

## **DOT Drug and Alcohol Policy**

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### **Purpose**

The City of Rochester has a vital interest in maintaining safe, healthful, and efficient working conditions for its employees. Employees who are impaired by drugs and/or alcohol jeopardize the safety and health of other teammates as well as themselves. In addition, alcohol and drug use can impair work performance, increase accidents, workers' compensation and insurance claims, and may result in workplace misconduct.

Because of the significant risk associated with drug and alcohol use for employees performing duties that require a Commercial Driver's License (CDL), and in accordance with regulations issued by United States Department of Transportation ("DOT") and the Federal Motor Carrier Safety Administration (FMCSA), the City has adopted this policy.

To ensure this policy is clearly communicated to all drivers and applicants, and in order to comply with applicable federal law, drivers and applicants are required to review this policy and sign the "Certificate of Receipt" portion.

### **Policy Scope**

This policy applies to all City of Rochester ("City") employees and job applicants who are required to hold a CDL and are required to perform safety-sensitive functions as part of their position. Additionally, these employees and job applicants must adhere to the provisions of Drug and Alcohol-Free Workplace, as described within in the City's *Drug and Alcohol Policy*, when applying with or working for the City.

For the purposes of this policy, "job applicant" includes a person who has received a job offer contingent on successfully passing a drug or alcohol test for a position that requires a CDL and the performance of safety-sensitive functions. "Job applicant" also includes a current City employee who is applying for a position where a CDL and the performance of safety-sensitive functions are required and the employee does not currently perform these functions.

Because of changes in applicable law, the City's practices and procedures, this policy is subject to change in the future. Any revisions to the Federal Omnibus Transportation Employee Testing Act and Federal Motor Carrier Safety Administration (FMCSA) regulations will take precedent over this policy to the extent the policy has not incorporated those revisions. Nothing in this policy is intended to be a contract, promise, or guarantee the City will follow any particular course of action, disciplinary, rehabilitative or otherwise, except as required by law.

### **Testing Requirements**

Under this policy, the City may test any job applicant, including job applicants for temporary and seasonal positions, to whom an offer of employment has been made and whose job duties include performing "safety-sensitive duties" as defined by the FMCSA. The City may test any employee for alcohol and/or controlled substance under any of the following circumstances using a properly accredited or licensed testing laboratory.

#### **(1) Pre-employment Testing**

All job applicants will be required to successfully pass a drug test as a condition of employment and prior to the performance of safety-sensitive function(s) for the City. In addition to pre-employment controlled substance testing, applicants will be required to authorize former employers to release the following information as required under federal law: alcohol test results of .04 or greater; positive controlled substance test results; refusals to test; other violations of drug and alcohol testing regulations; and completion of return to duty requirements. The City will review the information provided in determining whether to extend a formal offer of employment.

**(2) Post-Accident Testing**

The City of Rochester conducts post-accident testing in accordance with FMCSA §382.303. A covered employee involved in an accident that involves a commercial motor vehicle shall be tested for alcohol and controlled substances as soon as practicable.

The following chart summarizes when DOT post-accident testing needs to be conducted:

Type of accident involved	Citation issued to the DOT covered CDL driver?	Test must be performed by the City
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

A driver subject to post-accident testing must remain readily available or they will be deemed to have refused to submit to testing. The driver must not consume alcohol for eight hours following the accident, or until the driver undergoes a post-accident alcohol test, whichever occurs first. A supervisor or designee must accompany the driver to the testing facility.

The requirement to remain readily available for testing does not preclude 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 medical care.

The City may accept the results of a blood or breath test in place of an alcohol test and urine test for the use of controlled substances if:

- The tests are conducted by federal, state, or local officials having independent authority for the test, and
- The tests conform to applicable federal, state, or local testing requirements, and
- The test results can be obtained by the City.

**(3) Random Testing**

Every driver will be subject to unannounced alcohol and controlled substance testing on a random selection basis that will be conducted throughout the calendar year. Drivers will be selected for testing by use of a scientifically valid method under which each driver has an equal chance of being selected each time selections are made. It is mathematically possible drivers may be selected to be picked and tested more than

once, and others not at all. Each driver who is notified of selection for random testing must cease performing safety-sensitive functions and report to the designated test site immediately.

