

CITY of ROCKPORT, TEXAS



EMPLOYEE HANDBOOK

City of Rockport
2751 S.H. 35 Bypass
Rockport, Texas 78382

Personnel Policy

Employee Handbook

Section I

Adopted by City Council on April 23, 2002
Ordinance 1212

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1964

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PERSONNEL POLICY

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DIVISION 1. GENERALLY

Section 40-1

Purpose

- (a) Efficiency in the operation of the City of Rockport depends upon the effective utilization of its employees. This responsibility belongs to all supervisors of the City of Rockport.
- (b) The purpose of these policies is to bring into the service of the City a high degree of understanding, cooperation, efficiency and unity which comes through systematic application of good procedures in personnel administration and to provide a uniform policy for all employees with all the benefits such a program ensures. The basic objectives of these policies are:
 - (1) To promote and increase efficiency, effectiveness and economy in the service of the City.
 - (2) To provide fair and equal opportunity to all qualified applicants to enter City employment based on demonstrated qualifications, merit and fitness as determined through fair and practical methods of recruitment and selection.
 - (3) To provide a program of recruitment, advancement and retention which will make employment with the City attractive as a career and encourage each employee to render his or her best services to the City.
 - (4) To promote high morale among City employees by providing a good working environment, uniform personnel policies, opportunity for advancement and consideration for employee needs and desires.
 - (5) To provide a uniform plan of evaluation and consistent, up-to-date position classification and compensation plan based on relative duties and responsibilities

Section 40-2

Equal Employment Opportunity Policy

- (a) *Equal Opportunity.* It is the policy of the City of Rockport to ensure equal employment opportunities. Discrimination against any person in recruitment, examination, appointment, training, evaluation, promotion, discipline, pay or any other aspect of personnel administration, because of the political or religious opinions or affiliations, membership or non-membership in employee organizations, or because of race, color, national origin, marital status, sex (gender), sexual orientation, age, physical or mental disability or other non-merit factors, is prohibited.
- (b) *Civil Rights of All Employees.*
 - (1) The City of Rockport recognizes the right of every employee to work in an

environment that is free of racial, ethnic, age and/or sexual harassment and intimidation. The City will not tolerate any form of racial, ethnic, age or sexual harassment. Employees and supervisors are to take any and all steps necessary to prevent such conduct. It is the duty of every supervisor and Department Head, as well as the City Secretary, City Manager and the Council to ensure that harassment and/or intimidation is not permitted or tolerated in the workplace.

- (2) See Workplace Harassment (Division 3, Section 40-49, pg. 28-31)

Section 40-3 **Applicability**

This Employee Handbook applies to all City employees. An “employee” is any person hired by the City. A person on retainer or under contract is not considered to be a City employee in the absence of a specific agreement to that effect. City Council Members; Board, Committee and Commission Members; professionals that include, but are not limited to, Municipal Court Judges, attorneys, engineers, architects, auditors, etc. are not considered to be City employees. The principals of the Equal Employment Opportunity Commission shall also apply to interactions with vendors, contractors, officials, and customers equally. The City Charter supersedes all provisions in this Handbook if there is a conflict between the policies contained in this Employee Handbook and the City Charter.

Section 40-4 **Dissemination**

All employees shall be informed of the existence of these policies and each department head shall keep a copy available for reference by his or her employees. Employee Handbooks outlining the general personnel policies of the City will be furnished to all employees for their personal use and reference. The City of Rockport shall require that all employees sign a statement that they have been furnished a copy of the Employee Handbook outlining these policies. It shall be the employee’s responsibility to become thoroughly familiar with such policies.

Section 40-5 **Amendment To Policies**

These policies may be amended, supplemented or superseded at any time by the City Council. Upon any change, each employee will be given a copy of the revised policy changes in writing for their Employee Handbook. All employees will sign a statement that they have been furnished a copy of the amendment, supplement or notice of supersession.

Section 40-6 **Administrative Authority**


Chapter 4.07 of the City of Rockport Home Rule Charter states:

- (a) Personnel rules shall be prepared by the City Manager and presented to the City Council, which may adopt them by resolution, with or without amendment. The adopted rules shall establish the City as an Equal Opportunity Employer and shall govern the equitable administration of the personnel system of the City.

(b) The adopted rules shall provide for the following requirements:

- (1) A pay and benefits plan for all City employment positions.
- (2) A plan for working hours, attendance policy and regulation, and provision for sick and vacation leave.
- (3) Procedures for the hearing and adjudication of grievances.
- (4) Additional practices and procedures necessary to the beneficial and equitable administration of the City's personnel system.
- (5) A plan for oral and written evaluation annually for all City employees by their immediate supervisor, including evaluation of the City Manager and the City Secretary by the City Council.

(c) The adopted personnel policies and rules shall be reviewed not less than biennially by the City Manager; a report of said review, to include proposed changes, shall be submitted to Council for consideration.



DIVISION 2. HIRING POLICIES AND PROCEDURES

Section 40-21 Vacancies

Department Heads shall notify Human Resources when job vacancies occur or are projected in their department. The supervisor and department head will review the existing job description to determine if it needs updating prior to posting the vacancy. The department head will then complete the Personnel Requisition process (Appendix A: Position Requisition Preparation and Approval Process Policy) to start the posting of the vacancy.

Section 40-22 Posting of Vacancies

Human Resources will post the job vacancy within the City for three working days to allow current employees the opportunity to advance in the City service. Only after all internal applicants have been reviewed without a hire, will the position be advertised outside the City. The job posting will be placed on the City website. The applicable job description and associated forms will be available along with City Employment applications through the online applicant tracking system accessible through provided links and on the City website. The City Manager or Human Resources may waive the three (3) day internal posting if it is deemed that the internal posting is not necessary for a specific position.

Section 40-23 Applications

When a job vacancy has been posted, copies of the applicable job description, associated forms and City Employment applications will be available through the online applicant tracking system accessible through provided links and on the City website. When no job vacancies exist, no City Employment applications will be available. Completed applications are retained only to meet the requirements of the Records Management Plan; applications are not maintained for future employment consideration purposes. Human Resources retains the right to review similar applications for up to six (6) months.

Section 40-24 Selection

Employees are selected solely based on their qualifications for the specific position for which they apply. Selections are made without regard to the applicant's political or religious opinions or affiliations, race, color, national origin, marital status, sex(gender), sexual orientation, physical or mental disability, or other non-merit factors. Age and physical condition shall not be considered in selection except where specific age, or physical requirements constitute a *bona fide* occupational qualification necessary for proper and efficient operation and performance of duties.

Section 40-25 Categories of Employment

All employees are categorized as one of the following:

- (a) *Full-time employee:* one who is employed for a full-time workweek of forty (40) hours and who is eligible for all City benefits.
- (b) *Part-time employee:* one who is employed for a workweek of less than thirty (30) hours and

who is not eligible for all City benefits.

- (c) *Temporary employee*: one who is employed for a full-time workweek of up to forty (40) hours, but less than fifty-two (52) weeks out of a calendar year and who is not eligible for City benefits.

Section 40-26 **Continued Employment**

The City of Rockport is an “at-will” employer. Neither length of employment nor categorization as any type of employee shall be construed as to create an expectation of continued employment. At any time the employer, or the employee can terminate the employment relationship.

Section 40-27 **Nepotism**

- a) For the purposes of this policy the term “relative” or “related” shall include the following relationships: relationships established by blood (consanguinity), marriage or legal action (affinity). Examples include the employee’s: spouse, mother, father, son, daughter, sister, brother, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, aunt, uncle, nephew, niece, grandparent, grandchild or cousin. The term also includes domestic partners (a person with whom the employee’s life is interdependent and who shares a common residence) and the child of an employee’s domestic partner.
- b) It is the goal of the City to avoid creating or maintaining circumstances in which the appearance or possibility of favoritism, conflicts or management disruptions exist. The City may allow existing personal relationships to be maintained or employ individuals with personal relationships to current employees under the following circumstances:
 - 1. Individuals may not work under the supervision of the same manager/supervisor.
 - 2. They may not create a supervisor/subordinate relationship with a family member;
 - 3. They may not supervise or evaluate a family member;
 - 4. The relationship will not create an adverse impact on work productivity or performance;
 - 5. The relationship may not create an actual or perceived conflict-of-interest;
 - 6. They may not audit or reviewing in any manner the individual’s work.
 - 7. They may not be employed if a member of the employee’s immediate family (spouse, children, parents, grandparents, brothers, sisters, stepfamily members, in-law family members) serves on the agency’s Board or any Committee or Council which has authority to review or order personnel actions or wage and salary adjustments which could affect his/her job.
- c) No personal employee relationship covered by this policy will be allowed to be maintained, regardless of the positions involved, if it creates a disruption or potential disruption in the work environment, creates an actual or perceived conflict of interest or is prohibited by any legal or regulatory mandate.

- d) This policy must be considered when hiring, promoting or transferring any employee. Any existing positions that become related by marriage or other legal means will constitute a freeze of positions and no promotions will be allowed within the same department.
- e) Should relationships addressed within this policy be identified with either candidates for employment or current employees, the matter should be immediately reported to Human Resources and the following policies and procedures will be followed:
 - 1. A determination will be made whether the relationship is subject to the agency's Nepotism policy based on the conditions described above.
 - 2. If the relationship is determined to fall within one or more of the conditions described in this policy Human Resources in consultation with the affected employees, Department Head, and the City Manager will attempt will to resolve the situation through the transfer of one employee to a new position or identifying some other action (e.g., Supervisory reassignment) which will correct the conflict or issue identified. If accommodations are not feasible then, with affected employee suggestions, Human Resources in consultation with the Department Head and the City Manager shall determine which employee must resign in order to resolve the situation.
- f) The City reserves the right to exercise appropriate managerial judgment to take such actions as may be necessary to achieve the intent of this policy. The City reserves the right to vary from the guidelines outlined in this policy to address unusual circumstances on a case-by-case basis.
- g) It is the responsibility of every employee to identify to Human Resources their potential or existing personal relationships which fall under the definitions provided in this policy. Employees who fail to disclose personal relationships covered by this policy will be subject to disciplinary action up to and including the termination of employment.
- h) See Appendix D Nepotism Chart for more explanation.

Section 40-28

Required response time upon callback

- (a) In order to respond to civil emergencies within a reasonable time period, all employees who reside outside the corporate limits of the City shall reside so as to be able to respond to duty within one (1) hour of notification of the requirement to do so. All employees must comply with this residency requirement within the first six months of employment.
- (b) Due to the nature of the position, employees required by their position to be eligible for On-Call Duty shall reside so as to be able to respond within twenty (20) minutes.
- (c) Response time for all employees should be inclusive of the following: receiving the call, reacting and preparing to leave, travel time, and arrival.

Section 40-29

Medical Examination

- a) As a condition of employment, applicants applying for positions that meet any of the three criteria below, once offered employment must undergo a medical examination by a licensed facility designated by the City, the cost to be borne by the City. No one shall be employed in these positions unless the medical examiner certifies the applicant is able to perform the essential duties of the position offered.
1. Does the position require a physical under regulation? Department of Transportation (DOT), Grant Requirements, LGC (CBA) or FMCSA (CDL Holder), TCOLE, or any other regulatory over site agency?
 2. Does the position have specific essential functions that require or physical duties that an employee must be able to perform with or without accommodation such as lifting, pushing, pulling objects over 30 pounds, ability to see color, etc.?
 3. Does the position require the employee to drive a City vehicle, or their own as part of their essential duties?
- b) All job descriptions will list any information that is required to determine if the position meets any of the three (3) criteria to determine if a medical examination is required.

Section 40-30 **Transfers**

A transfer is the reassignment of an employee from one position to another. A transfer not involving promotion or demotion may be affected at any time for administrative convenience or necessity, or upon request of the employee to the department head, or if interdepartmental, to the City Manager; provided that the employee is qualified to perform the duties of the position to which the transfer is contemplated. In order to be eligible to transfer into a new position, an employee must have completed the orientation period (Division 3, Section 40-42, Pg9) with at least a satisfactory score, and must not have disciplinary action in the last 6 months. Transfers may be made administratively or in conjunction with an announced selection process. Transfers between classifications or between departments shall become effective following the approval of the City Manager or Human Resources.

Section 40-31 **Interviews**

- (a) *Internal interview process:* When a department wishes to conduct internal interviews, they should interview in a panel format with at least three (3) individuals, one of which should be someone from Human Resources, or their designee, or an individual from a completely different department (preferably someone of at least management level). The individual cannot be an individual from a sub-department that is under the same main department as the interviewing department. The other two or more individuals can vary. This requirement is waived for sworn positions within the Police Department due to legal restrictions.

External Interview process: External interviews should be conducted in the panel interview format with at least 3 individuals making up the panel.

