

# CITY OF MESA

## ALCOHOL AND CONTROLLED SUBSTANCE TESTING PROCEDURES SUMMARY

This handout will provide a general overview of the Department of Transportation (DOT) controlled substance use and alcohol misuse prevention rules for the commercial transportation and gas pipeline industries. This handout does not contain many of the requirements or special circumstances detailed in the individual DOT agency rules. The City of Mesa's policy can be viewed and printed from the City's internal InsideMesa webpage and the [www.cityofmesa.org](http://www.cityofmesa.org) webpage:

- **Intranet - InsideMesa**

From the home page locate the search box in the upper right corner and type in "Anti-Drug Plan" or "Alcohol Misuse Prevention Plan", and then click on the link to the document by the same name on the second screen. This process will access the policy documents in Word. You can also access this information from Departments & Divisions tab. Click on the Personnel link and then the Drug Testing link.

- **Internet - CityofMesa.org**

From the [www.cityofmesa.org](http://www.cityofmesa.org) webpage, choose Jobs, then the Frequently Asked Questions link. Select the Anti-City of Mesa Anti Drug or City of Mesa Alcohol Misuse Prevention Plan links.

### **PURPOSE**

To establish a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by employees who perform safety-sensitive functions for the City of Mesa. These rules apply to any employee who is required to have a commercial driver's license (CDL) and to those who perform safety-sensitive operating, maintenance, or emergency response functions to the gas pipelines.

### **PROHIBITIONS**

The Department of Transportation (DOT) defines the restrictions on the use of both alcohol and controlled substances by transportation employees.

#### **Alcohol**

Because alcohol is a legal substance, the rules define specifically prohibited alcohol-related conduct for those who perform safety-sensitive functions. For those who hold a CDL, safety-sensitive functions refers to any time the driver is actually driving, inspecting, servicing, unloading, or loading a commercial motor vehicle. Performance of safety-sensitive functions is prohibited:

- While having an alcohol concentration of 0.04 or greater as indicated by an alcohol breath test.
- While using alcohol.
- Within four hours after using alcohol.

In addition, refusing to submit to an alcohol test or failure to remain readily available for testing, failing to notify your employer of your location if you leave the scene of an accident or using alcohol within eight hours after an accident or until tested is prohibited.

### **Controlled Substances**

These rules prohibit any unauthorized use of the following controlled substances on or off-duty:

#### **Marijuana, Cocaine, Amphetamines, Opiates, and Phencyclidine (PCP).**

The exception to this ruling is if a physician has prescribed the substance and has advised the employee that it does not interfere with the ability to safely perform safety-sensitive functions.

Employees may not report for duty or perform safety-sensitive functions if they have tested positive for a controlled substance or have refused to take a test required by this policy.

After a positive test result, removal from duty cannot take place until the Medical Review Officer (MRO) has interviewed the employee and determined that the positive drug test resulted from the unauthorized use of a controlled substance.

An employee cannot be returned to duty until they have been evaluated by a substance abuse professional, complied with recommended rehabilitation, and have a negative result on a return-to-duty test. Follow-up testing to monitor the employee's continued abstinence from controlled substance use will be required.

### **REQUIRED ALCOHOL & CONTROLLED SUBSTANCE TESTING**

**Pre-Employment** - Conducted before applicants are hired or after an offer to hire, but before actually performing safety-sensitive functions for the first time. Also required when employees transfer to a safety-sensitive position. As of May 1, 1995, the Federal Motor Carrier Safety Administration (FMCSA) or Pipeline and Hazardous Material Safety Administration (PHMSA) no longer requires pre-employment alcohol testing, only testing for controlled substances.

**Random** - Conducted on a random unannounced basis just before, during, or just after performance of safety-sensitive functions. All "CDL operator employees" will be required to submit to alcohol and controlled substance testing. Random alcohol testing is not required in the pipeline industry. However, controlled substance testing is required. Testing will be conducted on an unannounced basis spread reasonably throughout the calendar year:

- **FMCSA** requires 50% of employees that have a commercial driver's license must be tested annually for controlled substances and 10% must be tested annually for alcohol.
- **PHMSA** requires 25% of employees who perform safety-sensitive operating, maintenance, or emergency response functions to the gas pipelines be tested annually. PHMSA has required only 25% annually as of January 1, 1997.