If a driver is selected for a random test while they are not at work, that driver may be required to undergo the test when they return to work.

The minimum annual percentage rates for these tests are set, and can be modified, by the Federal Motor Carrier Safety Administration in accordance with FMCSA §382.305.

#### **(4) Reasonable Suspicion Testing**

When a supervisor has reasonable suspicion to believe a driver has engaged in conduct prohibited by federal law or this policy, the City will require the driver to submit to an alcohol and/or controlled substance test. Alcohol testing under this policy is authorized only if the observations are made during, just before, or just after the driver has ceased performing safety sensitive functions.

The required observations for reasonable suspicion testing will be made by a supervisor or other person designated by the City who has received appropriate training in identification of actions, appearance and conduct of a driver which are indicative of the use of alcohol or controlled substance. These observations leading to an alcohol or controlled substance test, will be reflected in writing and signed by the supervisor who made the observations.

Notwithstanding the absence of a reasonable suspicion test, no driver may 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 use, nor will the City permit the driver to perform or continue to perform safety-sensitive functions until (1) an alcohol test is administered and the driver's alcohol concentration is less than .02; or (2) 24 hours have elapsed following the determination of reasonable suspicion.

#### **(5) Return-to-Duty Testing**

The City reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers for a first positive test result.

Should the City wish to consider reinstatement of a driver who engaged in conduct prohibited by federal law and/or who had a positive alcohol or controlled substance test, the driver must undergo a SAP evaluation, participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a controlled substance test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP will determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substance use and will ensure the driver properly follows any rehabilitation program and submits to unannounced follow-up alcohol and controlled substance testing.

In addition to the return-to-duty test, the City will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substance testing at the direction of the SAP. Follow-up alcohol testing will be conducted only when the driver is performing safety-sensitive functions, or immediately prior to or after performing safety-sensitive functions. At minimum, follow-up testing will consist of at least six tests in the first twelve months following the driver's return to duty, but will not extend longer than 60 months. The SAP may

terminate the requirement for follow-up testing at any time after the first six tests have been administered if they determine such testing is no longer necessary.

### **Cost of Required Testing**

The City will pay for the cost associated with pre-employment, post-accident, random, and reasonable suspicion testing required for job applicants and employees. The job applicant or employee must pay for the cost of all requested confirmatory retests, return-to-duty, and follow-up testing.

## **Collection and Testing Procedures**

### **Procedure for Testing**

Before requesting an employee or job applicant to undergo drug or alcohol testing, the City shall provide the individual with a form on which to:

- (a) acknowledge that the individual has seen a copy of the City's drug and alcohol testing policy
- (b) indicate consent to undergo the drug and alcohol testing

Drivers are required to report immediately upon notification to the collection site. Employees may use a City vehicle to drive to the collection site.

### **Alcohol Testing**

Screening tests for alcohol concentration will be performed utilizing a non-evidential screening device included by the National Highway Traffic Safety Administration on its conforming products list (e.g., a saliva screening device) or an evidential breath testing device ("EBT") operated by a trained breath alcohol technician ("BAT") at a collection site. If a driver's first test is positive (with an alcohol concentration of .02 or greater), the driver will be asked to wait at least 15 minutes and then be tested again. The driver may not eat, drink or place anything in their mouth (e.g., cigarette, chewing gum) during this time. Any results less than 0.02 alcohol concentration is considered a "negative" test result.

If the driver attempts and fails to provide an adequate amount of breath, they will be referred to a physician to determine if the driver's inability to provide a specimen is genuine or constitutes a refusal to test.

### **Controlled Substance Testing**

The City will use a "split urine specimen" collection procedure for controlled substance testing.

If an employee fails to provide a sufficient amount of urine on their first attempt, they will be allowed up to three hours to produce adequate specimen. If the driver is unable to produce adequate specimen within the time period provided, they must then obtain an evaluation from a licensed physician, acceptable to the MRO, within five calendar days. If the licensed physician concludes the driver has a medical reason that precluded the driver from providing a sufficient amount of urine, the City will consider the test to have been canceled. If a licensed physician cannot make such a determination, the City will consider the driver to have engaged in a refusal to test and will take appropriate disciplinary action under this policy.

