be sent to the City of Las Vegas Designated Employer Representative (Victoria Lovato @ 505-454-1401). Note: For DOT tests, see applicable DOT specific section of this policy. If negative, return the employee to work. If positive, the employee is processed per the disciplinary action subparagraph 7 that follows.
- (ii) Reasonable suspicion testing may be based upon, among other things:
 - (a) Observable phenomena, such as direct observation of drug/alcohol use or possession and/or the physical symptoms of being under the influence of a drug/alcohol, or a pattern of abnormal conduct or erratic behavior. Abnormal conduct or erratic behavior may include the following, which are not all inclusive:

* Abnormally dilated or constricted pupils	* Redness under nose
* Needle marks	* Change in personality
* Forgetfulness	* Slurred speech
* Constant fatigue or hyperactivity	* Smell of alcohol
* Flushed face	* Difficulty walking
* Slowed reaction rate	* Constant sniffing
* Dulled mental processes	* Glazed stare - redness of eyes
 - (iii) Information provided either by reliable and credible sources or independently corroborated; can trigger a supervisor to start the employee observation of employee behaviors. This observation can include two components:
 - (a) An immediate direct observation of the employee's behavior if possible. If observed behavior suggests substance abuse or alcohol misuse, administer drug and alcohol tests. Use the Reasonable Suspicion –Direct Observation Form; or
 - (b) If no test was conducted under subparagraph (v)(a) above, a longer- term review of the employee's work performance should be conducted. Such a review could include items such as absenteeism,

tardiness, co-worker relationships, work output and quality, etc. Use the "Reasonable Suspicion Long-Term" form to document items found in this subparagraph.

- (iv) Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

(E) Return-to-Duty Tests

- (i) The Supervisor and/or City of Las Vegas D&A Testing Program Administrator shall be responsible to ensure that employees who have self identified and who are returning to work are doing so only after the employee has completed the Return-To-Duty Process as defined in this policy or by DOT regulations. An employee, who is notified by their supervisor to obtain a return-to-duty test, must do so that day unless otherwise specified by the supervisor.
- (ii) DOT regulated (gas pipeline related or operation of a commercial motor vehicle) employees who test negative but have the laboratory and/or MRO designate the test result as dilute will be required to undergo a re-collection as allowed by DOT Part 40.197.

(F) Follow-Up Tests

- (i) Follow-up tests only apply to employees who have self identified and who are still employed by City of Las Vegas. Follow-up test frequency and duration of tests are determined or modified only by the SAP. The DER will notify the supervisor directly of an employee's follow-up test date. The supervisor (or his/her designee) will then notify the employee with no advance warning to the employee. If the supervisor is unable to notify the employee, then White Sands Drug & Alcohol Compliance or the City of Las Vegas Drug and Alcohol Program Administrator's office may notify the employee directly. Supervisors shall allow appropriate time during the work schedule for employees to attend any follow-up drug/alcohol-testing program.
- (ii) DOT regulated (gas pipeline related or operation of a commercial motor vehicle) employees who test negative but have the laboratory and/or MRO designate the test result as dilute will be required to undergo a re-collection as allowed by DOT Part 40.197

(G) CITY OF LAS VEGAS Drug and Alcohol Testing Process

Drug testing (inclusive of random selection and record keeping) is administered internally. For drug and/or alcohol testing during holidays or after hours, in the Albuquerque area contact:

WHITE SANDS DRUG & ALCOHOL COMPLIANCE - Albuquerque Office

Standard office hours are 7:00 AM - 4:00 PM Monday through Friday

505-345-9668 or (after hour cell number) 505-933-3372.

Note: Testing before or after standard hours is welcomed, please call after hours cell otherwise contact:

WHITE SANDS DRUG & ALCOHOL COMPLIANCE

Standard office hours are 7:00 AM - 5:00 PM Monday through Thursday, Friday 7:00AM to 11:00AM

(855) 584-8116, (575) 434-8734 during normal business hours

(575) 442-8437 (Shawna) or (575) 491-2060 (Kellie) after hour cell numbers

Note: Testing before or after standard hours is welcomed, please call after hours cell

SOMOS FAMILIA-FAMILY INSTITUTE, INC.

1216 9th Street

Las Vegas, NM 87701

(505)425-8120

Or other facility as available

4) Confidentiality of Employee Records

The City of Las Vegas contracts with laboratories and shall require that they maintain employee test records in confidence. The contracts shall provide that they shall disclose information related to a positive drug test of an

individual only to the individual, the City of Las Vegas, or the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from the results of an alcohol and/or controlled substance test, or from the Employer's determination that the employee engaged in conduct prohibited by this policy.

5) **Individual Access To Test And Certification Results**

Any employee who is the subject of a drug or alcohol test conducted under this policy or DOT jurisdiction, upon written request to the City of Las Vegas, shall have access to any records relating to his or her drug test.

6) **Counseling And Rehabilitation And The Return To Duty Process**

(A) **EAP and Rehabilitation Opportunities**

- (i) As a condition of continued employment, employees who self identify may be required to complete a treatment and/or rehabilitation program prescribed by a certified Substance Abuse Professional or the Employee Assistance Program (EAP) under contract to the City of Las Vegas.
- (ii) If the SAP refers the employee for extended assessment or treatment by another professional EAP service, the employee will be responsible to pay the fees for the professional EAP service to which they have been referred.
- (iii) Employees are responsible for their own rehabilitation. The City of Las Vegas provides EAP and SAP contract services to facilitate rehabilitation; however, the City of Las Vegas is not responsible for the rehabilitation of the employee's substance abuse or alcohol misuse.

(B) **Return To Duty Process**

- (i) Any employee who self identifies for controlled substances use or alcohol misuse, upon determination of the City of Las Vegas, the employee must complete the Return-To-Duty process before being allowed to perform any type of work for the City of Las Vegas. For purposes of the return-to-duty process, testing positive for alcohol means testing at 0.04 alcohol concentration or greater. Employees who test positive for either controlled substances or alcohol will not be allowed to complete the return-to-duty process. These employees will be administered through the "Disciplinary Action" paragraph 7) A) below.
- (ii) **The return-to-duty process has two separate tracks:**
 - (a) DOT employees must comply with the return-to-duty process detailed in DOT Part 40 and DOT specific agency if they are to return back to DOT duty (DOT-Federal Motor Carrier Safety Admin. or DOT-PHMSA [pipeline]) return-to-duty regulatory requirements found later in this policy.
 - 1. DOT employees, who have successfully completed the Return To Duty process, must sign a City of Las Vegas Return-To-Duty agreement as a condition of continued employment.
 - (b) Non-DOT employee return-to-duty process:
 - 1. This process is applicable to employees not under the regulatory oversight of DOT and also to DOT employees tested under the City of Las Vegas' policy authority. This non-DOT return to duty process can be applied to DOT and City of Las Vegas employees, as they would not be conducting DOT work. The non-DOT return-to-duty process will require:
 - a. An assessment by a SAP that results in the release of the employee back-to-duty. Only the SAP determines the release; and
 - b. A return-to-duty drug and/or alcohol test with results acceptable under this policy; and
 - c. The employee must sign a City of Las Vegas Return-to-Duty Agreement.

(C) **Voluntary Referrals (based on self-admission of drug and alcohol use) to a Substance Abuse Professional**

- (i) Employees are encouraged to, on their own accord, seek, and obtain SAP assistance for controlled substances use or alcohol misuse.
- (ii) Employees who refer for rehabilitation are still subject to random, reasonable cause/suspicion, and post-accident drug/alcohol testing as required by this policy or DOT. Employees cannot claim self-referral protection to avoid any drug/alcohol test required by City of Las Vegas or DOT regulations.

- (iii) Employees who self-refer for rehabilitation are not subject to disciplinary actions applied to those who have tested positive. No disciplinary action will be applied to an employee as a result of an employee's self-referral action.
- (iv) The City of Las Vegas will remove any employee from duty if notified by a SAP that the employee is not to perform work for the employer.

Employee Assistance Resources: A Selected List of Available Substance Abuse Counseling Sources

<u>LOCAL SAP</u>	<u>PHONE NUMBERS</u>
Drug Abuse Information and Treatment Referral Hotline	(800) 662-HELP
National Institute for Drug Abuse	(800) 843-4971
Cocaine Help-line	(800) COCAINE
Al-Anon	(800) 356-9996
Alcoholics Anonymous	(800) 503-8602 or www.alcoholics-anonymous.org
Alcohol Screening	www.alcoholscreening.org
American Council on Alcoholism	(800) 527-5344

7) Disciplinary Action

(A) Testing Positive – Disciplinary Action

The use of drugs or alcohol by an employee on the job may endanger not only the user, but fellow employees and the general public as well. For this reason, the City of Las Vegas shall terminate any employee having a confirmed positive drug or alcohol test result.

(B) Refusal or Failure to Test – Disciplinary Action

- (i) Employees are expected to cooperate fully in the testing process. Any employee that refuses as defined in this policy to test in any drug or alcohol test required by this policy is subject to disciplinary action, up to and including termination. A refusal to test has the same consequences inclusive of an assigned positive in this policy as a confirmed positive alcohol or verified drug test.

8) Leave and Pay Consequences to Employees

- (A) Employees with confirmed negative test results shall be allowed to return to duty with no loss of pay.
- (B) Employees at home who are waiting for lab results are there without pay.
- (C) Employees who have tested non-negative with an instant drug screen (Non-DOT testing applications only) are placed on relief of duty without pay until laboratory confirmation test results are received. Based on the lab result, if negative, the employee is returned to duty. If the result is a verified positive, the employee's pay status is changed from a pay status (*if pay was so authorized*) to a no-pay status as well as other requirements imposed on the employee as required by this policy.

9) Other Grounds for Termination

- (A) The following are also considered grounds for termination:
 - (i) The use, possession, or distributions of illegal drugs while employees are on the job or when in or on company premises; and
 - (ii) The use, possession, or distribution of beverage alcohol while employees are on the job or in or on company premises;

10) **Other Policies Regarding Drug And Alcohol Testing**

(A) **Duty to Notify of Endangerment to Employees or Public**

Any time that the EAP counselor, SAP, or MRO has reason to believe that the safety of employees or the public is endangered from drug or alcohol use, he or she has the duty to notify the City of Las Vegas Designated Employer Representative, at which point, the City of Las Vegas will remove the employee from duty. The City of Las Vegas administrative response will be determined on a case-by-case basis.

(B) **Policy Regarding Legal Drug Use**

- (i) Any employee who is taking either prescription, or nonprescription drugs, or medication containing alcohol, for illness or injury, must be familiar with the warning labels of the drugs or medication. It is the responsibility of the employee to determine the effects of these drugs on job performance and safety. Generally the effects would be considered substantial if the medication container states:
1. That driving or operating of equipment should be avoided or not be done after taking the medication; or
 2. That drowsiness may occur after taking the medication.
- (ii) In the event prescription, or non-prescription drugs, or medications adversely affect performance or safety, it is the employee's responsibility to notify the Human Resource Manager, Personnel Risk management Coordinator or Human Resource Director. The Human Resource Manager, Personnel Risk Management Coordinator or Human Resource Director may require employees to take sick leave, vacation, or be placed in a less sensitive position. Failure to report such safety or job performance hazards may result in disciplinary action. Prescription drugs shall not be brought into the work place by any person other than the person for whom the drug is prescribed by a licensed medical practitioner, and shall be used only in the manner, combination, and quantity prescribed.

(C) **Opportunity to Test Split Sample**

Upon notification by the MRO of a positive drug test result reported by the laboratory, an employee may request the MRO to test the second (split or Bottle B) sample of the original collected sample. The purpose of this is to verify the results of the original specimen. However, the employee **must pay in advance for such test**. Each drug that must be confirmed in the Split specimen is at the price of \$275.00 PER DRUG. If the employee cannot immediately afford the cost of the split sample, the City of Las Vegas will pay for the test but will deduct the cost from the employee's paycheck. Employees who request the split Bottle B to be tested must sign a release to deduct payment from the employee's paycheck. If the result of the second test is negative, the City of Las Vegas will reimburse the employee for the cost of the test.

(D) **Off the Job Use or Abuse of Alcohol and/or Mood-Altering Substances**

During off-duty time, the abuse of alcohol or use of other mood-altering substances is strongly discouraged. The use of these substances may impair the employee's job performance or negatively affect the public's perception of the City of Las Vegas.

(E) **Employees Convicted of Drug-Related Offenses**

It is the City of Las Vegas' policy that any employee convicted of the use, possession, distribution, or sale of illegal drugs or controlled substances shall report such conviction to his or her immediate supervisor within one business day after receiving notice of such conviction. Conviction and/or failure to report a conviction may subject an employee to disciplinary action, up to and including termination.

(F) **Eligibility for Rehire Following Termination or Rejection**

Applicants who have been rejected and employees who have resigned or have been terminated by the City of Las Vegas as a consequence of any violation of the Drug and Alcohol Policy will not be considered for employment at the City of Las Vegas, if at all for a period of at least one year and if considered, the applicant must provide the City of Las Vegas with documentation that shows:

- (a) The applicant has been evaluated by a certified Substance Abuse Professional (SAP); and
- (b) The SAP has released the applicant back to duty; and

- (c) The applicant has completed all the SAP imposed treatment; and
- (d) The applicant has completed all of the follow-up testing specified by the SAP.

NOTE: If the applicant does not provide the documentation, the City of Las Vegas could still make an offer contingent upon successful completion of the return to duty process. However, the applicant must complete the required items in the return to duty process at the applicant's cost.

II) PROCEDURES APPLICABLE TO NATURAL GAS PIPELINE WORKERS UNDER DOT-PHMSA AUTHORITY

NOTE: ON PAGES 19 - 29, TEXT THAT IS UNDERLINED AND ITALICIZED IS POLICY THAT THE CITY OF LAS VEGAS REQUIRES AND WHICH IS NOT SPECIFIED BY DOT-PHMSA. IF THERE IS ANY QUESTION, CONFLICT, OR DISCREPANCY IN THE POLICY AND DOT REGULATIONS AS CODIFIED AT 49 CFR PARTS 40 and 199 THE DOT REGULATIONS WILL PREVAIL.

a) COVERED EMPLOYEES

- 1) This section of the policy applies to all PHMSA pipeline covered employees as it details specific Drug and Alcohol testing requirements mandated by DOT. Covered employees are those who perform any "covered functions" such as operations, maintenance, or emergency-response function regulated by 49 CFR §192, 193, or 195 which is performed on a pipeline or on an LNG facility. Pipelines include all parts of the physical facilities through which natural gas moves in transportation (gathering, transmission, distribution, or storage), including pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, holders and fabricated assemblies. The term "covered employee" does not include clerical, truck driving, accounting, or other functions not subject to PHMSA but does include anyone who performs a covered function employed by the operator, or be a contractor engaged by the operator, or be employed by such a contractor.

b) DOT PROCEDURES REFERENCED BY 199.5

- 1) This anti-drug and alcohol program must be conducted according to the requirements of part 199 and DOT Procedures as listed as 49 CFR part 40.
- 2) Part 199 terms and concepts have the same meaning as in DOT Procedures.
- 3) Violations of DOT Procedures with anti-drug and alcohol programs required by Part 199 are violations of Part 199.
- 4) An employer must check on the drug and alcohol testing record of applicants or employees it is intending to use to perform safety-sensitive functions to comply with Part 199 and Part 40.25.
- 5) The City of Las Vegas must obtain specific written consent from the prospective covered employee to inquire about the applicant's previous controlled substances and alcohol testing information.
- 6) The City of Las Vegas shall, pursuant to an applicant's written consent, request the following information from DOT-regulated employers who have employed the employee (applicant) during any period before the date of the employee's application or transfer. Testing information required includes:
 - (A) Alcohol tests with a result of 0.04 or greater; and
 - (B) Verified positive controlled substance test results; and
 - (C) Refusals to be tested, including verified adulterated or substituted drug test results; and
 - (D) Other violations of DOT agency drug and alcohol testing regulations; and
 - (E) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests) the City of Las Vegas must complete the following:
 - (i) If the previous employer does not have information about return-to-duty process, the City of Las Vegas must seek to obtain this information from the employee.
 - (ii) The City of Las Vegas will only request information from previous employers regarding drug or alcohol test information that was obtained pursuant to Part 199, or other applicable DOT agency regulations only. Non-DOT testing results will not be considered by the City of Las Vegas.

7) If feasible, this information must be obtained and reviewed prior to the first time the applicant or employee performs a covered function. If it is not feasible, the City of Las Vegas must obtain and review the information as soon as possible. However, the City of Las Vegas must not permit an employee to perform covered functions after 30 days from the date on which the employee first performed covered functions without having made a good faith, documented effort to obtain the information.

(A) The City of Las Vegas shall not use a covered employee to perform covered functions if the City of Las Vegas obtains information on a DOT controlled substances or alcohol prohibition, without first obtaining information on DOT compliance (Return to Duty Process) per Part 50 Subpart C.

c) **STAND-DOWN WAIVERS REFERENCED BY PART 199.7 AND PART 40.21**

- 1) In accordance with Part 40.21, the City of Las Vegas may not stand-down any employee unless the City of Las Vegas obtains a specific waiver from the DOT agency with authority over the employer and its employees. The City of Las Vegas will not remove covered employees from covered functions until the MRO has completed the verification process and the City of Las Vegas has received results from the MRO. The City of Las Vegas will not apply for such a waiver.
- 2) The DOT stand-down procedure does not apply to situations where DOT employees test positive and request the split sample to be tested. The MRO will notify the City of Las Vegas when a DOT employee has a verified positive test regardless of a split specimen being tested or not. The City of Las Vegas will immediately remove the DOT employee from duty.

d) **SITUATIONS WHERE THE CITY OF LAS VEGAS WILL REMOVE COVERED EMPLOYEES FROM DUTY**

- 1) The City of Las Vegas will remove covered employees from covered functions without pay under the following situations:
 - (A) Immediately after a post-accident test if the employee shows signs of controlled substance use or alcohol misuse;
 - (B) Immediately after a reasonable suspicion test;
- 2) When those employees notify the City of Las Vegas that an MRO has notified the employee that a drug test has been verified as positive. This removal procedure is based on the "Actual Knowledge";
- 3) As a result of subparagraphs A-B above, covered employees who have been removed from duty will remain off duty (without pay) until the City of Las Vegas receives results from the MRO. If the results are negative, the employee is returned back to duty and receive back pay for time lost.

e) **PREEMPTION OF STATE AND LOCAL LAWS AS REQUIRED BY 199.9**

- 1) Part 199, subpart B, The Alcohol Misuse Prevention Program, except as provided in paragraph two (2) below, preempts any State or local law, rule, regulation, or order to the extent that:
 - (A) Compliance with both the State or local requirements and compliance is not possible; or
 - (B) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement of part 199 (b).
 - (C) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.
- 2) Part 199 subpart A shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

ANTI-DRUG PLAN

f) **ANTI-DRUG PLAN**

- 1) The City of Las Vegas will maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain:
 - (A) Methods and procedures for compliance with all requirements of this part, including the employee assistance program;
 - (B) The name and address of each laboratory that analyzes the specimens collected for drug testing;
 - (C) The name and address of the operator's MRO and SAP; and

- (D) Procedures for notifying employees of the coverage and provisions of the plan.
- (i) Employees will sign a form documenting receipt of the policy and specific information provided regarding the DOT controlled substances and alcohol testing at CITY.

- 2) The plan must be revised if requested by NM-PRC-Pipeline Safety Bureau or the DOT Administrator in order to provide a reasonable level of safety.

g) USE OF PERSONS WHO FAIL OR REFUSE A DRUG TEST AS REFERENCED BY PART 199.103

- 1) The City may not knowingly use as a covered employee any person who:
- (A) Fails a required drug test and the MRO determines that there is no legitimate medical explanation for the confirmed positive test result; or
- (B) Refuses to take a required DOT drug test.
- 2) The City may, however, use such employees in performing covered functions if the employee has:
- (A) Been considered by the MRO in accordance with DOT Procedures and been determined by a SAP to have successfully completed required education or treatment;
- (B) Passed a DOT Return-to-Duty test (result must be acceptable to DOT *and this policy*); and
- (C) Submit to DOT imposed follow-up testing including a minimum of 6 tests in the first 12 months, and not have failed any of those follow-up tests required by Part 50 Subpart C after returning to duty.
- 3) Per DOT Part 40.261(b) employees that refuse to take a DOT controlled substances test will incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.
- 4) Independent of PHMSA regulations, the City, under its policy authority shall terminate an employee for testing positive which would preclude the SAP, Return-to Duty drug and follow-up testing provisions. DOT employees who refuse to take a Non-DOT test when required by CITY OF LAS VEGAS policy have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal however, affected employees are subject to the City's policy regarding refusals.
- 5) DOT employees, who have successfully completed the Return To Duty process, must sign an City of Las Vegas Return-To-Duty agreement as a condition of continued employment.
- 6) The following levels constitute a positive controlled substance:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA1	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoylcegonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine ²	2000 ng/mL	Codeine	2000 ng/mL.
		Morphine	2000 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines ³			
AMP/MAMP ⁴	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine ⁵	250 ng/mL.
MDMA ⁶	500 ng/mL	MDMA	250 ng/mL.
		MDA ⁷	250 ng/mL.
		MDEA ⁸	250 ng/mL

*25 ng/ml if immunoassay specific for free morphine

h) DRUG TESTS REQUIRED BY 199.105

The City shall conduct the following drug tests for the presence of prohibited drugs:

1) Pre-Employment Testing as required by 199.105(a)

- (A) The City may not hire or contract for the use of any person as a covered employee unless that person passes a DOT pre-employment drug test.
- (B) All applicants receiving job offers for regular full-time, part-time or temporary positions must consent to and successfully pass a pre-employment drug test. Applicants will have 30 minutes plus travel time to report to the drug testing collection facility.
- (C) Applicants who refuse a pre-employment drug test will not be eligible for hire.
- (D) All current employees applying for transfer from a non-DOT position to a DOT covered position must consent to and successfully pass a DOT pre-employment drug test prior to transfer.
- (E) Transferring employees refusing a pre-employment drug test are not eligible to transfer to a covered function.

