

City of Pass Christian

Controlled Substances

And

Alcohol Use and Testing Policy

A compliance manual for all employee  
drivers subject to DOT regulations

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## SECTION I - INTRODUCTION

### A. Regulatory Background

The Department of Transportation (DOT) has instituted procedural regulations<sup>1</sup> designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. Accordingly, each operating agency under the DOT has published conforming regulations governing their respective industries. The Federal Motor Carrier Safety Administration (FMCSA), which regulates the motor carrier industry, has published its conforming regulations as set forth in 49 CFR Part 382 entitled “Controlled Substances and Alcohol Use and Testing.” The purpose of this regulation, which was amended August 17, 2001, is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles (CMVs).

### B. Applicability and Penalties

49 CFR Part 382 applies to every person and to all employers of such persons who operate a CMV in commerce in any State and is subject to the commercial driver’s license (CDL) requirements of 49 CFR Part 383. City of Pass Christian is such an employer and will be referred to as “the City” in this policy manual which details the FMCSA’s regulations as well as City policy statements issued in response to these regulations. **All City policy statements will be boldfaced and underlined.**

**This Policy supersedes any and all other DOT policies currently in place at all City of Pass Christian locations and applies to any City of Pass Christian employee who maintains a CDL as a job requirement. This also includes those employees who possess a CDL and may, on occasion, be called upon to operate a CMV when the need arises, although such operation is not part of their primary or daily job functions. All such employees will be referred to as “drivers” in this policy manual.**

Drivers are required to be in compliance with this Policy during that period of the work day when they are performing safety-sensitive functions<sup>2</sup>. Any employer or driver who violates the requirements of 49 CFR Part 382 and/or 49 CFR Part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b).

### C. City Policy

**The City of Pass Christian is committed to providing a safe workplace in which its employees work effectively with one another and with the public they serve. There is considerable evidence that alcohol and/or drug use can result in impaired work performance and may pose significant risk for property damage and/or to impaired employees, co-workers and the public at large. Though the City does not wish to intrude into the private lives of its employees, the City has a responsibility to all City workers and to the public it serves and intends to create and maintain the safest work environment possible for all its employees, to reduce the risk of on-the-job injuries and to maximize delivery of services to the citizens of Pass Christian.**

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

<sup>2</sup> See Glossary of Terms for definitions of “performing (a safety-sensitive function)” and “safety-sensitive function”

The City will only conduct business with responsible service agents (Reference Appendix A) who have the appropriate qualifications or have received the necessary training or certification as required by DOT regulations<sup>1</sup>. The City will not utilize the services of any service agent who is subject to a public interest exclusion and has been excluded from participation in this program.

D. Self-Identification

Drivers who admit to drug use or alcohol misuse in accordance with the City 's established voluntary self-identification program are not subject to the referral, evaluation and treatment requirements of this regulation provided that the driver does not self-identify in an attempt to avoid testing under the requirements of this regulation, and provided that the admission is made before performing safety-sensitive functions (i.e. prior to reporting for duty). The driver may not resume performance of safety-sensitive functions until the City is satisfied that he/she has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

## SECTION II – PROGRAM REQUIREMENTS

### A. Prohibited Activities

The following conduct by drivers covered by these regulations is prohibited. Information regarding the consequences of engaging in prohibited activities as defined below can be found in Section VI – Consequences for a Driver Who Engages in Prohibited Activities.

*Actual knowledge* for the purpose of this subsection means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer’s *direct observation* of the employee, information provided by the driver’s previous employers(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee’s admission of alcohol or controlled substance use, except as provided in Subsection D – Self-identification found in Section I. *Direct observation* as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under the following subsection.

1. Alcohol concentration. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.
2. On-duty use. No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform those functions.
3. Pre-duty use. No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.
4. Use following an accident. No driver required to take a post-accident alcohol test under the provisions of this regulation shall use alcohol for eight hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
5. Refusal to submit<sup>2</sup> to a required test. No driver shall refuse to submit to a post-accident, random, reasonable suspicion, return-to-duty or follow-up drug or alcohol test or pre-employment drug test as required in the following subsection. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

**In addition, all drivers required to submit to a drug or alcohol test, regardless of the circumstances surrounding the test or the test results, will be expected to be fully cooperative with the personnel administering the test at all times. Failure to do so will subject the driver to disciplinary action as deemed appropriate in accordance with the City’s discipline policy.**

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<sup>2</sup> See Glossary of Terms for complete definition of “refusal to submit (to a drug or alcohol test)”

6. Controlled substances use. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any Schedule I drug or substance. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any non-Schedule I drug or substance, except when the use is pursuant to the instructions of a *licensed medical practitioner* who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function. Drivers are required to inform their supervisor when they are taking medication, prescribed or non-prescribed, that would adversely affect their ability to perform their safety-sensitive functions.

*A licensed medical practitioner* is a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

7. Controlled substances testing. No driver shall report for duty, remain on duty or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

## B. Types of Tests

The City is required to conduct the following types of drug and alcohol tests and, *prior to performing each required test, must notify the driver that said test is required by this regulation and that he/she is required to submit to testing:*

1. Pre-employment testing. Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result. The City shall notify a driver of the results of a required pre-employment drug test if the driver request such results within 60 calendar days of being notified of the disposition of the employment application.

“Pre-employment” drug testing also applies to existing City of Pass Christian employees when:

- an employee not previously required to maintain a CDL but, due to a job transfer, promotion, re-assignment of duties, etc., is now required to maintain a CDL;
- an employee returns to a position where he/she is required to maintain a CDL after moving to and holding a position where a CDL is not required, after more than 30 days;
- an employee returns to a position where he/she is required to maintain a CDL after being temporarily removed from the payroll (i.e. leave of absence, lay-off with recall, disciplinary action, etc.), after more than 30 days.

