

**CITY OF CHEYENNE**  
**DRUG AND ALCOHOL TESTING POLICY**  
**49 C.F.R. PARTS 40, Part 29, and 655 as Amended, FMCSA 382**  
**(Revised 2/28/2018)**

**1.0 POLICY**

The City of Cheyenne ("City") is dedicated to providing safe, dependable and efficient public services to the citizens of Cheyenne. The City's employees are its most valuable resource and it is the City's goal to provide a safe, healthful and satisfying working environment which promotes personal opportunities for growth. In meeting these goals, it is City policy to:

- A. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner;
- B. Create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
- C. Prohibit the unlawful manufacture, distribution, dispensing, possession or use of controlled substances; and
- D. Encourage employees to seek professional assistance for personal problems, including alcohol or drug dependency, that adversely affect their ability to perform their assigned duties.
- E. Employees who receive a positive confirmed test result may contest or explain the result to the City within five (5) working days after written notification of the test result. (This item is under the City's own authority)
- F. The Medical Review Officer (MRO), for employees subject to FTA Regulations, has the sole authority to verify a test as positive. Employees who must speak with an MRO regarding a confirmed positive test have 72 hours to discuss their case.

**2.0 PURPOSE**

The purpose of this policy is to:

- A. Assure worker fitness for duty;
- B. Protect City employees and the public from the risks posed by on-the-job misuse of alcohol and use of prohibited drugs; and

C. Comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs established for employees for whom a commercial drivers' license is a job requirement, and for those employees performing "safety sensitive functions."

Federal Motor Carrier Safety Administration has published 49 C.F.R. Part 382, which mandates urine drug testing and breath alcohol testing for commercial driver's license (CDL) holders and for those employees who perform safety-sensitive functions. The Federal Transit Administration (FTA) has also published 49 C.F.R. Part 655 as amended, which mandates urine drug testing and breath alcohol testing for safety-sensitive positions as defined by the FTA and prohibits performance of a safety sensitive function when there is a positive test result. The U.S. Department of Transportation (DOT) published 49 C.F.R. Part 40, as amended, which sets forth standards for the collection and testing of urine and breath specimens. In addition, DOT published 49 C.F.R. Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses by employees to their employer and to the FTA. This policy incorporates the requirements of the Drug Free Workplace Act for all employees which prohibits the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace.

### **3.0 APPLICABILITY**

This policy applies to all full-time employees, those in the random pool, those whose job requires a CDL and to all employees performing safety-sensitive functions. It applies when employees are on City property, when performing any job-related duties which require the operation of a commercial motor vehicle (CMV), or when performing any safety-sensitive function. This policy also applies to off-site lunch periods or breaks when an employee is scheduled to return to work. Employees performing safety sensitive functions should refer to § 4.0(n) and (o) of this policy to clarify which regulation governs their function. Any references in this program to safety sensitive functions, however, applies to all employees performing safety sensitive functions as defined in § 4.0(n) and (o).

Independent contractors and their employees, who are governed by the Drug Free Workplace Act of 1988 and the DOT Drug and Alcohol Testing regulations, shall comply with these Federal laws while on City property or while conducting City business. Any contractor found in violation of this policy will not be permitted to conduct business on the City's behalf.

This policy incorporates the provisions of the FTA. In order to obtain a unified policy, the City of Cheyenne will implement the most stringent requirements of these regulations. The federal law provides minimum standards for drug and alcohol testing; the City will exceed these minimum standards only where reasonable and necessary to maintain a cohesive testing program for all affected City employees. To that end, the City requires that a statement of substance abuse testing appear on all vacancy announcements. Provisions which are more stringent will be designated as either following the FTA or FMSCA standards. Employees will receive 60 days' notice prior to the implementation of any changes to this policy.

#### **4.0 DEFINITIONS**

The following definitions apply to the policy and have been taken from 49 C.F.R. §§ 40, 382.107, 655 and 655.4. If conflicts are found between the Federal and City definitions, the Federal definitions control.

- A. Accident means, under 49 CFR Section 655.4, 49 CFR § 382.303 and 49 CFR § 390.5, and for the purposes of this program, an occurrence associated with the operation of a public transportation vehicle (FTA) or commercial motor vehicle (FMCSA) which results in:
1. A fatality; or
  2. Bodily injury to a person requiring immediate medical attention away from the scene of the accident; or
  3. One or more vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene.
- B. Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl and isopropyl alcohol.
- C. Alcohol Concentration 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. Alcohol concentration may be described in terms of Blood Alcohol Concentration (BAC).

D. Commercial Driver's License (CDL) means a class "A," "B," or "C" license with a hazardous endorsement issued by the State of Wyoming.

1. A class "A" license allows the driver to operate any combination of vehicles with a gross combination weight rating (GCWR) or 26,001 pounds or more, provided that the gross vehicle weight rating (GVWR) is in excess of 10,000 pounds gross vehicle weight (GVW), including those designed to carry 15 or more passengers.
2. A class "B" license allows a driver to operate any single vehicle with a GVWR of 26,001 pounds or more or any such vehicle towing a vehicle which does not have a GVW in excess of 10,000 pounds.
3. A class "C" license with a hazardous endorsement (H) allows a driver to transport hazardous materials in a placarded vehicle with a GVRW of less than 26,001 pounds.

E. Commercial Motor Vehicle (CMV) means any vehicle having tow axles and a gross vehicle weight of 26,000 pounds or greater or a vehicle used for transportation or ancillary services related to transportation.