2) Post Accident Testing As Required By 199.105(b)

- (A) As soon as possible, but no later than 32 hours after a **PHMSA accident**, the City shall drug test each employee whose performance either contributed to the accident **or cannot be completely discounted as a contributing factor** to the accident.
- (B) The City may decide not to test under this requirement. Any decision not to test following an accident must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.
- (C) It is the responsibility of the City of Las Vegas Safety Officer or his/her designee to determine if the drug test is covered under DOT-PHMSA (gas operations), or City policy. It is also the Safety Officer's or his/her designee's responsibility to inform the collection facility as to which of the above categories the test falls under and to confirm that the appropriate tests have been administered.

3) Random Testing As Required By 199.105(c)

The minimum annual percentage rate for random drug testing shall be:

- (A) **DOT-PHMSA (gas pipeline operation) employees** are randomly selected for urine drug testing at an annual minimum ratio of 25%.
- (B) The selection of employees for random drug testing shall be made by a scientifically valid method such as a compliant computer-based random number generator that is matched with the employees' Social Security numbers or other employee ID number. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.
- (C) The City will randomly select a number of PHMSA employees to test during each calendar year to equal or surpass the minimum annual percentage rate for random drug testing determined by the Administrator.
- (D) The City shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.
- (E) When the City is required to conduct random drug testing under the drug testing rules of more than one DOT agency, such as PHMSA, the City shall randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the City is subject. City employees are assigned to only one individual testing pool.

4) Reasonable Suspicion Testing As Required By 199.105 (d)

- (A) The City shall drug test each employee when there is reasonable suspicion that the employee is using a prohibited drug. Note: An alcohol test is also required as noted earlier in the PHMSA Alcohol Misuse section of this policy.
- (B) The decision to test must be based on a reasonable and arguable belief that the employee is using a prohibited drug based on specific, contemporaneous physical, behavioral, or performance indicators of probable drug use.
- (C) At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone.

5) Return to Duty Testing As Required By 199.105(e)

- (A) A covered employee who refuses to take or has a positive drug test shall be terminated under the City's zero tolerance drug and alcohol policy.
- (B) A covered employee who self identifies may not return to duty in a covered function until the covered employee has complied with applicable provisions of DOT Procedures concerning SAP's and the return-to-duty process. Effective August 31, 2009 these tests will be directly observed and the donor will be required to allow the collector or observer to inspect for prosthetic devices.
- (C) DOT regulated (covered functions) employees who test negative but have the laboratory and/or MRO designate the test result as dilute will be required to undergo a re-collection as allowed by DOT Part 40.

6) Follow-Up Testing As Required By 199.105(f)

- (A) Following a positive drug test or a refusal to take a DOT drug test, a covered employee shall be terminated under the City's zero tolerance drug and alcohol policy.
- (B) A covered employee who self identifies the number and frequency of such follow-up testing shall be determined by the SAP, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, such follow-up testing may include testing for alcohol as directed by the SAP in accordance with DOT Part 40. Effective August 31, 2009 these tests will be directly observed and the donor will be required to allow the collector or observer to inspect for prosthetic devices.
- (C) Follow-up testing shall be conducted just before, during, or immediately after the employee is on duty.
- (D) DOT regulated (covered functions) employees who test negative but have the laboratory and/or MRO designate the test result as dilute will be required to undergo a re-collection as allowed by DOT Part 40.

i) Review of Drug Testing Results As Required By 199.109

- 1) The City must appoint an MRO. The MRO is Dr. Philip Lopez @ MRO Express out of Miramar, Florida. Specific information on the MRO is found on page 49.
- 2) The City's MRO must be a licensed physician who has the qualifications required by DOT Procedures (Part 40.121).
 - (A) The MRO must perform functions for the City as required by DOT Procedures.
 - (B) The MRO must report all drug test results to the City in accordance with DOT Procedures.

j) Re-Testing Provision As Required By 199.111

- 1) Samples that yield positive results on confirmation must be secured, stored, and managed for at least 365 days as required by DOT Part 40.99. Only specific personnel may alter the storage and management of the sample per DOT Procedures.
- 2) If the MRO determines there is no legitimate medical explanation for the confirmed positive result other than the unauthorized use of a prohibited drug, and if timely additional testing is requested by the employee according to DOT Procedures Part 40.153 and 40.173, the split specimen must be tested.

- 3) The employee according to Part 199.111 can select the same laboratory that tested the primary specimen or can select an alternate laboratory that is certified to perform analysis for DOT drug testing programs.

k) Employee Assistance Program As Required By 199.113

- 1) The City shall provide an employee assistance program (EAP) for its employees and management personnel who will determine whether an employee must be drug tested based on reasonable cause. The City may establish the EAP as part of its internal personnel services or the City may contract with an entity that provides the EAP services.
- 2) The City EAP must include education and training on drug use.
- 3) At the discretion of the operator (City of Las Vegas), the EAP may include an opportunity for employee rehabilitation.
- 4) Education under each EAP must include at least one the following elements:
 - (A) Display and distribution of informational material.
 - (B) Display and distribution of community service hot-line telephone number for employee assistance.
 - (C) Display and distribution of a City policy regarding the use of prohibited drugs.
- 5) Training under each EAP for management personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

l) Contractor Employees Provisions As Required By 199.115

With respect to those employees who are contractor or employed by a contractor, the City may provide by contract that the drug testing, education, and training required by Part 199 be carried out by the contractor provided:

- 1) The City must remain responsible for ensuring that the requirements of Part 199 are complied with regardless if the contractor administers the program or the City administers the program or a combination thereof; and
- 2) The contractor must allow access to property and records by the City, by the Administrator, and a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of Part 199.

m) Recordkeeping Provisions For Part 199 As Required By 199.117

- 1) The City must keep the following records for the periods specified as well as permit access to the records as noted in paragraph below:
 - (A) Collection process records demonstrating compliance with part 199 for at least 3-years.
 - (B) Records of employee positive drug test results showing the type of test as well rehabilitation records, if any, must be kept for at least 5-years. These records must include:
 - (i) The function performed by each employee who tests positive.
 - (ii) The prohibited drug(s) that were used by an employee who had a positive drug test.
 - (iii) The disposition of each employee who had a positive drug test or who refused a drug test.
 - (iv) Negative drug test results must be kept for at least 1 year.
 - (v) A record of the number of employees tested by type of test must be kept for at least 5-years.
 - (vi) Records confirming that supervisors and employees have been trained as required by part 199 must be kept for at least 3 years.
- 2) Information regarding an individual's drug testing results or rehabilitation must be released upon the written consent of the individual and as provided by DOT Procedures.
 - i) Statistical data related to drug testing and rehabilitation that is not name-specific
 - ii) Training records must be made available to the Administrator
 - iii) Representative of a state agency for an accident investigation

ALCOHOL MISUSE PLAN

n) Requirement To Maintain An Alcohol Misuse Plan Per 199.202

Each operator (City of Las Vegas) must maintain and follow a written alcohol misuse plan that conforms to the requirements of part 199 and DOT Procedures concerning alcohol-testing programs.

o) Other Requirements Imposed By Operators As Required By 199.209

- 1) Except as expressly provided in Part 199, nothing in alcohol related Part 199 requirements shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.
- 2) Operators such as the City may, but are not required to, conduct pre-employment alcohol testing under Part 199. If operators choose to conduct pre-employment alcohol tests, specific criteria must be met.

p) Requirement For Notice Prior To Drug Or Alcohol Testing As Required By Part 199.211

Before performing an alcohol test under this plan (policy), the City shall notify the covered employee that Part 199 requires the alcohol test. The City cannot falsely represent that a test is administered under Part 199.

q) Use Of Employees Who Have Engaged In Prohibited Conduct Per Part 199

The City shall terminate any covered employee who has engaged in conduct prohibited by 199.215 through 199.223 as noted in the Prohibited Conduct section below (alcohol concentration >.04 AC, on-duty use, pre-duty use, use following an accident, and refusal to submit to a required alcohol test).

r) Conduct Prohibited By DOT-PHMSA

1) Alcohol Concentration -199.215

- (A) The City shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. If the City has actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater the City shall not permit the employee to perform or continue to perform covered functions. DOT sets two alcohol concentration levels as noted in the table below. Specific DOT mandated actions are assigned to each level.

SUBSTANCE	INITIAL	CONFIRMATION
Alcohol *	.02 AC	.02 AC Not DOT Prohibited Conduct
Alcohol **	.04 AC	.04 AC DOT Prohibited Conduct

*= A confirmation alcohol test result of 0.000 AC or greater but less than 0.04 AC (0.02-0.039 AC):

- DOT does not consider this level as "Prohibited Conduct." DOT employees must not perform DOT regulated work as required by DOT. The City disallows any company work and requires the employee be sent home for a period of 24 hours, this time to be without pay.
- No Return to Duty Test required.
- A Substance Abuse Professional is not required.
- The PHMSA employee must be away from work for 8 hours. Breath-test results less than .02 allows the worker to return before 8 hours.

** = A confirmation alcohol test result that is 0.04 AC or greater:

- All employees tested at this level are (0.04 or greater) are classified as positive under this policy.
- The Return-To-Duty Process is required for employees who have self identified.
 - In order for a DOT employee to return to DOT defined work, the employee must complete the DOT return-to-duty process as defined in Part 40.

s) **On-Duty Use - 199.217**

The City shall prohibit a covered employee from using alcohol while performing covered functions. If the City has actual knowledge that a covered employee is using alcohol while performing covered functions, the City shall not permit the employee to perform or continue to perform covered functions.

t) **Pre-Duty Use - 199.219**

The City shall prohibit a covered employee from using alcohol within **four hours** prior to performing covered functions, or if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. If the City has actual knowledge that a covered employee has used alcohol within **four hours** prior to performing covered functions or within the time period after the employee has been notified to report for duty, the City shall not permit that covered employee to perform or continue to perform covered functions.

u) **Use Following An Accident – 199.221**

Following an accident, each covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the City as a contributing factor to the accident, shall refrain from using or consuming alcoholic beverages for eight hours following the accident unless the required post accident alcohol test has been administered, or the City has determined that the employee's performance could not have contributed to the accident.

v) **Refusal To Submit To A DOT Required Alcohol Test - 199.223**

The City shall require a covered employee to submit to a required post accident alcohol test, reasonable suspicion alcohol test, or a follow-up alcohol test. The City shall not permit an employee who refuses to submit to such a test to perform or continue to perform covered functions. Additionally, per DOT Part 40.261(b) employees that refuse to take an alcohol test will incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

w) **Alcohol Tests Required By 199.225**

The City shall conduct the following types of tests for the presence of alcohol:

1) **Post-accident (199.225(a):**

- (A) As soon as practicable following a **PHMS Accident**, the City shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the PHMSA accident **or cannot be completely discounted as a contributing factor** to the accident. The decision not to administer a test under this part must be based on the City's determination, using the best available information at the time of the decision that the covered employee's performance could not have contributed to the accident.
- (B) If a required post-accident test is not **administered within 2 hours following the PHMSA accident**, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. The City will continue attempting to administer an alcohol test in this case for up to 8-hours. If a required test is not administered within 8 hours following the accident, the City shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.
- (C) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the City of Las Vegas of his or her location if the employee leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- (D) Nothing in Part 199 (or this policy) will be construed to require the delay of necessary medical attention for the injured following an accident or prohibit a covered employee from leaving an accident scene for the period necessary to obtain assistance in responding to the accident or to obtain emergency medical care.
- (E) It is the responsibility of the supervisor or his/her designee to determine whether the drug test is covered under DOT-PHMSA (gas operations), or the City's policy. It is also the supervisor's or his/her designee responsibility to inform the collection facility as to which of the above categories the test falls under and to notify the collection facility which test to perform or not perform (e.g., no alcohol test after 8-hours after the accident).

2) **Reasonable suspicion testing (199.225(b):**

- (A) The City shall require a covered employee to submit to an alcohol test when the City has reasonable suspicion to believe that the employee has violated the prohibitions of this policy.
- (B) Only management personnel who are trained in detecting the symptoms of alcohol misuse can make the reasonable suspicion determination. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.
- (C) The City's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.
- (D) Alcohol testing is authorized by Part 199 (or this policy) **only** if the observations required by this sub-part are made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with this sub-part. A covered employee may be directed by the City to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.
- (E) If a test required by this policy is not administered within 2 hours following the determination, of the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this part is not administered within 8 hours following the determination, the City shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to PHMSA upon request of the Administrator.
- (F) Notwithstanding the absence of a reasonable suspicion alcohol test under this provision, the City shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall the City permit the covered employee to perform or continue to perform covered functions, until:
 - (i) An alcohol test is administered and the employee's alcohol concentration measures less than 0.001; or
 - (ii) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.
- (G) Except as provided above, the City will not take any action against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test.

3) **Return-to-duty testing (199.225(c):**

- (A) Employees who have self identified or has otherwise engaged in conduct prohibited by DOT-PHMSA parts 199.215-199.223 shall not return to duty requiring the performance of a covered function until a DOT Return-to-Duty alcohol test result indicates an alcohol concentration of less than 0.001.
- (B) City, under its policy authority shall terminate an employee for testing which would preclude Return-to Duty testing.

4) **Follow-up testing (199.225(d):**

- (A) The City, under its policy authority shall terminate an employee for testing positive which would preclude Follow-up testing.
- (B) Following a determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the City shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional.

- (C) If a covered employee has engaged in conduct prohibited by DOT-PHMSA (parts 199.215-199.223) as noted in the Prohibited Conduct section, the covered employee shall be subject to follow-up testing determined by the SAP with a minimum of 6 tests in 12 months as required by DOT-PHMSA.
- (D) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

5) **Re-testing option (199.225(e):**

When a covered employee is tested with an alcohol concentration of 0.001 or greater but less than 0.04, the City at its option may retest the employee until the test indicates an alcohol concentration of less than 0.001 if the employee is to work covered functions within 8-hours after the initial test showing an alcohol concentration of 0.02 or greater but less than 0.04 AC. If the City chooses not to retest the covered worker, the City will not allow the covered worker to perform covered functions for at least a period of 8-hours after the first confirmation test showing an alcohol concentration of 0.001 or greater but less than 0.04 AC.

x) **Retention Of Records (199.227)**

- 1) The City will maintain records of its alcohol misuse and controlled substances use prevention programs as required by Part 199. All records must be maintained in a secure location with controlled access.
- 2) Records shall be maintained by record type and for the following duration:
- 3) Records that must be kept for a five (5) year retention period include:
 - (A) Alcohol test results indicating an alcohol concentration of 0.001 or greater
 - (B) Documentation of refusals to take required alcohol tests,
 - (C) Employee evaluation and referrals,
 - (D) A copy of each MIS annual report data as required by part 199.229,
 - (E) Copies of calibration records.
- 4) Records that must be kept for a two (2) year retention period include:
 - (A) Records related to the alcohol collection process (except calibration of EBT's) and training.
- 5) Records that must be kept for a one (1) year retention period include:
 - (A) Records of negative alcohol test results with a concentration of less than 0.001.
- 6) The types of records that must be generated and maintained under Part 199 and Part 40 are:
 - (A) Records related to the collection process.
 - (B) Calibration documentation for evidential breath testing devices.
 - (C) Documentation of breath alcohol technician training.
 - (D) Documents generated regarding decisions to test under reasonable suspicion requirements.
 - (E) Documents generated in connection with decisions on post-accident tests.
 - (F) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for alcohol testing.
 - (G) Records related to a covered employee's test results.
 - (H) The employer's copy of the alcohol test forms including the results.
 - (I) Documents related to the refusal of any covered employee to submit to an alcohol test required by part 199.
 - (J) Documents presented by a covered employee to dispute the result of a DOT Part 199 alcohol test.
 - (K) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer obtains per part 40.25,
 - (L) Records related to other violations of part 199.
 - (M) Records relating to evaluations or treatment such as:
 - (i) SAP determinations concerning a covered employee's need for assistance.
 - (ii) Records concerning a covered employee's compliance with recommendations of the SAP.
 - (iii) Records related to the operator's MIS annual testing data.

- (iv) Materials on alcohol misuse awareness including a copy of the employer's policy on alcohol misuse,
- (v) Documentation of compliance with requirements of part 199.231
- (vi) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make reasonable suspicion determinations.
- (vii) Certification that training conducted under this part complies with requirements for such training.

y) Reporting Of Alcohol Testing Results (199.229):

- 1) Currently, the City has less than 50 covered function employees.

aa) Access To Facilities And Records Per Part 199.231

- 1) Except as required by law or expressly authorized or required in Part 199, the City shall not release covered employee information that is contained in the records required by Part 199.
- 2) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The City shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
- 3) The City shall permit access to all facilities utilized in complying with the requirements of Part 199 to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the City.
- 4) The City shall make available copies of all results for employer alcohol testing conducted under Part 199, and any other information pertaining to the City alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the City or a state agency representative with regulatory over the City. The information shall include name-specific alcohol test results, records, and reports.
- 5) When requested by NTSB as part of an accident investigation, the City shall disclose information related to the City administration of any post-accident alcohol tests administered following the accident under investigation.
- 6) The City will make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.
- 7) The City may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.
- 8) The City will release information regarding a covered employee's records as directed by the authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee consent.

bb) Removal From Covered Functions Per Part 199.233

Except as provided in Part 199.239- Part 243, the City shall not permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by Part 199.215 – Part 199.223 or an alcohol misuse rule of another DOT agency.

cc) Required Evaluation And Testing Per Part 199.235

The City shall not permit a covered employee who has engaged in conduct prohibited by sections Part 199.215 – Part 199.223 to perform covered functions unless the employee has met the requirements of Part 199.243.

dd) Other Alcohol Related Conduct Per Part 199.237

- 1) The City will not permit a covered employee tested under Part 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:
 - (A) The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under Part 199.225(e); or

(B) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

2) Except as provided above, the City shall not take action under Part 199 against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator (City of Las Vegas) with authority independent of this subpart from taking any action otherwise consistent with law.

ee) City's Obligation To Promulgate A Policy On The Misuse Of Alcohol Per Part 199.239

1) The City shall provide educational materials that explain the alcohol misuse requirements of Part 199 and the City's policy and procedures with respect to meeting the Part 199 requirements.

2) The City will ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under Part 199 to each covered employees subsequently hired or transferred into a covered function.

3) The City will provide written notice to representatives of employee organizations of the availability of this information.

4) The materials to be made available to covered employees will include the following:

(A) The identity of the person designated by the employer to answer driver questions about the materials.

(B) The categories of employees who are subject to provisions of Part 199.

(C) Sufficient information about safety sensitive functions performed by those covered function workers to make clear what period of the workday the driver is required to be in compliance with Part 199.

(D) Specific information concerning covered employee conduct that is prohibited by Part 199

(E) The circumstances when a covered employee will be tested for alcohol under Part 199.

(F) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct covered employee.

(G) The requirement that a covered employee submit to alcohol tests administered in accordance with Part 199.

(H) An explanation of what constitutes a refusal to submit to an alcohol test and the resulting consequences.

(I) The consequences for covered employees found to have violated alcohol related Part 199 provisions, including the requirement that the employees will be immediately removed from covered functions and that they must complete the return-to-duty process as required by Part 40 Subpart O and Part 199.243.

(J) The consequences for covered employees with an alcohol concentration of 0.02 or greater but less than 0.04

(K) Information concerning the effects of alcohol misuse on an individual's health, work and personal life, signs and symptoms of an alcohol problem, and available methods of intervening when such a problem is suspected, including evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any employee assistance program and or referral to management.

ff) Training For Supervisors Per Part 199.241

The City will ensure that all persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under Part 199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech and performance indicators of probable alcohol misuse.

gg) Referral, evaluation and treatment per part 199.243:

1) Each City of Las Vegas PHMSA employee who has engaged in conduct prohibited by DOT-PHMSA as noted in this Alcohol Misuse Plan shall be advised of the resources available to the covered employee for evaluation and resolution of problems associated with the misuse of alcohol.