Section 40-32. **Demotions**

A demotion is the assignment of an employee from one position to another position having less responsibility or requiring less experience, education, technical or professional expertise, and which

is usually at a lower salary. A demotion may be affected for either a disciplinary or non-disciplinary action. With the approval of the City Manager and if qualified to perform the duties of the lower position, an employee may be administratively demoted at his or her request. Such demotions shall not be considered as disciplinary actions to disqualify the employee involved from consideration for later advancement.

Section 40-33 Termination.

Employment with the City is of an “at-will” nature, meaning the employee may resign at any time and the City may discharge the employee at any time, for any reason or for no reason.

- (1) An employee terminating under his or her own will shall provide two weeks’ written notice to his or her supervisor to terminate in good standing. The City Manager may waive any portion of the notice period.
 - (a) Any employee whose employment is terminated by the City shall not be considered to have terminated in good standing and may be listed as not eligible for rehire. Any employee who separates employment with the City will be paid not later than the next scheduled payday.
- (2) Upon an employee’s termination, retirement, resignation, or death, the employee shall be paid for accrued vacation leave at the employee’s current rate of pay. The City’s personnel record shall reflect the basis of the employees’ termination.
 - (a) Only employees who have successfully completed their initial six (6) month orientation period of employment with the City are entitled to the payout provision upon separation.
- (3) An employee failing to report for duty or remain at work as scheduled without proper notification, authorization or excuse shall be considered as absent without leave which constitutes abandonment of duties, except when the failure to notify is due to circumstances beyond the control of the employee. Absence without leave may be considered as an employee’s resignation without notice. In such cases, the employee’s termination shall not be considered in “good standing.”
- (4) Layoff
 - (a) An employee may be laid off because of changes in duties, organizational changes, lack of work or budget cutbacks.
Whenever possible, an employee laid off from one City department shall be transferred to a suitable position elsewhere provided said employee has the appropriate job qualifications and job skills and an opening exists in the receiving department. Whenever possible, at least two (2) weeks’ notice shall be given an employee prior to layoff. Layoffs should be carried out based on demonstrated job performance and efficiency, with the most proficient employees being retained the longest. Seniority within City service shall be used to determine the order of layoff among employees with substantially

equivalent records of job performance and efficiency, with the most senior employees being retained the longest. Temporary employees shall be laid off before regular employees performing similar duties. A layoff shall not be considered a disciplinary action.

- (b) Employees laid off may be recalled to their job or another similar job in which they meet the minimum job requirements and qualifications in the reverse order of layoff. Employees being recalled shall have precedence over other job applicants. Employees recalled to employment, within six (6) months, shall report to work as instructed.
 - (c) An employee failing to report back to work shall be considered as having forfeited his or her right to reemployment.
- (5) Incapacity. An employee may be terminated for medical reasons when the employee as an individual is no longer able to perform the minimum essential functions required for the position with reasonable accommodation. Human Resources may request a fitness for duty certification from a physician to support the finding of incapacity. Terminations for incapacity shall not be considered disciplinary action and shall not operate to deny any employee the use of any accrued illness, injury, disability leave or other benefits.
- (6) Unsatisfactory Service. An employee may be terminated for unsatisfactory service when his or her ability to handle the duties of the position fall below the desirable standards for continued employment, as supported by performance evaluation records and supporting documentation.

DIVISION 3. EMPLOYEE PERFORMANCE AND RETENTION

Section 40-41

New Employee Orientation

- (a) Human Resources will ensure that all new employees complete a new employee orientation, which typically includes an overview of the following types of information: Employee benefits, minimum standards of job performance and personal conduct, schedule of paydays, procedures for recording work time; introduction to other city employees in the employee's work area; supervisory relationships; minimum required standards of physical fitness; procedures for evaluation of job performance.
- (b) All new employees shall be given a thorough orientation about the nature of the job, the benefits, obligations and responsibilities of the position, and the general policies and procedures of both the City and the department within which he or she is to be employed. In addition, the City will obtain information needed for insurance programs, and obtain documents required to determine identity and employment authorization, as required by federal law. The employee shall also be furnished with a copy of the Employee Handbook for personal use and reference for which the employee, by signature, shall acknowledge receipt of the Manual.
- (c) New employees shall be given up to six months to acclimate to the standards required to complete the assigned job, as provided in Section 40-42 below. Supervisors are to inform the new employee of any shortcomings in job performance or personal conduct as they occur. Regular meetings should be held between the new employee and the supervisor (and/or Department Head) so as to assess the employee's progress in learning the required job skills as well as the employee's adaptation to the workplace and to the existing staff. See Orientation Period (Section 40-42)

Section 40-42 Orientation Period

- (a) All new employees hired to fill regular full-time positions must satisfactorily complete an initial performance Orientation Period of **six (6) months**.

The Orientation Period assists the City in maintaining an effective, productive, and efficient workforce to provide quality services to the citizens. Only those employees who meet acceptable performance and other standards during their orientation period will be retained as employees. The orientation period may be extended for additional training as determined by the supervisor.

Each employee serving in the orientation period is responsible for knowing, understanding, and meeting the expectations and standards for the position. In addition, each employee is also responsible for performing the job in a safe, productive, and effective manner within

the instructions and established standards for the position. Furthermore, employees are expected to maintain acceptable standards of conduct in their employment. During the Orientation Period, it is the responsibility of the employee to correct any deficiencies or inadequacies in job performance, or conduct. However, all employees are “at-will,” both during and after the initial six-month Orientation Period.

- (b) “Regular” Status Employee Transfer/Promotion Orientation Period
 - a. Any “Regular” status employee that is transferred/promoted to a new position must complete a six (6) month Orientation period in the new position.
 - b. The employee must receive a Performance evaluation at the end of the six (6) months with at least “satisfactory” rating to continue in the position.
 - c. All other “Regular” employee provisions apply.
- (c) Seasonal/ Temporary Employees
 - a. Seasonal and temporary full and part-time employees do not serve a performance orientation period.
- (d) Change in Assignment/Transfer/Promotion/Reassignment during Initial Orientation Period
 - a. Generally, employees serving in the Orientation Period may not request or make application for reassignment, promotion, or voluntary transfer during the orientation period.
 - b. The City Manager may approve a reassignment or transfer in special circumstances; however, the following criteria must be met:
 - i. The circumstances must be one deemed urgent, or necessary, by the City Manager.
 - ii. The employee must already possess the experience, training, and skill required of the position.
 - iii. The employee must have been employed with the City a minimum of thirty (30) days prior to the request and have a good performance recommendation from their current Department Head, since they will not have completed the six (6) month evaluation yet.
 - iv. If the transfer, reassignment, or promotion is approved, the employee must complete the original six (6) month orientation period, along with an additional 2 months. This will give time for the employee to be in the new position long enough to receive a fair evaluation at the end of the orientation period.
 - v. The employee will still be subject to possible termination if they do not successfully complete the performance evaluation at the end of the orientation period.
 - c. If an employee is unable to perform the essential functions of their current position, during the orientation period, due to a medical condition, or other condition covered by the ADA, FMLA, or PWFA, the City Manager, upon agreement with all affected parties, may approve a transfer if there is an open position that better fits the employee’s abilities with or without reasonable accommodation.
- (e) Absences During Orientation Period
 - a. During the Orientation Period, an employee is eligible to use sick leave for qualifying absences and may use vacation leave for an absence due to illness or injury only if all

sick leave has been exhausted.

- b. During the Orientation Period, an employee may only use vacation or sick leave due to illness, injury, or other medical condition, unless they receive prior approval of the Department Head. The request must be submitted two (2) weeks prior to the requested days off. The Department Head retains the right to deny personal days during the Orientation Period, if it would interrupt training, or cause an undue burden on the department, unless the absence is covered by Workers Compensation, the ADA, or PWFA.
- c. Transferred or promoted employees who have been with the City more than 6 months and are serving in the Orientation Period due to their transfer or promotion retain eligibility for all types of leave established by City policy.

(f) Orientation Period Evaluation

- a. All employees serving in the orientation period shall be trained, in the position and received constructive correction to their performance to assure they have had adequate time to learn the basics of the position and correct any mistakes as they train.
- b. At the end of the Orientation Period, the employee will receive a Performance Evaluation by their manager/supervisor, and the department head.
- c. The Performance will serve as a recommendation to retain or terminate employment.

(g) Extension to the Orientation Period

- a. The Orientation Period may be extended under the following circumstances:
 - i. At the end of the six (6) month initial period, the performance orientation period may be extended for up to an additional three (3) months when an employee's performance has been marginal due to extenuating circumstances, additional training is warranted, or an employee's absence from work for an extended period of time did not permit an opportunity for adequate assessment of performance.
 - ii. If the employee missed a significant number of days during their orientation period due to a condition covered by ADA, FMLA, or PWFA, and the Department Head feels that this caused them to miss key training goals, the Department Head may extend the Orientation period, to give time for appropriate training.
 - iii. The decision to extend or not to extend an employee's orientation period may not be appealed. If an extension is granted, the employee will be advised in writing and given the date on which the extended orientation period will be completed.
 - iv. Such an extension will be at the sole discretion of the Department Director and the Director of Human Resources.
 - v. The employee will still be required to successfully complete the Orientation Period Evaluation at the end of the Extension time in order to move forward.

(h) Successful Completion of Orientation Period

- a. Employees have no guarantee of employment either during or after their orientation period.
- b. Only employees who meet acceptable performance, conduct, attendance, and other standards during the orientation period will be retained as employees.
- c. An employee is granted "regular" status if the employee satisfactorily completes the

orientation period.

(i) **Failure of Orientation Period**

- a. An employee is considered to have failed the Orientation Period when it is determined that the employee's ability to perform essential functions, job performance, quality or quantity of work, attendance, or combination thereof, does not meet minimum job performance standards and expectations for the position.
- b. Failure of the Orientation Period may occur at any time within the orientation period.
- c. A poor/unsatisfactory Performance Evaluation at the end of the Orientation Period will be deemed as Failure of Orientation Period.
- d. An employee who does not successfully complete the Orientation Period will be terminated from the City's employment.
 - i. If desirable and feasible, the employee may be administratively transferred to a more suitable position at the sole discretion of the City. A transferred or promoted employee who fails the Orientation Period may, at the sole discretion of the City, be reinstated to the former position provided there is a vacancy and if approved by the affected Department Director(s).
- e. Department Directors are responsible for ensuring the thorough written documentation of all cases of failure of the orientation period, including documentation of counseling, training, and other efforts to help employees during their orientation period.
- f. All such documentation must be reviewed by the Director of Human Resources before an employee serving in the orientation period can be terminated.

Section 40-43

Standards of Conduct

- (a) **Political Activities:** City of Rockport encourages employees to participate in lawful political activities. Participating in these activities must be conducted on the employees' own time and should in no way suggest City of Rockport's endorsement of or support for any political candidate or political measure. Vacation leave may be requested to conduct such activities. The following guidelines pertaining to political activity shall apply to all employees.
- (b) The following activities are prohibited from being performed while on-duty:
 - (1) Demonstrating.
 - (2) Circulating petitions.
 - (3) Soliciting votes or contributions at any time in any working area of a City facility.
 - (4) Conducting or participating in opinion polls.
 - (5) Fundraising.

- (6) All other activities not considered part of the employee's normal duties. To maintain good customer relations, preserve the professional work environment, and avoid political advertising, employees may not wear any political insignia, campaign badges, or buttons on their person, nor display any partisan insignia, badges, buttons or political literature or campaign material on their desk or in their work area. Harassment of co-workers, customers or vendors regarding political preferences will not be tolerated
- (7) Under no circumstances may bumper stickers, placards or other forms of endorsement be placed on any City-owned vehicle or piece of equipment. Employees may not place placards or other forms of political endorsement on publicly owned lands.
- (8) No employees shall use working hours to participate in any partisan political activity. Employees not having defined work hours are expected to exercise professional discretion in this matter.
- (9) No employee shall use City funds, resources, property, equipment, media, or email to advertise, promote, or participate in a political campaign, or election.
- (10) Under no circumstances shall employees use or attempt to use their position as a City employee to influence the outcome of any election.
- (11) Employees may not use City of Rockport's equipment or resources for making, copying or distributing political materials or messages. Employees may not use the City's server system or email for political campaigns, endorsements, opinions or any other political activity
- (12) Employees are encouraged to participate in the electoral process by voting.
- (13) No employees may hold an appointed or elective office, partisan office or any other office with or without remuneration, where such service may constitute a direct conflict of interest with City employment. Prior to seeking or accepting an offer, all employees should first notify their Department Head and request permission to proceed if they seek to retain their position with the City.

(c) **Outside Employment:** The following guidelines pertaining to outside employment shall apply to all employees.