An employer may, but is not required to, conduct pre-employment alcohol testing under these regulations. **City of Pass Christian chooses not to conduct pre-employment alcohol testing.**

2. Post-accident. As soon as practicable following an occurrence involving a commercial motor vehicle *operating on a public road* in commerce, the City shall conduct alcohol and controlled substances tests according to the criteria and timeframes outlined below.

The City shall test for alcohol for *each of its surviving drivers*:

- (a) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (b) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
  - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

If an alcohol test required by this regulation is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this regulation is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

The City shall test for controlled substances *for each of its surviving drivers*:

- (a) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (b) Who receives a citation within 32 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
  - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

If a controlled substance test required by this regulation is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer 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 driver 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.

**City of Pass Christian drivers are directed to proceed to their local collection site (Reference Appendix A) for the purposes of submitting to a post-accident test as required by the provisions of this regulation. If the accident occurs after the normal business hours of the local collection site or at a geographic location that would make the use of the local collection site infeasible, the driver is to immediately contact their immediate supervisor.**

The results of a breath or blood test for the use of alcohol and the results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this regulation, provided such tests conform to the applicable Federal, State or local alcohol/controlled substances testing requirements, and that the results of the tests are obtained by the City.

FMCSA post-accident testing provisions do not apply to:

- (1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or
- (2) An occurrence involving only the loading or unloading of cargo; or
- (3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require it to be marked or placarded.

**For the purposes of post-accident testing, any driver covered by this Policy is also subject to post-accident testing under City of Pass Christian's Drug and Alcohol Testing Policy to the extent that the City Policy exceeds the provisions of the DOT/FMCSA Policy.**

3. Random testing. All drivers shall submit to random drug and alcohol testing in accordance with the following:

NOTE: A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

The City shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the FMCSA Administrator. An employer may use a service agent (e.g., a C/TPA) to perform random selections, and covered drivers may be part of a larger random testing pool of covered employees. However, the employer must ensure that the service agent is testing at the appropriate percentage established for the FMCSA and that only covered employees are in the random testing pool.

The FMCSA has adopted performance-based random testing rates in order to reward efforts to obtain low violation rates. The random rates may be increased or decreased dependent on the violation/positive rates for the entire industry. All information used for this determination is drawn from information reported through annual Management Information System (MIS) reports. Each year, the FMCSA will establish new minimum annual testing rates based on the industry's past performance. In the event of a change in these rates, the new rates will be published in the Federal Register and will become effective on January 1st of the calendar year following publication.



Current regulations, effective January 1, 2016, require the City to annually conduct:

- A number of drug tests equal to at least 25% of all covered employees
- A number of alcohol tests equal to at least 10% of all covered employees

Key aspects of the random testing selection and notification process are as follows:

- The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.
  - Each driver shall have an equal chance of being tested each time selections are made. (i.e. The name of each driver shall be placed in a common selection pool. Drivers remain in the common selection pool at all times, regardless of whether or not they have been previously selected for testing.)
  - Each driver selected for testing shall be tested during the selection period.
  - All random tests must be unannounced and test dates must be spread reasonably throughout the calendar year.
  - The City shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.
4. Reasonable suspicion testing. The City shall require a driver to submit to an alcohol or controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions outlined in Subsection A – Prohibited Activities of this section. The employer's determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations leading to a reasonable suspicion drug test may include indications of the chronic and withdrawal effects of controlled substances.

The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or employer official who is trained in accordance with this regulation. **Supervisors should refer to their training materials as guidance in making reasonable suspicion testing determinations and MUST consult with the Designated Employer Representative (Reference Appendix A) before reasonable suspicion testing is conducted. However, should the driver's condition be such that he/she poses an immediate threat to his/her safety or to the safety of others, the supervisor should act immediately by removing the driver from safety-sensitive duties until the Designated Employer Representative can be reached.**

A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or employer official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

**NOTE: No driver shall be allowed to proceed alone to or from the testing site.**

NOTE: Alcohol testing is authorized by these regulations only if the aforementioned observations are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with these regulations. A driver may be directed by the employer to only undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

If an alcohol test required by these regulations is not administered within 2 hours following the employer's reasonable cause determination, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by these regulations is not administered within 8 hours following the employer's reasonable cause determination, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Notwithstanding the absence of a reasonable suspicion alcohol test under these regulations, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the employer permit the driver to perform or continue to perform safety-sensitive functions, until:

- An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
- 24 hours have elapsed following the employer's determination that there is reasonable suspicion to believe that the driver has violated the prohibitions in this policy concerning the use of alcohol.

Except as provided in the preceding paragraph, the employer shall take no action under DOT/FMCSA authority against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. As this does not prohibit the employer with independent authority from taking any action otherwise consistent with law, **any driver covered under this Policy is also subject to disciplinary action under City of Pass Christian's Drug and Alcohol Testing Policy to the extent that the City Policy exceeds the provisions of the DOT/FMCSA Policy.**

**A driver who has taken a reasonable suspicion drug test will be temporarily suspended from active duty or otherwise re-assigned to a non-safety-sensitive position until the results of the test are known and the appropriate action can be taken. In the case of a negative test, the driver will be returned to active duty and made whole for any lost wages.** In the case of a positive drug test or an alcohol test with an alcohol concentration of 0.04 or greater, reference Section VI – Consequences for a Driver Who Engages in Prohibited Activities. In the case of an alcohol test with an alcohol concentration of 0.02 or greater but less than 0.04, reference Section V – Consequences of Other Related Alcohol Conduct.