2) Each covered employee engaging in conduct prohibited by this Plan shall be evaluated by a SAP who will determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

3) Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by this alcohol misuse plan shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.001.

- 4) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse:
- (A) Shall be evaluated by a SAP to determine that the employee has properly followed any rehabilitation program prescribed under this section and;
 - (B) Shall be subject to unannounced follow-up alcohol tests following the employee's return to duty. The number and frequency of such follow-up tests shall be determined by a SAP but shall consist of at least six (6) tests in the first 12 months following the employee's return to duty. Follow-up testing may also include testing for drugs as directed by the SAP, to be performed in accordance with 49 CFR Part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered if the SAP determines that such testing is no longer necessary.
- 5) Evaluation and rehabilitation may be provided by the City, by a SAP under contract with City, or by a SAP not affiliated with the City.
- 6) The City, to the best of its ability will not use a SAP that refers employees to the SAP's private practice or to a service provider from which the SAP receives remuneration or in which the SAP has a financial interest.
- 7) The SAP can refer an employee for assistance to resources such as a public agency, to the City (if qualified) or a person under contract to the City or to sole sources under the employee's health insurance or to a sole source of therapeutic treatment reasonably accessible to the employee.

hh) Contractor Employees Per Part 199.245

- 1) The City may utilize contractors to perform covered functions and administer their own drug and alcohol-testing program that is in compliance with Part 199. **A contractor however must notify the operator of intended subcontractor use for covered function work on the operators pipeline facilities. the operator will have final approval of such subcontractor use.**
- 2) The City, however, remains responsible for ensuring alcohol testing; training and education required by Part 199 are complied with.
- 3) The contractor must allow access to property and records by the City, the Administrator, any DOT agency with regulatory authority over the City or covered employee, and if the City is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the City's compliance with the requirements of Part 199 and Part 40.

JOB TITLES UNDER THE JURISDICTION OF DOT-PHMSA DRUG AND ALCOHOL TESTING REGULATIONS

GENERAL INSTRUCTIONS:

List only job functions that

- Perform covered function work on natural gas pipelines, facilities, or pipeline Right-of Way.
- Respond to natural gas leak emergencies or emergency response.
- Employee names are not required on this list.

Do not list job functions that do not work on natural gas pipelines or the Right-of Way of natural gas pipelines including accounting, administration, or other job duties that do not require actual pipeline work or emergency response duties.

JOB TITLE	REASON FOR PHMSA D&A COVERAGE
1. Gas Systems Manager	<ul style="list-style-type: none"> • Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
2. Gas Utility Superintendent	<ul style="list-style-type: none"> • Perform covered function work <u>on</u> natural gas

	<p>pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.</p>
3. Gas Construction Supervisor	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
4. Gas Utility Operator III	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
5. Gas Utility Operator IV	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
6. Gas Equipment Operator I	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
7. Gas Equipment Operator II	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
8. Gas Equipment Operator III	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
9. Gas Maintenance Tech I	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
10. Gas Maintenance Tech II	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
11. Gas Maintenance Tech III	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.
12. Gas Laborer	<ul style="list-style-type: none"> Perform covered function work <u>on</u> natural gas pipelines, facilities, or pipeline Right-of Way. Respond to natural gas leak emergencies or emergency response.

THIS LIST MAY BE UPDATED PERIODICALLY

IV -CONTRACTORS AND TEMPORARY STAFFING AGENCIES

OBJECTIVE

In order to determine a contractor's compliance with DOT regulations, the following procedures are to be followed, as set forth in 49 CFR Parts 40, 199.

APPLICABILITY

This part applies to:

- Any sub-contractor used to perform covered functions on natural gas pipeline facilities.

PROCEDURES FOR DETERMINING COMPLIANCE

a) Qualifying potential Contractors:

- The qualification of the potential contractor as it pertains to drug and alcohol testing policies is ensured by requesting the potential contractor to submit a copy of the drug and alcohol policies for review and compliance with PHMSA (if contractor employees drive CITY OF LAS VEGAS Commercial Motor Vehicles) Department of Transportation regulations.
- After review of the alcohol and drug policy is completed, written correspondence to the contractor will advise it whether or not the policy is acceptable or in need of further additions and or revisions.
- The review of the contractor plan shall be completed utilizing the criteria established by:
 - The PHMSA Headquarters Drug Inspection form;
 - The DOT Part 40 Inspection forms, and DOT Part 382, sub-part 601 requirements.
 - Addenda made to the contractor's policy shall be attached to the previously submitted policy.
- Upon approval of the addendum, a letter of acceptance will be sent to the contractor.

b) Monitoring Pipeline Sub-Contractor's DOT compliance:

The Contractor is responsible for full compliance with DOT regulations. Failure of sub-contractors to comply with DOT regulations and the Company imposed items listed below could result in termination of the contract between NMGC and the contractor.

NMGC Resources will have on-site access to inspect and audit the sub-contractor's Drug and Alcohol testing policy and records. On-site auditing access of the sub-contractor's employees who are available to the City to assure the sub-Contractor is in compliance with Department of Transportation requirements as required and NMGC, the operator of the pipeline facilities. Items specifically inspected and audited by the City include:

- A Drug and Alcohol policy that complies with 49 CFR parts 40 and 199.
- Education and training programs that educate its employees who are required to perform covered functions and train its supervisors on methods of reasonable suspicion for drugs and alcohol as required by DOT
- Provide the NMGC with quarterly reports of its covered function workers available to NMGC as required by DOT.
- The sub-contractor will be required to provide information on employees who will perform covered functions
- All subcontractors will be required to submit drug and alcohol testing statistical information on a quarterly basis for the duration of the contract.

c) Consequences for Failure to Comply:

Any City contractor who fails to comply with this part within 30 days of notice by the City shall be found in violation of its contract.

V) DRUG TESTING PROCEDURES

These procedures in pages 44-48 are written to meet DOT's 49 CFR Part 40 procedures for Transportation Workplace Drug and Alcohol Testing Program. These procedures are provided in this policy and compliance plans for two reasons only:

1. To meet requirements by DOT Part 199 and Part 382 to have these procedures in compliance plans
2. To provide employees general information regarding the Drug and Alcohol- testing process.

The Drug and Alcohol testing procedures noted in this policy do not impose any requirements of performance onto any Service Agent. Those Service Agents are bound by specific DOT Part 40 requirements applicable to the specific type of service agent.

The City of Las Vegas' policy applies these testing procedures to all City employees unless otherwise noted elsewhere in this policy.

a) URINE COLLECTION PERSONNEL – SUBPART C

1. Only collectors meeting the requirements of Part 40 subpart C are authorized to collect urine specimens for DOT drug testing as noted in Part 40.31.
2. Collectors must meet the training requirements of Part 40.33 that includes:
 - a. Collectors must possess some basic information and be knowledgeable about Part 40 DOT urine Specimen Collection Procedures and DOT agency regulations.
 - b. Collectors must receive qualification training that meets Part 40.33(b) and by the time frame specified by Part 40.33(d).
 - c. Collectors must demonstrate initial proficiency by performing five specific types of collection scenarios while being monitored and evaluated by a seasoned and practicing DOT drug test collector. This initial proficiency demonstration must occur by the specified time frame listed in Part 40.33(d).
 - d. Collectors must complete refresher training every five years from the date paragraph 2 (b) and (c) above.
 - e. Collectors making fatal/uncorrectable flaws must undergo error correction training with 30 days of the error.
 - f. Documents must be maintained regarding the Part 40.33 collector training compliance elements.
 - g. At NO TIME may a non certified person, such as an employer supervisor, take urinalysis collection for any reason. ALL COLLECTORS MUST BE CERTIFIED.

b) COLLECTION SITES, FORMS, EQUIPMENT AND SUPPLIES USED IN DOT URINE COLLECTIONS –SUBPART D

- 1) **Urine Collections Can Only Take Place In Collection Sites That Meet The Following Requirements Of Part 40.41:**
 - (A) Sites that meet security requirements of Part 40.43;
 - (B) Sites must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory and a suitable clean surface for writing;
 - (C) The site must include a facility for urination described in the two following paragraphs (D) and (E).
 - (D) The preferred type of collection facility may include a single-toilet room having a full-length privacy door within which urination can occur. These types of facilities must also have:
 - (i) No one but the employee present in the room during the collection, except for the observer in the event of a monitored or direct observation collection; and
 - (ii) A source of water for washing hands that if practicable should be external to the closed room where urination occurs. If an external source is not available water sources and other substances that could be used for adulteration and substitution must be secured.
 - (E) The second type of collection facility may include a multistall restroom that meets the following conditions:
 - (i) Toilet stalls that provide substantial visual privacy
 - (ii) Multistall restrooms must have all sources of water controlled or other substances that could be used for adulteration and substitution removed as well as place bluing agent in all toilets or secure them to prevent access.
 - (iii) Rather than meeting the requirements of (ii) above, collections may be conducted as monitored collections. This is the only circumstance in which monitored collections can occur.
 - (iv) No one but the employee may be present in the multistall restroom except the monitor.

- (F) A collection facility may be in a medical facility, a mobile facility, a dedicated collection facility, or any other location meeting the requirements of Part 40.41.
- (G) Collection Container
- (i) Single-use container made of plastic, large enough to easily catch and hold at least 55 mL of urine voided from the body.
 - (ii) Must have graduated volume markings clearly noting levels of 45 ml and above.
 - (iii) Must have a temperature strip providing graduated temperature readings 32–38 °C/90–100 °F that is affixed or can be affixed at a proper level on the outside of the collection container. Other methodologies (e.g., temperature device built into the wall of the container) are acceptable provided the temperature measurement is accurate and such that there is no potential for contamination of the specimen.
 - (iv) Must be individually wrapped in a sealed plastic bag or shrink wrapping; or must have a peel able, sealed lid or other easily visible tamper-evident system.
 - (v) May be made available separately at collection sites to address shy bladder situations when several voids may be required to complete the testing process.
 - (vi) 2. Plastic Specimen Bottles
 - (vii) a. Each bottle must be large enough to hold at least 35 mL; or alternatively, they may be two distinct sizes of specimen bottles provided that the bottle designed to hold the primary specimen holds at least 35 mL of urine and the bottle designed to hold the split specimen holds at least 20 mL.
 - (viii) b. Must have screw-on or snap-on caps that prevent seepage of the urine from the bottles during shipment.
 - (ix) c. Must have markings clearly indicating the appropriate levels (30 mL for the primary specimen and 15 mL for the split) of urine that must be poured into the bottles.
 - (x) d. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit with no damage to the seal when the employee initials it nor with the chance that the seal overlap would conceal printed information.
 - (xi) e. Must be wrapped (with caps) together in a sealed plastic bag or shrink wrapping separate from the collection container; or must be wrapped (with cap) individually in sealed plastic bags or shrink wrapping; or must have peel able, sealed lid or other easily visible tamper-evident system.
 - (xii) f. Plastic material must be leach resistant.
 - (xiii) 3. Leak-Resistant Plastic Bag
 - (xiv) a. Must have two sealable compartments or pouches which are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork.
 - (xv) b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.
 - (xvi) 4. Absorbent material
 - (xvii) Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.
 - (xviii) 5. Shipping Container

- (xix) a. Must be designed to adequately protect the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, plastic container).
- (xx) b. May be made available separately at collection sites rather than being part of an actual kit sent to collection sites.
- (xxi) c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the plastic leak-proof bags from the collection site to the laboratory.

40.13 How do DOT drug and alcohol tests relate to non-DOT tests?

- (a) DOT tests must be completely separate from non-DOT tests in all respects.
- (b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test.
- (c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing.
- (d) The single exception to paragraph (c) of this section is when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations. It is permissible to conduct required medical tests related to this physical examination (e.g., for glucose) on any urine remaining in the collection container after the drug test urine specimens have been sealed into the specimen bottles.
- (e) No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as an employer you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.
- (f) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.

2) Collection Site Security And Integrity Protection Steps (Part 40.43)

- (A) Collectors must take the following steps to prevent unauthorized access that could compromise the integrity of collections and to deter tampering with specimens:
 - (i) Secure any water sources or otherwise make them unavailable and ensure the toilet water is blue;
 - (ii) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;
 - (iii) Inspect the site to ensure that no foreign or unauthorized substances are present;
 - (iv) Tape or otherwise secure shut any movable toilet tank top or put bluing in the tank;
 - (v) Ensure that undetected access into the collection stall is not possible;
 - (vi) Secure areas and items that appear suitable for concealing contaminants.
- (B) Collection sites used for other purposes such as a public restroom or exam room, the collector must ensure:
 - (i) Access to collection materials and specimens is effectively restricted;
 - (ii) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited access signs must be posted.
 - (iii) That the collector is limited to conducting only one collection at a time in order to avoid distraction. The exception is when one employee is drinking fluid in a "shy bladder" situation. The collector may conduct another collection;

- (iv) The collection container is kept within view of both you and the employee between the time the employee has provided the specimen and before it is poured into the split bottles and sealed.
- (v) The collector must remain within the collection site between the time when the employee gives you the specimen and when you seal the specimen;
- (vi) The collector must maintain personal control over each specimen and custody and control form throughout the collection process.

(C) Collection sites must:

- (i) Implement a policy and procedures that prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored;
- (ii) Allow only employees being tested, collectors, and other collection site workers, designated employer representatives, employee and employer representatives authorized by the employer, and DOT agency representatives;
- (iii) Not allow anyone to enter the urination facility during a collection process except a monitor as allowed by specific situations in Part 40;
- (iv) All authorized visitors in the collection site are under the supervision of the collector at all times.
- (v) Remove any person who obstructs, interferes with, or causes a delay in the collection process; and
- (vi) Minimize the number of persons handling specimens.

3) Forms Used In Dot Drug Collections (Parts 40.45 And 40.47)

- (A) The five-part carbonless copy chain of custody form must be used to document every urine collection required by the DOT drug-testing program.
- (B) Collection forms cannot be altered except as authorized in Part 40.45. Non-DOT collection forms cannot be used in lieu of a DOT collection form. Rare circumstances allow the non-DOT form to be used but they must be converted to a DOT form by the MRO.

c) URINE SPECIMEN COLLECTIONS – PART 40 SUBPART E

1) Preliminary Steps in the Collection Process that collectors must take before actually beginning a collection per Part 40.61 are:

- (A) Contact the DER if the employee does not appear at the collection site at the scheduled time. If the employee's arrival is delayed beyond the DER's specified time limit, notify the DER that the employee has not reported for testing.
- (B) Ensure that when the employee enters the collection site you begin the testing process without undue delay.
 - (i) If the employee is also taking a DOT alcohol test, the collector must to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.
 - (ii) If the employee needs medical attention do not delay this treatment to collect a specimen.
 - (iii) The collector is prohibited from collecting by catheterization or other means, urine from an unconscious employee to conduct a drug test under Part 40.
 - (a) If the employee normally voids through self-catheterization, the employee must provide a urine specimen in that manner. If the employee refuses to do so, this constitutes a refusal to test.
- (C) Require the employee to provide positive identification such as a photo ID issued by the employer or a Federal, state, or local government. Positive ID by an employer representative (not a co-worker or other worker being tested) is also acceptable. Faxes or photocopies of ID are not acceptable. If positive ID cannot be produced, the collector must contact the DER to verify the identity of the employee.
- (D) If the employee asks, the collector must provide the collector's ID to the employee. The collector's ID must include collector name and the collector's employer name.
- (E) The collector must explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the Custody and Control Form (CCF.)
- (F) Direct the employee to remove outer clothing such as jackets, coveralls, coats, or hats that could be used to conceal items or substances that could be used to tamper with a specimen.

- (i) Also direct the employee to leave these garments and any briefcase, purse or other personal belongings with the collector in a mutually agreeable location. If the employee asks for a receipt of belongings, the collector must provide one. The employee may keep his or her wallet.
 - (ii) The collector must advise the employee that failure to comply with your directions constitutes a refusal to test.
 - (iii) The collector cannot require the employee to remove other clothing, to remove all clothing or to change into a hospital or examination gown unless the collection is simultaneously accomplished with a DOT agency authorized medical examination.
 - (iv) The collector must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into his or her pockets. The employee must allow the collector to make this observation.
 - (v) If items are found that could be used to adulterate a specimen, the collector must decide to administer a direct observation collection or not.
- (G) The collector is to instruct the employee to not list on the Custody and Control Form (CCF) any medications currently being used by the employee.

2) Collector Steps Taken before the Employee Provides A Urine Specimen Per Part 40.63.

Collectors will take the following steps before the employee provides the urine specimen:

- (A) Complete step 1 of the custody and control form;
- (B) Instruct the employee to wash and dry his or her hands. Limit access to water or other materials that could be used to adulterate or dilute a specimen;
- (C) Select or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either the collector or the employee unwraps or breaks the seal of the collection container while both are watching;
- (D) The collector will instruct the employee to go into the room used for urination to provide a specimen of at least 45 milliliters (mL) and to not flush the toilet then to return the specimen to the collector as soon as the employee has completed the void;
 - (i) Except in the case of an observed or a monitored collection, no one may go into the room with the employee;
 - (ii) The collector may define what a reasonable time limit for voiding will be.
- (E) The collector will pay careful attention to the employee during the collection process to note any conduct that clearly indicates an attempt to tamper with a specimen. If the collector notices any such behavior, the collector must require a collection to take place under direct observation collection procedures, note such on the CCF, and notify the DER.

3) Collector Steps when The Employee Presents A Specimen Per Part 40.65.

The collector must check the following items when the employee gives the collection container to the collector:

- (A) The collector must ensure that the specimen contains at least 45 mL;
 - (i) If not, the collector must follow the "shy bladder" procedures listed in Part 40.193(b) and discard the original specimen (unless the another problem such as out of range temperature, signs of tampering, etc. that would require the collector to keep the original specimen).
 - (ii) The collector is never permitted to combine urine samples from separate voids to create a specimen.
 - (iii) The collector must discard any excess urine.
- (B) The collector must check the temperature of the specimen after the employee has given the collector the specimen.
 - (i) The temperature must be checked no later than four minutes and the acceptable temperature range is 90-100 degrees F.

- (ii) The collector must notate whether the specimen is within the acceptable temperature range or not in the appropriate box on the CCF.
 - (iii) If the specimen temperature is outside the acceptable range, the collector must immediately conduct a new collection using direct observation procedures noted in Part 40.67.
 - (iv) The collector must process both the original specimen and the specimen that was outside acceptable temperature range and send both specimens to the laboratory.
 - (v) Upon completion of the collection, immediately notify the DER that a direct observation collection occurred and why it occurred.
 - (vi) If the employee refuses to provide a second specimen under direct observation, the collector must notify the DER of the refusal. The collector must then discard the specimen.
- (C) The collector must inspect the specimen for signs of tampering such as unusual color or odor, the presence of foreign objects or material or other signs of tampering.
- (i) If it is apparent from the inspection that the employee has tampered with the specimen, the collector must conduct a new collection using direct observation procedures noted in Part 40.67.
 - (ii) The collector must process both the original specimen considered to be tampered with and the specimen collected under direct observation procedures and send both to the laboratory.
 - (iii) If the employee refuses to provide a second specimen under direct observation, the collector must notify the DER of the refusal. The collector must then discard the specimen.
- 4) **As An Employer, CITY OF LAS VEGAS Must Direct A Collection under Direct Observation with No Advance Notice to the Employee Per Part 40.67.**
- (A) The laboratory reported to the MRO that a specimen is invalid with no adequate medical explanation for the result.
- (B) The MRO reported that original positive, adulterated, or substituted test had to be cancelled because the test of the split specimen could not be performed.
- (C) All Return to Duty and Follow up tests. Effective August 31, 2009 these tests will be directly observed and the donor will be required to allow the collector or observer to inspect for prosthetic devices.
- (D) The employer may require a directly observed collection for the following situations:
- (a) The City will obtain direct observed collections for employees who have been identified by the MRO to have adulterated or substituted previous test specimens when these employees are required to provide specimens for Pre-employment, Return-to-Duty, and Follow-up tests.
- (E) The collector must immediately conduct under direct observation if:
- (i) Directed to do so by the DER;
 - (ii) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with the specimen;
 - (iii) The temperature on the original specimen was out of range as defined in Part 40.65(b)(5); or
 - (iv) The original specimen appeared to have been tampered with.
- (F) The collector and/or the City when conducting a "Directly Observed Collection" must explain to the employee the reason under Part 40 for the "Directly Observed Collection."
- (G) The collector must complete a new Custody and Control Form (CCF) for the directly observed collection and complete the form per Part 40.67(e) and (f);
- (H) The collector must ensure that the observer is the same gender as the employee. The observer can be a different person from the collector and need not be a qualified collector.
- (I) The collector must verbally instruct the observer to follow the following procedures:
- (i) The observer must watch the employee urinate into the collection container. Specifically, the observer is to watch the urine go from the employee's body into the collection container; and

- (ii) The observer must not take the collection container from the employee. The observer, however, must observe the specimen as the employee takes it to the collector.
 - (J) The collector must write the observers name in the remarks field of the CCF.
 - (K) If the employee declines to allow a directly observed collection required or permitted under Part 40.67 or this policy, this is a refusal to test.
- 5) Monitored Collection Procedures per Part 40.69**
- (A) The collector must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection process has been completed.
 - (B) The collector must ensure the monitor is the same gender as the employee unless the monitor is a medical professional. The monitor can be a different person from the collector and need not be a qualified collector.
 - (C) The collector must verbally instruct the person to follow the following procedures:
 - (i) The monitor must not watch the employee urinate into the collection container. If the monitor hears sounds or make other observations indicating an attempt to tamper with the specimen, there must be an additional collection under direct observation procedures;
 - (ii) The monitor must ensure the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure;
 - (iii) The collector must notate the name of the monitor on the remarks field of the CCF;
 - (iv) If the employee declines to permit a collection authorized under Part 40.69 or this policy, this is a refusal to test.