- (1) In general, employees of the City are not prohibited from retaining outside employment. In many cases, such employment may be desirable and beneficial to the City. However, there may be cases where outside employment may be detrimental to the City. Employees wishing to seek outside employment are to review the matter with their Department head and obtain permission before beginning the employment if they wish to seek to retain their position with the City. Department Heads may refer the matter to the City Manager for consideration.

- (2) Discretion and good judgment must be the underlying guidelines when reviewing the matter of outside employment; however, the following rules shall be applied:
 - a) The performance of the City employee cannot be adversely affected by the outside employment, i.e., exhaustion, injury, etc. When there is an adverse impact on the performance of the employee, the Department Head should take the appropriate steps to remedy the situation.
 - b) A City employee cannot hold an outside job which creates a conflict of interest with the City.
 - c) Any outside business activity, such as selling a product, must not be conducted during normal business hours.
 - d) An Outside Employment form shall be completed by the employee and approved by either the employee's Department Head or the City Manager and shall be placed in the personnel file Human Resources maintains on the employee.
- (d) **Receipt and Solicitation of Gifts:** The following guidelines pertaining to the receipt and solicitation of gifts shall apply to all employees of the City.
 - (1) Under no circumstances shall any employee solicit or accept a gift in exchange for the performance of his or her job, or the delivery of a City service.
 - (2) Employees are to notify their supervisor of any citizen or vendor, who offers a gift to an employee in exchange for recommending a specific product or service, or performing, failing to perform, or modifying the tasks and duties assigned to the employee.
 - (3) If an employee is in a situation where refusal of a gift would lead to a discourteous confrontation or some other adverse event, the employee may receive it and then promptly turn it over to their supervisor.
 - (4) Employees who solicit gifts for civic projects in which they are involved shall make it clear to the prospective donor that their actions are unrelated to their employment with the City of Rockport and that the acceptance or refusal of the solicitation shall have no bearing on the job performance of that employee or other employees.
 - (5) Relations with Contractors. No officer or employee of the City shall accept, directly or indirectly, any gift, favor, privilege or employment having a monetary value in excess of twenty-five dollars (\$25) from any person, firm or corporation doing business with, or seeking to do business with the City during the term of office of such officer or during the employment of such employee of the City and in connection with such office or employment, except as may be authorized by

ordinance or on behalf of the City and for its benefit. Under no circumstance shall cash or any instrument of cash having monetary value be accepted. No officer or employee of the City who is employed, directly or indirectly, by any person, firm or corporation doing business with, or seeking to do business with the City shall in any manner participate in any discussion or decision of any agency, board, commission, or instrumentality of the City having to do with the business done or sought to be done with the City by such person, firm or corporation without first declaring publicly such employment.

(e) **Standards of Conduct:**

- (1) All employees are expected to perform their job with a maximum degree of courtesy, cooperation, effectiveness and efficiency. Mediocrity, indifference and other attitudes or behaviors that cause irreconcilable friction among employees or are counter-productive to completing specific tasks and delivering services to the public shall not be tolerated.
- (2) Conduct on or off the job, which adversely affects the ability of the employee to properly complete his job or adversely affects the ability of the city to provide services, shall be cause for disciplinary action.
- (3) All deficiencies in employee performance are to be corrected as they occur. Supervisors, Department Heads and the City Manager shall ensure that deficiencies are dealt with in a fair and consistent manner.
- (4) Supervisors are to utilize the guidelines outlined in this Handbook when addressing deficiencies on the part of an employee.
- (5)
- (6) It shall be the responsibility of each employee to ensure they are able to perform the essential functions of their assigned position, or to communicate the need of reasonable accommodations required to successfully perform the essential functions of their assigned position. The essential functions of the position shall be clearly defined at the time of employment or upon adoption of these Policies, whichever comes first.
- (7) The City of Rockport is a zero-tolerance employer. Under no circumstances shall the possession or use of illegal drugs be tolerated. In addition, the possession or consumption of alcohol will not be tolerated in the workplace or during work hours.

For more information see Section II – Alcohol and Drug Free Work Environment Policy

- (8) City equipment and facilities shall be used for official City purposes only. Personal use of City equipment is prohibited. Employees assigned a city vehicle for use during the workday will be allowed to stop for lunch so long as the vehicle remains within the City or the immediate vicinity (unless on special

assignment or performing authorized work outside the City limits). Employees assigned a take-home vehicle for the purposes of “on call” duty shall not use the vehicle for personal purposes. Department Heads and other senior employees assigned a “take home” vehicle shall resolve the parameters of the use of the vehicle with the City Manager. The City of Rockport respects the privacy of its employees. However, an employee may not expect such privacy rights to extend to the use of City-owned systems, property, equipment or supplies or to work-related conduct. This policy is intended to notify all employees that no reasonable expectation of privacy exists in connection with the use of City systems, property, equipment or supplies. City employees are prohibited from withholding information maintained within company-supplied containers, including but not limited to, computer files, computer databases, desks, lockers and cabinets. The following rules also apply to the use of City property:

- a) **City Right to Access Information.** While City employees have individual passwords to e-mail, voice mail and computer server and network systems, these systems are at all times accessible to and by the City and may be subject to unannounced, periodic inspections by the City. This policy applies to all telephone, electronic and computer network systems which are accessed on or from the City’s premises, used in a manner which identifies the employee with the City, accessed using City computer equipment and/or via City-paid access methods. The City maintains backup copies of computer records and these records, as well as the usage records of the City computer network systems, may be reviewed by the City for legal, business or other reasons.
- b) **Use is Restricted to City Business.** City employees are expected to use City e-mail, voice mail and computer network systems for City business (during working hours), not for personal reasons. Personal reasons include, but are not limited to, non-job-related communications, research or solicitations, or soliciting for political or religious causes, outside organizations for other commercial ventures.
- c) **Prohibited Content.** Employees are prohibited from using city telephone, electronic or computer network systems in any manner that may be offensive or disruptive to others. This includes, but is not limited to any use which would otherwise violate any of the City’s employment policies, including its harassment policy. No telephone, electronic or computer network communications may be sent which represent the sender is from another agency or as someone else, or which tries to hide the sender’s identity. Inappropriate or excessive personal use of City property or telephone, electronic or computer network systems will result in disciplinary action, up to and including termination.
- d) **For more guidelines for use of City technology, computers, and cell phones,** see the Computer, Internet, Email and Cell Phone Policy Division 7.

(f) **Smoking and Tobacco usage Policy.**

- (1) Definition:
 - a) **Smoking:** Refers to the inhalation of tobacco or use of similar products including but not limited to cigarettes, e-cigarettes or vaping devices, pipes, and cigars.
 - b) **Smokeless tobacco:** Referring to the use of non-inhalant tobacco products including but not limited to snuff or chewing tobacco.
- (2) Smoking of any kind or variety is prohibited in all City-owned facilities and vehicles. A sign, visible at each public entrance to the premises, shall be posted notifying people entering the premises that smoking is prohibited.
- (3) **Reasonable Distance:** Smoking is prohibited within a distance of twenty (20) feet or less outside entrances, operable windows, and ventilation systems of City facilities where smoking is prohibited.
- (4) Users of smokeless tobacco are prohibited from spitting on sidewalks, parking lots, on landscaping or in the bathroom facilities. Spit cups/containers must be kept out of the view of other employees or the general public, and may not be emptied into any City trash cans (unless sealed), sinks, or toilets.

Section 40-44 Attendance.

All employees are expected to report to work as scheduled and to work their scheduled hours and overtime, if necessary. Employees shall be at their place of work in accordance with City and departmental policies and regulations. Department Heads shall establish work schedules and maintain daily employee attendance records. The Finance/Payroll office will maintain annual employee attendance and time-keeping records.

Definitions. All employee time will be defined using the following categories:

Absence, excused. Those hours or days when an employee has been excused from being present during work time. Examples include vacation, sick leave, emergency leave, etc. An excused absence may be with or without pay, depending upon the circumstances that led to the absence and the employees' available leave.

Absence, unexcused. Those hours or days when an employee is not performing work on behalf of the City that is not regular time off, approved lost time or an excused absence. Unexcused absences are defined as follows:

- a) Tardiness;

- b) Unverified sick time;
- c) Unauthorized absence from the workplace during work time;
- d) Absence resulting from detention in a county, state or federal prison.
- e) Failure to inform the supervisor or Department Head within thirty (30) minutes after the beginning of the employees' regularly scheduled work time.

Abuse of Leave. Abuse of any leave provisions such as misuse of sick leave, emergency leave, funeral leave, or injury leave shall be cause for disciplinary action.

Compensatory Time – Time which is credited toward normal work hours during which an employee is excused from work in lieu of having to pay overtime (nonexempt employees) or in lieu of excess hours worked (exempt employees).

Emergency/Non-emergency Personnel. Because of the nature of public service employment, there will be occasions when it is necessary to define “emergency” and “non-emergency” personnel. This determination will be made by the Department Head in conjunction with the City Manager. It is expected that all emergency personnel will continue to work notwithstanding foul weather conditions or other situations dictating the designation of emergency and non-emergency personnel.

Job Abandonment. An employee who has two consecutive days of unexcused absences may be considered to have abandoned or voluntarily quit his or her employment. The City Manager is to be notified when it appears that an employee has abandoned his job.

Lost time. Those hours or days when an employee cannot be at the workplace during work time that is not covered by sick leave, vacation or some other form of paid excused absence. Injury leave during which there is no compensation provided by the City shall be considered to be lost time.

Medical Statements. All employees may be required to provide a doctor or hospital statement to the supervisor in order for an absence for medical reasons to be excused if:

- (1) The absence is two or more days,
- (2) The absence occurred on a:
 - a) regularly scheduled workday preceding or following a holiday;
 - b) regularly scheduled workday preceding or following a regular day off;
 - c) regularly scheduled workday preceding or following a day of vacation or some other form of excused absence.
- (3) The Department Head or City Manager feels that the employee's return to work may pose a health hazard or safety hazard to others or the employee.

- (4) If an employee has exhausted all sick leave, a doctor's report will be required.
- (5) The Department Head, or City Manager has noticed a pattern of excessive or unverified use of sick leave.

It is important that common sense and fairness be exercised when enforcing these requirements.

Pattern of Unexcused Absences. When a pattern of unexcused absences or excessive lost time occurs that the Department Head or City Manager considers to be detrimental to the cooperation, effectiveness and efficiency of the staff, the Department Head shall take the necessary remedial action. It is important that remedial action taken to resolve problems resulting from unexcused absences be applied equally and consistently and that remedial actions be documented in the personnel file kept by the City on the employee.

Regular Time Off. Those hours when an employee is not expected or required to be working.

Reporting to Work. Employees shall be required to report to and be at their place(s) of work during all scheduled work time. Reporting to work promptly means that an employee arrives at the work site early enough so that he or she will be prepared to begin work at the beginning of the work time. Employees are not to leave their assigned work area(s), except as approved by a supervisor or Department Head, until the scheduled work time is completed.

Severe Weather or Natural Disasters. See Division 11. Severe Weather, and Emergency/Natural Disasters.

Work Period, Workday.

- (1) The standard work period for all employees, except police officers, shall be 40 hours within a seven-day period. The definition of the work period has no meaning or impact on the determination of exempt or nonexempt status as defined by the Fair Labor Standards Act.
- (2) The standard work period for police officers shall be 80 hours within a 14-day period.
- (3) The standard workday for all employees except dispatchers and police patrol officers shall consist of eight (8) hours exclusive of any lunch hour or personal time. Up to one hour may be scheduled for a meal break or personal use by the employee.
- (4) The standard workday for police patrol officers and dispatchers shall consist of eight (8) or twelve (12) consecutive hours depending on the individual's position. These employees may "check out" on a meal break; however, they shall remain on duty and be responsible to respond to any call or job requirement at any time.
- (5) The Department Head shall determine the beginning and end of the standard workday, subject to approval by the City Manager. The Manager's review shall address any inconsistencies or problems that could arise if employees of different departments were scheduled to work different hours.

Work Time. Those hours when an employee is performing work on behalf of the City of Rockport or is attending training at the direction of his or her supervisor.

Section 40-45 **Work Standards**

It shall be the duty of each employee to maintain high standards of cooperation, proficiency and economy in his or her work for the City. Department Heads shall organize and direct the work of their departments to achieve these objectives. If work habits, attitude, production and/or conduct of an employee become a problem, supervisors should point out the deficiencies at the time they are observed and take appropriate action. Counseling and warning the employee in sufficient time for improvement should ordinarily precede formal disciplinary action, but nothing herein shall prevent immediate formal action as provided elsewhere in these policies whenever the interest of the City requires it.

Section 40-46 **Solicitation**

Solicitation of contributions or anything of value for any purpose whatsoever shall be permitted of or by City employees on the job only with the express approval of the City Manager. No employee may be required to make any contribution or may be penalized or rewarded in any way in connection with his or her employment according to his or her response to the solicitation.

