

City of White Sulphur Springs, Montana

**U.S. Department of Transportation
Federal Motor Carrier Administration
Drug and Alcohol Testing Program**

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REQUIREMENT TO ADOPT DRUG AND ALCOHOL TESTING PROGRAM

This policy is required under the U.S. Department of Transportation:

- Federal Motor Carrier Administration's *Procedures for Transportation Workplace Drug and Alcohol Testing Programs* found at [49 CFR Part 40](#); and
- Office of Secretary, *Controlled Substances and Alcohol Use and Testing* found at [49 CFR Part 382](#)

APPLICABILITY

This policy applies to:

1. City employees who, as a result of their job duties, must hold a commercial drivers' license.
2. Applicants for City employment in a covered position. These individuals will be subject to pre-employment drug and alcohol testing after a conditional employment offer has been made.
 - a. The drug and alcohol testing must be the last step in the conditional offer process, and the applicant will receive a final job offer if they pass the DOT drug and alcohol test.

KEY TERMS

NOTE: A glossary is provided beginning on page 22.

For purposes of this Policy:

- **Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- **Clearinghouse** – Refers to the federal Department of Transportation's Drug and Alcohol Testing Clearinghouse.
- **Commercial Motor Vehicle** - A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:
 - (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
 - (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or
 - (3) Is designed to transport 16 or more passengers, including the driver; or
 - (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
- **Controlled substance** – For purposes of this policy, "Controlled Substances" includes:
 - Marijuana metabolites.
 - Cocaine metabolites.
 - Amphetamines.

- Opioids.
- Phencyclidine (PCP)

Throughout this document, 'controlled substances' are also referred to as 'drugs'.

- **Covered Employee** –Any City employee whose job duties require them to hold a commercial driver's license.
- **On Duty** – The time during which an employee is performing a safety-sensitive function.
- **Medical Review Officer (MRO)** – A licensed physician who is responsible for receiving and reviewing laboratory results generated by the City's drug testing program and evaluating medical explanations for certain drug test results.
- **Safety-sensitive function** - All time from the time a covered employee begins to work or is required to be in readiness to work until the time the employee is relieved from work and all responsibility for performing work. Under the law, safety-sensitive functions include:
 - (1) All time at an employer or shipper plant, terminal, facility or other property, or on any public property, waiting to be dispatched, unless the covered employee has been relieved from duty by the employer;
 - (2) All time inspecting equipment as required by 49 CFR §§392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
 - (3) All time spent at the driving controls of a commercial motor vehicle in operation;
 - (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR §393.76);
 - (5) 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
 - (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- **Substance Abuse Professional (SAP)** – A licensed physician or a licensed certified psychologist, social worker, employee assistance professional, or marriage and family therapist, or drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap>.

PROHIBITIONS

The following prohibitions apply while a City employee is serving in any capacity with City, in any City-owned or leased vehicle, in any personal vehicle being used for City business, in all City owned property, and at any City-approved activity:

A. Alcohol Use

1. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No supervisor having knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the covered employee to perform or continue to perform safety-sensitive functions.
2. No employee tested under this program who has an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions, including driving a

commercial motor vehicle. The City shall not permit an employee with a BAC of .02 or greater but less than .04 to perform or continue to perform safety-sensitive functions, until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

- a. The City will not take any disciplinary action against a covered employee under this program based solely on test results showing an alcohol concentration less than 0.04. However, this does not prohibit the City from taking actions otherwise consistent with law.
3. No covered employee shall use alcohol while performing safety-sensitive functions or while on standby. No supervisor having actual knowledge that an employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.
4. No employee shall report for duty or remain on duty within four hours after using alcohol. No supervisor having actual knowledge that an employee has used alcohol within four hours shall permit an employee to report for duty or remain on duty.
5. No employee required to undergo a post-accident alcohol test shall use alcohol for eight hours following the accident, or until they undergo a post-accident alcohol test, whichever occurs first.