6) How The Collector prepares the Specimens per Part 40.71

- (A) All collections under DOT agency drug testing regulations and this policy must be split specimen collections.
- (B) The collector must follow the following steps (and in the presence of the employee) once the employee brings the urine specimen to the collector:
 - (i) Check the split specimen box on the CCF;
 - (ii) The collector must pour at least 30 mL of urine into one specimen bottle to be used for the primary specimen;
 - (iii) The collector must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.
 - (iv) The collector must place and secure the lids/caps on the bottles;
 - (v) The collector must then seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles;
 - (vi) The collector must then write the date on the tamper-evident bottle seals;
 - (vii) The collector then ensures that the employee initials the tamper-evident seals for the purpose of certifying that the bottles contain the specimens he/she provided. If the employee fails or refuses to do so, the collector notes this in the remarks line of the Custody and Control Form (CCF) and completes the collection process.

7) The Completion of the Collection Process per Part 40.73

- (A) The collector must do the following things in the presence of the employee to complete the collection process:
 - (i) The collector must direct the employee to read and sign the certification statement on Copy 2 (step 5) of the CCF and to provide date-of-birth, printed name, and the day and evening contact telephone numbers. If the employee refuses to sign the CCF or to provide the date of birth, printed name, or telephone numbers, the collector must note this in the remarks line of the CCF and complete the collection
 - (a) If the employee refuses to fill out any information, the collector must as a minimum print the employee's name in the appropriate place.
 - (ii) The collector must complete the chain of custody of the CCF by printing the collector's name, recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory;
 - (iii) The collector must ensure that all copies of the CCF are legible and complete;

- (iv) Remove Copy 5 of the CCF and give it to the employee;
- (v) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag;
- (vi) Secure both pouches of the plastic bag;
- (vii) Advise the employee that he/she may leave the collection site.

- (B) To prepare the sealed plastic bag containing the specimens and CCF for shipment, the collector must follow the procedures noted in Part 40.73(8) and (9).
- (C) The collector or the collection site must ensure that each specimen is shipped to a laboratory as quickly as possible, but in any case within 24 hours or during the next business day.

d) DRUG TESTING LABORATORIES –SUBPART F

1) Laboratories That May Be Used For DOT Mandated Drug Testing Per Part 40.81

- (A) **Certified laboratories:** The City shall utilize only HHS certified laboratories that are certified under the National Laboratory Certification Program (NLCP) to perform DOT drug testing.
- (B) Currently, the City uses the following certified laboratories; however, other laboratories not listed may be used that are federally certified to analyze DOT required urine specimens. White Sands Drug & Alcohol Compliance or the employee may select either of the laboratory listed below or another federally certified laboratory.

MedTox Laboratory
402 W. County Rd. D
St. Paul, MN 55112

Laboratories must comply with the requirements of Part 40 as well as all applicable requirements of HHS in testing DOT specimens, whether or not the HHS requirements are explicitly stated in part 40.

- (C) If DOT determines that the laboratory is in noncompliance with Part 40, the laboratory could be subject to “Public Interest Exclusions” (PIE) proceedings that could prevent the laboratory from conducting DOT required drug test analysis.

2) Laboratory Specimen Processing Procedures per Part 40.83:

- (A) Laboratories must comply with applicable provisions of the HHS Guidelines concerning accessioning and processing urine drug specimens. Laboratories must inspect each specimen and the control and custody form (CCF) for the following “fatal flaws”:
 - (i) Determine if the specimen ID numbers on the specimen bottle and the CCF do not match.
 - (ii) The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be redesignated;
 - (iii) The collector’s printed name and signature are omitted from the CCF; and
 - (iv) There is an insufficient amount of urine in the primary bottle for analysis, unless the specimens can be redesignated.
- (B) If fatal flaws are found, the findings must be documented and the testing process must stop.

3) What drugs do laboratories test for and what are the cutoff and concentrations for initial and confirmation tests per Part 40.85 and Part 40.87:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA1	15 ng/mL.

Cocaine metabolites	150 ng/mL	Benzoylcegonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine ²	2000 ng/mL	Codeine	2000 ng/mL.
		Morphine	2000 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines ³			
AMP/MAMP ⁴	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine ⁵	250 ng/mL.
MDMA ⁶	500 ng/mL	MDMA	250 ng/mL.
		MDA ⁷	250 ng/mL.
		MDEA ⁸	250 ng/mL

*25 ng/ml if immunoassay specific for free morphine

4) Laboratory Specimen Validity Testing per Part 40.89

- (A) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine.
- (B) The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- (C) Laboratories are authorized to conduct validity testing.

5) Validity testing on primary specimens and laboratory criteria for dilute or substituted specimens per Part 40.91 and Part 40.93

Laboratories must conduct the following tests on the primary specimens:

- (A) Creatinine and specific gravity testing (if the Creatinine concentration is less than 20 mg/dl).
 - (i) The specimen is considered dilute if Creatinine concentration is less than 5 mg/dl but greater than 2 mg/dl and the specific gravity is less than 1.003;
 - (ii) The specimen is considered to be substituted if the Creatinine concentration is 2 mg/dl or less and the specific gravity is less than or equal to 1.001 or greater than or equal to 1.020.
- (B) PH testing.
- (C) Adulterant testing;
 - (i) The specimen is adulterated when a substance that is not expected to be present in human urine is identified in the specimen;
 - (ii) The specimen is adulterated when a substance that is expected to be present in human urine is identified at a concentration so high that it is not consistent with human urine; or
 - (iii) The specimen is adulterated when the physical characteristics of the specimen are outside the normal expected range for human urine.

6) Laboratory criteria to establish that a specimen is adulterated per Part 40.95

- (A) Laboratories must consider the primary specimen to be adulterated if:
 - (i) A substance that is not expected to be present in human urine is identified in the specimen;
 - (ii) A substance that is expected to be present in human urine is identified at a concentration so high that it is not consistent with human urine; or
 - (iii) The physical characteristics of the specimen are outside the normal expected range for human urine.
- (B) The laboratory must apply current HHS criteria requirements or specimen validity guidance.

7) Laboratory Result reporting procedures per Part 40.97

- (A) Laboratories must report the results for each primary specimen tested as one or more of the following:
 - (i) Negative;
 - (ii) Negative –dilute;
 - (iii) Rejected for testing, with remarks;
 - (iv) Positive, with drug(s) metabolite(s) noted;
 - (v) Positive, with drug(s) metabolites (s) noted-dilute;
 - (vi) Adulterated with remark(s);
 - (vii) Substituted with remark(s);
 - (viii) Invalid results, with remark(s).
- (B) Laboratories must report drug test results directly, and only, to the MRO at his/her place of business. Part 40 prohibits reporting results directly to employers.
- (C) In transmitting laboratory results to the MRO, laboratories must ensure that the information is adequately protected from unauthorized access or release both during transmission and in storage. If the results are provided by fax, the fax connection must have a fixed telephone number accessible only by authorized individuals.
- (D) Laboratories must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.

8) Specimen Storage Procedures per Part 40.99

Laboratories are required to maintain specimens as follows:

- (A) Samples that were reported as positive, adulterated, substituted, or invalid must be retained for a minimum of one year and in a secure, long-term frozen storage in accordance with HHS requirements and in accordance with DOT part 40.99.
 - (i) The MRO, employee, the City or a DOT agency may request in writing retention for an additional period of time.

9) Laboratory and MRO relationships per Part 40.101

- (A) A laboratory may not enter into any relationship with an MRO that creates a conflict of interest or the appearance of a conflict of interest with the MRO's responsibilities for the employer. A laboratory may not derive any financial benefit by having an employer use a specific MRO.

10) Blind sample submission requirements for employers and consortia or Third Party Administrators per Part 40.103 and Part 40.105

- (A) Employers, consortia, or Third Party Administrators (TPA) with 2,000 or more DOT-covered employees must submit blind specimens to laboratories used. If less than 2,000 DOT-covered employees, no blind specimens are required.
- (B) If blind specimens are required specific requirements per Part 40.103 must be met.

- (C) If the results of blind specimens are different from that expected for a blind specimen, employers, consortia/TPA must follow procedures outlined in Part 40.105.

11) Inspection of laboratories per Part 40.109

- (A) Laboratories must permit an inspection, with or without prior notice, by ODAPC, a DOT agency, or a DOT regulated employer that contracts with the laboratory for drug testing under the DOT drug testing program or the designee of such an employer.

12) Laboratory documentation and retention periods per Part 40.109

- (A) Laboratories must retain all records pertaining to each employee urine specimen for a minimum of two years.
- (B) Laboratories must keep employer-specific data required in Part 40.111.
- (C) Laboratories must extend the retention periods if so requested by the MRO, the employer, the employee, or a DOT agency requests so in writing.

13) Laboratory Statistical Reporting per Part 40.113

- (A) Laboratories must transmit an aggregate statistical summary, by employer, of the data pertinent to the employer drug testing on a semi-annual basis. The summary must not reveal the identity of the employee.

e) MEDICAL REVIEW OFFICERS (MRO) AND THE VERIFICATION PROCESS – SUBPART G

- 1) DOT Part 40.121 requires an MRO to be qualified to act as an MRO in the DOT drug-testing program. MRO's must meet the following criteria:

- (A) Credential requirements.
- (B) Basic knowledge requirements.
- (C) Qualification training requirements.
- (D) Continuing education / training requirements.
- (E) Documentation of qualification requirements.

2) CITY OF LAS VEGAS primary MRO is:

Dr. Philip A. Lopez, MD
MRO Express
3501 SW 185th Ave
Miramar, FL 33029

(954) 592-3680

The MRO, at times may require a back-up MRO as necessary. That back-up MRO will be identified by the primary MRO.

3) The roles and responsibilities of the MRO according to Part 40.123 is to:

- (A) Act as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process.
- (B) Provide a quality assurance review of the drug testing process for the specimens under the MRO's purview which includes:
 - (i) Ensuring the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be cancelled;
 - (ii) Providing feedback to employers, collection sites, and laboratories regarding performance issues where necessary; and
 - (iii) Reporting to and consulting with the ODAPC or a relevant DOT agency when the MRO needs assistance.

- (C) Determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted and invalid test results from the laboratory.
- (D) Provide medical review of employee's test results. This activity does not deem that the MRO has established a doctor-patient relationship with the employees whose tests are reviewed by the MRO.
- (E) Investigate and correct problems where possible and notify appropriate parties where assistance is needed.
- (F) Ensure timely flow of test results and other information to employers.
- (G) Protect the confidentiality of the drug testing information.
- (H) Perform all MRO functions in compliance with Part 40 and other DOT regulations.

4) MRO relationships with Laboratories per Part 40.125

- (A) An MRO may not enter into any relationship with an employer's laboratory that creates a conflict of interest or appearance of a conflict of interest with the MRO's responsibilities to that employer. The MRO may not derive any financial benefit by having an employer use a specific laboratory.

5) MRO functions in reviewing negative test results per Part 40.127 are as follows:

- (A) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that require the MRO to initiate corrective action or to cancel the test.
- (B) Review the negative laboratory test result and ensure that it is consistent with the information contained on the CCF.
- (C) Before reporting a negative test result, the MRO must have specific documents from the collector and the laboratory as specified in Part 40. If the forms the MRO possesses are not legible, the MRO must obtain a legible copy (ies).
- (D) Report the results in a confidential manner.

6) MRO functions in reviewing laboratory test results that are positive, adulterated, substituted, or invalid per Part 40.129.

As the MRO, you must do the following with respect to confirmed positive, adulterated, substituted, or invalid drug tests you receive from a laboratory, before you verify the result and release it to the DER:

- (A) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that require the MRO to cancel the test. MRO Staff cannot cancel or verify a test;
- (B) Review Copy 1 (Laboratory copy) of the CCF and ensure that it is consistent with the information contained on Copy 2, that the test result is legible and that the certifying scientist signed the form. If the forms the MRO possesses are not legible, the MRO must obtain a legible copy (ies);
- (C) If not otherwise prohibited in Part 40.133, the MRO conducts a verification interview that must include direct contact in person or by telephone between the MRO and the employee;
- (D) Verify the test result as either negative, positive, test cancelled, or refusal to test because of adulteration or substitution;
- (E) Before reporting a verified positive test result a negative test result, a cancelled test, or a refusal to test because of adulteration or substitution test result, the MRO must have specific documents from the collector and the laboratory as specified in Part 40. If the forms the MRO possesses are not legible, the MRO must obtain a legible copy (ies);
- (F) If a test result is cancelled or confirmed positive check the appropriate box, sign, and date the CCF;
- (G) The MRO must not report positive, adulterated, substituted or invalid test results until the entire verification process is complete unless the employer has a DOT approved Stand-down exemption and the test result meets the criteria defined by the exemption; and

(H) Report the result in a confidential manner.

7) MRO responsibilities when notifying an employee of a positive, adulterated, substituted; or invalid test result per Part 40.131

(A) The MRO must inform the employee of the verification process including:

- (i) Contact the employee directly, talk to the employee on a confidential basis, and determine if the employee wants to discuss the test result;
- (ii) Explain to the employee that if he/she declines to discuss the result, you will verify the result as a positive, or a refusal to test because of a substituted or adulterated test result;
- (iii) The MRO's office must follow specific requirements limiting what staff members can do in the verification process.

(B) The MRO must make reasonable efforts to reach the employee:

- (i) Make and document a minimum of 3 attempts spaced reasonably in 24 hours to the phone numbers listed on the custody and control collection form.
- (ii) If contact is not made, contact the Designated Employer Representative (DER) and instruct the DER to simply notify the employee to contact the MRO. No other information must be given to the DER. The MRO must document the date and time the DER was contacted. Under this requirement the DER must:
 - (a) Attempt to contact the employee immediately using procedures that protect, as much as possible, the confidentiality of the MRO's request. The DER also must make 3 attempts for 24 hours documenting the efforts. The final effort, a message can be left on voice mail, e-mail, or letter to contact the MRO.
 - (b) If contact is not made, document the efforts and notify the MRO. The employer must place the employee on temporary medically unqualified status or medical leave.
 - (c) If contact is made, the DER must notify the employee that he/she has 72 hours to contact the MRO and failing to do so will automatically be considered a positive or a refusal to test. Document date and time of direct contact with the employee and inform the MRO of the date and time of the successful employee contact.

8) The MRO may verify a test as positive or a refusal to test because of adulteration or substitution without an employee interview under the following situations per Part 40.133

(A) The employee expressly declines the opportunity to discuss the test with the MRO.

(B) The employee does not contact the MRO within 72 hours of the DER's successful and documented contact with the employee, instructing the employee to contact the MRO.

(C) The MRO can verify a test as a positive or refusal to test if after 10 days of receipt of confirmed the test result from the laboratory, neither the MRO nor the DER has been able to contact the employee after making and documenting all reasonable efforts.

- (i) The MRO, however, must allow the employee to present information within 60 days to the MRO that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO or DER in the times provided under Part 40. Under such cases, the MRO may reopen the verification of the test result.

9) What the MRO must tell the employee at the beginning of the test result verification interview per Part 40.135:

(A) That the laboratory has determined the test result to be positive, adulterated, substituted or invalid as applicable and the drug that is the basis of the positive or MRO interview;

(B) Explain the result verification interview process and that the MRO decision is based on the information the employee provides to the MRO during the interview;

- (C) Explain that if further medical evaluation is needed for the verification process, the employee must comply with the request and failure to do so is expressly declining to discuss the test result.
- (D) Before obtaining any medical information as part of the verification process, the MRO must warn the employee who has a confirmed positive, adulterated, substituted or invalid test that the MRO is required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee provides the MRO in the verification process without the employee's consent.
- (E) The MRO must advise the employee that, after informing any third party about legally valid prescription medication, the MRO will allow 5 days for the employee to have, the prescribing physician to contact the MRO to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety-risk.

10) MRO's must verify a confirmed positive sample for marijuana, cocaine, amphetamines or PCP based on the following per Part 40.137:

- (A) When the test result is positive for marijuana, cocaine, amphetamines or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in the employee's system;
- (B) The MRO must offer the employee an opportunity to present a legitimate medical explanation in all cases.
- (C) The employee has the burden of proof that a legitimate medical explanation exists. The employee must present information at the time of the verification interview.
- (D) The MRO may allow the employee to present information for up to 5 additional days at the MRO's discretion if the MRO determines that there is a reasonable basis to believe the employee is able to produce relevant evidence within that time.
- (E) In determining whether a legitimate medical explanation exists you may consider the employees use of a medication from a foreign country. You must exercise your professional judgment consistently with the following principles:
 - 1) There can be a legitimate medical explanation only with respect to a substance that is obtained legally in a foreign country.
 - 2) There can be a legitimate medical explanation only with respect to a substance that has a legitimate medical use.
 - 3) Use of the substance can form the basis of a legitimate medical explanation only if it is used consistently with its proper and intended use.
 - 4) Even if you find that there is a legitimate medical explanation under this paragraph and verify a test negative, you may have a responsibility to raise fitness-for-duty considerations with the employer (see 40.327).

11) MRO test result verification process for Opiates per Part 40.139

- (A) MRO's must follow the specific procedures listed in Part 40.139.

12) How do MRO's obtain information for the verification process per Part 40.141

- (A) The MRO must conduct a medical interview with the employee, and review the employee's medical history and any other relevant biomedical factors presented by the employee.
- (B) The MRO may direct the employee to undergo further medical evaluation by the MRO or another physician.
- (C) The MRO must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides when the employee asserts that the use of prescription medication results in the presence of a drug or drug metabolite in his or her results.

13) The MRO process for test verification of results involving adulteration or substitution per Part 40.145:

- (A) The MRO must process these types of reported lab results the same as a laboratory reported positive and in accordance with Part 40 procedures.
- (B) In the verification process, the MRO must explain the laboratory findings to the employee and address technical questions or issues the employee may raise. The MRO must offer the employee the opportunity to present a legitimate medical explanation for the laboratory findings with respect to presence of the adulterant in, or the Creatinine and the specific gravity findings for the specimen.
- (C) According to Part 40 the employee has the burden of proof that there is a legitimate medical explanation.
- (D) If the MRO does not determine that the employee's explanation presents a reasonable basis for concluding that there is a legitimate medical explanation the MRO must report the test as a refusal to test.
- (E) If the MRO determines that the employee's explanation may present a reasonable basis for a medical explanation for the adulterated or substituted result, the employee will be given 5 days to obtain an additional medical evaluation. This additional medical evaluation will be at the expense of the employee. The MRO or employer may assist the employee to locate an appropriate physician.

14) The MRO process to change Positive drug test results or a refusal to test per Part 40.149

- (A) An MRO can change a verified positive or refusal to test only under specific conditions defined under Part 40.149.

15) MRO prohibited actions during the verification process per Part 40.151

- (A) The MRO must not consider any test results not collected or tested in accordance with this part.
- (B) The MRO must not consider any evidence not included on the CCF when determining if a test result is valid.
- (C) The MRO should not determine if the employer should have or had authority to administer the test.
- (D) The MRO cannot consider explanations of confirmed positive, adulterated, or substituted test results that would not, even if true constitute a legitimate medical explanation such as someone putting amphetamines into a drink at a part.
- (E) The MRO must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule 1 of the Controlled Substances Act, e.g., medical marijuana.
- (F) The MRO must not accept an assertion of consumption or other use of hemp or other non-prescription marijuana-related product as a basis for verifying a marijuana test negative. Nor can you accept the consumption of coca teas as a basis for verifying a cocaine test result negative.
- (G) The MRO must not accept as a legitimate medical explanation for the presence of PCP or 6-AM in a specimen. There are no legitimate medical explanations for the presence of these substances.
- (H) The MRO must not accept as a legitimate medical explanation for an adulterated specimen, an assertion that soap, bleach, or gluteraldehyde entered a specimen through physiological means.
- (I) The MRO must not accept as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce urine with no detectable creatinine.