**NOTE: In ALL instances where a driver is released from active duty as a result of reasonable suspicion testing provisions, he/she shall be provided transportation from the collection site to his/her home or another mutually acceptable location.**

5. Return-to-duty testing. FMCSA regulations require that return-to-duty testing be conducted in accordance with 49 CFR Part 40<sup>1</sup>. In summary, if the City allows a driver who engages in the prohibited activities outlined in Section II of this Policy to resume his/her safety-sensitive functions, that driver may not return to duty until he/she has a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02. This test cannot occur until after a Substance Abuse Professional (SAP) has determined that the driver has successfully complied with prescribed education and/or treatment.
  
6. Follow-up testing. FMCSA regulations require that follow-up testing be conducted in accordance with 49 CFR Part 40<sup>1</sup>. In summary, if the City allows a driver who engages in the prohibited activities outlined in Section II of this Policy to return to duty, he/she must first be evaluated by a Substance Abuse Professional (SAP) who shall establish a written follow-up testing plan after the SAP determines that the driver has successfully complied with his/her recommendations for education and/or treatment.

Said driver shall be subject to unannounced, follow-up testing after his/her return to duty as directed by the SAP. The number and frequency of follow-up tests are to be determined by the SAP but are not to exceed beyond 60 months from the date of the driver's return to duty. This testing will, at a minimum, consist of 6 unannounced tests in the first 12 months following the driver's return to duty. In addition, this follow-up testing may include testing for both drugs and alcohol if the SAP determines that this is required. The requirements of the SAP's follow-up testing plan follow the driver to subsequent DOT employers or through breaks in service.

Note: Follow-up alcohol testing must be conducted while the driver is performing safety-sensitive functions, just before the driver is to perform the safety-sensitive function or just after the driver has ceased performing these functions.

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

## SECTION III - DRUG TESTING PROCEDURES AND METHODOLOGY

The City shall ensure that all drug testing conducted under 49 CFR Part 382 complies with the procedures set forth in 49 CFR Part 40<sup>1</sup>. These procedures, which describe the specimen collection, laboratory analysis and verification process in detail, are briefly summarized in this Section.

### A. Controlled Substances for Which Testing Must be Conducted

The Company is required to test all drivers for the following five drugs or classes of drugs as identified in 49 CFR Parts 40.85 and 40.87<sup>1</sup> and detailed in Appendix B: marijuana metabolites, cocaine metabolites, amphetamines, opioids and phencyclidine (PCP.)

### B. Specimen Collection

All urine specimens collected under these regulations shall use proper chain-of-custody procedures.

1. Collection Sites. Urine collections for a DOT drug test must take place in a collection site that meets the requirements of this regulation. It 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. A collection site may be in a medical facility, a mobile facility, a dedicated collection facility, or any other location meeting the requirements of this regulation. A collection site must take steps to prevent unauthorized access that could compromise the integrity of collections.

The Federal Chain of Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program, and for each DOT drug test, the collection kit used must meet the requirements of this regulation.

2. Privacy. The collection site must provide the donor with privacy during the specimen collection process except in cases where a directly observed collection is required. The observer does not need to be a qualified collector, however, the observer must be of the same gender as the donor.

As a service agent, when you learn that a directly observed collection should have been collected but was not, you must inform the employer that it must direct the employee to have an immediate recollection under direct observation.

An employer must require an immediate collection under direct observation with no advance notice to the driver if:

- the lab reported to the MRO that a specimen is invalid and the MRO did not find an adequate medical explanation for the result; or
- the MRO reported that the original positive, adulterated or substituted test result had to be cancelled because the test of the split specimen could not be performed; or
- The lab reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as a negative-dilute and that a second collection must take place under direct observation.

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

In addition, the City must require directly observed collections for all return-to-duty and follow-up tests.

A collector must immediately conduct a collection under direct observation if:

- The collector observes materials brought to the collection site or the individual's conduct clearly indicates an attempt to tamper with a specimen; or
- The temperature of the original specimen was out of range; or
- The original specimen appeared to have been tampered with.
- The collector is advised by the DER to do so.

In any instance where a directly observed collection is to be conducted, the reason must be explained to the donor. A refusal to allow a directly observed collection which is required or permitted by these regulations constitutes a refusal to be tested.

### C. Specimen Analysis

1. Laboratory certification requirements. The City shall use a drug testing laboratory certified by the Department of Health & Human Services (HHS). The laboratory shall provide services in accordance with 49 CFR Parts 40<sup>1</sup> and shall comply with applicable provisions of the HHS Guidelines concerning accessioning and processing urine drug specimens. The name and address of the laboratory contracted by the City is contained in Appendix A.
2. Specimen analysis procedures
  - (a) Initial drug test – (also known as a “screening drug test”) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
  - (b) Confirmatory drug test – A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.
  - (c) Validity testing of all specimens must be conducted in accordance with these regulations to determine whether adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted or is invalid.
3. Specimen retention. Drug testing laboratories shall retain and place in properly secured long-term, frozen storage in accordance with HHS requirements all specimens reported with positive, adulterated, substituted, or invalid results for a minimum of one year.

Within this one-year period, the MRO, the donor, the City or a DOT agency may, in writing, request the laboratory to retain the specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation).

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

4. Reporting of results. The laboratory shall report all test results directly to the City 's MRO in a confidential and timely manner.

The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive.

#### D. Stand-Down Waiver Provisions

Employers are prohibited from standing employees down, except consistent with a waiver from the FMCSA. An employer who seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures set forth in 49 CFR Part 40.21<sup>1</sup> and must send a written request which includes all of the information required by that regulation to the Federal Motor Carrier Safety Administrator. The Administrator will make the final decision whether to grant or deny the application for a waiver and send a copy of that decision to the employer which will include the terms and conditions for the waiver or the reason for denying the application. **City of Pass Christian has not currently applied for a stand-down waiver.**

#### E. MRO Responsibilities and Test Outcomes

The Medical Review Officer (MRO) acts as an independent and impartial “gatekeeper” and advocate for the accuracy and integrity of the drug testing process and provides a quality assurance review of the drug testing process. The City has contracted with the MRO listed in Appendix A to provide services in accordance with the requirements of 49 CFR Parts 40 and 382.