F. Confirmation Testing for Alcohol means a second BAC test with an evidential breath testing device, following a screening test, with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

G. Confirmation testing for controlled substances means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test, in order to ensure reliability and accuracy.

H. Controlled substances includes, but is not limited to, the following: marijuana (THC), cocaine, opiates, phencyclidine (PCP) and amphetamines (including methamphetamine), MDMA, and Heroin, Spice. Controlled substances may be referred to as drugs.

- I. Disabling Damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner after simple repairs.
1. It includes damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
  2. It excludes damage which can be remedied temporarily at the scene of the accident without special tools or parts; tire disablement without other damage even if no spare tire is available; headlight or taillight damage; and damage to turn signals, horn or windshield wipers which makes them inoperative.
- J. Driver means any employee who is required by his/her job function or job description to have a Commercial Driver's License (CDL).
- K. Employee(s) means any employee and temporary employee covered by this program, including full-time and part-time, (as defined by the City's Personnel Rules and Regulations) unless otherwise specified.
- L. Medical Review Officer (MRO) is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
- M. Refuse to submit (to testing) means that an employee:
1. Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer;
  2. Fails to remain at the testing site until the testing process is complete;
  3. Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations;

4. In the case of a directly observed or monitored collection in a drug test, fails to permit observation or monitoring of the provision of a specimen;
5. Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fails or declines to take a second test the employer or collector has directed the employee 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 DAPM as part of the "shy bladder" or "shy lung" procedures;
8. Fails 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);
9. A report by the MRO that there is a verified adulterated or substituted test result;
10. In the case of a directly observed test, failure to follow the observer's instructions (raise or lower clothing and turn around in order to permit the observer to determine if there is a prosthetic or other device that could be used to interfere with the collection process);
11. Possessing or wearing a prosthetic or other device;
12. Admitting the adulteration or substitution of a specimen to the collector or MRO;
13. Failure or refusal to sign Step 2 of the alcohol testing form.

N. Safety-Sensitive Function under FMCSA 49 CFR Part 382 means commercial driver's license (CDL) holders, excluding transit employees, that perform, are ready to perform or are immediately available to perform the following on-duty functions:

1. Waiting to be dispatched;
2. Inspecting, servicing or conditioning any equipment, or commercial motor vehicle; or
3. Controlling or driving a commercial vehicle.

City of Cheyenne's positions under this definition and FMCSA regulations:

Fleet Maintenance: Fleet Maintenance Manager, Foreman, Lube Technician, Senior Lube Technician Mechanic\*, Senior Mechanic\*, Parts Coordinator, and Welder

Forestry: Forestry Manager, Arborist, Senior Arborist, Foreman

Parks: Foreman

Sanitation/Landfill: Solid Waste Manager, Foreman, Sanitation Worker, Driver, Senior Driver, Semi-Driver, Heavy Equipment Operator, Senior Heavy Equipment Operator, Safety Coordinator

Street and Alley: Street and Alley Manager, Equipment Operator, Senior Equipment Operator, Ranch Manager, Foreman, Supervisor

O. Safety Sensitive Function under the Federal Transit Administration (FTA) 49 CFR Part 655 means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a non-revenue service vehicle, when required to be operated by a holder of a CDL;
3. Controlling dispatch or movement of a revenue vehicle;
4. Maintaining a revenue service vehicle or equipment used in revenue service.

City of Cheyenne's positions under this definition and FTA regulations:

Fleet Maintenance: Mechanic\*, Senior Mechanic\*

Transit: Transit Administrator, Transit Manager, Bus Drivers (Full-time and Part-time), Dispatcher/Scheduler, Dispatcher

\*Mechanics and senior mechanics that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program who also provide services to the transit system are subject to FTA regulations while performing FTA-defined safety-sensitive functions. The Fleet Manager will determine which administration regulates the majority, (>50 percent) and therefore, primary.

Those employees will be subject to pre-employment and random testing under the regulatory authority of the primary administration. The regulatory authority for reasonable suspicion and post-accident testing will depend on the function being performed at the time of the incident/accident. (When a mechanic works on transit vehicles, he or she would be subject to FTA regulations. (Return-to-duty and follow-up tests will be assigned to the administration authority that generated the initial positive test)

Police Officers and Firefighters (effective 7/1/07) who are not covered by FTA or FMCSA regulations will not be sent for DOT tests. These employees will be subject to non-DOT testing.

P. Screening Test (Initial) means, for the purpose of alcohol testing, a breathalyzer test to determine whether a driver may have a prohibited concentration of alcohol in his/her system. A screening test, for the purpose of drug testing, means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Q. Substance Abuse Professional (SAP) means a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor, or marriage and family therapist with knowledge of, and clinical experience in, the diagnosis and treatment of alcohol and controlled substances related disorders. A SAP is primarily or routinely engaged in providing or consulting about detoxification and rehabilitation treatment for controlled substance and/or alcohol abuse.

## **5.0 PROHIBITED SUBSTANCES**

"Prohibited substances" addressed by this policy include the following:

### **5.1 Controlled Substances, Illegal Drugs and Alcohol**

Prohibited substances, for the purposes of this program, include but are not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), cocaine, MDMA, and Heroin as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Additionally, beverages containing alcohol and prescription or non-prescription medications containing alcohol are prohibited. Covered employees may be tested for these drugs any time while at work.

## **6.0 PROHIBITED CONDUCT**

Use of any illegal drug or substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined by 21 C.F.R. §§ 1300.11 through 1300.15 and the Wyoming Controlled Substances Act, Wyo. Stat. § 35-7-1031, et seq., is prohibited at all times unless a legal prescription has been written for the substance.

Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

### **6.1 Manufacture, Trafficking, Possession and Use of Illegal Drugs**

City employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of prohibited substances while on duty and on City property, in City vehicles, in uniform (including clothing indicative of employment with the City) or while on City business. Employees who violate this provision will be subject to disciplinary action as prescribed by the City Personnel Rules and Regulations. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

### **6.2 Intoxication/Under the Influence**

City employees are prohibited from being intoxicated, impaired or under the influence of a prohibited substance. Employees who

are reasonably suspected of being under the influence of a prohibited substance are not fit for duty and shall be removed from driving or safety sensitive functions pending an investigation and verification of condition.

**Safety-sensitive employees who fail or refuse a DOT drug test shall be removed from duty without pay, referred to a SAP and subject to disciplinary action as prescribed by the City Personnel Rules and Regulations.**

A drug test is considered positive if an individual has a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 C.F.R Part 40, as amended.

### 6.3 Alcohol Use

No employee shall use alcohol on duty or in uniform. No employee shall use alcohol within four hours of reporting for duty, or during the hours that they are on call. Violation of these provisions is prohibited and punishable by disciplinary action as prescribed by the City Personnel Rules and Regulations; this policy is issued under City's authority.

No employee will be allowed to report for duty within four hours of using alcohol. No employee will be allowed to remain on duty when his/her ability to drive a CMV or perform assigned safety-sensitive functions is adversely affected by alcohol or when his/her breath alcohol concentration is 0.02 or greater as indicated by a breath alcohol test. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

Employees with a BAC of 0.02 or greater and less than 0.04 will be removed from safety sensitive duty for 8 hours or until a retest results in a concentration of less than 0.02. Failure to comply with this provision shall result in disciplinary actions prescribed by the City Rules and Regulations. Any employee who tests positive, subject to disciplinary action under the City Personnel Rules and Regulations.

(Chapter XII, § 4).

Employees with a BAC of 0.04 or greater will be referred to a SAP for evaluation and will be removed from duty immediately, will be required to submit to a return to duty test and/or undergo treatment, as prescribed by the SAP, before returning to duty.

#### 6.4 Compliance with Testing Requirement

All drivers, as defined in § 4.0(j), and employees performing safety-sensitive function, as defined in § 4.0(n) and (o), will be subject to urine drug testing and breath alcohol testing. Any employee who refuses to comply with a request for testing may be removed from duty, subject to disciplinary action as prescribed by the City Personnel Rules and Regulations.

A dilute specimen is a specimen with creatinine and specific gravity values that are lower than expected for human urine. If the test is reported as a DILUTE POSITIVE, the test will be treated as a verified positive test result. If the test is reported as NEGATIVE DILUTE, the employee will be required to take another test and the results of the second test will be accepted. The retest will not be conducted under direct supervision.

#### 6.5 Commercial Driver License's Penalty on a Positive Test

Effective September 30, 2005, any City employee with a CDL license with a confirmed positive alcohol or drug test will be subject to the FMCSA Federal disqualifying Violations shown in Appendix C and Appendix D attached hereto. Any employee's who test positive is subject to disciplinary action under the City Personnel Rules and Regulations. (Chapter XII, § 4).

#### 6.6 Treatment Requirements

All employees are encouraged to make use of the available resources for treatment for alcohol misuse and illegal drug use problems. Full-time employees with positive drug or alcohol test results, and those who have an alcohol test result of 0.02 or greater, however, will be required to submit to testing upon return to duty as set forth in § 7.6. Full-time employees with positive drug or alcohol test results who complete a prescribed treatment program or obtain a release from a substance abuse professional will be subjected to follow-up testing as prescribed in § 7.7.

The City may make future employment of full-time employees contingent upon participation in and successful completion of a treatment program. The cost of any treatment or rehabilitation services will be paid for by the full-time employee or his/her insurance provider subject to the health insurance policy provisions. Full-time employees will be allowed to take accumulated sick leave, vacation leave and Family and Medical Leave Act leave to participate in the prescribed rehabilitation program.

Part-time employees who test positive are subject to disciplinary action under the City Personnel Rules and Regulations pertaining to part-time employees. (Chapter XII, § 4).

Any employee who refuses or fails to comply with City requirements for treatment, after care or return to duty shall be subject to disciplinary action as prescribed by the City Personnel Rules and Regulations.

Employees who make self-referrals (e.g., no management involvement or positive results) will be allowed to take accumulated sick leave and vacation leave to participate in a treatment program. The cost of any treatment or rehabilitation services will be paid for by the full-time employee and/or his/her insurance provider subject to the health insurance policy provisions.

#### 6.7 Notifying the City of Criminal Drug Conviction

All employees are required to notify the City of any criminal drug statute conviction for a violation occurring in the workplace within five days of such conviction. Failure to comply with this provision shall result in disciplinary action as prescribed by the City Personnel Rules and Regulations.

#### 6.8 Proper Application of the Policy

The City is dedicated to assuring the fair and equitable application of this substance abuse policy. Therefore, supervisors are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination. A notice regarding substance abuse testing shall be posted in conspicuous locations on City premises. This policy shall be made available to employees and job applicants in the Human Resource office.