16) Split Testing of the split specimen per Part 40.153

- (A) The MRO must notify the employee of his or her right to have the split specimen tested.
- (B) The MRO must notify the employee of the procedures for requesting a test of the split specimen.
- (C) The MRO must inform the employee that he or she has 72 hours from the time of notification to request a test of the split specimen.

- (D) The MRO must notify the employee how to contact the MRO including phone or other methods to make the request.
- (E) The MRO informs the employee what the City policy requires for split specimen analysis.

(i) The City requires the employee to pre-pay for the analysis. If the employee cannot immediately pay for the test, CITY OF LAS VEGAS in order to not delay the drug testing process will pay for the test; however, the cost will be deducted from the employee's paycheck. The employee must sign the payroll authorization form provided by the MRO. If the employee refuses to sign the form, the employee has refused to test as defined in this policy.

17) MRO responsibilities for negative or positive test results that are also dilute per Part 40.155

- (A) When a laboratory reports a specimen is dilute the MRO must report to the DER that the specimen in addition to being negative or positive is also dilute.
- (B) The MRO must process the CCF per Part 40.155
- (C) The MRO must explain to the DER the employer's obligations and choices under Part 40.197.

18) MRO responsibilities for invalid test results per Part 40.159

- (A) Discuss the laboratory results with a certifying scientist to obtain more specific information.
- (B) The MRO will notify the employee that the results are invalid.
- (C) The MRO will inquire as to medications the employee may have taken that may interfere with some immunoassay tests.
- (D) If there is a valid explanation for the result the MRO will cancel the test with no further actions.
- (E) If there is not a valid explanation but the employee denies having adulterated the specimen, the MRO will contact the City and immediately require another collection under direct observation collection procedures.
- (F) If the employee admits to having adulterated or substituted the specimen, the MRO must document the employee's statement and report the test result as a refusal.

19) MRO responsibilities when drug test specimens are rejected for testing per Part 40.161

- (A) Report the rejected drug test specimen to the DER and process the CCF appropriately.
- (B) Notify the DER that unless a negative test result is required (pre-employment or return-to-duty or follow-up tests), no further action is required.
- (C) No actions on this subpart can occur unless legible copies of the CCF are present with the MRO.

20) MRO drug test result reporting responsibilities per Part 40.163, and .165

- (A) The MRO has to meet the reporting and record processing requirements per Part 40.163.
- (B) The MRO must transmit the results to the DER.
- (C) Reporting must be in a confidential manner.
- (D) The report to the DER or the third party administrator must not include the quantitative values for drug or validity test results. However, the MRO may provide such information to the SAP who consults for the City.

21) How the MRO Reports are Transmitted per Part 40.167

- (A) The MRO must transmit drug test results to the employer in the following ways:

- (i) In a confidential manner;
- (ii) Reporting must be made the same day the MRO verifies the result, or the following business day for all verified positives, results requiring an immediate collection under direct observation, adulteration or substituted specimen results, and other refusals to test; and
- (iii) The MRO must ensure the security of the transmission and limit access to any transmission, storage, or retrieval systems.

f) SPLIT SPECIMEN TESTS – SUBPART H

1) How employees request a test of a split specimen per Part 40.171

- (A) An employee when the MRO has notified them of a verified positive drug test or refusal to test because of adulteration or substitution will have 72 hours from the time of the MRO notification to request a test of the split specimen.
- (B) If an employee has missed the 72 hour time limit to request a test of the split, the employee may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO or other circumstances unavoidably prevented you from making a timely request.
- (C) The MRO must conclude from the employee's information that there was or was not a legitimate reason for the employee's failure to contact the MRO within 72 hours.
- (D) The MRO must immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory.
- (E) Only the MRO may submit a request to the laboratory to test a split sample.

2) Who is responsible for paying for the test of a split specimen according to Part 40.173?

- (A) The City is responsible for making sure the MRO and laboratories perform the actions and tests in a timely manner.
- (B) The City must not condition its compliance with these requirements on the employee's direct payment to the MRO or laboratory. The City must ensure that the test takes place in a timely manner, even though this means that the employer pays for the split specimen test.
- (C) As the employer, per Part 40.173(c), the City may seek payment or reimbursement of all or part of the cost of the split specimen from the employee. Part 40 takes no position on who ultimately pays the cost of the test, so long as the employer ensures that the testing is conducted as required and the results released appropriately.

3) Laboratory procedures for testing the split specimen per Part 40.175 and .177

- (A) Both laboratories must follow specific protocol to assure process, transfer, and analyze the split sample.
- (B) The second laboratory tests the split specimen for only the drug(s) or drug metabolite(s) detected in the primary specimen and the test is conducted without regard to the cutoff concentrations in Part 40.87.
- (C) If the second laboratory fails to reconfirm the presence of the drug or drug metabolite identified in the primary specimen, the second laboratory must conduct validity tests in an attempt to reconfirm the presence of the drugs identified in the primary specimen.
- (D) If the second laboratory fails to reconfirm the presence of the drug or drug metabolite identified in the primary specimen the second laboratory may send the specimen or an aliquot of it to another HHS-certified laboratory that will conduct another reconfirmation test.

4) Second laboratory procedures for adulterated or substituted split specimen testing per Part 40.179 and .181

- (A) The second laboratory must conduct testing of the split specimen just as the laboratory would do for any other split specimen. If the second laboratory identifies an adulterant or determines the specimen is substituted, the first laboratory test result is confirmed.

5) Information that laboratories report to the MRO regarding split specimen results per Part 40.183

- (A) Second laboratory results must be documented on the CCF as appropriate.
- (B) If the second laboratory does not reconfirm the primary laboratory finding, the second laboratory must document the reason why reconfirmation did not occur on the CCF.

6) How and to whom do laboratories report split specimen results per Part 40.185

- (A) The laboratory must send results only to the MRO and not to the DER.
- (B) The laboratory must transmit the results to the MRO immediately, preferably on the same day the result is signed.

7) What does the MRO do with the split specimen results per Part 40.187

- (A) Reconfirmed positive, adulterated, or substituted test results require the MRO to report the result to the DER and the employee.
- (B) Failed to reconfirm results require the MRO to notify both the DER and to notify the Office of Drug and Alcohol Policy Compliance (ODAPC)
- (C) Failed to reconfirm adulteration or substitution results require the MRO to notify the DER and the employee that the tests were cancelled. The MRO must notify the ODAPC.
- (D) Failed to reconfirm results because the specimen was not available for testing requires that the MRO notify the DER and employee that the tests were cancelled. Also the MRO must inform the employee must submit to a recollection under direct observation with no advance notice given to the employee until immediately before the collection.

g) PROBLEMS IN DRUG TESTS – SUBPART I

1) What are refusals and what are the consequences per Part 40.191

- (A) Employees have refused to take a drug test when they:
 - (i) Fail to appear within a reasonable time at the collection site;
 - (ii) Fail to remain at the testing site until the testing process is complete;
 - (iii) Fail to provide a urine specimen for any drug test required by this Part 40, any DOT agency;
 - (iv) Fail to permit the observation or monitoring of a collection as required by DOT.
 - (v) Fail to provide a sufficient amount of urine when directed and it has been determined, through a required medical evaluation that there was no adequate medical explanation for the failure;
 - (vi) Fail or decline to take a second test CITY OF LAS VEGAS or collector has directed the employee to take;
 - (vii) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process;
 - (viii) Fail to cooperate with any part of the testing process; or
 - (ix) Have been notified by the MRO that they have a verified adulterated or substituted rest result.
- (B) Employees who refuse to take a test incur the same consequences specified under DOT.
 - (i) Employees who have refused to take a non-DOT test have not refused to take a DOT required test. There are no DOT consequences for refusing a non-DOT test.
- (C) Collectors and the MRO must follow specific steps listed in Part 40.191(d).

2) Procedures when employees don't provide a sufficient amount of urine for a drug test per Part 40.193

- (A) Collectors must discard the insufficient specimen unless it is outside the temperature range or there is evidence of tampering or adulteration.
- (B) The employee is allowed to drink up to 40 ounces of fluid, distributed through a period of up to three hours. It is not a refusal if the employee refuses to drink fluids.
- (C) If the employee refuses to make the attempt to provide a new specimen within the three hour period, the collector marks the CCF as a refusal to test.
- (D) If the employee has not provided a sufficient specimen, within three hours of the first attempt, the collector must discontinue the collection and immediately notify the DER;
- (E) The DER must consult with the MRO then direct the employee to obtain within 5 working days an evaluation from a licensed physician acceptable to the MRO.
 - (i) The MRO must provide the evaluating physician with information regarding the DOT or policy consequences, the protocol the physician must follow, and the required written report the physician must provide determining if the employee had a medical reason for not being able to provide a sufficient amount of urine to permit a drug test.
 - (ii) If there is a medical reason that the MRO accepts, the MRO cancels the test.
 - (iii) If there is not a medical reason, the MRO checks the refusal box in the CCF.
- (F) The MRO processes the CCF according to specific instructions listed in Part 40.193.
- (G) Employer's such as the City when in receipt of a cancelled test (medical reason present) does not take any further action. The employee remains in the random testing pool.

3) Procedures when applicants can't provide a sufficient amount of urine for a pre-employment/RTD due to a permanent/long term medical condition per Part 40.195.

- (A) See DOT Part 40.195 for details and MRO actions required.

4) What procedures apply when an employer receives a report of a dilute specimen per Part 40.197

- (A) If the City receives a verified positive result that is also reported as dilute, the City will treat the result as any other positive.
- (B) If the MRO notifies the City of a negative drug test that is also dilute, the City, at its discretion may direct the employee to take another test.
- (C) The City may establish different procedures for different types of tests. *As such, the City when required to obtain a negative test result by DOT will require a recollection when the laboratory or MRO identifies the result as negative but dilute as allowed by Part 40.197 for:*
 - (i) Pre-employment tests.
 - (ii) Return-to-Duty tests.
 - (iii) Follow-up tests.

5) What problems always cause a drug test to be cancelled per Part 40.199

Tests are cancelled when:

- (A) The laboratory rejects the specimen for testing;
- (B) There is no printed collector's name nor the collector's signature;
- (C) The specimen ID numbers on the specimen bottles and the CCF do not match;

- (D) The specimen bottle seal is broken or shows evidence of tampering and a split specimen cannot be re-designated;
- (E) There is an insufficient amount of urine in the primary specimen bottle due to leakage or other causes and the split specimen cannot be re-designated.

6) Problems that always cause a drug test to be cancelled and may require another collection per Part 40.201

The MRO must cancel a drug test when a laboratory reports any of the following problems. The MRO must inform the DER that the test was cancelled and to require an additional collection occurs immediately using specific collection procedures noted in the following problems:

- (A) The laboratory reports an "invalid result." The MRO may require a recollection under direct observation procedures if specified by the MRO;
- (B) The laboratory reports the result as "Rejected for Testing." A recollection may be required if specified by the MRO;
- (C) The laboratory's primary specimen is positive and the split specimen is reported as "Failure to Reconfirm." No recollection is required in this case.
- (D) The laboratory's test result for the primary specimen is adulterated or substituted and the split specimen is reported as "Adulterant not found within criteria." No recollection is required in this case.
- (E) The laboratory's test of the primary specimen is positive, adulterated, or substituted and the split specimen is unavailable for testing. A recollection under direct observation is required in this case.
- (F) An examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of urine. No recollection is required in this case.

7) Flaws in drug testing that cause a test to be cancelled unless corrected per Part 40.203 and 205

- (A) The MRO and the laboratory work along with the collector to correct flaws in the paperwork such as signatures missing, boxes not checked on the CCF or the use of non-DOT form. "Correctable Flaws" not corrected cause the test to be cancelled per Part 40.203.
- (B) The collector must take specific steps per Part 40.205 to correct the flaws at the time of the collection or the same business day. If the flaw(s) are not corrected, the MRO must cancel the test.

8) Employer (CITY OF LAS VEGAS) responsibilities for cancelled drug tests per Part 40.207:

- (A) A cancelled drug test is neither positive nor negative.
- (B) The employer (the City) cannot attach to a cancelled test the consequences of a positive test or other violation of a DOT drug testing regulation.
- (C) Employers cannot use a cancelled test to authorize the employee to perform safety-sensitive functions such as pre-employment, return-to-duty, or follow-up tests.
- (D) Employers must not require a recollection because of a cancelled test unless a negative test result is required for pre-employment, return-to-duty, or follow-up tests.
- (E) Cancelled tests do not count towards the employer's requirement to meet certain random percent criteria.
- (F) Cancelled tests do not validate the need to administer a non-DOT drug test.

h) ALCOHOL TESTING PERSONNEL –SUBPART J

1) Who is authorized to conduct DOT alcohol tests per Part 40.211:

- (A) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of Subpart J are the only people authorized to conduct DOT alcohol tests.

2) Training requirements for STTs and BATs per Part 40.213

- (A) A BAT or STT shall be trained to proficiency in the operation of the Evidential Breath Testing device (EBT) he or she is using and the testing procedures of this policy. The BAT is required to be properly trained, as follows:

- (i) Basic Information: BAT's must be knowledgeable about the alcohol testing procedures in Part 40 and specific DOT agencies.

(B) Qualification Training:

- (i) BAT's must be trained in accordance with the DOT Model BAT course.
(ii) Qualification training must include training to proficiency in using the alcohol testing procedures of Part 40 and in the operation of the particular alcohol-testing device.
(iii) The training must emphasize the BAT's responsibility for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
(iv) The instructor must be an individual who has demonstrated necessary knowledge, skills, and ability by regularly conducting DOT alcohol tests as a BAT.

(C) Initial Proficiency Demonstration:

- (i) BAT's must demonstrate proficiency in alcohol testing under Part 40 by completing three consecutive error-free mock tests.
(ii) Another person must monitor and evaluate the BAT'S performance in person or by real-time observation and interaction between the instructor and the trainee. The monitor must attest in writing that the mock collections are error-free. The monitor must meet the requirements of paragraph (b) (4) of Part 40.213.
(iii) The mock tests must use the alcohol-testing device that the BAT will use as a BAT.

(D) Schedule for qualification training and initial proficiency demonstration.

- (i) If the BAT performed tests before August 1, 2001 the BAT has already met the qualification and initial proficiency training. The BAT does not have to meet the requirements again.
(ii) If the BAT started conducting tests after August 1st, 2001, the BAT must meet the qualification and initial proficiency training of Part 40.

(E) Error Correction Training

- (i) If the BAT makes a mistake that causes a test to be cancelled, the BAT must undergo error correction training.
(ii) The error correction training must occur within 30 days of the cancelled test.
(iii) The training must be provided by someone who meets the requirements of paragraph (b) (4) of Part 40.213.
(iv) Error correction training is to cover only the subject matter area(s) in which the error that caused the test to be cancelled.
(v) As part of the error correction training, the BAT must demonstrate proficiency in the alcohol testing procedures of Part 40 by completing these corrective error-free mock tests.

(F) Documentation.

- (i) Documents showing that the BAT meets all requirements of Part 40.213 must be kept and made available to DOT and the employers who use the BAT's service.

(G) Other persons who may serve as a BAT.

- (i) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as a BAT if a state or local government to use the testing device used for the test has certified the officer.

i) TESTING SITES, FORMS, EQUIPMENT AND SUPPLIES USED IN ALCOHOL TESTING -SUBPART K

1) LOCATIONS FOR BREATH ALCOHOL TESTING -40.221

- (A) The City shall conduct alcohol testing in a location that meets Part 40.221 and 40.223. These locations must:
- (i) Afford visual and aural privacy to the individual being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
 - (ii) Have all necessary equipment, personnel, materials, and facilities to provide for the collection and analysis of breath samples and a suitable clean surface for writing.
 - (iii) The City may use a mobile collection facility or medical facility that meets the requirements of Part 40.221.
 - (iv) In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet the requirements of part 40.221. In such a case, the City or the BAT shall provide visual and aural privacy to the employee to the greatest extent practicable.

2) SECURITY OF THE ALCOHOL TESTING LOCATION-40.223

- (A) No unauthorized persons shall be permitted access to the testing location when the EBT remains unsecured.
- (B) Authorized personnel include the employee tested, BAT's, other alcohol testing personnel, employee representatives authorized by the employer, DER's, and DOT agency representatives.
- (C) BAT's must assure that all persons are under the supervision of a BAT at all times when permitted into the site.
- (D) A BAT may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
- (E) As a BAT, to avoid distraction that could compromise security, you are limited to conducting an alcohol test for only one employee at a time.
- (F) When an EBT screening test indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, the BAT is not allowed to use the EBT for another employee before completing the confirmation test on the first employee.
- (G) As a BAT you must complete the screening test and confirmation test (if appropriate) on one employee before starting the screening test on another employee.
- (H) As a BAT, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process.
- (I) BAT's must assure that when the EBT is not being used for testing, that it is stored in a secure place.
- (J) Assure that no one other than BAT's or other employees of the site have access to the site when an EBT is unsecured.
- (K) The BAT is not allowed to leave the alcohol-testing site while the testing process for a given employee is in progress, except to notify a supervisor or DER for assistance in the case an employee or other person obstructs, interferes with, or unnecessarily delays the testing process.

3) THE BREATH ALCOHOL TESTING FORM - 40.225 and 40.227

- (A) The City shall use two separate breath alcohol testing forms, one covering employees in DOT functions and one covering employees in non-DOT functions. The City may not modify or revise the DOT forms, except that a form directly generated by an EBT may omit the space for affixing a separate printed result to the form.
- (B) The BAT shall process the forms per DOT part 40.225 and 40.

- (C) The form shall provide triplicate (or three consecutive identical) copies and, except for a form generated by an EBT, the form shall be 8 ½ by 11 inches in size. The 3 copies shall be maintained as follows:
- (i) Copy 1 (white) shall be transmitted to the City of Las Vegas
 - (ii) Copy 2 (green) shall be provided to the employee.
 - (iii) Copy 3 (blue) shall be retained by the BAT.

4) DEVICES TO BE USED FOR BREATH TESTING - 40.229 – 231

The City will utilize only EBT's and calibration devices listed on the NHTSA conforming products list for any alcohol test.

(A) Screening test requirements per Part 40.229:

- (i) For screening tests, the City shall use only EBTs.

(B) Confirmation test requirements per Part 40.231.

(C) For confirmation tests, the City shall use EBTs that meet the following requirements:

- (i) EBTs shall have the capability of providing, independently or by direct link to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test.
- (ii) EBTs shall be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the employee before each test and which is printed out on each copy of the result.
- (iii) EBTs shall be capable of printing out, on each copy of the result, the manufacturer's name for the device, the device's serial number, and the time of the test.
- (iv) EBTs shall be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level.
- (v) EBTs shall be capable of the following operations:
 - (a) Testing an air blank prior to each collection of breath; and
 - (b) Performing an external calibration check.

5) EBT MAINTENANCE, USE AND CARE PER 40.233

Breath Alcohol Technicians must use EBT's properly and maintain and calibrate them in accordance to the manufacturer's quality assurance plan (QAP) and per DOT part 40.231. Specifically BAT's must:

- (A) Follow manufacturer instructions for proper maintenance, use and care.
- (B) Use only NHTSA approved calibration devices.
- (C) Conduct external calibration checks of the EBT per the manufacturer's QAP.
- (D) An EBT that fails external calibration checks must be taken out of service until it is repaired and passes an external calibration check.
- (E) Assure that inspection, maintenance and calibrations are performed by the manufacturer of the EBT or a maintenance representative certified by the State or health agency or its manufacturer.
- (F) Records of inspections, maintenance and calibration must be maintained for 2-years.

6) FIRST STEPS IN ALCOHOL SCREENING TESTS - 470.241

BAT'S must perform the following steps when an employee presents for a DOT alcohol test:

- (A) When a specific time for an employee's test has been scheduled or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive.

If the employee's arrival is delayed beyond that time, the BAT must notify the DER that the employee has not reported for testing.

- (B) When a test subject arrives at the testing site, begin the testing process without delay.
- (C) If a DOT drug test is also to be administered, the BAT must, to the greatest extent possible, ensure that the alcohol test is completed before the urine collection process begins.
- (D) Require the employee to provide positive identification that includes a photo ID or positive identification by the employee's supervisor.
- (E) The BAT must show the employee their identification if so requested by the employee.
- (F) The BAT should explain the testing procedure to the employee.
- (G) The BAT shall complete Step 1 on the Breath Alcohol Testing Form.
- (H) The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

7) SCREENING TEST PROCEDURES - 40.243

The BAT must take the following steps when conducting an alcohol screening test using an EBT:

- (A) Select or allow the employee to select an individual mouthpiece. The individually sealed mouthpiece shall be opened in view of the employee and BAT and be attached to the EBT in accordance with the manufacturer's instructions;
- (B) The BAT shall instruct the employee to blow steadily and forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained;
- (C) The BAT must show the employee the displayed test result; and
- (D) If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-proof evident tape.)