Section 40-47 **Physical Fitness**

It shall be the responsibility of each employee to maintain the standards of physical fitness required for performing his or her job.

Section 40-48 **Dress Code**

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This policy aims to promote a professional, safe, and inclusive work environment while allowing employees to express their individuality within reasonable guidelines. It applies to all employees of the City of Rockport, and compliance with the policy is required during working hours and while representing the company.

(a) General Guidelines

1. **Professionalism:** Employees are expected to dress in a manner that is appropriate for their role and the work environment. This may vary depending on the department, client-facing duties, or specific job functions.
2. **Safety:** Employees must wear clothing and foot wear that is safe for the tasks they perform. Specific roles may require additional safety-related attire, such as protective gear, uniforms, or close-toe shoes, to comply with regulatory guidelines.

(b) Dress Code Options

1. Business Casual: For most employees, a business casual dress code is recommended. This includes but is not limited to:
 - i. Acceptable attire: Dress slacks, khakis, shirts, blouses, collared shirts, skirts, dresses, sweaters, nice blue jeans with Collared City Shirt or Blouse, and appropriate footwear.
 - ii. Unacceptable Attire: Jeans with holes or excessive wear, shorts higher than 3 inches above the knee, beach flip flops, tank tops, or overly revealing clothing.
 1. T-shirts are only acceptable as job appropriate or on Casual Fridays.
2. Uniforms: Some positions may require specific uniforms provided by the City. Employees in such roles must wear their uniforms during work hours, ensuring they are clean, well-maintained, and presentable.
3. Casual Fridays and special occasions: The city may allow more casual attire on specific days such as Friday, or special occasions, provided employees still maintain a neat professional appearance. Casual attire may include jeans (without rips), sneakers, and T-shirts (without offensive logos or language), unless otherwise specified by the City Manager.

(c) Compliance with Anti-Discrimination Laws

1. Religious and Culture Attire: The City respects employees' rights to wear religious and Cultural Garments, including hijabs, turbans, yarmulkes, or other attire related to religious practices. The City will provide reasonable accommodation for religious or cultural dress unless it poses an undue hardship or safety risk.
2. Gender Expression: Employees are free to dress in a manner consistent with their gender identity and expression. Discrimination based on gender, gender identity, or gender expression is strictly prohibited.
3. Disability Accommodations: Reasonable modifications to dress code will be made to accommodate employees with disabilities, in accordance with the Americans with Disabilities Act (ADA), Pregnant Workers Fairness Act (PWFA), and similar state laws.

(d) Prohibited Clothing:

1. Clothing that contains discriminatory or inappropriate language or imagery is not permitted.
2. Attire that compromises safety in the workplace (e.g. open-toe shoes in a safety sensitive area with chemicals) is Prohibited.

(e) Hair

1. Extreme hair styles are not permitted. Non-natural hair colors are also not acceptable. Examples of extreme hairstyles include but are not limited to unnatural hair colors (such as pink, blue or lavender), mohawks or spiked hair. Hair, including facial hair, must be clean and neatly groomed at all times.
2. Natural Hair Styles (HB 567):

- i. Employees have the right to wear their hair in natural styles hairstyles, such as braids, locks, twists, afros, and other culturally or ethnically associated hairstyles, without fear of discrimination or retaliation.

(f) Exceptions:

The Department Director, with the approval of the City Manager, may make departmental exceptions to this policy when deemed necessary for business reasons or implement a restrictive dress and appearance policy.

(g) Enforcement:

Supervisor and managers are responsible for enforcing the dress code in a fair and consistent manner. If an employee is found to be in violation of the dress code:

1. They may be asked to go home and change into appropriate attire.
2. Repeated violations may result in disciplinary action, up to and including termination.

Section 40-49 General Department

The attitude and deportment of a City employee, whether in public or private, should at all times be such as to promote the good will and favorable attitude of the public toward the City administration and its programs and policies. All employees are expected to embody and promote the following principles at all times to both fellow employees, customers, vendors, and citizens.

- a) **Respect:** Treat all colleagues, customers, and clients with respect and courtesy. Avoid offensive, discriminatory, or disrespectful behavior, including but not limited to harassment, bullying, and discrimination.
- b) **Confidentiality:** Protect the confidentiality of City information, customer data, and proprietary knowledge. Do not disclose sensitive information to unauthorized individuals or entities.
- c) **Conflict Resolution:** Resolve workplace conflicts professionally and constructively. Seek assistance from supervisors or Human Resources when necessary.
- d) **Punctuality:** Arrive at work on time and adhere to scheduled breaks and work hours. Notify your supervisor in advance if you will be late or unable to work as scheduled.

Section 40-50 Workplace Harassment

e) **General Provisions**

The City does not tolerate harassment of employees and others based on, or related to, sex, race, national origin, religion, age, disability, sexual orientation, or other group factors. Directors, supervisors, and employees who violate these policies may be subject to disciplinary action.

All employees must report incidents of harassment against themselves or observed

acts of harassment against others to their immediate supervisor or the Human Resources Department. Supervisors are to report any such complaints or reports to Human Resources.

The City shall promptly investigate all reports of harassment and take appropriate action.

Retaliation against employees who report harassment is strictly forbidden. Any director, supervisor, or other employee who is found to have taken any adverse action against an employee because of the employee's "good faith" report or complaint is subject to discipline, including termination.

f) Sexual Harassment

1. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
 - a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment.
 - b. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions.
 - c. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
2. No employee, male or female, shall harass another employee by making unwelcome sexual advances or other verbal or physical conduct of a sexual nature a condition of any employee's employment, using an employee's submission to or rejection of such conduct as the basis for or as a factor in any employment decision affecting the individual; or otherwise creating an intimidating, hostile or offensive working environment by such conduct. The City does not condone any sexual harassment of its employees. All employees, including supervisors and department heads, will be subject to severe discipline, up to and including discharge, for any act of sexual harassment they commit.
3. The creation of an intimidating, hostile or offensive working environment may include such actions as persistent comments on an employee's sexual preferences or the display of obscene or sexually oriented photographs or drawings. However, conduct or actions that arise out of a personal or social relationship and that are not intended to have a discriminatory employment effect may not be viewed as sexual harassment. Any employee who feels victimized by sexual harassment should report the harassment to their immediate supervisor immediately. If the immediate supervisor is a part of the harassment, the employee should report the harassment to the next level of supervisor immediately above the level where the harassment is occurring. No employee will be subject to any form of retaliation or discipline for pursuing a sexual harassment complaint.

g) Race, Color, Religion, National Origin, Age, Sexual Orientation, and Disability

Harassment

Harassment include unwelcome statements, name-calling, or other verbal or physical conduct based on an employee's race, color, religion, national origin, age, sexual orientation, or disability and is prohibited under the same conditions listed under sexual harassment.

h) Examples of Prohibited Behavior

To aid employees in identifying prohibited behavior, the following specific examples of workplace harassment are provided, but are not meant to be all-inclusive:

- a) Unwelcome touching of a personal nature, which can include leaning over, cornering or pinching; sexual innuendoes, teasing and other sexual talk such as jokes, personal inquiries, persistent unwanted courting and sexist put-downs;
- b) Slurs and jokes about a class of persons, such as persons who are disabled, homosexual or a racial minority;
- c) Display of explicit or offensive calendars, posters, pictures, drawings or cartoons which reflect disparagingly upon a class of persons or a particular person;
- d) Derogatory remarks about a person's national origin, race, language or accent; disparaging or disrespectful comments even if unrelated to a person's race, color, sex(gender), sexual orientation, national origin, religion, age, disability or sexual orientation; or
- e) Loud, angry outbursts or obscenities directed toward another employee, a customer, contractor or visitor in the workplace; or
- f) Disparate treatment

i) Procedures for Reporting Harassment Charges

The employee should politely, but firmly, confront the harasser and ask him/her to stop the unwelcome behavior. If practical have a witness – such as a co-worker present. If uncomfortable with a face-to-face meeting, or a written letter to the harasser, immediately notify your supervisor, or, if your supervisor is the harasser, notify the Director of Human Resources. A letter of complaint will be requested.

j) Procedures for Handling Harassment Complaints

All complaints shall be handled in a timely and confidential manner. Confidentiality is preserved, to the degree possible, to encourage the filing of valid complaints as well as to protect the reputation of any employee who might be wrongfully accused of harassment.

If a complaint of harassment is made to a supervisor, the supervisor shall immediately contact the Director of Human Resources who shall consult with the supervisor on how to conduct an investigation.

The Human Resources Department shall assist the department in directing the

investigation of harassment complaints. If necessary, Human Resources will recommend to the supervisor any warranted disciplinary action and remedies to the aggrieved party.

k) Confidentiality

In no event will information concerning a complaint, or a report of harassment be released by the City to a third party or to anyone who is not directly involved in the investigation. Specifically, information will not be released to an affected employee's family, the news media, or a prospective employer seeking a reference. The purpose of this provision is to protect the confidentiality of an employee who files a complaint or reports a potential violation, and to protect the reputation of any employee wrongly charged with a violation. The City may need to share information concerning a complaint with potential witnesses as part of its investigation of the complaint and may also be legally compelled by a court or government agency to disclose information concerning a complaint.

l) No Retaliation

Retaliation for reporting a harassment claim will not be tolerated.

m) Workplace Violence

- The City is committed to providing a safe and healthy workplace free from violence. Therefore, the City has a zero tolerance of workplace violence. All employees of the City are expected to treat each other and all others with courtesy, dignity and respect.
- Violence, as the term is used in this policy, includes written or verbal communications, whether direct or indirect, which are of a threatening, intimidating or coercive nature; the use or threat of physical force, including fighting or horseplay; hitting; slapping; stalking; vandalism or destruction of property.
- All employees are responsible for promptly reporting violations of this policy to their supervisors and, where appropriate, to law enforcement authorities.

Section 40-51 Indictments Against Employees

An employee may be suspended, with or without pay, if accused of or indicted for a crime or official misconduct pending a decision on the indictment such as dismissal, acquittal or conviction. If the indictment is dismissed or if the employee is acquitted, the suspended employee shall be reinstated to his or her former position, or a similar one if the former position is not available, without loss of any benefits and such suspension shall not be considered as a disciplinary action.

Section 40-52

All Weapons Banned

The City specifically prohibits the carrying or possession of weapons by any employee while on City owned property or in a City vehicle. Weapons include guns, knives, explosives and other items with the potential to inflict harm.

(1) Firearms and handguns:

- a. A City employee is prohibited from carrying a firearm onto City premises. The prohibition stated above shall not apply to a peace officer or those persons who have written authorization to carry a firearm as part of their official duties.
- b. Vehicles:
 - i. A City employee may transport or store a firearm in his/her personal vehicle in a City parking lot and/or space so long as the vehicle is locked and the weapon is out of site, unless otherwise prohibited by law.
 - ii. A City employee is prohibited from possessing or storing a firearm in a vehicle owned or leased by the City of Rockport, regardless of whether the employee is a Licensed Handgun Holder, unless the City employee is authorized to carry a firearm in a City vehicle as part of his/her normal course and scope of employment, such as a police officer.
- c. Areas Prohibited by Law: It is a violation for a City employee when performing City duties or functions to carry a firearm in any location where the carrying of the firearm is not authorized by law.

- (2) Enforcement: A violation of this policy may result in adverse employment action, up to and including termination. Violations may also incur criminal penalties. However, nothing in this Policy shall prohibit any state or federal certified peace officer or law enforcement officer from carrying or possessing any weapon he or she is lawfully authorized to carry or possess. Employees who are required to possess weapons to perform the duties of their Job Descriptions are exempt from the applicable provisions of this section.

DIVISION 4. COMPENSATION AND BENEFITS

Section 40-61 **General Policy Statements**

- (a) It is the Policy of the City of Rockport to fairly compensate its employees and to adhere to all fair labor standards regulations. Employees who believe the City is not adhering to these standards may pursue resolution of the matter through a formal conference or a grievance.
- (b) The actual rate of compensation for an employee shall be determined by the Employee Grade/Step Pay Scale, developed and adopted by the City. The compensation of the City Manager and the City Secretary shall be fixed by the City Council, and may be amended from time to time, in accordance with the individual experience and qualifications of the City Manager and of the City Secretary. The compensation to be paid to the City Manager, City Secretary shall be exempt from the Grade and Step wage/salary schedule.
- (c) The City's adopted pay scales are based shall be predicated solely on base pay of the employees. Additional forms of pay such as stability pay, vacation pay and certification pay are considered separately from base pay.
- (d) All employees will be paid biweekly. Pay dates falling on a City holiday will be scheduled for the preceding workday.