The MRO shall review and report all drug testing results to the City or designated C/TPA in a confidential manner. Below is a review of the most common testing outcomes:

1. Negative results – The MRO shall report the laboratory findings of a negative specimen to the City .
2. Diluted results – The MRO shall report the laboratory findings of a dilute specimen to the City regardless of whether the test result is positive or negative. In the case of a positive-dilute result, the test is treated like a verified positive result. In the case of a negative-dilute result, the City may direct the individual to take another unobserved test (unless there is another basis for the direct observation or unless directed to do so by the MRO) immediately with minimum possible advance notice. **City of Pass Christian shall require such a retest in ALL testing situations.** The result of the second test will become the test of record. If the result of the second test is also negative-dilute, no additional testing is required or allowed. A refusal to take the second test as requested constitutes a refusal to be tested.
3. Adulterated or substituted results – These test results must be verified in the same way as the positive results. If the MRO determines that no legitimate medical explanation exists for these results, the test is reported to the City as a verified refusal to test because of adulteration or substitution and the individual is to immediately be removed from performing safety-sensitive functions. If the MRO determines that a legitimate medical explanation does

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

exist, the test will be cancelled and no further testing is necessary unless a negative drug test result is required (i.e. in all cases of pre-employment, return-to-duty or follow-up testing). The City must then direct the individual to provide another specimen immediately.

4. Positive results – A positive test result does not automatically identify an individual as having used drugs in violation of a DOT regulation. Accordingly, the MRO must contact the donor directly, on a confidential basis, to determine whether the individual wants to discuss the test result.

In those situations, as stipulated in 49 CFR Part 40<sup>1</sup>, where a legitimate medical explanation can be taken into consideration in the verification decision, the MRO must conduct a medical interview with the individual and must review the individual's medical history or any other relevant biomedical factors presented by the individual. The MRO may direct the individual to undergo further medical evaluation. The MRO must review and take all reasonable and necessary steps to verify the authenticity of all medical records the individual provides if he/she asserts that the presence of a drug or drug metabolites are the result taking prescription medication.

If the MRO determines there is a legitimate medical explanation for the test result, the MRO shall report the test result to the City as negative. If the MRO determines that there is no legitimate medical explanation for the positive test result, it will be verified as positive, or in the cause of an adulterated or substituted specimen, a refusal to test. The MRO must immediately report all drug test results to the City 's DER and or C/TPA.

The MRO, or a staff member, must make a reasonable effort to contact the individual at the day and evening telephone numbers listed on the CCF. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact the City 's Designated Employer Representative (DER). The DER must attempt to contact the individual immediately, in as confidential a manner as possible, to inform him/her to contact the MRO immediately and of the consequences of failing to contact the MRO within the next 72 hours.

If, after making all reasonable efforts, the DER is unable to contact the individual, the City may place the driver on temporary medically unqualified status or medical leave.

The MRO may verify a test result as positive, or as a refusal to test because of adulteration or substitution, or as cancelled because the test was invalid (with instructions to recollect immediately under direct observation), without interviewing the individual about the test in three circumstances:

- (i) The individual expressly declines the opportunity to discuss the test;
- (ii) The DER has successfully made and documented a contact with the individual and instructed the individual to contact the MRO, and more than 72 hours have passed since the time the DER contacted the individual; or

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

- (iii) Neither the MRO nor the DER, after making and documenting all reasonable efforts, has been able to contact the individual within 10 days of the date on which the MRO receives the confirmed test result from the laboratory.

#### F. Split Specimen Testing

When the MRO verifies a drug test as positive for a drug or drug metabolite, and/or as a refusal to test because of adulteration or substitution, the MRO must also notify the individual of his/her right to have the split specimen tested and the procedures for requesting this test. There is no split specimen testing for an invalid result.

The individual has 72 hours from the time he/she is provided with this notification to make this request either verbally or in writing. The City must ensure that the test takes place, and although the individual is not required to pay for the test from his/her own funds before the test takes place, the City may seek reimbursement for the cost of the test. **The City of Pass Christian may seek reimbursement from the individual for the cost of a split specimen test that confirms the original laboratory result.**

When the individual makes a timely request for a test of the split specimen, the MRO must immediately provide written notice to the laboratory that tested the primary specimen, directing them to forward the split specimen to a second HHS-certified laboratory.

Action required by DOT agency regulations as the result of a positive, adulterated or substituted drug test (i.e. removal from performing a safety-sensitive function) is NOT stayed pending the result of the test of the split specimen.

If the test of the split specimen fails to reconfirm the presence of the drug(s)/drug metabolite or the adulterant result reported in the primary specimen, the second laboratory may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test. The result of the test of the split specimen is transmitted by the second (or subsequent) laboratory directly to the MRO, who then reports the result to the City 's DER and the individual. All test outcomes are detailed in 49 CFR Part 40<sup>1</sup>

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40



## **SECTION IV - ALCOHOL TESTING PROCEDURES AND METHODOLOGY**

The City shall ensure that all alcohol testing conducted under 49 CFR Part 382 complies with the procedures set forth in 49 CFR Part 40<sup>1</sup>. These procedures, which describe the alcohol testing process in detail, are briefly summarized in this Section.

### **A. Locations for Alcohol Testing**

Alcohol testing shall be conducted in a location that affords visual and aural privacy to the individual being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

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 this section. In such a case, the Technician shall provide visual and aural privacy to the individual to the greatest extent practicable. All necessary equipment, personnel, and materials shall be provided at the location where testing is conducted. The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test.