B. Drug Use

1. No covered employee shall remain on duty requiring the performance of safety-sensitive functions when the employee uses any drug or substance identified in 21 CFR 1308.11 Schedule I. See <https://www.ecfr.gov/current/title-21/chapter-II/part-1308>
2. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is at the instructions of a licensed medical practitioner who is familiar with the employee's medical history and has advised the employee that the substance will not adversely affect the employee's ability to safely operate a commercial motor vehicle.
3. No supervisor having actual knowledge that a covered employee has used a controlled substance in violation of paragraphs 1 and 2 above shall permit the employee to perform or continue to perform a safety-sensitive function.
4. The City may require a covered employee to provide the City with information about any therapeutic drug use that may adversely impact the employee's ability to perform safety-sensitive job functions.
5. Covered employees should consult with a pharmacist when purchasing over-the-counter medications to avoid positive drug tests and understand the effects the drug may or will have on them.

VOLUNTARY SELF-IDENTIFICATION PROGRAM

- A. The City encourages employees who are struggling against the use of alcohol or drugs to seek help. The City will not terminate the employment of, discipline, or discriminate against an employee solely because the employee voluntarily seeks treatment for an alcohol or substance abuse problem by following the procedures outlined below.
- B. Covered employees who self-identify to alcohol misuse or controlled substances use will not be subject to the Administrative Action provisions found on page 18 if:
1. The admission is in accordance with the policy found in paragraph C below.
 2. The covered employee does not self-identify in order to avoid testing under this program;
 3. The covered employee makes the admission of alcohol misuse or controlled substances use before performing a safety-sensitive function (specifically, the admission must be made prior to reporting for duty); and
 4. The covered employee may not perform a safety-sensitive function until the City is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with this self-identification program.
- C. If a covered employee admits to alcohol misuse or controlled substances:
1. The City will not take adverse action, such as termination, demotion or formal discipline, against an employee who self-identifies within the parameters of Section B, above.
 2. The employee will be provided with a reasonable accommodation in order to seek evaluation, education or treatment to establish control over their drug and/or alcohol problem.
 3. The employee will be allowed to return to safety-sensitive functions upon:
 - a. Successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, (i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor) as evidenced by a letter from the education or treatment program or counselor or a limited HIPPA waiver allowing City to communicate with the program or counselor as to completion and advice regarding safety-sensitive functions and a Return to Duty;
 - b. The employee undergoing:
 - 1) a Return to Duty alcohol test with a result indicating an alcohol concentration of less than 0.02; and/or
 - 2) a Return to Duty controlled substance test with a verified negative test result.
 4. Based on the advice of the employee's substance abuse expert, and as part of a Return to Duty Agreement, the City may incorporate employee monitoring and may require non-DOT follow-up testing.
- D. Employees who are struggling with drug and/or alcohol abuse have the following resources available:
- The City's Employee Assistance Program (enter phone number)

- Substance Abuse and Mental Health Services Administration's National 24-hour Addiction Helpline: 1-800-662-HELP (4357)
- A list of Montana-based treatment centers by level of care is available at <https://dphhs.mt.gov/amdd/substanceabuse/treatmentproviderinformation>
- Some of the costs for treatment of substance abuse-related issues may be covered through the City's health insurance program.

For more information, contact the Clerk-Treasurer or Mayor.

- E. Employees may be disciplined for drug or alcohol -related incidents that occur prior to an employee seeking protection under this section.

TESTING PROGRAM COMPONENTS AND CUT OFF CONCENTRATIONS

A. Controlled Substance Testing

Under this program, the City will test for the following controlled substances:

Marijuana¹

Cocaine

Amphetamines, including:

- Amphetamine
- Methamphetamine
- MDMA
- MDA

Opioids, including:

- Codeine
- Morphine
- Hydrocodone
- Hydromorphone
- Oxycodone
- Oxymorphone
- 6-AM (Heroin)

Phencyclidine (PCP)

¹ The use of hemp oil products, including CBD oil, will not be an acceptable defense for a positive Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC) test.

In determining whether a drug test is positive or negative, the City will use the cutoff concentrations found in the current edition of 49 CFR § 40.87, [What are the Cutoff Concentrations for Drug Tests?](#)

B. Alcohol Testing

An Alcohol Test will be verified as a Positive Test if the initial and confirmation tests reveal a BAC greater than .04 grams of alcohol per 210 liters of breath or higher.

REMOVAL FROM DUTY

- A. The City will not permit a covered employee to perform safety-sensitive functions; including driving a commercial motor vehicle, if it has determined that a covered employee has violated this policy.