### 7.0 TESTING PROCEDURES

Analytical urine drug testing and breath testing for alcohol may be conducted when circumstances warrant (done under the City's authority) or as required by Federal regulations. All drivers and employees performing safety-sensitive functions shall be tested pre-employment, at random, for a reasonable suspicion and following an accident as outlined in §§ 7.3 and 7.4 of this policy. Additionally, all drivers and employees performing safety-sensitive functions will be tested prior to returning to

duty after failing a drug or alcohol test, after receiving an alcohol test result of 0.04 or greater, and after completion of the SAP's recommended treatment program.

Employees who return to work after failing a drug test shall be subject to follow-up testing on a random, unannounced basis. Follow-up testing will be conducted for a period of one to five years, with at least six tests performed during the first year.

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures set forth in 49 C.F.R. Part 40, as amended.

The drugs that will be tested for include marijuana, cocaine, opiates, semi-synthetic opiates, amphetamines, phencyclidine, MDMA, and Heroin. An initial drug screen will be conducted on each urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 C.F.R. Part 40, as amended.

In instances where there is a reason to believe an employee is abusing a substance other than the five drugs listed above, the City reserves the right to test for additional drugs under the City's own authority using standard laboratory testing protocols.

Tests for breath alcohol concentration (BAC) will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. An employee who has a confirmed alcohol concentration of 0.02 or greater, but less than 0.04, will be removed from safety sensitive duty for 8 hours or until a retest results in a concentration of less than 0.02. Failure to comply with this provision shall result in disciplinary actions prescribed by the City Rules and Regulations.

An alcohol test result of 0.02 or greater, but less than 0.04 will result in an employee's removal from duty. His/her absence will be considered an unexcused absence from work subject to City disciplinary procedures as set forth in the City Personnel Rules and Regulations. An alcohol concentration of 0.04 or

greater will be considered a positive alcohol test, in violation of this policy, and in violation of the requirements set forth in the FHWA and FTA regulations. A concentration of 0.04 or greater will result in the employee being referred to a SAP for evaluation.

When an employee tests positive on an initial drug test, the test results will be reviewed by a Medical Review Officer (MRO). The MRO will evaluate the drug test results and speak with the employee to determine what, if any, substances consumed or ingested by the employee could have contributed to a positive result. The employee may request that the MRO initiate a confirming test on the split sample. The MRO does not evaluate employees or refer them to treatment programs. The SAP evaluates employees with positive results. The MRO and the SAP will not be the same person.

Any employee with a confirmed positive drug or alcohol test will be removed from his/her position, informed of education and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. A positive drug and/or alcohol test will also result in disciplinary action as prescribed by the City Personnel Rules and Regulations.

Failure to provide a breath or urine specimen in alcohol and drug testing constitutes a refusal under this policy. Failure to undergo a medical evaluation as required by the MRO or DER for drug and alcohol testing constitutes a refusal under this policy. Failure to permit monitoring or observation under drug testing constitutes a refusal under this policy. Failure to take a second test as directed by the collector or employer under drug testing is a refusal under this policy. Refusal to sign the certification at Step 2 of the ATF constitutes a refusal under this policy.

A covered employee who fails or refuses a drug test will cease performing a safety-sensitive function immediately and an applicant who fails or refuses a pre-employment drug test will be referred to a substance abuse professional.

The City affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process.

## 7.1 Employee Requested Confirmation Testing

Any employee who questions the results of a required drug test under §§ 7.2 through 7.7 of this policy may request that an additional test be conducted. This test must be conducted at a different DHHS-certified laboratory. The test must be conducted on the split sample. The employee pays the costs for confirmation testing unless the result of the split sample invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 C.F.R. Part 40, as amended.

The employee's request for a split sample test must be made to the Medical Review Officer (MRO) within 72 hours of notice of the original sample's verified positive test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.

## 7.2 Pre-Employment Testing

All new employees for positions with the City of Cheyenne, may be subject to pre-employment drug testing (under the City's own authority) and is required for those performing safety sensitive duties. Employees transferring into a safety sensitive position or a position that requires a CDL, or employees who have been off work for more than 90 consecutive days who plan to return to a safety sensitive function, must first undergo urine drug testing immediately following an offer of employment, transfer, or return to work. The applicant must receive a negative drug test result prior to employment or transfer. There is no pre-employment testing for alcohol.

Failing a pre-employment drug test will disqualify an applicant for employment for a period of 12 months (done under the City's authority). Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with the approval of the City and a negative pre-employment drug test will be required prior to further consideration for employment. DOT employers from the previous two years will be contacted concerning previous drug testing results.

A covered employee who has not performed a safety-sensitive duty for 90 consecutive days AND has been out of the random testing pool shall take a pre-employment drug test with a verified negative response before returning to safety-sensitive duties.

Prior to hiring an employee, the City must contact any former employers for whom the prospective employee performed a safety-sensitive function. A copy of the information which must be obtained for employees covered under Part 382 is contained in Appendix C of this policy. A prospective employee who failed a DOT drug test within the last two years and did not successfully complete a program prescribed by an SAP, is ineligible for employment with the City.

The cost for the assessment and any subsequent treatment will be the sole responsibility of the individual. The pre-employment test will be the responsibility of the City.

### 7.3 Reasonable Suspicion Testing

All employees may be subject to a fitness for duty evaluation and urine and breath alcohol testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with the short-term effects of substance abuse or alcohol misuse. Examples of reasonable suspicion include, but are not limited to the following:

- A. Physical signs and symptoms consistent with prohibited substance use or alcohol misuse.
- B. Evidence of the manufacture, distribution, dispensing, possession or use of controlled substances, drugs, or other prohibited substances, or the possession or use of alcohol on City property or during City business or in a manner that affects job performance.