### **B. Alcohol Screening Tests**

An alcohol screening test is an analytical procedure to determine whether an individual may have a prohibited concentration of alcohol in a breath or saliva specimen. Other types of tests (i.e. blood and urine) are not authorized. Only a certified Screening Test Technician (STT) or a certified Breath Alcohol Technician (BAT) is authorized to conduct a DOT alcohol screening test. An alcohol screening test can be conducted using either an Alcohol Screening Device (ASD) or an Evidential Breath Testing Device (EBT).

If the result of the screening test is a breath alcohol concentration of less than 0.02, no further testing is authorized. If the result of the screening test is a breath alcohol concentration of 0.02 or greater, a confirmation test is required.

### **C. Alcohol Confirmation Tests**

An alcohol confirmation test provides quantitative data about alcohol concentration. Only breath tests are authorized for alcohol confirmation tests. Other types of tests (i.e. saliva, blood and urine) are not authorized. Only a BAT is authorized to conduct a DOT alcohol confirmation test. An alcohol confirmation test can be only conducted using an Evidential Breath Testing Device (EBT).

If the result of the confirmation test is an alcohol concentration of 0.02 or greater, the BAT must immediately notify the Company's local DER of the results in a confidential manner and the driver is immediately prohibited from performing any safety-sensitive functions. (Reference Section V – Consequences of Other Alcohol Related Conduct for alcohol concentration results of 0.02 or greater but less than 0.04 and Section VI – Consequences for a Driver Who Engages in Prohibited Activities for alcohol concentration results of 0.04 or greater.)

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

**SECTION V – CONSEQUENCES OF OTHER RELATED ALCOHOL CONDUCT**  
(Alcohol Concentration of 0.02 or Greater But Less Than 0.04)

A. Prohibited Use

Although the results of an alcohol test with an alcohol concentration of 0.02 or greater but less than 0.04 is not considered to be prohibited behavior as defined in 49 CFR Part 382 (Reference Section II of this Policy), no driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for the City , including driving a commercial motor vehicle.

B. Return-to-Duty Requirements

The City shall not permit said driver to perform or to continue to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test. No return-to-duty test is required at that time.

Except as provided in the preceding paragraph, the employer shall take no action under DOT/FMCSA authority against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit the employer with independent authority from taking any action otherwise consistent with law.

C. City Policy Issues

**Any City of Pass Christian driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 will be released from duty for the remainder of his/her regularly scheduled workday or over-time assignment and will not be allowed to resume his/her safety-sensitive duties until the start of his/her next regularly scheduled workday, provided that the applicable 24 hour time period has elapsed.**

**In addition, any such driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 will be subject to disciplinary action up to and including termination for violation of City Policy which prohibits the use of intoxicants while on duty or reporting for duty under the influence of intoxicants.**

**Transportation. Under no circumstances shall a driver who is found to have an alcohol concentration of 0.02 or greater operate or be permitted to operate a City vehicle. In addition, the City will provide the employee with transportation from the collection site to his/her home or another mutually acceptable location.**

## SECTION VI – CONSEQUENCES FOR A DRIVER WHO ENGAGES IN PROHIBITED ACTIVITIES

### A. Immediate Removal from Safety-Sensitive Functions

No driver shall perform safety-sensitive functions, including driving a CMV, if the driver has engaged in the conduct prohibited by Section II of this Policy or an alcohol or controlled substances rule of another DOT agency. No employer shall permit any driver to perform safety-sensitive functions, including driving a CMV, if the employer has determined that the driver has violated this regulation.

Notwithstanding any action the City may take under its own authority, said drivers (*this includes applicants as well as employees*) will be given the names, addresses and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs and shall be advised as to the resources available to them in evaluating and resolving problems associated with drug use or alcohol misuse. **Said drivers will be required to sign a statement certifying receipt of this information (Reference Appendix C).**

### B. Required Evaluation and Testing

No driver who has engaged in conduct prohibited by Section II of this Policy shall perform or be permitted to perform safety-sensitive functions, including driving a commercial motor vehicle, (for any employer) unless the driver has met the requirements of 49 CFR Part 40<sup>1</sup> regarding referral, evaluation, and treatment.

In summary, if the City allows said covered employee an opportunity to resume his/her safety-sensitive functions, that employee must first undergo a face-to-face assessment and clinical evaluation by a substance abuse professional (SAP) who will determine what assistance is needed to resolve problems associated with drug use or alcohol misuse.

Once the SAP recommends a course of education and/or treatment (i.e. in-patient hospitalization, intensive out-patient rehabilitation, counseling, self-help groups, aftercare, etc.), said employee must fully comply with the recommendation and must then be re-evaluated in a follow-up face-to-face clinical interview by the SAP to ensure that he/she has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations. Said employee may then resume his/her safety-sensitive duties after undergoing a return-to-duty drug test with a verified negative result and/or an alcohol test with a breath alcohol concentration below 0.02. This employee shall be subject to unannounced follow-up testing and may also be subject to continuing education and/or treatment in accordance with the SAP's recommendations.

Neither the individual nor the City may seek a second SAP's evaluation in order to obtain another recommendation, and no one may change, in any way, the SAP's evaluation or recommendations for assistance.