If the initial result is positive or non-negative, a "confirmatory retest" will be conducted on the primary specimen. If the confirmatory retest is also positive, the MRO will contact the driver or job applicant prior to verifying the positive result and to provide the individual opportunity to offer additional or clarifying information. If the MRO upholds the positive, adulterated or substituted drug determination, that test result will be provided to the City. There is no opportunity to explain a positive alcohol test provided in the DOT regulations.

The driver can request the MRO to have the split specimen (the second “B” container) tested at the driver’s expense. This includes all costs that may be associated with the re-test. There is no split specimen testing for an invalid result. The driver has 72 hours after they have been notified of the positive result to make this request. If the employee requests an analysis of the split specimen, the MRO will direct the laboratory to send the split specimen to another certified laboratory for analysis.

If an employee has not contacted the MRO within 72 hours, the employee may present information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the employee from making timely contact. If the MRO concludes there is legitimate explanation for the employee’s failure to contact within 72 hours, the MRO will direct the analysis of the split specimen.

If the results of the split specimen are negative, the City may pay for all costs associated with the test and there will be no adverse action taken against the employee or job applicant.

## **Notification of Test Results**

### **Employees**

The City will notify a driver of the results of random, reasonable suspicion, and post-accident tests for controlled substance if the test results are verified positive and will inform the driver which controlled substance or substances were verified as positive. Results of alcohol tests will be immediately available from the collection agent.

### **“Non-Negative” Results**

If a driver tests positive, or if the driver is found to have an alcohol concentration of .02 or greater but less than .04, they will be removed from safety sensitive duties and escorted home. The driver will not be allowed to work until at least 24 hours have passed since the administration of the test. The driver will be required to use their accrued time off for hours missed from work.

No driver may report for duty, remain on-duty or perform a safety-sensitive function if the driver tests positive for controlled substance.

### **Right to Confirmatory Retest**

Within seventy-two (72) hours after receiving notice of a positive controlled substance test result, an applicant or driver may request a confirmatory retest through the MRO. Action required by federal regulation as a result of a positive controlled substance test (e.g., removal from safety-sensitive functions) will not be stayed during retesting of the split specimen. If the results of the confirmatory retest are negative, the City will pay for all costs associated with the retest and there will be no adverse action taken against the employee or job applicant.

### **Dilute Specimens**

Dilute Negatives Creatinine concentration of specimen is equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL. If the City receives information that a driver has provided a dilute negative specimen, the City will direct a recollection, pursuant to the MRO’s direction, under direct observation.

## **Clearinghouse Queries and Reporting Requirements**

Job applicants and current employees must successfully pass a query of the Federal Motor Carrier Safety Administration's Clearinghouse prior to performing safety sensitive functions and on an annual basis thereafter. Job applicants and employees must provide the necessary consent for Clearinghouse queries in order for the City to view driving records and violations. If a query reveals driving violations regarding an applicant, a conditional offer may be rescinded. If a query reveals driving violations regarding an employee, they will not be permitted to perform safety-sensitive functions, including the operation of a Commercial Motor Vehicle, and may be subject to discipline as appropriate.

The City and/or its MRO or SAP is mandated to report the following information to the Clearinghouse:

- A verified positive, adulterated, or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- The driver's refusal to submit to a DOT test for drug or alcohol use;
- An employer's report of actual knowledge, as defined in §382.107 of
  - (a) On duty alcohol use pursuant to §382.205;
  - (b) Pre-duty alcohol use pursuant to §382.207;
  - (c) Alcohol use following an accident pursuant to §382.209; and
  - (d) Controlled substance use pursuant to §382.213;
- A substance abuse professional report of the successful completion of the return-to-duty process;
- A negative return-to-duty test; and
- An employer's report of completion of follow-up testing.