Reasonable suspicion referrals must be made by a supervisor who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. Reasonable suspicion alcohol testing is only permissible just before, during, and after the performance of safety-sensitive duties.

### 7.4 Post-Accident Testing

Each employee will be required to undergo urine and breath testing if they are involved in an accident while driving a City vehicle that results in a fatality. This includes all employees with CDL's that are on-duty and any other employees performing

safety sensitive functions, as defined in § 4.0(n) and (o), whose performance could have contributed to the accident.

In addition, a post-accident test will be conducted if:

- A. An accident results in injuries requiring transportation to a medical treatment facility;
- B. An accident results in one or more vehicles incurring disabling damage which requires towing from the site; or
- C. For employees covered under Part 382, when the driver receives a citation under State or local law for a moving traffic violation arising from the accident; or
- ~~D.~~ Employees tested under this provision will include all employees, not only personnel with CDLs, and any employee performing a safety-sensitive function who could have contributed to the accident. This determination shall be made based on the facts and circumstances surrounding the accident.

For FTA accidents, the FTA Rule Requirement states: As soon as practicable following an accident not involving the loss of human life in which a mass transit vehicle is involved, the employer shall drug and alcohol test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

Employees subject to post-accident testing, as indicated above, will be tested as soon as possible, but not to exceed eight hours for alcohol testing and 32 hours for drug testing. A driver or employee performing a safety-sensitive function who is involved in an accident must refrain from alcohol use for eight hours following the accident or until he/she undergoes a post-accident alcohol test.

A driver or employee performing a safety-sensitive function subject to post-accident testing will be removed from duty and will receive leave with pay until a result is received. If a test comes back as a positive result refer to 8.0 Employee Assessment of this policy.

A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

An employee who is involved in an accident must report the accident to his/her supervisor as soon as possible.

An attempt will be made to complete the post-accident alcohol test within two hours of the accident and, if unsuccessful, the reason will be documented. If still unable to perform the test within eight hours, the reason will also be documented. Post-accident testing is stayed while an employee assists in resolution of the accident or receives medical attention following the accident.

#### 7.5 Random Testing

All drivers and employees performing safety-sensitive functions will be subject to random, unannounced testing. The selection of employees for random drug and/or alcohol testing will be made using a scientifically valid method that ensures each employee will have an equal chance of being selected each time selections are made. To the extent permitted by law, random testing shall be conducted, at a minimum, on 25% of the average staff on an annualized basis for drug tests and 10% for alcohol tests. FMCSA'S minimum random testing rate is 25% for drug tests and 10% for alcohol tests. The random tests will be unannounced and spread throughout the year. All tested employees will be placed back into the pool and, therefore, subject to repeat testing. Random tests will be conducted during the employee's regular hours of work. Random tests will be unannounced and immediate. Employees may be tested for drugs anytime while on duty. Employees selected for random testing will report immediately to the testing site. Random alcohol testing is only permissible just before, during, and after the performance of safety-sensitive duties. Random tests will be conducted on all days during which safety-sensitive functions are performed.

#### 7.6 Return-to-Duty Testing

All drivers and employees performing safety-sensitive functions who previously tested positive on a drug or alcohol test must test negative (below 0.02 for alcohol) and be evaluated and released to duty by a Substance Abuse Professional (SAP) before

returning to work. Failure to comply with this provision shall result in disciplinary actions prescribed by the City Rules and Regulations.

Employees performing non safety-sensitive functions who previously tested positive on a drug or alcohol test must test negative (below 0.02 for alcohol) prior to returning to work.

#### 7.7 Follow-up Testing

Drivers and employees performing safety-sensitive functions will be required to undergo frequent unannounced random urine and/or breath alcohol testing upon returning to duty after testing positive for drugs and/or alcohol, completing a recommended treatment program and being released by a SAP. The follow-up testing will be performed for a period of up to five years with a minimum of six tests to be performed the first year. Follow-up testing will be conducted during the employee's regularly scheduled hours of work.

#### 7.8 Split Sample

If the specimen is determined to be positive the employee has the option of having the split sample tested at another lab at their own expense. Should the second test invalidate the first the City will reimburse the employee for the cost of the second test.

#### 7.9 Alcohol Tests

Breath tests for alcohol below 0.02 are considered negative. Tests of 0.02 or greater but less than 0.04 require the employee to be removed from safety-sensitive service for 8 hours or until a retest results in a concentration of less than 0.02. The retest shall be conducted under City authority. Tests indicating 0.04 or greater require the employee to cease performing a safety-sensitive function immediately and referred to a SAP for evaluation. The employee must follow the SAP's treatment schedule and pass a return to duty test prior to commencing work activities. For alcohol results between 0.02 and 0.039, retests conducted after eight hours will be done under City authority.

### **8.0 EMPLOYEE ASSESSMENT**

Any safety-sensitive employee who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 C.F.R. Part 40, as amended, will be referred for evaluation by a Substance Abuse Professional (SAP). The SAP will evaluate each employee to determine what

assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.

Assessment by a SAP or participation in an approved Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City. The City Personnel Rules and Regulations govern the penalties for performance-based infractions and violations of the drug and alcohol policy.

If a driver or employee performing a safety-sensitive function is allowed to return-to-duty, he/she must:

- A. Properly follow the rehabilitation program prescribed by the SAP;
- B. Test negative on a return-to-duty drug and/or alcohol test; and
- C. Be subject to unannounced follow-up tests for a period of up to five years.