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

C. City Policy Issues

**Any City of Pass Christian driver who engages in the prohibited activities outlined in Section II of this Policy will be terminated immediately.**

**Transportation. Under no circumstances shall a driver who is found to have an alcohol concentration of 0.02 or greater or thought to be under the influence of a controlled substance, operate or be permitted to operate a City vehicle. In addition, the City will provide the employee with transportation from the collection site to his/her home or another mutually acceptable location.**

## SECTION VII - EDUCATION AND TRAINING REQUIREMENTS

### A. Employee Education

Prior to start of alcohol and controlled substances testing, the City shall provide all drivers with educational materials that explain the requirements of the FMCSA's regulations as well as information describing City policies and procedures regarding how the City will comply with these regulations. In addition, these materials will include information on the effects of alcohol and controlled substances use on an individual's health, work, and personal life, signs and symptoms of an alcohol or controlled substances problem, and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

These materials will also be distributed to all employees subsequently hired for or transferred to a position where a CDL is required or an employee is utilized to operate a CMV. Each driver will be required to sign a statement certifying receipt of this information (Reference Appendix D). **Failure to sign this receipt will be considered a voluntary termination.**

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

All questions regarding these regulations and related City policies and procedures should be directed to the Designated Employer Representative or the Substance Abuse Program Manager (Reference Appendix A for the names of these individuals).

### B. Supervisory Training

All supervisors who may be required to make reasonable suspicion determinations must receive at least 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use. This training shall include the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.

## SECTION VIII - CONFIDENTIALITY AND RECORDKEEPING PROCEDURES

### A. Access and Confidentiality

The City shall maintain records of its alcohol misuse and controlled substances use prevention program in accordance with DOT regulations. These records shall be maintained in a secure location with controlled access for the specified retention periods. **Drug and alcohol testing information shall not be included in employee personnel files.**

Except as required by law or expressly authorized or required, the City shall not release driver information that is contained in records required to be maintained under this regulation. **With the exception of requests for information from drivers as described in the following paragraph and requests for information from subsequent employers as described in Subsection C, all requests for information or facility access by third parties should immediately be directed to the Substance Abuse Program Manager.**

A driver is entitled, upon written request, to obtain copies of any records pertaining to his/her use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests. The City will promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

The City shall permit access to all facilities utilized in complying with the requirements of this Policy to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

The City shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this policy and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program(s), when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer and any of its drivers.

When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose information related to its administration of a post-accident alcohol and/or controlled substances test administered following the accident under investigation.

The City may disclose information required to be maintained under this regulation pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this regulation (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver). Additionally, the City may disclose information in criminal or civil actions in accordance with 49 CFR Part 40.321(b)<sup>1</sup>

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

The City shall release information regarding a driver's records as directed by the specific written consent of the driver 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 specific written consent as outlined in 49 CFR part 40.321(b)<sup>1</sup>.

**B. Management Information System (MIS) Report**

The Company shall prepare and maintain annual MIS reports summarizing the results of its alcohol and controlled substances testing program in the form and manner prescribed by FMCSA regulations. This report will be submitted in accordance with rule requirements (e.g. dates for submission, selection of companies required to submit, and method of reporting) established by the FMCSA.

**C. Exchange of Information Between Employers**

1. Procurement of information. The City shall request alcohol and controlled substances information from previous employers in accordance with 49 CFR Part 40.25<sup>1</sup> for all drivers it is intending to use to perform safety-sensitive duties.

In summary, the City must, after obtaining an individual's specific written consent, request the following information from all DOT-regulated employers who have employed that individual during the preceding 3 years:

- alcohol tests with a concentration result of 0.04 or greater;
- verified positive drug test results;
- refusals to be tested (including verified adulterated or substituted drug test results);
- other violations of DOT agency drug and alcohol testing regulations;

and, with respect to any individual who violated a DOT drug and alcohol regulation:

- documentation of their successful completion of DOT return-to-duty requirements (including follow-up tests).

If the previous employer does not have information about the return-to-duty process (e.g. an employer who did not hire an employee who tested positive on a pre-employment test), the City must seek to obtain this information from the employee. The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this regulation or other applicable DOT agency regulations.

This information is to be obtained by supplying each of said previous employers with the driver's specific, written authorization for the release of these records (Reference Appendix E).

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<sup>1</sup> See Appendix F – How to Obtain Copies of Federal Regulation 49 CFR Part 40

If feasible the City must obtain and review this information before the driver first performs safety-sensitive functions. If this is not feasible, the City must obtain and review the information as soon as possible. However, the City must not permit the driver to perform safety-sensitive functions after 30 days from the date on which he/she first performed safety-sensitive functions unless it has obtained or made and documented a good faith effort to obtain this information. This information must be retained for 3 years from the date of the driver's first performance of safety-sensitive functions.

In addition, the City may not permit a driver to perform or to continue to perform safety-sensitive functions if information is obtained showing that the individual has violated a DOT agency drug and alcohol testing regulation unless information is also obtained showing that the individual has complied with the return-to-duty requirements as outlined in Section VI.

The City is also required to ask the driver whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the driver applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past 3 years. If the driver admits that he/she had a positive test or a refusal to test, the City must not use the driver to perform safety-sensitive functions until and unless the driver documents successful completion of the return-to-duty process.

2. Release of information. Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request. After reviewing the employee's specific, written consent, the City will immediately release the requested information to the employer making the inquiry. The City must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.



## GLOSSARY OF TERMS

**“Adulterated specimen”** A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

**“Alcohol”** The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. (*Caution: Certain cough medicines may contain alcohol.*)

**“Alcohol concentration (or content)”** 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 under this part.

**“Alcohol use”** The drinking or swallowing of any beverage, liquid mixture or preparation, (including any medication), containing alcohol.

**“Alcohol Screening Device (ASD)”** A breath or saliva device, other than an EBT, that is approved by the national Highway Traffic Safety Administration (NHTSA) and appears on ODAPC’s Web page for “Approved Screening Devices to Measure Alcohol in Bodily Fluids.”

**“Aliquot”** A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

**“Breath Alcohol Technician (BAT)”** A person who instructs and assists individuals in the alcohol testing process and operates an EBT. The BAT shall be trained to proficiency in the operation of the EBT that he or she is using.