Section 40-62 **Types of Pay**

- (a) *Base Pay.* The amount paid for completing the normally assigned tasks and duties associated with the position held by the employee. for the purpose of determining an employee's entitlement to minimum wage and overtime pay. "Time worked" generally includes all hours during which an employee is required or permitted to be on duty, on the employer's premises, or at any other prescribed place of work.
- (b) *Regular Rate of Pay:* Regular rate requires that an employer total all remuneration (less authorized exclusions) and divide that total by the number of hours worked by the employee. The resulting number is the "regular rate" on which Over Time rates are based.
 - (1) Types of pay included in "Regular Rate":
 - a) Base Pay
 - b) Certification Pay
 - c) Degree Pay
 - d) Additional Duties Pay
 - e) Car Allowance
 - f) Uniform Allowance
- (c) *Time worked.* The FLSA provides specific guidelines for what constitutes "time worked" Types of activities considered "time worked" under FLSA.

- (1) **Hours Worked:** All hours an employee spends performing job-related activities, including productive work, waiting time, on-call time, and certain rest breaks, are generally considered hours worked.
 - (2) **Waiting Time:** Time spent waiting for work, whether at the workplace or another location, is generally considered hours worked if the waiting time is controlled by the employer. For example, if an employee is required to wait for a specific task or assignment, that time is typically considered compensable
 - (3) **On-Call time:** If an employee is required to remain on-call at the workplace or another location and must be available to perform work when needed, that on-call time is usually considered hours worked and must be compensated.
 - (4) **Rest and Meal Breaks:** Short rest breaks (typically lasting 20 minutes or less) are generally considered hours worked and must be paid. However, meal breaks (typically lasting 30 minutes or longer) where the employee is relieved of all duties are generally not considered hours worked and do not need to be paid.
 - (5) **Travel Time:** Travel time that is part of an employee's principal job duties, such as travel between job sites during the workday, is generally considered hours worked and must be compensated. Commute time to and from work is typically not considered hours worked.
 - (6) **Training and Meetings:** Time spent in required training sessions, meetings, or other job-related activities is generally considered hours worked and must be compensated.
- (d) *Certification Pay.* A form of compensation or financial incentive provided by employers to employees who hold certain certifications, licenses, or qualifications relevant to their job duties. Certification pay is typically offered as a way to recognize and reward employees for their expertise, skills, and dedication to professional development. Certification pay for full-time regular employees must be recommended by the Department Head and approved by the City Manager. See Section 40-69 for the Certification Pay Policy
- (e) *Stability Pay.* In any year in which the City Council sets aside funds for stability pay, the City may pay to each employee an amount based on a percentage of the employee's base rate of pay calculated from October 1 to September 30. Only full-time permanent employees are eligible for stability pay. To be eligible to receive stability pay, an employee must have been with the City for twelve (12) months as of the first day of the fiscal year. Such sums may not, however, be credited toward overtime compensation due under the Act.
- (f) *Severance Pay.* A minimum of one-month base pay and all accrued vacation and sick leave paid to an employee in good standing upon the elimination of his or her position. Since staffing levels are reviewed and approved by Council as part of the budget process, Council must vote to reduce or eliminate the position(s) in question, thereby necessitating the payment of Severance Pay. If it becomes necessary to eliminate a position within a department, the Department Head shall eliminate the position(s) based on employee(s) evaluations.
- (g) *Vacation Pay.* It shall be the policy of the City to ensure that every employee has ample opportunity to utilize the vacation he or she has earned each year.

- (h) *Holiday Pay.* Every regular full-time employee of the City of Rockport shall automatically be credited with eight (8) hours of work on all scheduled holidays. Any “nonexempt” employee who works on a Holiday shall be compensated at one and one-half times the normal rate for hours worked with in that 24 hour period in addition to being given eight hours credit for the holiday.
- (i) *Overtime Compensation.* All “nonexempt” employees shall be compensated for overtime. Until such time that sufficient funds may be budgeted, most overtime will be compensated in the form of “comp time.” i.e., compensatory time off. For every hour of approved overtime worked by a nonexempt employee, 1.5 hours of comp time shall be accrued. Hours accrued at 1 ½ times the regular rate shall be defined as the actual hours worked in excess of 40 hours in a work week, except as may be provided in policies applicable to employees of the Police Department in conformance with the Fair Labor Standards Act. All time not physically worked i.e. vacation leave, sick leave, holiday time, jury duty time or use of previously accrued comp time will not be counted or considered as “time worked” in order to receive “over time” pay.

For all non-exempt employees, all overtime must be approved by the employee’s supervisor or department head in advance. Employees who work unauthorized overtime may be subject to disciplinary action, up to and including termination.

For more Over Time Information see Section 40-65

- (j) *Compensatory Time.* All eligible non-exempt employees may accrue compensatory time (“comp time”) in lieu of being paid overtime compensation. Exempt employees are not eligible for comp time under this policy. All non-exempt employees are subject to a cap Forty (40) hours. Overtime hours worked beyond the cap must be paid as overtime compensation, or requested for use, as described under the Overtime Policy and Procedures section.

Eligible employees are:

1. Non-exempt employees who work over 40 hours in a work week.
2. Sworn law enforcement assigned to 80-hour work periods
3. Seasonal employees are eligible for overtime if they actually work over 40 hours in a work week, but they are not eligible for compensatory time.

Compensatory time accrues at a rate of 1 ½ hours for every hour of overtime worked by non-exempt employees. Compensatory time accruals are to be monitored by the Department and Payroll. All compensatory time accrued and/or used is to be documented on the employee’s time sheet.

An employee who has accrued compensatory time and requests use of such time must be permitted to use the time off. If compensatory time cannot be scheduled within a “reasonable period” after the request, the department may elect to pay out the time requested by the employee in lieu of approving the request. The City may also require employees to take time off in order to reduce their accrued compensatory time or department heads may adjust work schedules to eliminate compensatory. Otherwise,

compensatory time off may be used the same as leave time. Comp Time can only be used if it has already been earned. It cannot be used prior to earning the comp time.

Payment of Compensatory Time. All employees who are reclassified from a non-exempt position to an exempt position will be paid all accrued compensatory time upon approval of the reclassification and will cease to be eligible for any additional overtime and /or compensatory time. Likewise, an employee who is either promoted, transferred, or demoted to another non-exempt position will be paid in full for any compensatory time accrued before the promotion or demotion becomes effective. Upon leaving employment with the City, a nonexempt employee will be paid for unused compensatory time at the employee's current hourly rate.

All use of comp time must be approved by the employee's supervisor or department head in advance. Employees who take unauthorized comp time may be subject to disciplinary action, up to and including termination.

- (k) *Discretionary Time for Salaried Employees (Exempt).* Exempt employees are ineligible for statutory overtime pay or compensatory time as a matter of right under the Fair Labor Standards Act. Exempt employees, however, will sometimes be required to work more than the normal 40 hours per week without compensation due to the nature of their job duties. Supervisors of exempt employees may determine/approve discretionary time off, based on workload, for hours worked in excess of 40 hours per week.

Exempt (Salaried) employees also accrue vacation and sick leave in accordance with the applicable policies and shall be required to use the appropriate leave to document absences from work that cannot be offset by discretionary time, i.e. taking multiple days off for a vacation, or illness.

Exempt (Salaried) employees are required to turn in a time sheet each pay period to document the use of any leave for payroll and record keeping purposes. In weeks that no leave is used, the employee will just document the straight 40 hours.

- (l) *Flex time.* Flex time is scheduling time off to avoid accrual of overtime within the same week in which the extra hours were worked.
 - (1) Flex time scheduled during the same week in which it was earned will be traded hour for hour because flex time used results in no actual overtime for the week. Department Directors and supervisors should schedule flex time where applicable for more efficient operation of the department and to minimize overtime for non-exempt employees
 - (2) Adjusting Work Schedules within a workweek may be done to reduce overtime hours. Supervisors may require an employee to take time off without pay, avoid incurring overtime for to offset "extra" hours previously worked during the same work week. For instance, if an employee works three extra hours on a Monday, the supervisor may adjust the employee's work schedule by reducing his/her work time

by three hours on Tuesday.

- (m) *Wage Continuation Pay.* An employee who sustains an on-the-job injury that results in lost time shall automatically receive up to one week of wage continuation pay. Wage continuation pay may be extended indefinitely if Workman's Compensation approves Temporary Income Benefits (TIBS) payments. Wage continuation pay shall be the difference between the weekly Worker's Compensation insurance payment and the employee's base pay for one week. Special wage continuation provisions apply to Police Officers for Line-of-Duty injuries, see Section 40-63 (4)

- (1) For non-public safety Wage Continuation, the City will generally continue to pay the employee for a regular 40 hours per week (for Full-time Employees). Once the employee receives the Temporary Income Benefits Payment from Worker's Compensation, the employee reimburses the City those funds.
 - a) If the employee does not reimburse the City with the funds sent to them by the City, they may be responsible for reimbursing the City the difference on their own.
- (2) To be eligible for Wage Continuation Pay, an employee must meet the following criteria:
 - a) Full-time, regularly scheduled, active employee
 - Temporary and seasonal employees do not qualify for wage continuation pay.
 - b) Employee must be on Workman's Compensation, and eligible for and receiving Temporary Income Benefits (TIBS) through Workman's Compensation due to their impairment status.

- (n) *Emergency and Disaster Pay.*

- (1) See Division 11. Severe Weather, and Emergency/Natural Disasters

- (o) *On-Call duty Pay:*

- (1) Employees assigned On-Call duty will be paid a \$100 stipend for the time that they are assigned On-Call.
- (2) When an employee is called to work while On-Call shall be paid one and one half times their hourly wage for any hours in excess of 40 in a 7 day period (80 in a 14 day period for Police).
- (3) Employees must be fit for duty anytime they are called to work while On-Call. If they employee is not fit for duty, it is the employee's responsibility to advise his/her supervisor immediately. (See Section 40-307 (c)(d) of Section II- Alcohol and Drug Free Environment Policy for further guidance).
- (4) On-Call duty pay is not considered regular pay.

Section 40-63 **Excused Absences and Types of Leave.**

Listed below are all of the types of excused absences and types of leave for which an employee will be compensated.

The use of the various leaves is a benefit provided to employees to make a full work week/pay period. These leave options are available to assist eligible employees to reach 40 hours per work week or 80 hours per pay period for police officers. No leave benefit may be used nor be paid out to an employee that allows them to exceed their respective 40 hours per work week or 80 hours per pay period for police officers. For example, if an employee was out sick on Thursday, and on Monday, Tuesday, Wednesday, and Friday, they worked a total of 38 hours, they will only need to use 2 hours of sick time for Thursday to bring them to their 40 hours.

- (1) Vacation. All employees are encouraged to use the vacation that they have earned. In order for vacation to be credited against an employee's record of time, the Department Head must approve the vacation in advance. Each Department Head may establish internal Departmental policies pertaining to submission and review of vacation requests so as to insure completion of the Department's tasks and reasonable scheduling of other employees. The following rules or guidelines shall apply to all employees. The Department Head may decline the request if the request was not received in sufficient enough time to make arrangements in the work schedule and duties, or if the employee does not have enough vacation hours on the books to cover the requested time.

- (a) Payroll shall keep the official record of vacation earned and vacation used.
- (b) Employees shall earn vacation at the following rates:

<u>Length of Service</u>	<u>Days Earned Per Month</u>
Less than 10 years	One
10-14 years	One and one-quarter
15 or more years	One and one-half

- (c) Department Heads shall earn vacation at the following rates:

<u>Length of Service</u>	<u>Days Earned Per Month</u>
Less than 10 years	One and one-quarter
10 or more years	One and one-half

- (d) The rate at which the City Manager and City Secretary earn vacation shall be determined by Council as part of their salary negotiations and by contract, if any.
- (e) On the first day of the City's fiscal year, the maximum allowable vacation leave balance will be thirty (30) days (240 hours), except as noted below. Any days in excess of thirty (30) (240 hours), shall be lost unless it has been necessary to deny an employee the opportunity to take his or her requested vacation. In these cases, the Manager may recommend to Council that the employee be paid for the excess leave.
- (f) *Buyback of employee vacation time:* Employees, with the approval of the department head and city manager, may be allowed to sell one week (40 hours) of vacation back to the City once each fiscal year. Such buybacks are limited to employees with a minimum balance of 40 hours of vacation leave remaining in

their account after the 40 hours are purchased; additionally, the employee must have taken a cumulative total of 40 vacation hours in the preceding 12 months. Such buyback by the City will be at a one-for-one hourly rate at the time the vacation leave is “purchased” by the City.