8) STEPS TAKEN IMMEDIATELY AFTER THE ALCOHOL SCREENING TEST - 40.247

- (A) If the result of the breath alcohol-screening test is a breath alcohol concentration of less than 0.02, the BAT shall date the form and sign the certification in Step 3 of the form.
 - (i) No further testing is authorized. The BAT shall transmit the result of less than 0.02 to the City in a confidential manner per Part 40.255.
 - (ii) If the employee does not sign the certification in Step 4 of the form for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign in the "Remarks" section of the form.
- (B) If a test result printed by the EBT does not match the displayed result, or if a sequential test number printed by the EBT does not match the sequential test number displayed by the EBT prior to the screening test, the BAT shall note the disparity in the "Remarks" section. Both the employee and the BAT shall initial and sign the notation. The test is cancelled and the employee shall be so advised.
- (C) If the result of the screening test is an alcohol concentration of 0.02 or greater, the BAT will direct the employee to take a confirmation test.
- (D) If you are the BAT who will conduct the confirmation test, you must then conduct the test using the procedures listed below in the Procedures for Conducting an alcohol confirmation test beginning at Part 40.251
- (E) If a different BAT will conduct the confirmation test, the BAT who conducts the screening test shall complete and sign the form. The BAT will provide the employee with Copy 2 of the form.

- (F) If the confirmation test is conducted at a different site from the screening test, the BAT shall ensure that:
- (i) The employee is advised against eating, drinking, putting any object or substance into his or her mouth and, to the extent possible, not belching during the waiting period before the confirmation test;
 - (ii) Explain to the employee that the confirmation step will be conducted even if the employee has disregarded the instruction given as noted directly above.
 - (iii) Explain to the employee the reason for the waiting period and that it is for the employee's benefit by preventing any accumulation of mouth alcohol leading to an artificially high reading.
 - (iv) The employee is under observation of a BAT or other City personnel while in transit from the screening test site to the confirmation test site.

9) ALCOHOL CONFIRMATION TESTS -FIRST STEPS FOR CONDUCTING -40.251 and .253

- (A) If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT must require positive identification of the employee, explain the confirmation procedures, use a new alcohol test form, and note on the "Remarks" line that a different BAT conducted the screening test.
- (B) The BAT for an alcohol confirmation test must follow these steps to begin the confirmation test process:
- (i) Carry out a waiting period before the confirmation test by:
 - (a) Ensuring that the waiting period lasts at least 15 minutes starting with the completion of the screening test. Beginning the confirmation test as soon as possible after the waiting period has elapsed, but not more than 30 minutes after the completion of the screening test.
 - (b) If the confirmation test is taken at a different site from the screening test, the travel time counts toward the waiting period if the initial BAT provided the waiting period instructions.
 - (c) If the BAT cannot verify, through review of the alcohol test form that waiting period instructions were provided, then the BAT must carry out the waiting period requirement.
 - (ii) Concerning the waiting period, the BAT must tell the employee:
 - (a) Not to eat, drink, put anything into his or her mouth, or belch;
 - (b) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
 - (c) That following the BAT's instructions about the waiting period is to the employee's benefit; and
 - (d) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.
- (C) If the BAT becomes aware that the employee has not complied with the instructions, the BAT shall so note in the "Remarks" section of the form.
- (D) The BAT shall complete Step 1 on the form and direct the employee to complete Step 2 on the form and sign the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note the refusal in the "Remarks" section of the form and immediately inform the City of Las Vegas' DER.
- (E) Even if more than 30 minutes have passed since the screening test result was obtained, the BAT must begin the confirmation test procedures in paragraph 40.253, and not another screening test. The BAT must note on the "Remarks" line the time elapsed between the two events and if the confirmation test could not begin within 30 minutes of the screening test and the reason why.
- (F) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests.
- (G) The BAT conducting the alcohol confirmation test must follow these steps in order to complete the confirmation test process:
- (i) Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the second reading is greater than 0.00, testing shall not proceed using that instrument, which shall be taken out of service. However, testing may proceed on using another instrument. Any EBT

taken out of service because of failure to perform an air blank accurately shall not be used for testing until the EBT is found to be within tolerance limits on an external check of calibration.

- (ii) A new mouthpiece shall be used for the confirmation test. The mouthpiece shall be opened in view of the employee and inserted into the device in accordance with the manufacturer instructions.
- (iii) The BAT shall ensure that he/she and the employee read the sequential test number displayed by the EBT.
- (iv) The BAT shall instruct the employee to blow steadily and forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.
- (v) The BAT must show the employee the displayed test result.
- (vi) If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-proof evident tape). The BAT must show the employee the result and unique test number that the EBT prints out.

10) STEPS TAKEN AFTER THE ALCOHOL CONFIRMATION TEST -40.255

- (A) The BAT must assure that these steps are performed immediately following an alcohol confirmation test:
 - (i) Following the completion of the test, the BAT shall date the form and sign the certification in Step 3;
 - (ii) If the alcohol concentration is less than 0.02, no further action is required of the employee;
 - (iii) If the alcohol concentration is 0.02 or higher, the BAT must direct the employee to sign the certification and fill in the date in Step 4 of the form;
 - (iv) If the employee does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign in the "Remarks" section;
 - (v) If the test is invalid, the BAT must inform the employee of such and note the problem on the "Remarks" line. If practicable conduct a re-test; and
 - (vi) Upon completion of the confirmation process immediately and confidentially notify the DER directly (and not the TPA) of any result of 0.02 or greater.

11) REFUSAL TO TAKE AN ALCOHOL TEST – BAT PROCEDURES - 40.261

- (A) Refusals to take an alcohol test are defined by this policy and DOT Part 40.261.
- (B) The BAT in the "Remarks" section of the form shall note a refusal by an employee. The testing process shall be terminated and the BAT shall immediately notify the City.
- (C) If the BAT is confronted with a "shy lung" situation, the BAT must terminate the testing process, document the refusal on the form or a separately attached form, and then immediately notify the DER.

12) INABILITY TO PROVIDE AN ADEQUATE AMOUNT OF BREATH - 40.265

- (A) This provision sets forth procedures to be followed in any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test:
 - (i) The BAT shall instruct the employee again to attempt to provide an adequate amount of breath and about the proper way to do so.
 - (ii) If the employee refuses to make the attempt, discontinue the test, note the fact on the "Remarks" line and immediately inform the City of the refusal. This is a refusal to test.
 - (iii) If the employee again attempts and fails to provide an adequate amount of breath, the BAT may provide another opportunity to provide an adequate breath sample of the BAT believes there is a strong likelihood that it could result in providing a sufficient amount of breath.
 - (iv) If the BAT is using an EBT that can be operated manually, the BAT may conduct the test in manual mode.
 - (v) If the employee refuses or cannot make the attempt after step c. or d. above, note the fact on the "Remarks" line and immediately inform the City of the refusal.
 - (vi) If the City is notified by the BAT that the employee refused to test due to inability to provide an adequate amount of breath, the City shall proceed as follows:
 - (a) The City shall direct the employee to obtain within five (5) working days after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the City and who has expertise in the medical issues raised by the employee's failure to provide an adequate amount of breath;

- (b) The City must provide the physician conducting the evaluation with the following information and instructions:
1. That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;
 2. The consequences of the DOT agency regulation for refusing to take the required alcohol test;
 3. That the physician must provide the DER with a signed statement of his/her conclusions,
 4. That the physician, in his/her reasonable medical judgment, must base those conclusions on one of the following determinations:
 - a. A medical condition has or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not provide detailed information on the employee's medical condition. In such a determination, the City will cancel the alcohol test that triggered the medical evaluation;
 - b. That there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have precluded the employee from producing a sufficient amount of breath. In such a determination, the City will assign the alcohol test that triggered the medical evaluation as a refusal to test;
 - c. The physician must consider certain medical conditions per DOT Part 40.265(1) (iv) (C).
 - d. The licensed physician shall provide a written statement of the basis for his or her conclusions and the basis for them to the City.
 5. Upon receipt of the physician's report, the City must immediately inform the employee and take action based on the applicable DOT agency regulations of the City's Policy.

13) SITUATIONS WHEN ALCOHOL TESTS ARE CANCELLED - 40.267

- (A) If any of the following situations occur, the applicable alcohol test(s) will be cancelled.
- (i) If the sequential test number of alcohol concentration displayed on the EBT is different than the one printed on the result during a screening and confirmation tests using an EBT.
 - (ii) During confirmation tests, tests are canceled when:
 - (a) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period;
 - (b) The BAT does not conduct an air blank before the confirmation test;
 - (c) There is not a 0.00 result on the air blank conducted before the confirmation test;
 - (d) The EBT does not print the result; or
 - (e) If the EBT during the next external calibration check, produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled.

14) SITUATIONS WHERE PROBLEMS CAUSE ALCOHOL TESTS TO BE CANCELLED UNLESS CORRECTED - 40.269

- (A) The following situations if not corrected cause an alcohol test to be cancelled:
- (i) The BAT does not sign the alcohol test form;
 - (ii) The BAT fails to note on the "Remarks" line of the alcohol test form that the employee has not signed the form after the result is obtained; or
 - (iii) The BAT uses a non-DOT form for the DOT required test.

(B) 40.271 How are alcohol testing problems corrected?

- a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.
 - i) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (see §40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.
 - ii) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It

- is permissible to use additional technical capabilities of the EBT (e.g., manual operation) if you have been trained to do so in accordance with §40.213(c).
- iii) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process.
 - iv) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.
 - v) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a "correctable flaw" (see §40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.
 - vi) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the "Remarks" line of the ATF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.
 - vii) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(C) If you cannot correct the problem, you must cancel the test.

1) WHAT ARE THE CONSEQUENCES OF CANCELLED ALCOHOL TESTS?

- (A) Per Part 40.273, cancelled tests are neither a positive nor negative. Regarding cancelled tests, employers:
- (i) Must not attach the consequences of a test result that is 0.001 or greater such as removal from safety sensitive functions;
 - (ii) The City must not require a Return-to-Duty alcohol test with a result less than 0.02 or follow-up tests to authorize the employee to perform safety-sensitive functions;
 - (iii) The City must not direct a recollection for an employee because of a cancelled test;
 - (iv) Cancelled tests do not count toward compliance with DOT requirements, such as random testing rate;
 - (v) When a test must be cancelled, if you are a BAT who determines that the cancellation is necessary, you must inform the affected DER within 48 hours of the cancellation; and
 - (vi) A cancelled DOT test does not provide a valid basis for the City to conduct a non-DOT test under the City's authority.

(VI) REQUIREMENTS OF OTHER SERVICE AGENTS

b) SUBSTANCE ABUSE PROFESSIONAL REQUIREMENTS - 40.281 – 313 –SUBPART O

1) Who is qualified to be a Substance Abuse Professional (SAP) -40.281-283:

- (A) A SAP must meet the requirements of 40.281. A summary of the requirements follows. The SAP must be a licensed physician (M.D. or Osteopathic) a licensed or certified social worker, a licensed or certified psychologist, a licensed social worker, a licensed or certified employee assistance professional, or a drug and alcohol counselor certified by the NAADAC or the ICRC.
- (B) SAP Basic knowledge:
- (i) Qualification training including satisfactorily completing an examination;
 - (ii) Continuing education; and
 - (iii) Documentation must be kept regarding the credentials.

2) When is a SAP evaluation required -40.285:

- (A) SAP evaluations are required when an employee has violated DOT drug and alcohol regulations. DOT regulated employees cannot again perform any DOT safety-sensitive duties until and unless they complete the SAP evaluation, referral and education/treatment process as required by DOT. DOT drug and alcohol violations are:
 - (i) Verified positive drug test results, a DOT alcohol test with a result of 0.04 or greater, a refusal to test including adulterating or substituting a urine specimen, or any other violation of the prohibition on the use of alcohol or drugs under DOT regulations.

3) What information the City must provide to employees regarding SAP services? 40.287:

- (A) The City must provide to each employee including applicants to DOT positions who violates a DOT drug and alcohol regulation a listing of SAP'S readily available to the employee. The list must include names, addresses, and telephone numbers. Employees cannot be charged for the list.

4) Must employers provide for SAP services? 40.289

- (A) Employers are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
- (B) If employers offer an employee an opportunity to return to a DOT safety-sensitive duty following a violation, the employer must ensure that the employee receives an evaluation by a SAP meeting DOT Part 40.281 and that the employee successfully complies with the SAP's evaluation and recommendations.
- (C) Payment for SAP evaluations and services is left for employers and employees to decide.

5) SAP's role in the evaluation, referral, and treatment process for those who violate DOT drug/alcohol testing regulations- 40.291

- (A) SAP's are charged with conducting the following activities:
 - (i) Making a face-to -face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;
 - (ii) Referring the employee to an appropriate education and /or treatment program;
 - (iii) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance the initial assessment and evaluation recommendations;
 - (iv) Providing the City with a follow-up drug and/or alcohol testing plan for the employee; and
 - (v) Providing the employee and the City with recommendations for continuing education and/or treatment.
- (B) SAP'S are not an advocate for the employer or employee. The SAP's primary function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

6) SAP's function in conducting the initial evaluation of an employee - 40.293

- (A) SAP 'S who are sent employees who violate DOT drug and alcohol regulations must accomplish the following:
 - (i) Provide a comprehensive face-to-face assessment and clinical evaluation;
 - (ii) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty;
 - (a) Such a recommendation must be made for every individual who has violated a DOT drug and alcohol regulation.
 - (b) Make such a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.

- (c) Appropriate education may include, but is not limited to, self-help groups and community lectures, where attendance can be independently verified and bona fide drug and alcohol education courses.
- (d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, outpatient counseling programs, and aftercare.
- (e) The SAP must provide a written report directly to the employer highlighting the employee's specific recommendations for assistance.
- (f) The SAP must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. In determining what the recommendation will be, the SAP must not take into consideration in any way any of the following:
 - 1. A claim by the employee that the test was unjustified or inaccurate;
 - 2. Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation such as implying the use of hemp oil, medical marijuana use, poppy seed ingestion, job stress, etc; or
 - 3. Personal opinions the SAP may have about the justification or rationale for drug and alcohol testing.
- (g) The SAP may consult with the MRO and obtain the necessary information without the need to obtain the consent of the employee to have the information released to the SAP.

7) Prohibition against seeking second opinions of SAP recommendations - 40.295

- (A) An employee who has violated a DOT drug or alcohol regulation and who has been evaluated by a SAP cannot seek a second SAP, evaluation in order to obtain another recommendation.
- (B) An employer must not seek a second SAP's evaluation if a qualified SAP has already evaluated the employee. If an employee has obtained a second SAP evaluation contrary to the subparagraph above, the employer cannot rely on the second evaluation for any purpose under this part.

8) Situations where the SAP's initial evaluation may be changed and by whom - 40.297

- (A) The SAP who made the initial evaluation is the only person that may modify the initial evaluation and recommendations based on new or additional information.

9) SAP's role and limits in referring employees for education and treatment. -40.299

- (A) The SAP is a referral source assisting the employee into an education/ and/or treatment program.
- (B) The SAP must not refer an employee to a service that pays the SAP or in which the SAP has a financial interest.
- (C) The SAP can refer an employee for assistance to resources such as a public agency, to the City (if qualified) or a person under contract to the City, to sole sources of therapeutically appropriate treatment under the employee's health insurance, or reasonably available to the employee, or otherwise detailed in DOT Part 40.299.

10) SAP's function in follow-up evaluation of an employee - 40.301

- (A) The SAP must re-evaluate the employee to determine if the employee has successfully carried out the education and/or treatment recommendations.
- (B) The SAP evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.
- (C) In the follow-up evaluation, the SAP must:
 - (i) Confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and
 - (ii) Conduct a face-to face clinical interview with the employee to determine if the employee demonstrates successful compliance with the SAP's initial evaluation recommendations.

- (a) If successful compliance is demonstrated, the SAP must provide a written report directly to the City highlighting the clinical determination that the employee has complied with the initial evaluation recommendation.
- (b) The SAP may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education/treatment or needs additional assistance.
- (c) If the SAP believes that the employee has not demonstrated compliance with the SAP recommendations, the SAP must provide written notice directly to the City must not return the employee to the performance of safety-sensitive or covered function duties.
- (d) The SAP may conduct an additional follow-up evaluation(s) if the employer determines that doing so is consistent with the employee's progress as the SAP has reported it and with the employer's policy.
- (e) The City may take personnel action consistent with its policy against employees who do not comply with SAP recommendations.

11) What occurs if the SAP believes the employee needs additional treatment after the employee returns to safety sensitive functions? 40.303

- (A) If the SAP believes that ongoing services (in addition to follow-up tests) are needed to maintain sobriety or abstinence from drug use and after the employee resumes safety-sensitive duties, the SAP must provide recommendations for these services in the follow-up evaluation report.
- (B) The employer when having received such a report may require the employee to participate in the recommended services.
- (C) Per Part 40.303 (c) the employee is obligated to comply with the SAP's recommendations for these services. If the employee fails or refuses to do so, the employee may be subject to disciplinary action by the employer.

12) How the return-to-duty process concludes -40.305

- (A) If the employer decides to allow the employee to return safety-sensitive duties, the employer must ensure that the employee takes a return-to-duty test.
- (B) The return-to-duty test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment.
- (C) The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming safety sensitive duties.
- (D) Employers must not return an employee to safety-sensitive duties until the employee meets the conditions as required by paragraph (A) of this section; however, employers are not required to return an employee to safety-sensitive duties because the employee has met these conditions. It is a personnel decision that the employer has the discretion to make, subject to collective bargaining agreements or other legal requirements.
- (E) The SAP or MRO must not make a "fitness for duty" determination as part of this re-evaluation unless required by an applicable DOT agency regulation. It is the employer rather than the SAP or MRO, who must decide whether to put an employee back to work in a safety-sensitive position.

13) SAP functions in prescribing follow-up tests - 40.307

- (A) The SAP must establish a written follow-up testing plan for each employee who has committed a DOT drug or alcohol regulation violation and who seeks to resume the performance of safety sensitive functions. The plan should not be established until after the SAP determines that the employee has successfully complied with the SAP's recommendations for education and/or treatment. A copy of this plan must be presented to the employer.

- (B) The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation.
- (C) The SAP must, at a minimum, direct that the employee be subject to six (6) unannounced follow-up tests in the first 12 months of safety-sensitive duties. The SAP may require a greater number of tests during the first 12 months or require follow-up tests for an additional 48 months beyond the initial 12-month period.
- (D) The SAP is not to establish the actual dates for the follow-up tests. The decision on specific dates to test is the employer's responsibility.
- (E) The employer cannot impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.
- (F) The SAP's follow-up testing plan follows the employee to subsequent employers or through breaks in service.
- (G) The SAP may modify the follow-up test plan just as long as the minimum 6 tests in the first 12 months remain intact. Initially recommended testing that is in addition to the minimum number of tests can be terminated at the discretion of the SAP.

14) Employer responsibilities regarding the SAP's directions for follow-up tests. 40.309

- (A) The employer is required to carry out the SAP's follow-up testing requirements.
- (B) The employer may not allow the employee to continue to perform safety sensitive functions unless the follow-up testing is conducted as directed by the SAP.
- (C) The employer should schedule follow-up tests on unannounced test dates at the employer's discretion. The employer must ensure that there is no discernable pattern as to the timing of the scheduled follow-up test dates and that no advance warning is given.
- (D) The employer cannot substitute other tests (e.g., random, post-accident, etc) conducted on the employee for a follow-up test.
- (E) The employer cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

15) SAP report requirements - 40.311

- (A) The SAP conducting required evaluations must send written reports required by this section in writing directly to the DER and not to a third party administrator (TPA) for forwarding to the DER. The SAP may, however, send a copy of the report simultaneously to the DER and to the TPA.
- (B) The SAP's initial evaluation report must be on the SAP's letterhead and must be signed and dated by the SAP. Additionally, the following information is required in initial reports by DOT Part 40.311(c):
 - (i) Employee's name and social security number;
 - (ii) Employer's name and address;
 - (iii) Reason for the assessment (specific violation of DOT regulations and violation date);
 - (iv) Date(s) of the assessment;
 - (v) SAP's education and/or treatment recommendation; and
 - (vi) SAP's telephone number.
- (C) The SAP's written report concerning a follow-up evaluation determining the employee has demonstrated successful compliance must be on the SAP's own letterhead (not the letterhead of another service agent) signed by the SAP and dated. Additionally, the following is required on follow-up reports by DOT Part 40.311(d):
 - (i) Employee's name and social security number;
 - (ii) Employer's name and address;
 - (iii) Reason for the initial assessment (specific violation of DOT regulations and violation date);

- (iv) Date(s) of the initial assessment and synopsis of the treatment plan;
 - (v) Name of the practice or service providing the recommended education and/or treatment;
 - (vi) Inclusive dates of employee's program participation;
 - (vii) Clinical characterization of employee's program participation;
 - (viii) The SAP's clinical determination as to whether the employee has demonstrated successful compliance;
 - (ix) Follow-up testing plan;
 - (x) Employee's continuing care needs with specific treatment, aftercare and/or support group services recommendations; and
 - (xi) The SAP's telephone number.
- (D) If an employee has not demonstrated successful compliance to the SAP'S treatment plan, the SAP'S written follow-up evaluation report must be on the SAP's own letterhead (and not the letterhead of another service agent) signed by the SAP and dated. Additionally, the following is required on non-compliance follow-up evaluation reports by DOT Part 40.311(e):
- (i) Employee's name and social security number;
 - (ii) Employer's name and address;
 - (iii) Reason for the assessment (specific violation of DOT regulations and violation date);
 - (iv) Date(s) of the initial assessment and synopsis of the treatment plan;
 - (v) Name of the practice or service providing the recommended education and/or treatment;
 - (vi) Inclusive dates of employee's program participation;
 - (vii) Clinical characterization of employee's program participation;
 - (viii) Date(s) of the first follow-up evaluation;
 - (ix) Date(s) of any further follow-up evaluation the SAP has scheduled;
 - (x) SAP's clinical reasons for determining the employee has not demonstrated successful compliance, and
 - (xi) The SAP's telephone number.
- (E) The SAP must also provide these written reports directly to the employee if the employee has no current employer and the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.
- (F) The SAP must maintain copies of its reports for five (5) years and its employee clinical records in accordance with Federal, State, and local laws regarding record maintenance, confidentiality, and release of information.
- (G) These records must be made available upon request to DOT agency representatives and the NTSB in an accident investigation.
- (H) The employer must maintain the SAP reports for five (5) years from the date received.