**“CFR”** Code of Federal Regulations.

**“Cancelled test”** A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this regulation otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

**“Chain-of-custody”** The procedure used to document the handling of the urine specimen from the time the individual gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF) as approved by the Office of Management and Budget.

**“Collection site ”** A place designated by the employer where individuals present themselves for the purpose of providing a specimen to be analyzed for the presence of controlled substances and/or alcohol.

**“Commercial motor vehicle (CMV)”** A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (a) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (b) Has a gross vehicle weight rating of 26,001 or more pounds; or

- (c) Is designed to transport 16 or more passengers, including the driver; or
- (d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations.

**“Confirmed drug test”** A confirmation test result received by an MRO from a laboratory.

**“Consortium/Third-party administrator (C/TPA)”** A service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers.

**“Controlled substances”** Those substances identified in 49 CFR Part 40.85. The word “drugs” is used interchangeably with this term in this policy manual.

**“Designated Employer Representative (DER)”** An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties or cause employees to be removed from these covered 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 these regulations. Service agents cannot serve as DERs.

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

**“Disabling damage”** Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

*Inclusions:* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

*Exclusions:* (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts; (ii) tire disablement without other damage even if no spare tire is available; (iii) headlight or taillight damage; (iv) damage to turn signals, horn, or windshield wipers which make them inoperative.

**“Driver”** Any person who operates a commercial motor vehicle. This includes, but is not limited to: full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

**“Employer”** A person or entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this regulation. The term, as it is used in this Policy, refers to 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 Policy and any applicable DOT agency regulations. Service agents are not employers for the purposes of this regulation.

**“Evidential Breath Testing Device (EBT)”** A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, and appears on ODAPC’s Web page for “Approved Evidential Breath Measurement Devices” because it conforms with the model specifications available from NHTSA.

**“HHS”** The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

**“Initial specimen validity test”** The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

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

**“Laboratory”** Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

**“Medical Review Officer (MRO)”** A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

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

**“Performing (a safety-sensitive function)”** An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**“Positive result”** The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

**“Primary specimen”** In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the donor has a drug or drug metabolite in his/her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, also defined in this section.

**“Public Interest Exclusion (PIE)”** A debarment mechanism that directs DOT-regulated employers not to use a particular service agent who has been determined to have failed or refused to provide drug and alcohol testing services consistent with DOT regulations for a specific period of time.

**“Reconfirmed”** The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

**“Refuse to submit (to a drug or alcohol test)”** means that a driver:

- (1) Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA;

- (2) Fails to remain at the testing site until the testing process is complete, provided that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- (3) Fails to provide a urine specimen for any drug test required by this regulation or DOT agency regulations, provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen;
- (5) Fails 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;
- (6) Fails/declines to take a second test the employer or collector directs the driver to take;
- (7) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER concerning the evaluation as part of the "shy bladder" procedures of this regulation. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
- (8) Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector);
- (9) For an observed collection, fails to follow the observer's instructions to raise the his or her clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the driver has any type of prosthetic or other device that could be used to interfere with the collection process.
- (10) Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- (11) Admits to the collector or MRO that he or she adulterated or substituted the specimen.

**"Rejected for testing"** The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

**"Safety-sensitive function"** All time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
- (2) All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
- (3) All time spent at the driving controls of a commercial motor vehicle in operation.
- (4) All time, other than driving time, in or upon any commercial motor vehicle (except for time spent resting in the sleeper berth).

- (5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**“Screening Test Technician (STT)”** A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device (ASD).

**“Service agent”** A person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

**“Split specimen collection”** A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

**“Stand-down”** The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

**“Substance Abuse Professional (SAP)”** A person who evaluates individuals who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

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

**“Verified test”** A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

## APPENDIX A

### Program Administration and Medical Service Providers

#### Substance Abuse Program Manager

City Clerk/Human Resources Manager  
Marian Gest  
Telephone: 228-452-3311

#### Designated Employer Representative (DER)

City Clerk/Human Resources Manager  
Marian Gest  
Telephone: 228-452-3311

#### Program Administrator (C/TPA)

Medical Analysis, LLC  
400 Security Square  
Gulfport, MS 39507  
Telephone: 228-284-5291

#### SAMHSA Certified Laboratory

Laboratory Corporation of America  
1120 Main Street  
Southaven, MS 38671  
Telephone: 800-233-6339

Laboratory Corporation of America  
1904 Alexander Drive  
Research Triangle Park, NC 27709  
Telephone: 800-833-3984

#### Medical Review Officer (MRO)

Doug Leavengood, M.D.  
1025 Division Street, Suite B2  
Biloxi, MS 39530  
Telephone: 228-267-3520  
228-432-3520 (Office)

#### Substance Abuse Professional (SAP)

American Substance Abuse Professionals  
888-792-2727

#### Local Collection Site(s)

*Name:* Medical Analysis  
*Street Address:* 400 Security Square  
*City/State:* Gulfport, MS 39507  
*Telephone:* 228-284-5291  
*Hours:* 8:30 a.m. – 5:30 p.m.  
(closed: noon – 1:00 p.m.)

## APPENDIX B

### Specimen Analysis Cutoff Concentration Chart

Initial and confirmatory cutoff concentrations are expressed in nanograms per milliliter (ng/mL):

Initial Test Analyte	Initial Test Cutoff <sup>(1)</sup>	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Marijuana metabolites (THCA) <sup>(2)</sup>	50 ng/mL <sup>(3)</sup>	THCA	15 ng/mL
Cocaine metabolites (Benzoylecgonine)	150 ng/mL <sup>(3)</sup>	Benzoylecgonine	100 ng/mL
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL
MDMA <sup>(4)</sup> /MDA <sup>(5)</sup>	500 ng/mL	MDMA MDA	250 ng/mL

(1) For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

*Immunoassay:* The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

*Alternate technology:* Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

(2) An immunoassay must be calibrated with the target analyte, Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

(3) *Alternate technology (THCA and Benzoylecgonine):* When using an alternate technology initial test for the specific target analytes of THCA and Benzoylecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylecgonine).