TYPES OF TESTING CONDUCTED

A. Pre-employment Testing

1. Applicants for covered positions are subject to pre-employment controlled substance and alcohol testing after a conditional job offer has been made. This includes new employees, employees who are moving from a non-covered position to covered position, and employees who are transferring from one covered position to another covered position.
2. A positive drug or alcohol test, a Refusal to Test, a shy bladder with no medical explanation, and a positive urine specimen with no medical explanation will disqualify a prospective applicant for employment.
3. The "Designated Employer Representative" or DER or designee will notify the applicant of the date and time of the pre-employment testing. In order to allow time to receive test results, this testing should take place no less than 3-4 working days prior to the start date. The prospective employee will be responsible for getting themselves to the test collection site on the scheduled date and time.
4. The testing site will notify the DER of the results of the pre-employment alcohol test and the MRO will notify the DER of the results of the pre-employment drug testing process.
 - a. If both tests are negative, the DER will notify the hiring supervisor to proceed with the hiring process.
 - b. If either or both tests are positive, the DER will notify the Mayor, who will notify the applicant that the employment offer is being rescinded.
5. No supervisor shall allow a prospective employee to begin work until being notified by the DER that the pre-employment test(s) have come back as negative.

B. Reasonable Suspicion Testing

1. A covered employee will be tested for alcohol and drugs when there is reasonable suspicion of on duty use or impairment. "Reasonable suspicion" can include but is not limited to observable phenomena (e.g., a supervisor observes an employee using alcohol), and/or the physical signs of being under the influence of drugs or alcohol (e.g., the supervisor smells alcohol on an employee's breath.)
2. If a covered employee is suspected of being under the influence of or impaired by alcohol or drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion and will present this evidence to an authorized party for confirmation. Authorized parties can include but are not limited to the Public Works Supervisor, the Mayor, and the DER.
 - a. The City will ensure that supervisors of covered employees receive reasonable suspicion training that complies with 49 CFR § 382.603, Training for Supervisors.

3. A covered employee suspected of being under the influence of or impaired by alcohol or drugs shall remain on duty but shall not be allowed to operate a vehicle or perform safety-sensitive functions until reasonable suspicion has been confirmed or disproven.
4. Reasonable suspicion testing will be conducted by a qualified testing laboratory.
5. The Mayor, the employee's supervisor, or an outside transportation provider will provide transportation to the collection facility. Co-workers, friends, and family members may not transport for employees under reasonable suspicion.
6. Employees will be paid through the time the sample is given. Employees being tested under Reasonable Suspicion will be placed on paid administrative leave until the test results are received. The tests results are typically processed within two days.
7. No employee will be allowed to drive themselves home if they are believed to be under the influence of alcohol or have a measurable quantity of a controlled substance in their system. If attempts to reach a third party for transportation home fail, someone designated by management will drive the employee home. In all cases, if the employee refuses to accept transportation and attempts to drive their vehicle, the City will immediately notify law enforcement officials.
8. The appropriate supervisor will, within 24 hours, prepare a written report detailing the circumstances that formed the basis to warrant the testing. This report should include the specific dates and times of reported alcohol or drug related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken. All documentation related to the determination shall be forwarded to the DER.

C. Post-Accident Testing

1. The Mayor or designee shall initiate DOT post-accident alcohol and drug testing when an accident occurs on a public road, and if:
 - a. The accident involved the loss of human life (fatality); or
 - b. The accident resulted in bodily injury to any covered employee or another person requiring immediate medical treatment away from the scene and/or a covered employee received a citation within 32 hours of the accident; or
 - c. The accident caused disabling damage to any motor vehicle that required any vehicle to be towed away and/or the covered employee received a citation within 32 hours of the accident.

All covered employees involved in the accident will be tested. See Post Accident Testing Flowchart, Appendix C.

2. The City may also conduct appropriate post-incident testing under a non-DOT Workforce Alcohol and Drug Testing program.
3. An employee subject to DOT post-accident testing shall remain immediately available for up to two (2) hours for such testing, or the City will consider the employee to have Refused to Test.
 - a. If there were circumstances that kept the employee from submitting to a test within 2 hours after the incident, the DER or designee in coordination with the employee's supervisor and the Mayor shall evaluate those circumstances and make the final determination as to whether or not it will be deemed a Refusal to Test.