The cost of any treatment or rehabilitation services will be paid for by the full-time employee and/or his/her insurance provider subject to the health insurance policy provisions. Employees will be allowed to take accumulated sick leave, vacation leave, and Family and Medical Leave Act leave to participate in the recommended rehabilitation program.

## **9.0 RE-ENTRY CONTRACTS**

Employees who re-enter the work force must agree to a re-entry contract. That contract may include, but is not limited to:

- A. A release to work statement from the Substance Abuse Professional;
- B. A negative test for drugs and/or alcohol;
- C. An agreement to unannounced frequent follow-up testing for a period of one to five years with at least six tests performed the first year;
- D. A statement of expected work-related behaviors; and
- E. An agreement to follow specified after care requirements with the understanding that violation of the re-entry contract is grounds for termination.

## **10.0 DESIGNATED EMPLOYER REPRESENTATIVES**

Any employee with questions regarding this policy or any other aspect of the drug-free workplace act should contact the following City employees who are more specifically designated in Appendix A:

- A. The City Human Resource Department
- B. The City Risk Management Department

## **11.0 MAINTENANCE OF RECORDS**

All information from an applicant's or an employee's drug and alcohol tests will be confidential to the extent required by law.

Records will be maintained in a secure manner so that disclosure of confidential information to unauthorized persons does not occur.

Record retention will follow the following schedule:

- A. Five years for a verified positive controlled substance test result and alcohol test results indicating an alcohol concentration of 0.02 or greater; documentation of refusal to take required tests.
- B. Two years for collection and training records.
- C. One year for negative or canceled tests.
- D. Three years for alcohol test results indicating concentrations of less than 0.02.

## **12.0 SUPERVISOR AND EMPLOYEE TRAINING**

Supervisors will annually receive two hours of training in the detection and reporting of substance abuse and subsequent reasonable suspicion testing and locations for testing as provided in § 7.3 of this policy.

Employees will annually receive one hour of training on the requirements of this policy, and controlling Federal regulations.

### **13.0 EMPLOYEE ASSISTANCE PROGRAM**

The City of Cheyenne will make an employee assistance program available (EAP) that is designed to assist employees with personal or behavior problems. Employees may contact:

Post and Associates  
Jerry Post, Psy.D.  
1401 Airport Pkwy., Suite 240, Cheyenne, WY  
<http://www.wyeap.org/cheyenne/>  
307-632-7771

**APPENDIX A**

**Designated Employer Representatives**

**Human Resources**

Darrin Hass, Director of Human Resources  
Tammy Bartlett, Human Resource Specialist

Louise Waldo, Human Resource Specialist  
Julia Lebeck, Human Resource Specialist  
Benefits

**Risk Management**

Mike Wilkinson, Safety Manager

**APPENDIX B**

SUBSTANCE ABUSE PROFESSIONALS

Behavioral Health, UMC East  
2508 Olive Drive  
Cheyenne, WY 82001  
633-7370

Fleming & Associates  
1001 West 31<sup>st</sup> St.  
Cheyenne, WY 82001  
634-6883

Peak Wellness Center  
2526 Seymour Ave.  
Cheyenne, WY 82001  
634-9653

**APPENDIX C**

Federal Disqualifying Violations

State must take action to disqualify commercial drivers for specific time periods after a driver commits certain violations. Some violations require disqualification after a single conviction and other violations require more than a single conviction before a disqualification is imposed. The specific Disqualifying violations are summarized in the tables that follow. New disqualifying violations addressed in the Motor Carrier Safety Improvement Act of 1999 are provided separately.

Under the rule issued by FMCSA on July 31, 2002, states must adopt these new requirements no later than September 30, 2005.

Violations Requiring Disqualification After a Single Conviction

Violation	First Offense Penalty	Second Offense Penalty	Third Offense Penalty
Driving a CMV under the influence of alcohol-blood alcohol content of 0.04 percent	1 year disqualification if no hazardous material involved, 3 years of hazardous material involved	Life disqualification (eligible for reinstatement after 10 years*)	Life disqualification (no eligible for reinstatement)
Driving a CMV under the influence of a controlled substance	1 year disqualification if no hazardous material involved, 3 years of hazardous material involved	Life disqualification (eligible for reinstatement after 10 years*)	Life disqualification (no eligible for reinstatement)
Leaving the scene of an accident involving a CMV	1 year disqualification if no hazardous material involved, 3 years of hazardous material involved	Life disqualification (eligible for reinstatement after 10 years*)	Life disqualification (no eligible for reinstatement)
Committing a felony while in a CMV , or dispensing a controlled substance but not involving manufacturing, distributing, or dispensing a controlled substance	1 year disqualification if no hazardous material involved, 3 years of hazardous material involved	Life disqualification (eligible for reinstatement after 10 years*)	Life disqualification (no eligible for reinstatement)
Committing a felony while in a CMV, involving manufacturing, distributing, or dispensing a controlled substance	Life disqualification (no eligible for reinstatement)	Not Applicable	Not applicable
Violating an out-of-service order	90-day minimum disqualification	1 to 5 years disqualification in any 10-year period	3 to 5 years disqualification in any 10-year period
Violating any of six railroad crossing rules (Rule went into effect October 4, 1999)	60-day disqualification	120-day disqualification (If offense within 3 years of first offense)	1-year disqualification (if offense within 3 years of first offense).