- (g) Holidays and regularly scheduled days off when taken in conjunction with a vacation, shall not be counted as vacation days.
 - (h) In the event that an employee's request for a day off is denied, the employees must adhere to the denial and report to work as scheduled. Failure to do so without prior authorization will be considered a violation of leave policies and may result in disciplinary action.
 - (i) Employees shall be paid all unused vacation upon retirement or termination.
 - (j) Misuse or abuse of the vacation leave provisions shall be cause for disciplinary action.
- (2) Sick Leave. Employees who are ill or who must temporarily care for their father, mother, spouse, son, or daughter; or for any relative that is dependent upon the employee as their primary caregiver, may utilize sick leave. In order for an absence to be excused as sick leave, the following rules shall apply to all employees.
- (a) In order for an absence to be counted as sick leave, an employee must call his or her supervisor within thirty (30) minutes after the start of the workday. If the supervisor cannot be contacted, then the employee is to contact the Department Head.
 - (b) Sick leave may be used for scheduled appointments with health care professionals. Sick leave may also be used for the purpose of attending inpatient or after care, outpatient treatment of alcohol or drug abuse. It may also be used to attend physical therapy if that therapy has been prescribed by a physician.
 - (c) Sick leave may not be used in lieu of injury leave.
 - (d) An employee has the option of utilizing earned comp time in lieu of sick leave, however, the Department Head retains the option of requiring a medical or hospital statement.
 - (e) All employees shall earn sick leave at a rate of one day per month of service.
 - (f) Employees who resign or are terminated shall not be paid for unused sick leave.

- (g) Employees who retire with fifteen or more years of service with the City on July 10, 1990 shall be paid 50% of their accrued sick leave or 45 days, whichever is less.
- (h) Employees who retire and who have had less than fifteen years of service with the City on July 10, 1990 shall be paid 50% of their accrued sick leave or thirty (30) days, whichever is less.
- (i) The Finance Department shall maintain the official record of sick leave earned and sick leave taken.
- (j) Once sick leave is depleted, an employee may utilize any vacation leave they have remaining to bring them up to 40 hours while they are still out due to illness, however, sick leave cannot be used to make up for depleted vacation leave should the employee need to take time off unrelated to illness.
- (k) Misuse or abuse of the sick leave provisions shall be cause for disciplinary action.

(3) Injury Leave (non-police only).

- (a) Employees who are injured on the job and cannot perform the essential elements of their job description shall be placed in an injury leave status so long as the employee reports the injury immediately to his/her supervisor.
- (b) If the employee has not been released by his or her physician to return to a full-duty work status by the end of a reasonable injury leave period and cannot perform the essential elements of the job description, the employee may be terminated.
- (c) The Department Head may recommend a leave of absence without pay in lieu of termination if:
 - a) The employee will be able to return to his/her job within a thirty (30) day period of time if certified by the attending physician; and
- (d) The department head can forego a regular replacement, or the position can be filled on a temporary basis until the injured employee can return to work.

(4) Line of Duty Injury Leave

Line of duty injuries for paid Police shall be managed in accordance with Texas Local Government Code Chapter 177A. Paid police officers who sustain a line-of-duty injury shall be provided with a leave of absence at full pay for a period commensurate with the nature of the line of duty illness or injury for up to one year from the date of injury. Full pay will be provided as Temporary Income Benefits received by the employee from the City's Worker's Compensation Insurance provider plus a supplemental wage to equal the employee's regular

rate of pay at the employee's regular schedule. Full pay under this section does not include overtime, even if regularly incurred when the employee is actively working. At the end of the leave of absence, the City Council may extend the leave of absence at full or reduced pay in response to a request by the employee.

- a. In the event the police officer is temporarily disabled by a line of duty injury or illness and requires additional leave beyond the leave of absence and any extension granted by the City Council has expired, the employee may use accumulated sick leave, vacation time and other accrued benefits before the employee shall be placed on temporary leave. Another police officer may voluntarily do the work of the injured police officer so that the temporarily disabled employee continues to receive wages and benefits while on temporary leave. In order to facilitate recovery, Employees on temporary leave are prohibited from working off-duty or ancillary jobs for other employers.
 - b. If able, a police officer may return to light duty while recovering from a temporary disability. If medically necessary, the light duty assignment may continue for at least one year.
 - c. After recovery from a temporary disability, the officer shall be reinstated at the same rank and with the same seniority the employee held before going on temporary leave.
 - d. Should the officer be determined to be permanently disabled during any part of this process, and be unable to perform the essential functions of the employee's position with or without an accommodation, the department head --with the approval of the City Manager will make the necessary arrangements for the officer's retirement under the on-the-job disability clause of any coverage provided by the City, including the Texas Municipal Retirement System (TMRS).
- (5) First Responders Mental Health Leave. The purpose of this policy is (1) provide clear and objective guidelines establishing the circumstances under which a Peace Officer and full-time Telecommunicator is granted mental leave and may use mental health leave; (2) entitle a Peace Officer and Telecommunicators to mental health leave without a deduction in salary or other compensation; (3) enumerate the number of mental health leave days available to a Peace Officer and Telecommunicators; and (4) detail the level of anonymity for a Peace Officer who takes mental health leave. See Appendix C.
 - (6) Court/Jury Leave. An employee who is called for jury duty, or who is subpoenaed to testify before a grand jury or at a criminal trial or in a civil case in which the City is a party shall be given Court/Jury leave. If the subpoena requires that the employee remain away from the workplace for one or more workdays, the employee will be credited with eight hours court/jury leave per workday.
 - (7) Military Leave. In accordance with State and Federal law and regulations, an employee who is actively involved in the Reserve Armed Forces of the United States, the Texas National Guard or State Guard, shall be entitled to take up to fifteen (15) days military leave per Fiscal Year for Military Training or Military Active Leave.. Military training leave includes annual training, and scheduled inactive duty for training. Active Military Leave applies to regular full-time employees who are in the United States Reserves or Texas

National Guard forces who have been called to active duty. The employee is to give as much notice as possible and eventually will need to provide a copy of their orders upon receipt.

Employees will only be paid for workdays missed as a result of military training leave. For example, if an employee works a standard five-day workweek Monday through Friday, the employee will only be paid for days they are scheduled to work but are absent due to a military leave obligation. Holiday pay will be granted during the expenditure of training leave. Holiday pay will be paid at straight time.

- (a) Other benefits (i.e., vacation and sick leave) will continue to accrue during military training leave.
 - (b) The paid Military Leave does not count against the employee's personal time, sick leave, vacation time, or performance appraisal. The 15 days do not need to be consecutive. Once the 15 days of paid Military leave have been exhausted, employees have the option to use any paid time off or go without pay during their military leave.
 - (c) Employees returning from Military Active Leave must return to work (or reapply and be available to work) and provide written copies of their separation or deactivation orders to the City as follows:
 - a) Less than 31 days of leave – within 72 hours of their release from service.
 - b) More than 31 days, but less than 180 days of leave – within 14 days from their release from service.
 - c) More than 180 days of leave – within 90 days from their release from service.
- (8) Off Site Training. An employee may from time to time be required to attend training that occurs outside the normal workplace. As such, the employee will be absent from the normal workplace. Attendance at the training will be considered the employee's work assignment for that period of time. When the training is out of town or lasts for more than one day, the employee will be credited with eight hours training (work) time per day, as well as paid travel time for out-of-town travel.
- (9) Death in Family Leave. All full-time employees may be granted leave with pay for a period not to exceed three (3) workdays to attend a funeral and handle the necessary family details in case of death in their immediate family or other relative living in the same household. This leave will not be charged against sick leave or vacation. Part-time, seasonal and temporary employees may be granted up to three (3) days leave of absence without pay in such cases. (Immediate family, for this purpose, shall be defined as husband, wife, son, daughter, mother, father, mother-in-law, father-in-law, grandparents, brother and sister).
- (10) Family and Medical Leave Act (FMLA). An employee must be awarded up to 12 weeks total of paid and unpaid leave for the reasons of birth of a child, adoption or foster care of a child, care for seriously ill spouse, child, or parent, and during the employee's own serious illness. The employee must exhaust accrued vacation, comprehensive and sick leave time first before unpaid leave is taken.

- (a) To be eligible for FMLA leave, an employee must have been employed with the City for at least 12 months and worked at least 1,250 hours during the previous 12 months.
- (b) Eligible employees will be granted leaves of absence for up to 12 weeks within a “rolling” 12-month period (measured backwards from the date the leave begins) for any of the following reasons:
 - 1) Birth or placement (adoption or foster care) of a child, or in order to take care of a newborn child or a child newly placed with the employee for adoption or foster care and the leave must be taken before the end of the first 12 months following the date of birth or placement (“birth leave”); or
 - 2) When certified by a health care provider, to care for a “family member” (the employee’s spouse, child, or parent, but not a parent-in-law) with a serious health condition; or
 - 3) For a serious health condition that makes the employee unable to perform the functions of his or her position.
- (c) Eligible employees may take FMLA leave for any combination of these reasons. However, all combined leaves cannot exceed 12 weeks within the “rolling” 12-month period.
- (d) A birth leave (unless it involves a serious health condition) must be taken in a continuous time period and may not be taken in intermittent periods (e.g., one week working and the next week on leave) or through a reduced work schedule (e.g., changing from 40 hours per week to 20 hours per week). A childcare leave must be completed within 12 months of the birth, adoption or placement of the child. Leave for a serious health condition may be taken in a continuous time period, or an intermittent basis or through a reduced work schedule.
- (e) Serious Health Condition. For the purpose of this policy the meaning of the term “serious health condition” may be summarized as an illness, injury, impairment or physical/mental condition that involves in-patient care in a hospital, hospice or residential medical care facility, or “continuing treatment” by a health care provider as defined in the FMLA. For a complete definition of the term “serious health condition,” contact the Administrative Assistant. Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, ulcers, headaches (other than migraines) and routine dental or orthodontia problems are examples of conditions that DO NOT constitute a serious health condition and DO NOT qualify for FMLA leave.
- (f) Notice to City of Leave.
 - 1) Where the need for FMLA leave (including intermittent or reduced work schedule leaves) is foreseeable, employees must provide the City with thirty

(30) days' prior notice. If 30 days prior notice is not practicable because the absence results from unforeseen circumstances, notice must be given as soon as practicable (usually within two (2) business days after the leave begins). If an employee fails to give timely advance notice when the need for leave is foreseeable, the City may deny FMLA leave until the employee provides 30 days' notice.

- 2) The City must notify the employee if the absence qualifies as FMLA leave. If the City does not have the information from the employee needed to designate the leave as FMLA when the time leave commences, it may retroactively designate the leave as FMLA upon obtaining that information.
- 3) If leave is taken on an intermittent basis or reduced work schedule for foreseeable, planned medical treatment, the City may transfer the employee during the leave to an alternative position with equal pay and benefits which better accommodates an intermittent or recurring leave. If the leave is foreseeable for planned medical treatment, the employee must make a reasonable effort to schedule medical treatments to avoid disrupting City operations.

(g) Required Medical Certifications

- 1) Initial Certification. Employees who request leave because of a serious health condition must provide the Administrative Assistant with a medical certification from their health care provider, on the form provided by the City. When 30 days notice of leave is provided to the City, if possible, the employee must return the completed medical certification before beginning the leave. However, when the need for leave is not foreseeable, the completed certification must be returned to the City within 15 days. If an employee fails to return a completed medical certification in a timely manner, the City may deny foreseeable leave until the certification is submitted. If an employee never returns the health care provider certification, the absence will not be considered FMLA leave.
- 2) Recertification During Leave. Employees may also be required to submit medical Recertification from their health care provider during the course of the leave. Employees on leave may also be required to periodically report to the City regarding their intent to return to work upon completion of leave. If an employee gives unequivocal notice that he or she does not intend to return to work, the employee's FMLA leave, entitlement to reinstatement and medical/dental benefits, and employment with the City will be terminated.
- 3) Return to Work Certification. Before being reinstated from leave, employees must submit a medical certification that they are fit for duty and able to perform the essential functions of their job position (with or without reasonable accommodation). Employees will not be reinstated until the City receives this certification.

- (h) Reinstatement from Leave. The City will reinstate employees from FMLA leave to their former positions. Employees must seek reinstatement on or before the expiration of 12 cumulative weeks of leave and be able to perform their job duties (with or without reasonable accommodation). Employee must request reinstatement within three (3) working days after being released by their health care provider. If the employee's former position is not available, the employee will be reinstated to an equivalent job position. Refusing an offer of reinstatement to an equivalent position will be treated as a voluntary resignation of employment. Employees who do not return to work after 12 cumulative weeks of FMLA leave or do not seek extended leave (if eligible) will be dismissed from employment. However, such employees are eligible to reapply for future employment by submitting an application to the City.