4. If a post-accident drug or alcohol test is not administered within two (2) hours of the occurrence, the supervisor shall document the reason(s) why it was not promptly administered.
 - a. If more than eight (8) hours pass, no alcohol test will be administered.
 - b. If more than thirty-two (32) hours pass, no drug test shall be administered.If either test is not completed under a or b above, the supervisor shall document the reason(s) why. The documentation shall be forwarded to the DER.
5. If a post-accident test was not conducted within the initial two-hour period, an employee will be subject to call-out for up to 32 hours following an accident for testing
 - a. An employee subject to post-accident testing shall not consume alcohol for 8 hours post-incident.
 - b. An employee subject to post-accident testing shall not consume drugs, whether over-the-counter, by prescription or otherwise, prior to the post-accident testing. Exceptions may be made for previously prescribed maintenance medications and/or medications administered to treat any personal injury.
6. For Post-Accident testing, the City will arrange for transportation to the sample collection facility. Co-workers, friends, or family members may not transport employees to post-accident testing.
7. Employees being tested under this post-accident testing program will return to work unless Reasonable Suspicion also exists, which requires the employee to be placed on administrative leave. The tests results are typically processed within two days.
 - a. No employee will be allowed to drive themselves home if they are believed to be under the influence of alcohol or have a measurable quantity of a controlled substance in their system. If attempts to reach a third party for transportation home fail, someone designated by the City will drive the employee home. In all cases, if the employee refuses to accept transportation and attempts to drive their vehicle, the City will immediately notify law enforcement officials.

D. Random Testing

1. Administration of the Random Testing Pool

The City contracts with a third party administrator to establish and administer its random testing pool and to conduct random draws. Because employees selected for random testing during one quarter are included in the population for the next quarterly draw, each covered employee has an equal chance of being randomly tested each time selections are made.

2. Random Testing Process

- a. Random controlled substance and alcohol testing may be performed at any time a covered employee is employed in a position involving a safety-sensitive function.
- b. An individual selected for random testing and the individual's supervisor will be notified the same day the test is scheduled; preferably within two hours of the scheduled test.
- c. The employee will be notified whether they have been drawn for a drug test, an alcohol test, or both.
- d. The employee will be provided enough time to stop performing their job functions and report to the testing site.
- e. Random tests will be conducted in a manner consistent with **Test Procedures**, below.

3. Deferral of Testing - An employee selected for random testing may be deferred from testing if the employee is:
 - a. In a leave status (e.g., sick, vacation, leave without pay) on the day of testing notification; or
 - b. In travel status away from the work site or is about to embark on travel that was scheduled prior to testing notification, and this travel cannot be delayed or rescheduled.

The supervisor of an employee whose random test is deferred will notify the DER that the testing needs to be deferred, and when the employee has returned to work. The employee will then be subject to unannounced random testing.

4. Refusal to Test - Failure to appear for a Random Test or interfering with the testing process will be considered a Refusal to Test.

E. Return to Duty and Follow-up Testing

If an employee tests positive for drugs and/or alcohol and is not terminated, the following will occur:

1. Before returning to safety-sensitive functions work after a verified positive test for drugs and/or alcohol, the employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02.
2. The employee will be subject to unannounced follow-up drug and/or alcohol testing, as required under 49 CFR Part 40 Subpart O.
 - a. The Return to Duty and Follow Up Testing will be conducted under Direct Observation, as defined in the Special Testing Procedures below.
 - b. The follow-up testing will be at the frequency recommended by the Substance Abuse Professional but, at a minimum, the employee is subject to six unannounced follow-up tests in the first 12 months following the employee's return to safety-sensitive functions.
 - c. Follow-up testing is distinct from any testing which may be taken as part of a rehabilitation program.
3. Upon return to work, the following shall be cause for discharge from employment:
 - a. a positive test for alcohol or drugs
 - b. the illegal use of a legal drug
 - c. failure to successfully complete a Substance Abuse Professional-recommended rehabilitation program

TEST PROCEDURES

A. Participation is Required

As a condition of continued employment, covered employees shall submit to the requirements of the City's Drug and Alcohol Testing program, including the required testing.

B. Preliminary Procedures

1. An employee will be notified by a supervisor that they are being sent for drug and/or alcohol testing and will be required to sign the Test Notification Form.
2. The employee will immediately report to the collection site.