### **Prohibited Conduct**

The following conduct is explicitly prohibited by applicable DOT and FMCSA regulations and therefore, constitutes violation of City policy. This list is not inclusive of all conduct that would constitute a violation under this policy.

- Reporting to work or performing work under the influence of alcohol
- Using alcohol while at work or within four hours of reporting to work
- Using alcohol within eight hours after an accident or prior to undergoing a post-accident alcohol test
- Altering or attempting to alter a urine sample or breath test
- Reporting to work or performing work after using controlled substances except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver in writing the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.
- Using, possessing, or being impaired by any cannabis or medical cannabis products on the worksite or while on-call for City employment.
- Refusing to submit to a required alcohol or controlled substances test

The following constitutes refusal:

- ✓ Failing to provide adequate breath for alcohol testing without a valid medical explanation after receiving notice of the requirement for breath testing.
- ✓ Failing to provide adequate urine for controlled substance testing without a genuine inability to provide a specimen (as determined by a medical evaluation), after receiving notice of the requirement for urine testing.
- ✓ Failing to report for testing within a reasonable period of time, as determined by the City.
- ✓ Failing to remain at a testing site until testing is complete.
- ✓ In the case of directly observed or monitored collection, failing to permit observation or monitoring.
- ✓ Failing or declining to take a second test as required by the City and/or collector.

- ✓ Failing to undergo a medical examination as directed by the City pursuant to federal law.
- ✓ Refusing to complete and sign the alcohol testing form, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in any way that prevents the completion of the testing process.
- ✓ Engaging in conduct that clearly obstructs the test process.

## **Consequences for Employees Engaging in Prohibited Conduct**

### **Job Applicants**

The City's conditional offer of employment will be withdrawn from any job applicant who refuses to be tested or tests positive for controlled substance pursuant to this policy.

### **Employees**

Drivers who are known to have engaged in prohibited behavior, as defined earlier in this policy, will be subject to the removal from safety-sensitive functions and/or discipline up to and including termination of employment. Refusal by a driver to submit to controlled substance or alcohol testing will be considered a positive test result, will cause disqualification from performing safety-sensitive functions, and may appear on the driver's permanent record. Drivers who refuse to submit to testing will be subject to discipline, up to an including termination. In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements, the City and/or its MRO or SAP will report a driver's refusal to submit to a DOT test for drug or alcohol use to the Clearinghouse. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers following a first positive confirmed controlled substance or alcohol test result.

### **Other Misconduct**

Nothing in this policy limits the right of the City to discipline or terminate an employee on grounds other than the prohibited conduct specified in DOT and FMCSA regulations. This includes, but is not limited to, the conviction of any criminal drug statute for a violation occurring in the workplace or violation of other City personnel policies.

## **City's Employee Assistance Program**

The City has a formal employee assistance program (EAP) to assist employees in addressing serious personal or work-related problems at any time. The City's EAP provides confidential, cost-free, short-term counseling to employees and their families. Employees who may have an alcohol or drug abuse problem are encouraged to seek assistance before a problem interferes with their employment with the City.

## **Definitions**

**Accident:** Means an occurrence involving a commercial motor vehicle operating on a public road which results in a fatality; bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. The term "accident" does not include an occurrence involving only boarding and alighting from a stationary motor vehicle; an occurrence involving only the loading or unloading of cargo; or an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle unless the vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 C.F.R. § 177.823; 49 C.F.R. § 382.303(a); 49 C.F.R. § 382.303(f).

**Alcohol Use:** Means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. 49 C.F.R. § 382.107.

**City premises:** Means, but is not limited to, all City all job sites, facilities, offices, buildings, structures, equipment, vehicles and parking areas, whether owned, leased, used or under the control of the City. For the purposes of this policy, city premises also includes any other locations or modes of transportation to and from those locations while in the course and scope of employment of the City.

**City vehicle:** Means any vehicle which employees are authorized to use solely for City business when used at any time; or any vehicle owned or leased by the City when used for City business.

**Collection site:** Means a place designated by the City where drivers present themselves for the purpose of providing a specimen of their urine or breath to be analyzed for the presence of alcohol or controlled substances. 49 C.F.R. § 40.3.