### **Post-Accident Controlled Substance Testing**

**FMCSA** – Conducted as soon as practicable following an occurrence involving a commercial motor vehicle (CMV) operating on a public road in commerce. Testing is required for each employee who:

- a. Was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; **OR**
- b. Receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, **if the accident involved:**
  - (1) Bodily injury to any person who, as a result of the injury, immediately receives **medical** treatment away from the scene of the accident; **OR**
  - (2) 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.

**PHMSA** – Conducted as soon as possible, but no later than 32 hours after an accident. Each employee will be required to test for controlled substances if the employee's performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.

### **Post Accident Alcohol Testing**

Both FMCSA and PHMSA require employers to promptly determine and test each employee for alcohol if the employee's performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident. In addition, once a determination has been made to test an employee for alcohol, the test must be completed within 2 hours of the accident. If the test does not occur within the 2-hour time frame, the employer will be required to prepare and maintain on file a record stating the reasons why the test was not administered.

**Reasonable Suspicion** - Conducted when a trained supervisor observes behavior or appearance that is characteristic of alcohol misuse or controlled substance abuse. Testing is designed to provide management with a tool to identify alcohol and/or drug-affected employees who may pose a danger to themselves and others in their job performance.

**Return-to-Duty** - Conducted just prior to returning to performing safety-sensitive duties when an employee has violated prohibited conduct.

**Follow-Up** – Unannounced testing conducted following failure of an alcohol or controlled substance test, as determined by a Substance Abuse Professional (SAP). For employees subject to DOT regulations, reference City of Mesa Anti-Drug & Alcohol Prevention Plan.

## **COLLECTION PROCEDURES**

### **Alcohol**

The rules require breath testing using evidential breath testing devices (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. The employee and the individual (called a breath alcohol technician [BAT]) conducting the breath test complete the alcohol testing form to ensure that the results are properly recorded. The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results. The confirmation test result determines any actions taken.

### **Controlled Substances**

Conducted by analyzing an employee's urine specimen. The analysis is performed at laboratories certified and monitored by the Department of Health and Human Services (DHHS). The employee provides a urine specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody document, and prepares the specimen and accompanying paperwork for shipment to a drug-testing laboratory.

The rules require split specimen collection procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and "split" specimen. Both bottles are sent to a laboratory. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee has 72 hours to request the split specimen be sent to another DHHS certified laboratory for analysis. This split specimen procedure essentially provides the employee with an opportunity for a "second opinion".

## **RECORD RETENTION**

The following records shall be maintained:

### **1. Collection Process Records**

- Random selection process.
- Calibration documents for EBT devices.
- Breath alcohol technician training records.
- Documents showing why reasonable suspicion testing and post-accident testing were done.
- Documents relating to a driver's inability to provide adequate breath or urine for testing.
- Consolidated annual calendar year summaries.

### **2. Records of Employees' Test Results**

- Employer's copy of the alcohol test forms and results.
- Employer's copy of the controlled substances test chain of custody and control forms.
- Documents the medical review officer (MRO) sent to the employer.
- Refusal to submit to testing records.
- Documents presented by an employee to dispute test results.

### **3. Records regarding other violations of alcohol/drug rules**

### **4. Evaluation Records**

- Recommendations of the substance abuse professional.
- Employee's compliance with recommendations.

### **5. Education & Training Records**

- All materials used for alcohol and drug awareness.
- Copy of company alcohol and drug policy.
- Employees' signed receipts of educational materials.
- Documentation of supervisor training.
- Certification that the training provided complied with the requirements.

### **6. Records related to drug and alcohol testing**

Must be maintained for **5** years:

- Alcohol tests with alcohol concentration of 0.02 or above.
- Controlled substance tests with a positive result.
- Refusal to submit to testing records.

- Calibration documents.
- Employee evaluations and referrals.
- Annual calendar year summary of alcohol and drug test results.

Must be maintained for **3** years:

- Records relating to the collection process.
- Training records.

Must be maintained for **2** years:

- Records of inspection, maintenance, and calibration of EBTs (machines used to test breath samples).

Must be maintained for **1** year:

- Negative and cancelled controlled substance test results.
- Alcohol test results with alcohol concentrations of less than 0.02.

## **REPORTING TEST RESULTS**

Each year employers subject to these regulations are required to compile an annual calendar year summary of the results of their alcohol and controlled substance testing program. The report for the previous calendar year should be completed by March 15 of the following year.