\*Reinstatement requires successful completion of an appropriate rehabilitation program that meets the standards set by the state-licensing department. CMV: Commercial Motor Vehicle  
FMCSA and DOT Regulations

**APPENDIX D**

Federal Disqualifying Violations Continued

Violations Requiring More than a Single Conviction Before a Disqualification is Imposed			
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Violations	First Offense	Second Offense Within a 3-Year Period*	Third Offense Within a 3 Years of First Offense*
Excessive speeding	Recorded	60-day disqualification	120-day disqualification
Reckless driving	Recorded	60-day disqualification	120-day disqualification
Improper or erratic lane change	Recorded	60-day disqualification	120-day disqualification
Following too closely	Recorded	60-day disqualification	120-day disqualification
Violation in connection with a fatal accident	Recorded	60-day disqualification	120-day disqualification

\*Multiple Offenses may be a combination of different violations.

Additional Disqualifying Violations Required Under the Motor Carrier Safety Improvement Act of 1999
-----------------------------------------------------------------------------------------------------

- Driving a commercial vehicle with a revoked, suspended, or canceled CDL or driving while disqualified.
- Conviction for causing a fatality through the negligent or criminal operation of a commercial vehicle
- Driving a commercial vehicle without obtaining a CDL
- Driving a commercial vehicle without a CDL in possession
- Driving a commercial vehicle when the individual has not met the minimum testing standards for the specific class of vehicle or type of cargo
- Being convicted of a serious offense involving a **noncommercial vehicle** that resulted in license suspension, cancellation, or revocation
- Being convicted of a drug or alcohol-related offense involving a **noncommercial vehicle**



**HUMAN RESOURCES**  
 2101 O'NEIL AVENUE, ROOM 103  
 CHEYENNE, WYOMING 82001

Reasonable Suspicion Testing Checklist

This checklist is used to determine and document reasonable suspicion of a potential violation of the Drug and Alcohol policy. In such instances, the supervisor or manager observing the behavior with another supervisor/administrator as witness, must complete this form. The checklist must be reviewed with HR. Upon establishment of reasonable suspicion of on the job impairment, HR will inform the manager to complete a drug and alcohol test.

Observed Employee Name: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Supervisor/Manager Name: \_\_\_\_\_ Title: \_\_\_\_\_

Witness Name: \_\_\_\_\_ Title: \_\_\_\_\_

**Physical Indicators Observed (check all that apply):**

<b>WALKING</b> <input type="checkbox"/> Appears Normal <input type="checkbox"/> Holding On For Support <input type="checkbox"/> Stumbling <input type="checkbox"/> Unable to Walk <input type="checkbox"/> Unsteady <input type="checkbox"/> Staggering <input type="checkbox"/> Swaying <input type="checkbox"/> Falling <input type="checkbox"/> Other _____	<b>FACE</b> <input type="checkbox"/> Appears Normal <input type="checkbox"/> Red/Flushed <input type="checkbox"/> Pale <input type="checkbox"/> Sweaty <input type="checkbox"/> Slobbering <input type="checkbox"/> Grinding Teeth <input type="checkbox"/> Dry Mouth <input type="checkbox"/> Runny Nose <input type="checkbox"/> Other _____	<b>SPEECH</b> <input type="checkbox"/> Appears Normal <input type="checkbox"/> Whispering <input type="checkbox"/> Slurred <input type="checkbox"/> Shouting <input type="checkbox"/> Incoherent <input type="checkbox"/> Silent <input type="checkbox"/> Rambling <input type="checkbox"/> Slow <input type="checkbox"/> Other _____	<b>BREATH/ODOR</b> <input type="checkbox"/> No Odor <input type="checkbox"/> Faint Alcohol Odor <input type="checkbox"/> Strong Alcohol Odor <input type="checkbox"/> Tobacco Odor <input type="checkbox"/> Chemical Odor <input type="checkbox"/> Marijuana Odor <input type="checkbox"/> Breath Spray/Mouthwash/Mints <input type="checkbox"/> Unidentifiable Odor <input type="checkbox"/> Other _____
<b>STANDING</b> <input type="checkbox"/> Appears Normal <input type="checkbox"/> Swaying <input type="checkbox"/> Feet Wide Apart <input type="checkbox"/> Rigid <input type="checkbox"/> Staggering <input type="checkbox"/> Sagging at Knees <input type="checkbox"/> Other _____	<b>EYES</b> <input type="checkbox"/> Appear Normal <input type="checkbox"/> Watery <input type="checkbox"/> Bloodshot <input type="checkbox"/> Glassy <input type="checkbox"/> Dilated <input type="checkbox"/> Closed <input type="checkbox"/> Droopy Eyelids <input type="checkbox"/> Other _____	<b>MOVEMENT</b> <input type="checkbox"/> Appears Normal <input type="checkbox"/> Clumsy <input type="checkbox"/> Fumbling <input type="checkbox"/> Jerky <input type="checkbox"/> Nervous <input type="checkbox"/> Slow <input type="checkbox"/> Hyperactive <input type="checkbox"/> Other _____	<b>Appearance</b> <input type="checkbox"/> Appears Normal <input type="checkbox"/> Messy <input type="checkbox"/> Dirty/Stained Clothing <input type="checkbox"/> Burns on Person/Clothing <input type="checkbox"/> Ripped/Torn Clothing <input type="checkbox"/> Partially Undressed <input type="checkbox"/> Puncture Marks/Needle Tracks <input type="checkbox"/> Other _____