**Commercial Motor Vehicle:** Means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle (1) has a gross combination weight rating or gross combination weight of 26,001 or more pounds, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or (3) is designed to transport sixteen (16) or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulation. (49 C.F.R. part 172, subpart F) § 382.107.

**Confirmation (or Confirmatory) Test:**

For alcohol testing means a second test, following a positive non-evidential test, following a positive non-evidential (e.g., saliva) screening test or a breath alcohol screening test with the result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substance testing, "Confirmation (or Confirmatory) Test" means a second analytical procedure to identify the presence of a specific controlled substance or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy. 49 C.F.R. § 382.107.

**Controlled Substance:** Means those substances identified in 49 C.F.R. § 40.85. Marijuana, amphetamines, opioids, (including heroin), phencyclidine (PCP), cocaine, and any of their metabolites are included within this definition. 49 C.F.R. § 382.107; 49 C.F.R. § 40.85.

**Disabling Damage:** Means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. Disabling damage does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available, headlight or tail light damage or damage to turn signals, horn or windshield wipers which make them inoperative. 49 C.F.R. § 382.107.

**Driver:** Means 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 who are either directly employed by or under lease to the City or who operate a



commercial motor vehicle at the direction of or with the consent of the City. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

**Drug:** Has the same meaning as “controlled substance” as stated above. In addition, the definition in Minn. Stat. § 152.01, subd. 4 shall also apply, where applicable.

**Drug paraphernalia:** Has the meaning set forth in Minn. Stat. § 152.01, subd. 18.

**Employee:** Means a person who performs services for compensation for the City and includes independent contractors except where specifically noted in this policy.

**Medical Review Officer or MRO:** Means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by a controlled substance 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. 49 C.F.R. § 40.3

**Performing (a Safety-Sensitive Function):** Means any period in which a driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. 49 C.F.R. § 382.107.

**Positive Test Result:** Means a finding of the presence of alcohol or controlled substance, or their metabolites, in the sample tested in levels at or above the threshold detection levels established by applicable law.

**Reasonable Suspicion:** Means a belief a driver has engaged in conduct prohibited by the FMCSA controlled substance and alcohol testing regulations, except when related solely to the possession of alcohol, based on specific contemporaneous, articulable observations made by a supervisor or City official who has received appropriate training concerning the appearance, behavior, speech or body odors of the driver. The determination of reasonable suspicion will be made in writing on a Reasonable Suspicion Record Form during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this policy. In the case of a controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.

**Safety-Sensitive Functions Include:**

- All time waiting to be dispatched to drive a commercial motor vehicle;
- All time inspecting equipment as required by 49 C.F.R. § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 C.F.R. § 393.76);
- All time loading or unloading a 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; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. 49 C.F.R. § 382.107.

**Screening Test (also known as Initial Test):** In alcohol testing, means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in her or her system. Screening tests may

be conducted by utilizing a non-evidential screening device included by the National Highway Traffic Administration on its conforming products list (e.g., a saliva screening device) or an evidential breath testing device (“EBT”) operated by a trained breath alcohol technician (“BAT”). In controlled substance testing, “Screening Test” means an immunoassay screen to eliminate “negative” urine specimens from further consideration. 49 C.F.R. § 382.107.


**Substance Abuse Professional” or “SAP”:** Means a licensed physician (medical doctor or doctor of osteopathy), licensed or certified psychologist, licensed or certified social worker, licensed or certified employee assistance professional, or licensed or certified addiction counselor (certified by the National Association of Alcoholism and Controlled Substance Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders. 49 C.F.R. § 40.281.

**Under the influence:** Means (1) the employee tests positive for alcohol or drugs, or (2) the employee’s actions, appearance, speech, and/or bodily odors reasonably cause the City to conclude that the employee is impaired because of illegal drug use or alcohol use.

**Contact for Additional Information**

Policy questions or requests for additional information on the City’s drug and alcohol testing procedures should be directed to the Director of Human Resources or their designee.

Policy revisions approved by City Administrator:

  
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Alison Zelms  
Current Revision: February 2021  
Adopted: May 2007

02/25/2021  
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Date