16) CONFIDENTIALITY AND RELEASE OF INFORMATION - 40.321, 40.323

- (A) The general confidentiality rule for drug and alcohol test information:
- (i) The service agent or employer participating in DOT drug or alcohol testing process are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.
 - (ii) "Blanket releases" in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties are prohibited under Part 40.
- (B) The release of drug or alcohol test information in connection with legal proceedings under 40.323:
- (i) An employer may release information regarding an employee's drug and alcohol test without the employee's consent in certain legal proceedings:
 - (a) Lawsuits, grievances, or administrative proceedings brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test, including adulteration or substituted test results;
 - (b) Criminal or civil actions resulting from an employee's performance of safety-sensitive duties in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant and issues an order directing the employer to produce the information;

- (c) In such a proceeding information may be released to the decision maker in the proceeding (e.g., the court in a lawsuit), but only with a binding stipulation that the decision maker to whom it is released will make it available only to parties to the procedure;
 - (d) Service agents must provide the requested information to the employer who will use the information in alcohol legal proceeding;
 - (e) The employer or service agent must immediately notify the employee in writing of any information the City released under this section.
- (C) The release of medical information gathered during the verification process by the MRO –40.327
- (i) The MRO must report drug test results and medical information learned as part of the verification process to third parties without the employee’s consent if you determine, in your reasonable medical judgment, that:
 1. The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
 2. The information indicates that continued safety-sensitive performance by the employee is likely to pose a significant safety risk.
 - (ii) The MRO may provide information to the employer, a physician, or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return-to-duty process, a DOT agency, or the NTSB in the course of an accident investigation.
- (D) Laboratory, MRO, or other service agent information release to employees- 40.329
- (i) MRO’s, service agents, laboratories and SAP’s must provide any pertinent information you possess regarding the specific employee within 10 business days of receiving a written request from an employee. You may charge no more than the cost of preparation and reproduction for copies of these records.
- (E) Employers and their service agents must release information to additional parties as detailed in 40.331.
- (i) An employer or service agent must release information under the following circumstances:
 - (a) If you receive a specific, written consent form from an employee authorizing the release of information about the employee’s drug and alcohol tests to an identified person. You must provide the information to the identified person.
 - (b) Employers must provide to DOT when requested:
 1. Access to your facilities used for Part 40 and DOT agency drug and alcohol program functions
 2. All written, printed, and computer-based drug and alcohol program records and reports.
 - (ii) A service agent must release information under the following circumstances:
 - (a) If you receive a specific, written consent form from an employee authorizing the release of information about the employee’s drug and alcohol tests to an identified person. You must provide the information to the identified person.
 - (b) Employers must provide to DOT when requested:
 1. Access to your facilities used for Part 40 and DOT agency drug and alcohol program functions.
 2. All written, printed, and computer-based drug and alcohol program records and reports.
 - (iii) If requested by NTSB as part of an accident investigation, you must provide information concerning post-accident tests administered after the accident.
 - (iv) If requested by a Federal, State, or local safety agency with regulatory authority the City or the employee, the City must provide drug and alcohol test records regarding the employee.
- (F) What records employers must keep for the specified durations: 40.333
- (i) The following must be kept for five (5) years:

- (a) Records of employee alcohol test results indicating an alcohol concentration of 0.001 or greater.
 - (b) Records of employee verified positive drug test results;
 - (c) Documentation of refusals to take required alcohol and or drug tests (including substituted or adulterated drug test results);
 - (d) SAP reports; and
 - (e) All follow-up tests and schedules for follow-up tests.
- (ii) Records of information obtained from previous employers pursuant to 40.25 concerning drug and alcohol test results of employees must be kept for three (3) years.
 - (iii) Records of EBT inspection, maintenance, and calibration must be kept for two years.
 - (iv) Records of negative test result or cancelled drug test results and alcohol test results with a concentration of less than 0.02 must be kept for one (1) year.
 - (v) All drug and alcohol related records kept per DOT Part 40 or other DOT regulatory agencies must be in locations with controlled access.
 - (vi) Service agents may maintain these records for the employer; however, the employer must have all these records available at the employer's site within 2 working days.

k) ROLES AND RESPONSIBILITIES OF SERVICE AGENTS

1) Service agents must comply with DOT drug and alcohol testing requirements - 40.341

- (A) As a service agent, the services you provide to transportation employers must meet the requirements of Part 40 and the DOT agency drug and alcohol testing regulations. If you do not comply, you may be subject to the DOT Public Interest Exclusions found in Subpart R or Part 40.

2) TPA responsibilities when acting as an intermediary for drug and alcohol test results transmission. - 40.345

- (B) As a TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing if the employer chooses to have you do so.
- (C) In every case, the service agent must ensure that, in transmitting information to employers, you meet all requirements (e.g., confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the employer.

3) TPA functions when administering testing for employers - 40.347

- (D) As a TPA, except as otherwise specified in Part 40, you may perform the following functions for employers concerning random selection and other selections for testing:
 - (i) Operate random testing programs for employers.
 - (ii) Assist through contracting with laboratories and collection sites.
 - (iii) Assist employers with other types of tests such as pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up testing.
- (E) TPA's (as well as employers) must ensure that employees not covered by DOT agency regulations are not part of the same random pool with DOT covered employees.
- (F) TPA's may assist employers ensure that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither the TPA nor the employer is permitted to randomly select employees form a "follow-up" pool for follow-up testing.

4) What records may a service agent receive and maintain -40.349

- (G) Service agents may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. You do not need the employee's consent to receive and maintain these records.

- (H) Service agents may maintain all information needed for operating a drug and alcohol program on behalf of the employer.
- (I) If you are serving as an intermediary in transmitting information required to be provided to the employer, you must ensure it reaches the employer in the same time periods required elsewhere in Part 40.
- (J) Service agents must ensure that they can make available to the employer any information the employer is asked to produce by a DOT agency within two (2) working days.
- (K) On request of an employer, you must immediately transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates.
- (L) If you are planning to go out of business or are bought by or merged with another organization, the service agent must immediately notify all employers and offer to transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates.

5) What confidentiality requirements apply to service agents - 40.351

- (M) Service agents must meet the following confidentiality requirements of Part 40.351:
 - (i) When the service agent receives or maintains confidential information about employee individual test results, they must follow the same confidentiality regulations as the employer with respect to the use and release of information;
 - (ii) The service agent must follow confidentiality and record retention requirements applicable to employers;
 - (iii) Service agents may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee; and
 - (iv) The service agent must establish adequate confidentiality and security measures to ensure that confidential that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic databases.

6) What limitations apply to service agents - 40.355

- (N) Service agents are subject to the following limitations concerning activities in the DOT drug and alcohol testing program:
 - (i) Service agents must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of drug and alcohol testing covered by Part 40;
 - (ii) The service agent must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO;
 - (iii) The service agent must not transmit drug test results directly from the laboratory to the employer or to a service agent who forwards them to the employer;
 - (iv) The service agent must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the BAT to the DER;
 - (v) Except when transmitting a SAP report to an owner-operator, the service agent must not act as an intermediary in the transmission of individual SAP reports and follow-up testing plans to the employer. The service agent may, however maintain the individual SAP reports and follow-up testing plans after they are sent to the DER. The SAP may transmit such reports to you simultaneously with sending them to the DER;
 - (vi) The service agent must not make decisions to test an employee based on reasonable suspicion, post accident, return-to-duty, and follow-up determination criteria. These are duties the actual employer cannot delegate to a service agent. The service agent may, however, provide advice regarding these tests;
 - (vii) The service agent must not make a determination that an employee has refused a drug and alcohol test. This is a duty the employer cannot delegate to a service agent. The service agent may, however, provide advice regarding refusal-to-test issues:
 - 1. As an exception to this subparagraph, the service agent may make a determination that an employee has refused a drug and alcohol test, if:
 - a. As an MRO, the service agent determines that an individual has refused to test on the basis of adulteration or substitution.

- (viii) The service agent must not act as a DER;
- (ix) In transmitting documents to laboratories, the service agent must ensure that only the laboratory copy of the CCF is sent;
- (x) The service agent must not impose conditions or requirements on employers that DOT regulations do not authorize; and
- (xi) The service agent must not intentionally delay the transmission of drug and alcohol testing-related documents concerning actions the service agent has performed, because of a payment dispute or other reasons.

I) PUBLIC INTEREST EXCLUSIONS

1) What is the purpose of public interest exclusion (PIE)? – 40.361

- (A) A PIE is intended to protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules.
- (B) The DOT therefore uses PIE's to exclude from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with Part 40 or other DOT agency drug and alcohol testing regulation, has shown that it is not currently acting in a responsible manner.
- (C) The DOT's policy is to ensure that employers conduct business only with responsible service agents.
- (D) Additional specific PIE related information could be found at Parts 40.363-40.413.

VI) INFORMATION CONCERNING THE EFFECTS OF ALCOHOL AND CONTROLLED SUBSTANCES

1. ALCOHOL

Although used routinely as beverage for enjoyment, alcohol can also have negative physical and mood-altering effects when abused. These physical or mental alterations in a driver may have serious personal and public safety risks.

Health Effects

An average of three or more servings per day of beer (12 oz.), whiskey (1 oz.), or wine (6 oz.), over time, may result in the following health hazards:

- Dependency
- Fatal liver disease, Kidney disease, or Pancreatitis
- Ulcers
- Decreased sexual functions
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Spontaneous abortion and neonatal mortality as well as birth defects such as Fetal Alcohol Syndrome

Social Issues

- 2/3 off all homicides are committed by people who drink prior to the crime.
- 2-3% of the driving population is legally drunk at any one time. This rate doubles at night and on weekends.
- 2/3 of all Americans will be involved in an alcohol-related accident during their lifetime.
- The separation and divorce rate in families with alcohol dependency problems is 7 times the average.
- 40% of family court cases are alcohol-related.
- Alcoholics are 15 times more likely to commit suicide.
- More than 60% of burns, 40% of falls, 69% of boating accidents are alcohol related.
- Over 17,000 fatalities in 1993 in highway accidents that were alcohol-related. This was 43% of all highway fatalities.
- 30,000 people will die each year due to alcohol-caused liver disease.
- 10,000 people will die each year due to alcohol-related brain disease or suicide.
- Up to 125,000 people die each year due to alcohol-related conditions or accidents.

Workplace Issues

- It takes one hour for the average person (150 pounds) to process one serving of alcohol from the body.
- Impairment can be measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

Alcohol's Trip Through the Body

- Mouth / Esophagus: Alcohol is an irritant to the delicate linings of the throat and food pipe. It burns as it goes down.
- Stomach / Intestines: Alcohol has an irritating effect on the stomach's protective lining, resulting in gastric or duodenal ulcers. If it becomes acute the condition, can cause a perforation of the stomach wall. In the small intestine, alcohol blocks absorption of such substances as thiamine, folic acid, fat, vitamin B₁ and B₁₂, and amino acids.
- Bloodstream: 95% of the alcohol taken into the body is absorbed into the bloodstream through the lining of the stomach and duodenum. Once in the bloodstream, alcohol quickly goes to every cell and tissue in the body. Alcohol causes red blood cells to clump together in sticky wads, slowing circulation and depriving tissues of oxygen. It also causes anemia by reduction of red blood cell production. Alcohol slows the ability of white cells to engulf and destroy bacteria and degenerates the clotting ability of blood platelets
- Pancreas: Alcohol irritates the cells of the pancreas, causing them to swell, thus blocking the flow of digestive enzymes. The chemicals, unable to enter the small intestine, begin to digest the pancreas, leading to acute hemorrhagic pancreatitis. One out of five patients who develop this disease dies during the first attack. Pancreatitis can destroy the pancreas and cause a lack of insulin, thus resulting in diabetes.
- Liver: Alcohol inflames the cells of the liver, causing them to swell and block the tiny canal to the small intestines. This prevents bile from being filtered properly through the liver. Jaundice develops, turning the whites of the eyes and skin yellow. Each drink of alcohol increases the number of liver cells destroyed, eventually causing cirrhosis of the liver. This disease is eight times more frequent among alcoholics than among non-alcoholics.
- Heart: Alcohol causes inflammation of the heart muscle. It has a toxic effect on the heart and causes increased amounts of fat to collect, thus disrupting its normal metabolism.
- Urinary Bladder and Kidneys: Alcohol inflames the lining of the urinary bladder making it unable to stretch properly. In the kidneys, alcohol causes increased loss of fluids through its irritating effect.
- Sex Glands: Swelling of the prostate gland caused by alcohol interferes with the ability of the male to perform sexually. It also interferes with the ability to climax during intercourse.
- Brain: The most dramatic and noticed effect of alcohol is on the brain. It depresses brain centers, producing progressive in coordination: confusion, distortion, stupor, anesthesia, coma, or death. Alcohol kills brain cells and brain damage is permanent. Drinking over a period of time causes loss of memory, judgment, and learning ability.

A) So What If I Got Drunk Last Night

- Am I OK Now?

If at 2:00 a.m. an employee goes to bed intoxicated with a blood alcohol reading of .25 and alcohol leaves the blood at .015 per hour, let's see what happens to an employee the next morning.

Time		Blood/Alcohol
2:00 a.m.	Goes to bed	.250
3:00 a.m.	Sleeping	.235
4:00 a.m.	Sleeping	.220
5:00 a.m.	Sleeping	.205
6:00 a.m.	Gets up for work	.190
7:00 a.m.	Wonders why keys don't fit the car	.175
8:00 a.m.	At work	.160
9:00 a.m.	Spills Coffee	.145
10:00 a.m.	Still legally intoxicated	.130
11:00 a.m.	Trips and stumbles	.115
12:00 noon	Still legally intoxicated	.100
1:00 p.m.	DOT prohibitive conduct	.085
2:00 p.m.	DOT prohibitive conduct	.070
3:00 p.m.	DOT prohibitive conduct	.055
4:00 p.m.	Still DOT prohibitive conduct	.040
5:00 p.m.	Can't work DOT	.025
6:00 p.m.	Finally clear to work DOT covered functions	.010

Know Your Limit

Number of drinks in one (1) hour
Approximate blood alcohol content (BAC)

Drinks	Body weight in Pounds								Influenced
	100	120	140	160	180	200	220	240	

1	.04	.03	.02	.02	.02	.02	.02	.02	Rarely (.02-.04)
2	.08	.05	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	
4	.15	.12	.11	.09	.08	.08	.07	.06	Possibly (.02-.06)
5	.19	.16	.13	.12	.11	.09	.09	.08	
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	Definitely (> .08)
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

What is a drink?

1 drink = 1 oz 86 proof whiskey, gin, vodka, etc.
 1 beer (12 oz)
 3 oz wine (20%)
 6 oz wine (12%)

2. DRUGS

A. MARIJUANA

Health Effects

- Emphysema-like conditions.
- One joint of marijuana contains cancer-causing substances equal to ½ a pack of cigarettes.
- One joint causes the heart to race and be overworked. People with heart conditions are at risk.
- Marijuana is commonly contaminated with the fungus *Aspergillus*, which can cause serious respiratory tract and sinus infections.
- Marijuana lowers the body's immune system response, making users more susceptible to infections.
- Chronic smoking causes changes in brain cells and brain waves. The brain does not work as efficiently or effectively. Long-term brain damage may occur.
- Tetrahydrocannabinol (THC) and 60 other chemicals in marijuana concentrate in the ovaries and testes.
- Chronic smoking of marijuana in males causes a decrease in testosterone and an increase in estrogen, the female hormone. As a result, the sperm count is reduced, leading to temporary sterility.
- Chronic smoking of marijuana in females causes a decrease in fertility.
- A higher than normal incidence of stillborn births, early termination of pregnancy, and higher infant mortality rate during the first few days of life is common in pregnant marijuana smokers.
- THC causes birth defects including brain damage, spinal cord, forelimbs, liver, and water on the brain and spine in test animals.
- Prenatal exposure may cause underweight newborn babies.
- Fetal exposure may decrease visual functioning.
- User's mental function can display the following effects:
 - Delayed decision making
 - Diminished concentration
 - Impaired short-term memory and signal detection
 - Impaired tracking
 - Erratic cognitive function
 - Distortion of time estimation

Workplace Issues

- THC is stored in body fat and slowly released.
- Marijuana smoking has long-term effects on performance.
- Increased THC potency in modern marijuana dramatically compounds the side effects.
- Combining alcohol or other depressant drugs with marijuana increases the impairing effects.
-

MEDICAL MARIJUANA

The City of Las Vegas' Drug and Alcohol policy does not now, nor has it ever; recognized the use of prescription marijuana as a justifiable excuse for laboratory positive results. The Drug and Alcohol Policy requires that the Medical Review Officer review all positive laboratory results. The Federal Government and subsequently Medical Review Officers throughout the country, specifically the City of Las Vegas' Medical Review Officer, Dr. Lopez, do not and will not overturn a positive result based on medical marijuana use and/or medical marijuana prescriptions.

B. COCAINE

Cocaine is used medically as a local anesthetic. When abused, it becomes a powerful physical and mental stimulant. The entire nervous system is energized. Muscles tense, heartbeats faster and stronger, and the body burns more energy. The brain experiences exhilaration caused by a large release of neuro hormones associated with mood elevation.

Health Effects

- Regular use may upset the chemical balance of the brain. As a result, it may speed up the aging process by causing damage to critical nerve cells. Parkinson's disease could also occur.
- Cocaine causes the heart to beat faster, harder, and rapidly increases blood pressure. It also causes spasms of blood vessels in the brain and heart. Both lead to ruptured vessels causing strokes and heart attacks.
- Strong dependency can occur with one "hit" of cocaine. Usually mental dependency occurs within days for "crack" or several months for snorting coke. Cocaine causes the strongest mental dependency of all the drugs.
- Treatment success rates are lower than other chemical dependencies.
- Extremely dangerous when taken with other depressant drugs. Death due to overdose is rapid. Fatal effects are usually reversible by medical intervention.

Workplace Issues

- Extreme mood and energy swings create instability. Sudden noise causes a violent reaction.
- Lapses in attention and ignoring warning signals increases probability of accidents.
- High cost frequently leads to theft and/or dealing.
- Paranoia and withdrawal may create unpredictable or violent behavior.
- Performance is characterized by forgetfulness, absenteeism, tardiness, and missing assignments.

C. OPIATES

Opiates are Narcotic drugs that alleviate pain and depress body functions and reactions.

Health Effects

- IV needle users have a high risk of contracting hepatitis or AIDS when sharing needles.
- Increased pain tolerance. As a result, a person may more severely injure themselves and fail to seek medical attention as needed.
- Narcotic effects are multiplied if combined with other depressants causing an increased risk for an overdose.
- With increased tolerance and dependency combined, there is a serious financial burden for users.

Workplace Issues

- Side effects such as nausea, vomiting, dizziness, mental clouding and drowsiness place the user at high risk for an accident.
- Causes impairment of physical and mental functions.

D. AMPHETAMINES

Central nervous system stimulant that speeds up the mind and body.

Health Effects

- Regular use causes strong psychological dependency and increased tolerance.
- High doses may cause toxic psychosis resembling schizophrenia.

- Intoxication may induce a heart attack or stroke due to increased blood pressure.
- Chronic use may cause heart or brain damage due to severe constriction of capillary blood vessels.
- Euphoric stimulation increases impulsive and risk taking behavior, including bizarre and violent acts.
- Withdrawal may result in severe physical and mental depression.