## **ACCESS AND CONFIDENTIALITY**

The following requirements are intended to protect the rights of the employee and provide access to the Department of Transportation's operating agencies and others as needed:

- Except as required by law, no employer shall release employee information that is contained in records required to be maintained under this program.
- Upon written request, the employee can obtain copies of his or her records.
- Employers must provide employee test results and access to any facility used in complying with alcohol and drug rules, to any DOT agency, and state, or local officials with regulatory authority over the employer or any of its employees.
- If requested by the National Transportation Safety Board as part of an accident investigation, the employer must release information on the post-accident testing of the accident in question.
- Records are provided to a future employer upon the written request of the employee.
- Regardless of employee consent, the employer can disclose records to a decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee that arises from test results or the violation of either alcohol or drug prohibitions.
- The employer can disclose records to others only with the written consent of the employee.

## **RESPONSIBILITIES OF THE MEDICAL REVIEW OFFICER (MRO)**

The medical review officer (MRO) is a licensed physician who is responsible for receiving test results generated by an employer's drug testing program. The MRO must be knowledgeable about substance abuse disorders and have the appropriate medical training to interpret and evaluate an individual's confirmed positive test, along with medical history and other relevant biomedical information.

The MRO will provide the employer with a signed, written notification within three days of the medical review. Other means of communication can be used, but they must be backed-up with the signed, written notice.

The notice must state:

- That the test was done according to the requirements of this rule.
- The name of the person tested.
- The type of test (random, post-accident, etc.).
- The date and location of the test.
- The names of those:
  - Collecting the specimen
  - Analyzing the specimen
  - Serving as the MRO
- The verified results of a drug test, either positive or negative, and the name of any substance verified as positive.

The MRO is also responsible for alerting the employer if they have been unsuccessful in contacting the employee to discuss test results. It is then up to the employer to request the employee contact the MRO. This must be done within 24 hours or before the employee can be dispatched for duty, whichever is first.

The MRO must retain dated records and notification of verified positive drug tests for five years and records of negative or cancelled tests for one year.

The MRO cannot release any of this information unless the employee provides a specific, written authorization to do so. However, they may provide information to any state or local officials with regulatory control over the testing program.

## **NOTIFYING EMPLOYEES OF TEST RESULTS**

It is the responsibility of the employer to provide test results if the employee requests them within 60 days of being notified of the status of the employment application. The employer will also provide random, reasonable suspicion and post-accident results (including the name of the substance) to the employee if the results are verified positive.

## **RELEASE OF ALCOHOL AND DRUG TEST INFORMATION BY PREVIOUS EMPLOYERS**

An employer may obtain from any previous employer of an employee, provided they have given their written consent, any information concerning their participation in an alcohol and controlled substance testing program.

An employer must obtain and review information received from any previous employer concerning a positive controlled substance test result and an employee's alcohol tests with a concentration result of 0.04 or greater, and refusals to be tested, within the preceding three years, which are maintained by the employee's previous employers. The information must be obtained and reviewed no later than 14 days after the first time an employee performs safety-sensitive functions for an employer. If it is not feasible to obtain the information prior to the employee performing safety-sensitive functions, an employer may not permit an employee to perform safety-sensitive functions after 14 days without obtaining the information.

The release of this information may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality. Each employer must maintain a written, confidential record with respect to each past employer contacted.

An employer may not use an employee to perform safety-sensitive functions if the employer obtains information on their alcohol test with a concentration of 0.04 or greater, a positive controlled substance test, or refusal to be tested, without obtaining evidence that the driver has been evaluated by a substance abuse professional, completed any required counseling, passed a return-to-duty test, and has been subject to follow-up testing as required by this rule.

## CONSEQUENCES

### Alcohol

An employee will be removed from safety-sensitive functions if the prohibitions stated earlier in this document are violated. These are:

- Reporting or staying on duty with an alcohol concentration of 0.04 or greater, while using alcohol.
- Possession of alcohol (which includes any product - medication, food, or other product) containing alcohol, regardless of the alcohol content.
- Use of alcohol at time of performing safety-sensitive duties.
- Use of alcohol within four hours of performing safety-sensitive duties.
- Use of alcohol after an accident before post-accident testing could be done or before eight hours, whichever comes first.
- **Refusal to submit to alcohol testing** includes failing to appear under any circumstance for any test within a reasonable amount of time, as determined by the employer, fails to remain at the testing site until the testing process is complete, or fails to cooperate with any part of the testing process. See DOT 49 CFR Part 40.191 and City of Mesa's Anti-Drug and Alcohol Misuse Prevention Plan.