(4) Methylenedioxymethamphetamine (MDMA).

(5) Methylenedioxyamphetamine (MDA).

**APPENDIX C**

**Receipt for Counseling/Treatment Program Information**

I, (print name)\_\_\_\_\_ hereby acknowledge that I have received the names, addresses and telephone numbers of substance abuse professionals (SAP's) and counseling and treatment programs and have been advised as to the resources available to me in evaluating and resolving problems associated with drug use and/or the misuse of alcohol.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Driver's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness' Signature



## APPENDIX D

### Receipt for Controlled Substances and Alcohol Use & Testing Policy

I, (print name) \_\_\_\_\_ hereby acknowledge that I have received a copy of the City 's Controlled Substances and Alcohol Use & Testing Policy Revised 01/01/2018. This Policy explains the requirements of Federal Regulation 49 CFR Part 382, Federal Motor Carrier Safety Administration Controlled Substances and Alcohol Use and Testing Regulations and contains information regarding the consequences for violating these regulations.

This manual also includes information regarding additional City policies pertaining to substance abuse issues that are implemented under City authority. I understand that all City policy statements are **boldfaced and underlined**.

Materials are also being provided to me concerning the effects, signs and symptoms of alcohol and controlled substances use as well as available intervention methods.

I understand that it is a requirement of 49 CFR Part 382.601(d) that each driver sign a statement certifying receipt of the above-listed materials.

I acknowledge that I am responsible for reading and familiarizing myself with these materials and that compliance with the Controlled Substances and Alcohol Use and Testing Policy is a condition of employment.

I understand that I have refused to take a drug/alcohol test if I:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA;
2. Fail to remain at the testing site until the testing process is complete; (Note: An employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.);
3. Fail to provide a specimen for any test required by DOT agency regulations; (Note: An employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.);

4. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of the provision of a specimen;
5. Fail to provide a sufficient specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fail or decline to take a second test that the employer or the collector has directed me to take;
7. Fail to undergo a medical examination or evaluation, as directed by the Medical Review Officer as part of the verification process, or as directed by the Designated Employer Representative. In the case of a pre-employment drug test, I am deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
8. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector);
9. For an observed collection, fail to follow the observer's instructions to raise my clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if I have any type of prosthetic or other device that could be used to interfere with the collection process;
10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process;
11. Admit to the collector or MRO that I adulterated or substituted the specimen.

I understand that a refusal to submit to a required test is a prohibited activity and carries the same consequences as a positive test, as fully described in Section VI – Consequences for a Driver Who Engages in Prohibited Activities in this manual. I understand that as an applicant driver who has a positive test result or has been determined to have refused a required test, I will not be hired and/or I understand that as an employee driver who has a positive test result, has been determined to have refused a required test or is found to be in violation of these regulations or policies, disciplinary action up to and including termination may also be taken.

*The following section pertains to applicant drivers only:*

Have you tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which you have applied for, but did not obtain, safety-sensitive transportation work covered by any DOT agency drug and alcohol testing rules during the past 3 years?      No \_\_\_\_\_      Yes \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Driver's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness' Signature

*The City is required to maintain the original of the signed Certificate but may provide a copy to the driver.*

## APPENDIX E

### Release of Information Form -- 49 CFR Part 40 Drug and Alcohol Testing

**Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:**

Employee Printed or Typed Name: \_\_\_\_\_

Employee SS or ID Number: \_\_\_\_\_

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in *Section I-B*, to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released by my previous employer is limited to the DOT-regulated testing items listed in *Section II-A*.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**I-A.**

New Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Designated Employer Representative: \_\_\_\_\_

**I-B.**

Previous Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Designated Employer Representative (if known): \_\_\_\_\_

**Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:**

**II-A.** In the three years prior to the date of the employee's signature (in Section I), for DOT-regulated testing ~

1. Did the employee have alcohol tests with a result of 0.04 or higher? YES \_\_\_ NO \_\_\_
2. Did the employee have verified positive drug tests? YES \_\_\_ NO \_\_\_
3. Did the employee refuse to be tested? YES \_\_\_ NO \_\_\_
4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? YES \_\_\_ NO \_\_\_
5. Did a previous employer report a drug and alcohol rule violation to you? YES \_\_\_ NO \_\_\_
6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process? N/A \_\_\_ YES \_\_\_ NO \_\_\_

*NOTE: If you answered "yes" to item 5, you must provide the previous employer's report. If you answered "yes" to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).*

**II-B.**

Name of person providing information in *Section II-A*: \_\_\_\_\_

Title: \_\_\_\_\_

Phone #: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX F**

### **How to Obtain Copies of Federal Regulation 49 CFR Part 40**

The 49 CFR Part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs” referenced in this policy manual was published in the Federal Register on 12/19/00 with an effective date of 08/01/01 and has undergone several subsequent amendments, the most recent being effective 01/01/2018.

This Federal Regulation, as well as interpretations and answers to questions, may be viewed at the DOT Office of Drug and Alcohol Policy Compliance web site: <https://transportation.gov/odapc>.

In addition, a copy of 49 CFR Part 40 may be obtained by writing to the U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590, or by calling the Office of Drug and Alcohol Policy and Compliance at (202) 366-3784 or by emailing: [ODAPCWebmail@DOT.gov](mailto:ODAPCWebmail@DOT.gov).