(11) Medical Leave of Absence

- (a) Employees who do not qualify for FMLA leave may apply for or be placed on a medical leave of absence for the treatment of their on-the-job serious health condition. Employees will be eligible for medical leave after completing the entry period, except for on-the-job injuries, when a medical leave can begin immediately.
- (b) Medical leave is limited to a maximum of 12 cumulated weeks within the "rolling" 12-month period. A medical leave must be taken on a continuous basis and may not be taken on an intermittent basis or a reduced work schedule.
- (c) Medical leaves will be unpaid. However, an employee's accrued sick leave, vacation or other paid benefits must be used during the leave, under the policies of the City, until exhausted. The use of paid benefits will not extend the duration of a medical leave. An employee may not receive more than one hundred percent of regular wages during a medical leave from any combination of employment benefits.

(12) Extended Leave

- (a) Employees may qualify for additional time off from work during the "rolling" 12-month period for treatment of their on-the-job or off-the-job serious health condition. To qualify for extended leave, employees must first exhaust their FMLA or medical leave. Employees must apply for extended illness leave through the City Manager.
- (b) Full time employees (for the purpose of this policy, individuals authorized to work 40 hours per week) who qualify for extended leave may continue their absence for up to a maximum of 14 weeks during the "rolling" 12 month period.

(c) Extended illness leave must be taken in a continuous time period and may not be taken on an intermittent basis or through a reduced work schedule.

(d) Benefits During Leave

- 1) Extended leaves will be unpaid. However, if an employee has accrued sick leave or vacation, such benefits must be used during an extended leave, under the policies of the City, until exhausted. The remainder of the leave would be unpaid. The use of paid benefits will not extend the duration of the leave. An employee may not receive more than one hundred percent of regular wages during the extended leave from any combination of employment benefits (e.g., vacation, sick leave, etc.).
- 2) Employees will not accrue service credit or employment benefits during the unpaid portion of an extended leave. Coverage under the Plan will remain in effect if the employee timely pays the employee's portion of the premium during an extended leave. Premiums will be paid either through payroll deduction (if paid benefits are used during all or any or part of an extended illness leave) or through other arrangements approved by the City Manager. Employees who fail to pay Plan premiums during their extended leave will be dropped from the Plan and may be required to requalify for health coverage if they are reinstated to employment.
- 3) Eligible employees may take reasonable leaves of absence for maternity purposes; the birth, adoption, or placement of a foster child; or for the care of a spouse, son, daughter, or parent who has a serious health condition. For these purposes, "serious health condition" shall mean an illness, injury, impairment or physical or mental condition involving inpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider. "Spouse" shall mean the husband or wife of the employee but shall not include unmarried domestic partners. If the City employs an employee and his or her spouse, their combined time off may not exceed twelve (12) workweeks during any twelve (12) month period.
- 4) Taking FMLA will not result in the loss of any benefit accrue prior to the date on which the leave began. An employee on FMLA will remain covered under all employee benefit plans (medical, retirement, etc.) throughout the duration of the leave as if actively employed. If the employee fails to return to work at the conclusion of the leave, the City will require the employee to reimburse it for the full cost of health care coverage during the period of leave out of their final paycheck and long as it does not drop their pay below minimum wage. However, if an employee fails to return to work because of legitimate medical reasons or circumstances beyond the employee's control, he or she may not be required to reimburse the City for such benefits.

(13) Leave Without Pay. In rare occasions where an employee has no accrued vacation, sick leave or comp time and has legitimate reason to be absent from the workplace, a

Department Head may recommend leave without pay. Reasonable causes for leave without pay may include, but not limited to:

- (a) Maternity leave when the employee has no accrued vacation, sick leave or comprehensive time; or is ineligible for FMLA.
 - (b) Additional emergency leave beyond five days when the employee has no accrued vacation, sick leave or comp time.
 - (c) Additional military leave when the employee has no accrued vacation, sick leave, or comp time.
 - (d) Any leave required by the Americans with Disabilities Act (ADA).
- (14) **Compensatory Time.** Compensatory time is excused time away from the work site for non-exempt employees in lieu of cash payment for overtime or excused time for exempt employees in lieu of excess hours above the standard workweek. Non-exempt employees shall accrue one and one-half hour of comp time for every hour of overtime worked for which they are not paid. The Department Head must approve the use of compensatory time before an employee can take it. The City strives to pay overtime when it is earned. See Section 40-65.

Section 40-64 Catastrophic Leave Policy

1. Purpose

The purpose of this policy is to establish standard procedures regarding the donation of sick/vacation leave to City employees who have exhausted all accrued leave and are out on unpaid leave due to a catastrophic illness or injury to the employee, or a qualifying family member.

2. Policy

The Catastrophic Leave program is designed for use when an employee has exhausted all accrued comp time/sick leave/vacation leave and must be out due to a catastrophic illness or injury suffered by the employee, or a qualifying immediate family member. The Catastrophic Leave program is funded “by employees for employees” and is intended to lessen hardship caused to an employee by providing a source of additional paid leave for those employees who have exhausted all leave time earned. The maximum number of hours an eligible employee can receive through the Catastrophic Leave program is 480 hours per 12-month rolling period (lifetime max of 1440 hours), if enough hours are available within the Leave Bank.

This program is not designed as an indefinite extension of any person’s employment with the City of Rockport. This will instead only apply in those cases wherein a person suffered a catastrophic injury or illness that is not covered by workman’s compensation, and the employee’s complete recovery is reasonably expected within a time frame beneficial to the City, and the employee has expended all accrued leave fully.

Abuse of the catastrophic leave bank program will subject the employee to disciplinary action, up to and including termination.

3. Definitions

For purposes of this policy, the following definitions apply:

- (a) Catastrophic Illness or Injury: A life-threatening or severe injury or illness of an employee which totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation for 5 or more days. Chronic illnesses or injuries, such as cancer or major surgery, which result in intermittent absences from work and are long-term in nature and require long recuperation periods, may be considered catastrophic.
- (b) Eligible Employee: Full-time employee regularly scheduled for a minimum of 40 hours per week, eligible to receive sick/vacation leave.
- (c) New Hire: Full-time employee regularly scheduled for a minimum of 40 hours per week, eligible to receive vacation/sick leave, that has been employed with the City for less than 2 years (24 months).
- (d) Licensed Physician: A practitioner who is practicing within the scope of his/her license in treating the employee.
- (e) Open Enrollment: The period when an eligible employee may make contributions to the Catastrophic Leave program. The open enrollment period shall be the period each year allotted for benefit enrollment changes and is subject to change in accordance with the health insurance contract.
- (f) Plan Year: A 12-month period beginning October 01 of the current year and ending September 30 of the following year.
- (g) 12-Month Rolling Period: A period of 12 consecutive months determined on a rolling basis measured backwards and in accordance with FMLA regulations.
- (h) Leave Bank: The accumulated sick/vacation leave voluntarily donated by employees for utilization in accordance with this policy.
- (i) Qualifying Family Member: Qualifying Family member is immediate family defined as those individuals related by kinship, adoption, marriage, or foster children who are living in the same household or, if not in the same household, are totally dependent upon the employee for personal care or services on a continuing basis.

4. Donation to Leave Bank

- (a) Procedure for Donating Leave: Employees who wish to donate sick/vacation leave, during the annual benefits open enrollment period, must complete an application for Catastrophic Leave Donation Form provided by the Human Resources Department. The donor's leave balance will be reduced by the number of leave hours donated. Contributions will be credited to the Leave Bank on the first full pay period for the Fiscal Year. Employees who leave the City are not eligible to donate leave upon their departure.

Employees must meet the following requirements in order to be eligible to donate sick/vacation leave through the Catastrophic Leave program. Comp time cannot be donated. Leave is donated hour for hour and is not transferred into a monetary value.

1. Full-time employment status with the City, and eligible to accrue and use sick leave.
 2. Sick/vacation leave must be donated in increments of eight (8) hours.
 3. To donate sick/vacation leave an employee must have at least 80 hours of accumulated leave remaining after the donation is made.
 4. The maximum number of hours one individual may donate is 40 hours of sick/vacation leave per annual open enrollment.
- (b) Voluntary Participation: Participation in this program is strictly voluntary. Contributions to the Leave Bank may not be designated for use by any specific employee. Time donated by an employee may not be recovered or recaptured. Participation in donating leave does not guarantee approval of future leave bank time requests. Approval of use of catastrophic leave bank hours is based strictly on an employee meeting all Policy requirements on a first come first serve basis, and on the availability of leave in the Bank.
- (c) Leave Bank Availability: Should insufficient Leave Bank Hours be donated to the Leave Bank, the City is not obligated to pay any Leave Bank payments to eligible employees.

5. Eligibility to Receive Leave Donations

- (a) Eligible Employee: Employees must meet the following requirements to be eligible to receive leave donations:
1. Has personally experienced a catastrophic illness or injury, or;
 2. The employee's request is to care for a qualifying family member's catastrophic illness or injury.
 3. Must be full-time employee regularly scheduled for a minimum of 40 hours per week.
 4. Must have exhausted all accumulated comp time/sick leave/vacation leave.
 5. Must have donated to the Catastrophic leave bank during the most current open enrollment to be eligible.
 6. Or, is a New Hire as defined by this policy.
- (b) Exclusions: The following medical procedures are excluded from eligibility to receive leave donations:

1. Non-catastrophic illness or injury such as flu
2. Non-emergency elective surgery, except when life-threatening complications occur.
3. Routine surgeries with no complications.
4. Illness or injury covered by the City's worker's compensation program.
5. Employees who have been released by a licensed physician to return to work.
6. Normal pregnancies, except when life-threatening complications occur.

*** The City Manager may approve the request of an employee for donated leave that does not meet the minimum eligibility requirements if the City Manager determines there are extenuating circumstances that warrant an exception.

- (c) Multiple Employees Eligibility for Donated Leave: If more than one City employee is eligible for donated leave under this Policy, each employee's receipt of donated hours may be adjusted to ensure that the number of hours granted to each employee does not exceed the number of hours available.

If an employee and his/her spouse or other immediate family member are both employed by the City, only one individual can use the catastrophic leave pool at a time. The only exception would be in the event both are incapacitated and are needing to request time due to their own catastrophic illness, such as both employees being in the same car wreck, and hospitalized.

6. Procedure for Requesting Leave

- (a) Application Forms: To apply for Catastrophic Leave the employee must complete the Catastrophic Leave Request Form and submit medical documentation from a licensed medical professional. The required Request Form is available from the Human Resources Department.

The Human Resources representative or City Manager may temporarily waive the need of medical documentation due to the severity of the catastrophic illness, injury, or circumstances involved.

If it is anticipated the employee will be exhausting his/her leave balances, a request for hours from the Leave Bank may be sought to coincide with the exhaustion of their leave in order to prevent a gap in the employee's pay. Leave Bank hours may be used for a continuous absence or for intermittent or part-time absences if all other requirements of this policy are met.

- (b) Application Review: A representative from the Human Resources Department will act as the primary administrator and contact for the program. The Human Resources Department will review each application and ensure that each of the following conditions have been met:

1. Employee's entire accumulated leave (comp/sick/vacation leave) has been

- exhausted; and
2. Employee meets the eligibility requirements stated above to be able to receive hours; and
 3. Requesting employee, or representative, provides the licensed physician statement or justification that employee has a qualifying catastrophic illness or injury.

The Human Resources Department will inform the applicant of the City's decision granting or denying the request of donated leave in writing within five (5) business days after the receipt of the application

An employee using hours from the Leave Bank will continue to accrue sick leave, vacation leave, and holiday(s) and must use their own comp time, sick leave, vacation leave, and holiday(s) before using the Leave Bank hours. If an employee does not use all of the Leave Bank hours donated to them, the unused time will be forfeited and revert back to the Leave Bank. There will be no retroactive pay of Leave Bank to any previous pay period where Leave Bank was not yet requested. Leave Bank will be used only on a go forward basis by pay period, on a first come, first serve basis.

(c) Continuation of Leave

The employee, or a representative if the employee is unable, must notify Human Resources on a weekly basis (day to be determined by HR) as to the expected date of return. Upon return of the employee, any unused donated time will be forfeited and revert to the Leave Bank.

(d) Continuation of Employment Benefits: While an employee is receiving benefits from the Catastrophic Leave program, the following will apply:

1. Health insurance premiums and other benefit premiums will continue to be deducted from the employee's pay so long as the employee is receiving donated leave.
2. Sick and vacation will continue to accrue as long as pay is received by the employee.
3. Holiday(s) will continue as long as pay is received by the employee.
4. Longevity will continue as long as pay is received by the employee.
5. Pension contributions will continue as long as pay is received by the employee.
6. Certification pay will continue as long as pay is received by the employee.

If a separation of employment occurs while an employee is utilizing Catastrophic Leave, the employee may not receive additional payment for Catastrophic Leave, and all unused hours will revert to the Leave Bank.

(e) FMLA

The use of donated leave will run concurrent with FMLA leave if eligible.