An employee who has violated any of these prohibitions cannot return to a safety-sensitive function until an evaluation by a substance abuse professional has been done, and any recommended treatment has been completed, and submitted to a return-to-duty test and tested negative. An employee who refuses to submit to alcohol testing as required shall be terminated from City of Mesa employment per Personnel Rule, Section 550.C.5.

Anyone found to have an alcohol concentration of 0.02 or over cannot return to safety-sensitive duties for 24 hours, or until another breath test is negative.

### **Controlled Substance Use**

An employee will be removed from safety-sensitive functions if the prohibitions stated earlier in this document are violated. These are:

- Using any controlled substance with the exception of a legitimate prescription by a physician indicating that it will not interfere with the ability to safely perform safety-sensitive functions.
- A verified positive test for a controlled substance.
- **Refusal to submit to controlled substance testing** includes failing to appear under any circumstance for any test within a reasonable amount of time, as determined by the employer, fails to remain at the testing site until the testing process is complete, or fails to cooperate with any part of the testing process. See DOT 49 CFR Part 40.191 and City of Mesa's Anti-Drug and Alcohol Misuse Prevention Plan.

The employee cannot return to safety-sensitive functions until they have been evaluated by a substance abuse professional, completed the recommended therapy, and submitted to a return-to-duty test and tested negative for controlled substances.

### **EMPLOYEE INFORMATION, TRAINING AND REFERRAL**

Because the primary objective of this alcohol and controlled substances misuse program is deterrence rather than detection, it is especially important that, before any testing is begun, employers make their employees fully aware of the dangers of alcohol misuse and controlled substances use in their jobs, advise them where help can be obtained if they have a problem with alcohol or controlled substances use, and the potential consequences for people who violate this rule.

Each employee shall receive educational materials that explain alcohol misuse, controlled substances use, and the policies and procedures with respect to meeting these requirements. These materials shall be distributed prior to the start of alcohol and controlled substance testing under this program and to each person subsequently hired for or transferred to a covered position.

The materials to be made available to covered employees shall include detailed discussion of at least the following:

- The identity of the person designated by the City of Mesa to answer covered employee questions about the materials.
- The categories of employees who are subject to the provisions of this program.
- The safety-sensitive functions required of the employee as well as a clear definition of what part of the workday is involved.
- The prohibitions on alcohol and drug use for employees.
- The requirement that a covered employee submit to alcohol and controlled substance tests administered in accordance with this program.
- An explanation of what happens if an employee refuses to be tested.
- The effects of substance abuse.
- The consequences of a positive test.
- Information on how and where an employee can get help for a substance abuse problem.

Each employee must sign a statement saying that they have received this information.

### **Training For Supervisors**

The alcohol and controlled substance ruling also contains a training requirement for those who are responsible for determining whether employees should undergo testing for reasonable suspicion. These supervisors must attend a minimum of two hours of training in the following areas:

- At least one hour on alcohol misuse.
- At least one hour on controlled substances use.

This training must include the physical, behavioral, speech, and performance indicators of probable alcohol misuse or controlled substance use. The training may consist of formal classroom training, videos, written materials, online training, or other appropriate methods.

### **Referral, Evaluation, and Treatment**

The rules require that employees be provided with information on the employer's EAP program. It does not, however, require that the employer pay for rehabilitation or hold a job open for an employee or continue employment.

Specifically, the alcohol and controlled substance ruling requires:

- Employees who violate alcohol or controlled substance prohibitions be advised of the resources available to evaluate and resolve the problem.
- Following a violation, employees who are provided the opportunity to return to a DOT safety-sensitive position and perform safety-sensitive duties (with either their current employer or any future employer), must complete the Return to Duty process:
  - (1) Receive an evaluation by a substance abuse professional (SAP); and,
  - (2) Successfully complete the SAP recommended treatment and/or education program; and,
  - (3) Produce a return-to-duty alcohol test of less than 0.02; and,
  - (4) Produce a verified negative return-to-duty controlled substance test.
- Employees will be subject to a minimum of six unannounced follow-up tests within the first year of their follow-up program.

Follow-up testing can be done for up to five years after return to safety sensitive duties. The substance abuse professional, however, can terminate follow-up tests any time after the first six tests have been administered.