Workplace Issues

- Since the drug alleviates the sensation of fatigue, it may be abused to increase alertness during periods of overtime or failure to get rest.
- With heavy use or increasing fatigue, the short-term mental or physical enhancement reverses and becomes an impairment.

E. PHENCYCLIDINE (PCP)

Often used as a large animal tranquilizer. Abused primarily for its mood altering effects. Low doses produce sedation and euphoric mood changes. Mood can rapidly change from sedation to excitation and agitation. Larger doses may produce a coma-like condition with muscle rigidity and a blank stare. Sudden noises or physical shocks may cause a "freak out" in which the person has abnormal strength, violent behavior, and an inability to speak or comprehend.

Health Effects

The potential for accidents and overdose emergencies is high due to the extreme mental effects combined with the anesthetic effect on the body. PCP, when combined with other depressants, including alcohol, increases the possibility of an overdose. If misdiagnosed as LSD induced, and treated with Thorazine, can be fatal. Irreversible memory loss, personality changes, and thought disorders may result.

Workplace Issues

- Not common in the workplace primarily because of the severe disorientation that occurs.
- There are four phases to PCP abuse:
 - Acute toxicity causing combativeness, catatonia, convulsions, and coma. Distortions of size, shape, and distorted perception are common.
 - Toxic psychosis with visual and auditory delusions, paranoia and agitation.
 - Drug induced schizophrenia.
 - Induced depression, which may create suicidal tendencies and mental dysfunction.

CITY OF LAS VEGAS
VIII) ACKNOWLEDGEMENT OF RECEIPT OF POLICY

Employee Name (please print)

Employee Number (SS# or CITY OF LAS VEGAS ID #)

This is to certify that I have been provided with the City of Las Vegas zero tolerance drug and alcohol policy, procedures, and educational materials on the following checked (✓) items.

_____ The person designated to answer questions about the policy and any of the materials presented. (Victoria Lovato, Risk Management Coordinator (505) 454-1401 ext. 3282 and/or Leette Kugler, Human Resource Manager (505) 454-1401 ext. 3263)

_____ The categories of employees subject to drug and alcohol testing that perform covered functions as defined by DOT - PHMSA Part 199 or City's Policy.

_____ Specific information concerning DOT employee prohibited conduct such as prohibited alcohol concentration, pre-duty use of alcohol, on-duty use of alcohol, use following an accident or refusal to submit to a required alcohol test.

_____ Circumstances under which an employee is subject to DOT-PHMSA required testing will be anytime that the employee is actually performing, ready to perform, or immediately available to perform such covered or safety sensitive functions.

_____ The requirement that all tests are administered in accordance with regulations.

- Drug testing will be administered when required by the regulations for random, post-accident, reasonable suspicion, return-to-duty and follow-up tests.
- Alcohol tests will only be conducted during post-accident and reasonable suspicion situations.
- All tests are conducted in a manner to assure the tests are conducted per DOT regulations that assure that the sample provider is properly identified, and that the procedures and equipment used to conduct the test are correct and calibrated.
- All employees will have 72 hours (after 1st contact from the MRO) to request of the MRO in writing to have the split sample analyzed at the cost of the employee.

_____ Covered employees must submit to tests under the DOT-PHMSA regulations in order to continue to perform covered function work. An inability to perform essential functions of your job may jeopardize employment with the City. Refusal to test is defined in this policy.

_____ The procedure and consequences for violations noted below include disciplinary actions up to and including termination.

- The consequences for DOT employees found to have an alcohol concentration of 0.001 – 0.039 will be 8-hours away from work. .
- Alcohol concentrations greater than 0.04 BAC result in automatic termination from the City.
- The consequences for failing a drug test result in termination from the CITY OF LAS VEGAS.

_____ Information on the effects of alcohol and controlled substances on an individual's health, signs and symptoms of a problem, work available methods of intervening, personal life when a problem is suspected.

_____ I further acknowledge that I am subject to the City of Las Vegas' Drug and Alcohol Policy and that I have received a copy of the Policy that also serves as the DOT compliance plan.

Employee Signature

Date

ATTACHMENT 1

49 CFR PART 199

PART 199—DRUG AND ALCOHOL TESTING

Subpart A—General

- Sec.
199.1 Scope.
199.2 Applicability.
199.3 Definitions.
199.5 DOT procedures.
199.7 Stand-down waivers.
199.9 Preemption of State and local laws.

Subpart B—Drug Testing

- 199.100 Purpose.
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- 199.103 Use of persons who fail or refuse a drug test.
199.105 Drug tests required.
199.107 Drug testing laboratory.
199.109 Review of drug testing results.
199.111 Retention of samples and additional testing.
199.113 Employee assistance program.
199.115 Contractor employees.
199.117 Recordkeeping.
199.119 Reporting of anti-drug testing results.

Subpart C—Alcohol Misuse Prevention Program

- 199.200 Purpose.
199.201 [Reserved]
199.202 Alcohol misuse plan.
199.203–199.205 [Reserved]
199.209 Other requirements imposed by operators.
199.211 Requirement for notice.
199.213 [Reserved]
199.215 Alcohol concentration.
199.217 On-duty use.
199.219 Pre-duty use.
199.221 Use following an accident.
199.223 Refusal to submit to a required alcohol test.
199.225 Alcohol tests required.
199.227 Retention of records.
199.229 Reporting of alcohol testing results.
199.231 Access to facilities and records.
199.233 Removal from covered function.
199.235 Required evaluation and testing.
199.237 Other alcohol-related conduct.
199.239 Operator obligation to promulgate a policy on the misuse of alcohol.
199.241 Training for supervisors.
199.243 Referral, evaluation, and treatment.
199.245 Contractor employees.

AUTHORITY: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.
SOURCE: 53 FR 47096, Nov. 21, 1988, unless otherwise noted.

Subpart A—General

§ 199.1 Scope.

This part requires operators of pipeline facilities subject to part 192, 193, or 195 of this chapter to test covered employees for the presence of prohibited drugs and alcohol.

[Amdt. 199–19, 66 FR 47117, Sept. 11, 2001]

§ 199.2 Applicability.

(a) This part applies to pipeline operators only with respect to employees located within the territory of the United States, including those employees located within the limits of the “Outer Continental Shelf” as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(b) This part does not apply to any person for whom compliance with this part would violate the domestic laws or

policies of another country.

(c) This part does not apply to covered functions performed on—

- (1) Master meter systems, as defined in § 191.3 of this chapter; or
- (2) Pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.

[Amdt. 199–19, 66 FR 47117, Sept. 11, 2001]

§ 199.3 Definitions.

As used in this part—

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid pipeline facilities.

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Covered employee, employee, or individual to be tested means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

Covered function means an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter that is performed on a pipeline or on an LNG facility.

DOT Procedures means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in part 40 of this title.

Fail a drug test means that the confirmation test result shows positive evidence of the presence under DOT Procedures of a prohibited drug in an employee’s system.

Operator means a person who owns or operates pipeline facilities subject to part 192, 193, or 195 of this chapter.

Pass a drug test means that initial testing or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in a person’s system.

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Performs a covered function includes actually performing, ready to perform, or immediately available to perform a covered function.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

Prohibited drug means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

Refuse to submit, refuse, or refuse to take means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 *et seq.*)

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989; 59 FR 62227, Dec. 2, 1994; Amdt. 199-13, 61 FR 18518, Apr. 26, 1996; Amdt. 199-15, 63 FR 13000, Mar. 17, 1998; Amdt. 199-19, 66 FR 47117, Sept. 11, 2001; 68 FR 11750, Mar. 12, 2003; 68 FR 75465, Dec. 31, 2003; 70 FR 11140, Mar. 8, 2005]

§ 199.5 DOT procedures.

The anti-drug and alcohol programs required by this part must be conducted according to the requirements of this part and DOT Procedures. Terms and concepts used in this part have the same meaning as in DOT Procedures. Violations of DOT Procedures with respect to anti-drug and alcohol programs required by this part are violations of this part.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.7 Stand-down waivers.

(a) Each operator who seeks a waiver under § 40.21 of this title from the stand-down restriction must submit an application for waiver in duplicate to the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, Washington, DC 20590.

(b) Each application must—

- (1) Identify § 40.21 of this title as the rule from which the waiver is sought;
- (2) Explain why the waiver is requested and describe the employees to be covered by the waiver;
- (3) Contain the information required by § 40.21 of this title and any other information or arguments available to support the waiver requested; and
- (4) Unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver.

(c) No public hearing or other proceeding is held directly on an application before its disposition under this section. If the Associate Administrator determines that the application contains adequate justification, he or she grants the waiver. If the Associate Administrator determines that the application does not justify granting the waiver, he or she denies the application. The Associate Administrator notifies each applicant of the decision to grant or deny an application.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001, as amended at 70 FR 11140, Mar. 8, 2005]

§ 199.9 Preemption of State and local laws.

- (a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:
- (1) Compliance with both the State or local requirement and this part is not possible;
 - (2) Compliance with the State or

local requirement is an obstacle to the accomplishment and execution of any requirement in this part; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994. Redesignated and amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001]

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Pipeline and Hazardous Materials Safety Administration, DOT § 199.105 Subpart B—Drug Testing

§ 199.100 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform covered functions for operators of certain pipeline facilities subject to part 192, 193, or 195 of this chapter.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.101 Anti-drug plan.

(a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—

- (1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;
- (2) The name and address of each laboratory that analyzes the specimens collected for drug testing;
- (3) The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and
- (4) Procedures for notifying employees of the coverage and provisions of the plan.

(b) The Administrator or the State Agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 *et seq.*) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989; Amdt. 199-4, 56 FR 31091, July 9, 1991; 56 FR 41077, Aug. 19, 1991; Amdt. 199-13, 61 FR 18518, Apr. 26, 1996; Amdt. 199-15, 63 FR 36863, July 8, 1998. Redesignated by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.103 Use of persons who fail or refuse a drug test.

(a) An operator may not knowingly use as an employee any person who—

- (1) Fails a drug test required by this part and the medical review officer makes a determination under DOT Procedures; or

(2) Refuses to take a drug test required by this part.

(b) Paragraph (a)(1) of this section does not apply to a person who has—

(1) Passed a drug test under DOT Procedures;

(2) Been considered by the medical review officer in accordance with DOT Procedures and been determined by a substance abuse professional to have successfully completed required education or treatment; and

(3) Not failed a drug test required by this part after returning to duty.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989. Redesignated and amended by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.105 Drug tests required.

Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) *Pre-employment testing.* No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part.

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

(c) *Random testing.* (1) Except as provided in paragraphs (c)(2) through (4) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(2) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug

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testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this subpart. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from operators, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the FEDERAL REGISTER the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(3) When the minimum annual percentage rate for random drug testing is

50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 199.119 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(4) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 199.119 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(5) The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computerbased random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(6) The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this subpart or any DOT drug testing rule.

(7) Each operator shall ensure that random drug tests conducted under this subpart are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(8) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same operator, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(9) If an operator is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the operator may—

(i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(ii) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the operator is subject.

(d) *Testing based on reasonable cause.*

Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject

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to testing under this part, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(e) *Return-to-duty testing.* A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has complied with applicable provisions of DOT Procedures concerning substance abuse professionals and the return-to-duty process.

(f) *Follow-up testing.* A covered employee who refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the operator following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989; 59 FR 62227, Dec. 2, 1994; Amdt. 199-15, 63 FR 13000, Mar. 17, 1998; Amdt. 199-15, 63 FR 36863, July 8, 1998. Redesignated and amended by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.107 Drug testing laboratory.

(a) Each operator shall use for the drug testing required by this part only drug testing laboratories certified by the Department of Health and Human Services under the DOT Procedures.

(b) The drug testing laboratory must permit—

- (1) Inspections by the operator before the laboratory is awarded a testing contract; and
- (2) Unannounced inspections, including

examination of records, at any time, by the operator, the Administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency.

[53 FR 47096, Nov. 21, 1988. Redesignated by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.109 Review of drug testing results.

(a) *MRO appointment.* Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.

(b) *MRO qualifications.* Each MRO must be a licensed physician who has the qualifications required by DOT Procedures.

(c) *MRO duties.* The MRO must perform functions for the operator as required by DOT Procedures.

(d) *MRO reports.* The MRO must report all drug test results to the operator in accordance with DOT Procedures.

(e) *Evaluation and rehabilitation* may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

(f) The operator shall ensure that a substance abuse professional, who determines that a covered employee requires assistance in resolving problems with drug abuse, does not refer the covered employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a covered employee for assistance provided through:

- (1) A public agency, such as a State, county, or municipality;
- (2) The operator or a person under contract to provide treatment for drug problems on behalf of the operator;

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(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989; Amdt. 199-15, 63 FR 13000, Mar. 17, 1998; Amdt. 199-15, 63 FR 36863, July 8, 1998. Redesignated and amended by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.111 Retention of samples and additional testing.

(a) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT Procedures. Within this 365-day period, the

employee or the employee's representative, the operator, the Administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(b) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, and if timely additional testing is requested by the employee according to DOT Procedures, the split specimen must be tested. The employee may specify testing by the original laboratory or by a second laboratory that is certified by the Department of Health and Human Services. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee must be reimbursed for such expense if the additional test is negative.

(c) If the employee specifies testing by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.

(d) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT Procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results.

[53 FR 47096, Nov. 21, 1988; 55 FR 797, Jan. 9, 1990, as amended by Amdt. 199-17, 63 FR 7723, Feb. 17, 1998. Redesignated and amended by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.113 Employee assistance program.

(a) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.

(b) Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(c) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must

include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

[53 FR 47096, Nov. 21, 1988. Redesignated by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.115 Contractor employees.

With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

(a) The operator remains responsible for ensuring that the requirements of this part are complied with; and

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(b) The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.

[53 FR 47096, Nov. 21, 1988. Redesignated by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.117 Recordkeeping.

(a) Each operator shall keep the following records for the periods specified and permit access to the records as provided by paragraph (b) of this section:

(1) Records that demonstrate the collection process conforms to this part must be kept for at least 3 years.

(2) Records of employee drug test that indicate a verified positive result, records that demonstrate compliance with the recommendations of a substance abuse professional, and MIS annual report data shall be maintained for a minimum of five years.

(3) Records of employee drug test results that show employees passed a drug test must be kept for at least 1 year.

(4) Records confirming that supervisors and employees have been trained as required by this part must be kept for at least 3 years.

(b) Information regarding an individual's drug testing results or rehabilitation must be released upon the written consent of the individual and as provided by DOT Procedures. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the Administrator or the representative of a state agency upon request.

[53 FR 47096, Nov. 21, 1988, as amended at 58 FR 68260, Dec. 23, 1993. Redesignated and amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001; 68 FR 75465, Dec. 31, 2003]

§ 199.119 Reporting of anti-drug testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to PHMSA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.25 and appendix H to Part 40), not later than March 15 of

each year for the prior calendar year (January 1 through December 31). The Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to PHMSA.

(b) Each report required under this section shall be submitted to the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590.

(c) To calculate the total number of covered employees eligible for random testing throughout the year, as an operator, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis.

(d) As an employer, you may use a service agent (e.g., C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(e) Each operator that has a covered employee who performs multi-DOT agency functions (e.g., an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Operators may have to explain the testing

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data for these employees in the event of a DOT agency inspection or audit.

(f) A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness.

[68 FR 75465, Dec. 31, 2003, as amended by Amdt. 199-20, 69 FR 32898, June 14, 2004; 70 FR 11140, Mar. 8, 2005]

Subpart C—Alcohol Misuse Prevention Program

SOURCE: Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, unless otherwise noted. Redesignated

by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001.

§ 199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to parts 192, 193, or 195 of this chapter.

§ 199.201 [Reserved]

§ 199.202 Alcohol misuse plan.

Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001]

§§ 199.203-199.205 [Reserved]

§ 199.209 Other requirements imposed by operators.

(a) Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

(b) Operators may, but are not required to, conduct pre-employment alcohol testing under this subpart. Each operator that conducts pre-employment alcohol testing must—

(1) Conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions);

(2) Treat all covered employees the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others);

(3) Conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test;

(4) Conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT Procedures; and

(5) Not allow any covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001]

§ 199.211 Requirement for notice.

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart.

No operator shall falsely represent that a test is administered under this subpart.

§ 199.213 [Reserved]

§ 199.215 Alcohol concentration.

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

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§ 199.217 On-duty use.

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

§ 199.219 Pre-duty use.

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

§ 199.221 Use following an accident.

Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under § 199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident.

§ 199.223 Refusal to submit to a required alcohol test.

Each operator shall require a covered employee to submit to a post-accident alcohol test required under § 199.225(a), a reasonable suspicion alcohol test required under § 199.225(b), or a follow-up alcohol test required under § 199.225(d). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.

§ 199.225 Alcohol tests required.

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

(a) *Post-accident.* (1) As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either

contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2)(i) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by paragraph (a) is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(ii) [Reserved]

(3) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered 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.

(b) *Reasonable suspicion testing.* (1)

Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(2) The operator's determination that reasonable suspicion exists to require

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the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (b)(2) of this section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just

after the employee has ceased performing covered functions.

(4)(i) If a test required by this section is not administered within 2 hours following the determination under paragraph (b)(2) of this section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination under paragraph (b)(2) of this section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Records shall be submitted to PHMSA upon request of the Administrator.

(ii) [Reserved]

(iii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

(A) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(B) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination under paragraph (b)(2) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(iv) Except as provided in paragraph (b)(4)(ii), no operator shall take any action under this subpart against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this subpart from taking any action otherwise consistent with law.

(c) *Return-to-duty testing.* Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(d) *Follow-up testing.* (1) Following a determination under § 199.243(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of § 199.243(c)(2)(ii).

(2) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee

has ceased performing such functions.

(e) *Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.* Each operator shall retest a covered employee to ensure compliance with the provisions of § 199.237, if an operator chooses to permit the employee to perform a covered function within 8 hours following the

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administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended at 59 FR 62239 and 62246, Dec. 2, 1994; Amdt. 199-19, 66 FR 47119, Sept. 11, 2001; 70 FR 11140, Mar. 8, 2005]

§ 199.227 Retention of records.

(a) *General requirement.* Each operator shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each operator shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices), and training shall be maintained for a minimum of two years.

(3) *One year.* Records of all test results below 0.02 (as defined in 49 CFR part 40) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained:

(1) Records related to the collection process:

(i) Collection log books, if used.

(ii) Calibration documentation for evidential breath testing devices.

(iii) Documentation of breath alcohol technician training.

(iv) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(v) Documents generated in connection with decisions on post-accident tests.

(vi) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The operator's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this subpart.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this

subpart.

(3) Records related to other violations of this subpart.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Record(s) related to the operator's MIS annual testing data.

(6) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 199.231.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this subpart complies with the requirements for such training.

§ 199.229 Reporting of alcohol testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to PHMSA of its alcohol testing results using the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.25 and appendix H to part 40), not later than March 15 of each year for the previous calendar year (January 1 through December 31). The Administrator may require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to PHMSA.

(b) Each operator that has a covered employee who performs multi-DOT

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agency functions (e.g., an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(c) Each report required under this section shall be submitted to the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590.

(d) A service agent (e.g., Consortia/Third Party Administrator as defined in part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's

anti-drug manager or designated representative for accuracy and completeness. [68 FR 75466, Dec. 31, 2003, as amended by Amdt. 199–20, 69 FR 32898, June 14, 2004; 70 FR 11140, Mar. 8, 2005]

§ 199.231 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in § 199.227.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.

(d) Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include namespecific alcohol test results, records, and reports.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.

(f) An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(g) An operator may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.

(h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

[Amdt. 199–9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199–19, 66 FR 47119, Sept. 11, 2001]

§ 199.233 Removal from covered function.

Except as provided in §§ 199.239 through 199.243, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223 or an alcohol misuse rule of another DOT agency.

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§ 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243.

§ 199.237 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

(1) The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under § 199.225(e); or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph

(a) of this section, no operator shall take any action under this subpart against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this subpart from taking any action otherwise consistent with law.

§ 199.239 Operator obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

(2) Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the operator to answer covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.

(3) Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee

is required to be in compliance with this subpart.

(4) Specific information concerning covered employee conduct that is prohibited by this subpart.

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(6) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under § 199.243.

(10) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

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(c) *Optional provisions.* The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this subpart.

Any such additional policies or consequences shall be clearly described as being based on independent authority.

§ 199.241 Training for supervisors.

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 199.243 Referral, evaluation, and treatment.

(a) Each covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 of this subpart shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including

the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited under §§ 199.215 through 199.223 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223 of this subpart, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse—

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for followup testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

(e) The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(1) A public agency, such as a State,

county, or municipality;

(2) The operator or a person under contract to provide treatment for alcohol problems on behalf of the operator;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

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(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

§ 199.245 Contractor employees.

(a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:

(b) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and

(c) The contractor allows access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this subpart and part 40 of this title.