**Behavioral Indicators (check all that apply):**

<b>DEMEANOR</b> <table style="width: 100%;"> <tr> <td style="width: 33%;">Cooperative</td> <td style="width: 33%;">Polite</td> <td style="width: 33%;">Calm</td> </tr> <tr> <td><input type="checkbox"/> Talkative</td> <td><input type="checkbox"/> Silent</td> <td><input type="checkbox"/> Sleepy/Drowsy</td> </tr> <tr> <td><input type="checkbox"/> Sarcastic</td> <td><input type="checkbox"/> Belligerent</td> <td><input type="checkbox"/> Tearful/Crying</td> </tr> <tr> <td><input type="checkbox"/> Anxious</td> <td><input type="checkbox"/> Excited</td> <td><input type="checkbox"/> Frequent Mood Changes</td> </tr> <tr> <td><input type="checkbox"/> Disoriented</td> <td><input type="checkbox"/> Inattentive</td> <td><input type="checkbox"/> Other _____</td> </tr> <tr> <td colspan="3"><input type="checkbox"/> Unconscious/unresponsive (call 911 and notify Public Safety)</td> </tr> </table>	Cooperative	Polite	Calm	<input type="checkbox"/> Talkative	<input type="checkbox"/> Silent	<input type="checkbox"/> Sleepy/Drowsy	<input type="checkbox"/> Sarcastic	<input type="checkbox"/> Belligerent	<input type="checkbox"/> Tearful/Crying	<input type="checkbox"/> Anxious	<input type="checkbox"/> Excited	<input type="checkbox"/> Frequent Mood Changes	<input type="checkbox"/> Disoriented	<input type="checkbox"/> Inattentive	<input type="checkbox"/> Other _____	<input type="checkbox"/> Unconscious/unresponsive (call 911 and notify Public Safety)			<b>ACTIONS</b> <table style="width: 100%;"> <tr> <td style="width: 50%;">Normal</td> <td style="width: 50%;">Profane Language</td> </tr> <tr> <td><input type="checkbox"/> Fighting/Combative</td> <td><input type="checkbox"/> Hostile</td> </tr> <tr> <td><input type="checkbox"/> Threatening</td> <td><input type="checkbox"/> Hyperactive</td> </tr> <tr> <td><input type="checkbox"/> Non-Communicative</td> <td><input type="checkbox"/> Sleeping on the Job</td> </tr> <tr> <td><input type="checkbox"/> Argumentative</td> <td><input type="checkbox"/> Other _____</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	Normal	Profane Language	<input type="checkbox"/> Fighting/Combative	<input type="checkbox"/> Hostile	<input type="checkbox"/> Threatening	<input type="checkbox"/> Hyperactive	<input type="checkbox"/> Non-Communicative	<input type="checkbox"/> Sleeping on the Job	<input type="checkbox"/> Argumentative	<input type="checkbox"/> Other _____	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/> Argumentative	<input type="checkbox"/> Other _____																														
<input type="checkbox"/>	<input type="checkbox"/>																														

Comments and other observations:

Additional Facts:

- Presence of alcohol and/or drugs in individual's possession or vicinity.
- On the job misconduct by individual (describe) \_\_\_\_\_
- Individual admitted to being under the influence of drugs and/or alcohol on the job when observed.
- Individual admitted to using drugs and/or alcohol on the job when observed.
- Individual Provided Explanation for Behavior:

Is individual at least 18 years of age?  Yes  No If "no", name of parent/guardian \_\_\_\_\_

**Manager and Witness sign below, certifying that the above is true and accurate to the best of their knowledge and observations:**

Supervisor/Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

**STOP: Manager should NOT complete this form with the employee until authorized to do so by HR.**

**REASONABLE SUSPICION TESTING CONSENT FORM**

Once Human Resources has determined reasonable suspicion exists that an employee may be impaired in the workplace, they will request that the Manager present this testing consent form to the employee under suspicion.

I, \_\_\_\_\_ (individual name) as an employee of the City of Cheyenne, have been informed that:

- After reviewing the attached Reasonable Suspicion Checklist, Human Resources has agreed with the Department Manager that reasonable suspicion exists that I am in violation of the City's Drug and Alcohol Policy.
- I will be transported by my supervisor/manager and a witness to and from the designated testing location.
- A positive test could result in disciplinary action up to and including termination of employment.
- I may refuse my consent to submit to the drug/alcohol test.
- I will be subject to disciplinary action up to and including termination of employment if I refuse the screening or test, adulterate or dilute the specimen, substitute the specimen, send an imposter, or refuse to cooperate in the testing process in such a way that prevents completion of the test.

Individual's statement regarding the allegation of being in violation of the Drug and Alcohol Policy:

At the conclusion of this process, I will make arrangements for my safe transportation home and that my supervisor may notify law enforcement if I attempt to operate a vehicle.

I have read the form and AGREE to undergo testing for drugs and/or alcohol \_\_\_\_\_  
Employee Signature Date

I have read the form and REFUSE to undergo testing for drugs and/or alcohol \_\_\_\_\_  
Employee Signature Date

Witnessed by (signature): \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Testing Locations:

Employee Onboarding Specialties 1651 Carey Avenue, Suite 1-E (inside the Downtown Mall) Cheyenne, WY 82001 307-701-5400 307-634-1025 (Fax)	Employee Onboarding Specialties 3415-A Cheyenne Street Cheyenne, WY 82001 307-638-2505 307-634-1025 (Fax)
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Submit completed form to [Humanresourcesstaff@cheyennecity.org](mailto:Humanresourcesstaff@cheyennecity.org), fax to 307-637-6342, or hand deliver to HR Office, 2101 O'Neil Avenue, Room 103