(f) Ineligibility. A participating employee shall lose the right to obtain benefits from the Leave Bank by:

1. Termination of employment, including but not limited to, resignation, involuntary termination, and retirement, and/or;
2. Refusal to comply with the policies and procedures set forth in the Employee

Handbook and/or this policy.

3. Exhaustion of donated leave in the Leave Bank.
4. Employee becomes permanently incapacitated, and unable to perform job duties, or return to work in a reasonable timely manner.
5. In the event of death, employee's family or heirs cannot receive any remaining donated leave. The leave will revert to the bank.
6. Employees has reached the lifetime max of 1440 hours.

7. Appeal

Appeal Process. An employee whose request for Catastrophic Leave benefits is denied by the Human Resources Department may appeal the denial to the City Manager but must do so in writing within five (5) days of receiving notification that the request was denied. The City Manager shall respond in writing to the employee within five (5) business days following the day the written appeal was received. The decision of the City Manager is final. If employee does not appeal the decision within the allotted amount of time, the last decision made will stand.

8. Tracking and Record Keeping

Human Resources will be the administrator for the Catastrophic Leave Bank balance, all related forms, and records.

- (a) Donation Requests will be turned into Human Resources during each annual open enrollment period for approval.
- (b) Any hours remaining in the Leave Bank at the end of the fiscal year on September 30th, will roll over to the next fiscal year effective October 1.
- (c) Human Resources will keep an excel spreadsheet to track all donated and granted leave bank hours, along with the roll over balance from the previous fiscal year.
- (d) After all donation forms are received and approved, Human Resources will send Payroll a Leave Bank Balance including any roll over from the previous year, along with a list of those who donated so that the hours can be deducted from each donating employee's balance effective the first payroll of the new fiscal year.
- (e)
- (f) All requests will be reviewed/approved on a first come, first approved basis.
- (g)
- (h) Hours will be granted on a per pay period bases. Hours will not be granted in sums larger than the amount needed to bring an employee up to 80 hours, for the current pay period.
- (i)
- (j) Employees (or department representative) will track use of granted Leave Bank Hours on their timesheet. Leave Bank Hours will be placed under the "Other" column, and the words "Leave Bank" are to be noted in the comments section of each day that hours are applied.
- (k)
- (l) Timesheets for individuals receiving hours from the leave bank are to be sent to Human Resources on the last Wednesday of each pay period to be approved and forwarded to

payroll. Timesheets not received in a timely manner, may hinder them being processed in time for payment to be issued.

- (m)
- (n) This process is meant to allow Human Resources to accurately track donation and use of Leave Bank Hours, and to ensure those claiming Leave Bank Hours on their timesheets have been approved, and actually awarded hours.
- (o)
- (p) Timesheets noting use of Leave Bank Hours received by Payroll that have not been approved by the Human Resources department will be sent to Human Resources for approval before processing.
- (q)
- (r) Payroll and Human Resources will compare records at least once per year and as needed should questions/concerns arise.

9. Termination of Catastrophic Leave

This policy may be revised or discontinued by the City Council at any time for any reason. Should the Council terminate this Catastrophic Leave provision only those hours previously granted prior to the council decision will be honored; pending leave bank balance.

Section 40-65 Overtime Policy and Procedures

1. Overtime Compensation.

- (a) All “nonexempt” employees shall be compensated for overtime. Until such time that sufficient funds may be budgeted, most overtime will be compensated in the form of “comp time.” i.e., compensatory time off. For every hour of approved overtime worked by a nonexempt employee, 1.5 hours of comp time shall be accrued.
- (b) The City shall comply with all fair labor, job safety and health regulations applicable to the workplace. Willful violations of any of these standards are cause for disciplinary action. Employees are entitled to request a formal conference if they believe there has been an accidental or intentional violation of these policies, rules and regulations.
- (c) The City recognizes the Fair Labor Standards Act definition of “exempt” and “nonexempt” employees for the purpose of determining mandatory payment of overtime compensation. The City also recognizes while “exempt” employees may have to work beyond the standard number of hours on occasion; every effort should be made to limit the frequency with which this occurs. Exempt employees may be given discretionary time by a Department Head in recognition of those occasions when they do work beyond the normal number of hours in a work period.

- (d) All employees of the City of Rockport should keep a record of their time worked, regardless of their status as exempt or nonexempt employees. Time sheets for all nonexempt and exempt employees shall be forwarded to the Finance Department.
- (e) A Department Head may review the exempt or nonexempt status of the positions within his department and recommend a change to the City Manager.
- (f) All employees, except exempt employees, are eligible to receive overtime pay. Overtime when ordered for the maintenance of essential city functions, shall be allocated as evenly as possible among all employees qualified to perform the work. For all scheduled and approved time worked in excess of a regular workweek, compensation will be at the rate of one and one-half (1½) times the employee's regular base pay. Overtime pay will be paid for all time worked over forty-(40) hours per week unless such employees are exempt from overtime pay. No sick time, vacation time or seminars shall be considered when determining overtime pay. All overtime work must be clearly reflected on the employee's time records before it is allowed.

2. Compensatory Time.

- (a) All eligible non-exempt employees may accrue compensatory time ("comp time") in lieu of being paid overtime compensation. Exempt employees are not eligible for comp time under this policy. All non-exempt employees are subject to a cap Eighty (80) hours. Overtime hours worked beyond the cap must be paid as overtime compensation, or flexed, as described under the Overtime Policy and Procedures section.
- (b) *Eligible employees are:*
 - 1. Non-exempt employees who work over 40 hours in a work week.
 - 2. Sworn law enforcement assigned to 80-hour work periods
 - 3. Seasonal employees are eligible for overtime if they actually work over 40 hours in a work week, but they are not eligible for compensatory time.
- (c) Compensatory time accrues at a rate of 1 ½ hours for every hour of overtime worked by non-exempt employees. If less than 40 hours have been actually worked during the work week (80 in 2 weeks for Police officers), compensatory time shall be paid at the rate of one hour for each hour worked. Compensatory time accruals are to be monitored by the Department and Payroll. All compensatory time used its to be documented on the employee's time sheet.
- (d) An employee who has accrued compensatory time and requests use of such time must be permitted to use the time off if it does not "unduly disrupt" the work of the department. If used compensatory time would be unduly disruptive and a satisfactory time for the employee to use the time cannot be scheduled within a "reasonable period" after the request, the department may elect to pay out the time

requested by the employee in lieu of approving the request. The City may also require employees to take time off in order to reduce their accrued compensatory time. Otherwise, compensatory time off may be used the same as leave time. Comp Time can only be used if it has already been earned. It cannot be used prior to earning the comp time.

- (e) *Payment of Compensatory Time.* All employees who are reclassified from a non-exempt position to an exempt position will be paid all accrued compensatory time upon approval of the reclassification and will cease to be eligible for any additional overtime and /or compensatory time. Likewise, an employee who is either promoted, transferred, or demoted to another non-exempt position will be paid in full for any compensatory time accrued before the promotion or demotion becomes effective. Upon leaving employment with the City, a nonexempt employee will be paid for unused compensatory time at the employee's current hourly rate.
- (f) All use of comp time must be approved by the employee's supervisor or department head in advance. Employees who take unauthorized comp time may be subject to disciplinary action, up to and including termination.

3. Discretionary Time for Salaried Employees (Exempt).

- (a) Under the Fair Labor Standards Act, exempt employees are not eligible for overtime pay or compensatory time. These employees will sometimes be required to work more than the normal 40 hours per week without compensation due to the nature of their job duties. Supervisors of exempt employees may determine/approve discretionary time off, based on workload, for hours worked in excess of 40 hours per week.
- (b) Exempt (Salaried) employees also accrue vacation and sick leave in accordance with the applicable policies, and shall be required to use the appropriate leave to document absences from work that cannot be offset by discretionary time i.e. taking multiple days off for a vacation, or illness.
- (c) Exempt (Salaried) employees are required to turn in a time sheet each week so that the use of any leave may be documented for payroll and record keeping purposes. In weeks that no leave is used, the employee will just document the straight 40 hours.

4. Flex time.

- (a) Flex time is scheduling time off in lieu of overtime pay within the same week in which the extra hours were worked.
- (b) Flex time scheduled during the same week in which it was earned will be traded hour for hour because flex time used results in no actual overtime for the week. Department Directors and supervisors should schedule flex time where applicable

for more efficient operation of the department and to minimize overtime for non-exempt employees

- (c) Adjusting Work Schedules within a workweek may be done to reduce overtime hours. Supervisors may require an employee to take a day off without pay or leave early, to offset “extra” hours worked during the same work week. For instance, if an employee works three extra hours on a Monday, the supervisor may adjust the employee’s work schedule by reducing his/her work time by three hours on Tuesday.

Section 40-66

Benefits

(a) Group Insurance.

- (1) Insurance provided: All full-time employees and all qualified retired employees are provided with medical insurance for which an employee contribution may be required. Coverage shall begin upon acceptance of the employee by the insurance underwriter. This insurance provided for payment of hospitalization and major medical expenses up to the limits of the policy for illness and accidental injuries off the job. Coverage for other family members is at the option of and payable by the employee through payroll deductions at the prevailing rates. Any employee whose employment ends except by retirement may continue the insurance coverage up to a maximum of 18 months through COBRA. Employees who elect to continue coverage will be required to pay the entire cost of the premium.
- (2) Opt-out provision: Coverage under the City’s medical insurance is mandatory unless an employee is already covered by another medical insurance plan at the date of hire. In order to “opt out” employees must already be covered by another medical insurance plan at the time of hire in one of the following ways: they are on their spouse’s medical insurance, on a parent’s medical insurance (if they are age 26 or under), on a retiree insurance plan through a previous employer, or on medical insurance through the military. Those employees who choose this option of allowing another medical insurance provider to become their primary medical insurance shall not be eligible for payment of any of the forfeit benefits under the City of Rockport's group medical insurance, nor for reimbursement of any past contributions paid by the city for that individual's employee medical insurance.
 - a) Employees wishing to "opt-out" must submit proof of coverage to Human Resources at the time of employment. Employee’s choosing to “opt out” can only choose to “opt in” due to a qualifying event or during open enrollment each year.
- (3) Employees wishing to make any other permitted changes to their insurance coverage must still comply with the city's group medical insurance carrier's rules and regulations. Most changes can only be made due to a qualifying event or during open enrollment.
 - a) Qualifying Events are defined as life events that affect an employee’s insurance coverage or the insurance coverage of dependents that are

qualified to be enrolled in the employee's insurance plan.

- b) General list of Qualifying Events: birth, legal adoption, or becoming the legal guardian of a child; death of the employee or a dependent covered by the plan; marriage; divorce; child aging out of coverage; loss of other medical insurance coverage or gaining of other medical insurance coverage for a spouse or child.
 - c) Any changes must be made within 30 days of the qualifying event, or the employee must wait to make the change during open enrollment.
- (b) Workers' Compensation Insurance. All employees are covered by City-paid workers' compensation insurance.
- (c) Retirement System. All regular employees contribute seven percent of their gross income into the Texas Municipal Retirement System (TMRS). The City matches the employee contribution on a two-for-one basis according to the experience rating given by TMRS. Employee contributions are tax deferred until the employee receives the funds either as a refund upon termination of employment or as monthly retirement benefits.
- (d) Social Security Coverage. The Social Security Act provides a plan for benefits to workers and their survivors. Under this plan, the City contributes an amount equal to that paid by each employee. The contributions are made to a federal fund from which benefits are paid in the event of the employee's retirement, disability or death.
- (e) Educational Incentive. Employees who voluntarily pursue additional education or training during their off-duty hours may petition to have a portion of the tuition and book costs associated with that education or training reimbursed. In order to be eligible for reimbursement, the employee must notify the City Manager in writing that they intend to enroll in a specific training session or classes. The necessary forms can be obtained from Human Resources.
- (1) Upon submission of transcripts or course completion certificate and a copy of the tuition and book receipts, employees will be reimbursed based upon the following schedule:
- a) Course or training session directly related to the employee's field of employment: 80%
 - b) Course or training session intended to improve the overall ability, skill and performance of an employee: 20%.
 - c) Under no circumstances may any of the time utilized for voluntary, off duty education be construed as training time as defined by the Fair Labor Standards Act and therefore make it necessary for the City to compensate the employee.
 - d) Tuition and Fee amounts eligible for reimbursement are the maximum dollar amounts charged by state university systems.

(2) The employee must remain in the employment of the City of Rockport for 6 months following the issuance of their last reimbursement check. Should the employee voluntarily resign, or leave employment with the City of Rockport, before completing that 6-month period, they may be responsible for paying back all or a portion of the final reimbursement check.

a) If an employee is required to payback any portion of their final reimbursement check, payment will be deducted from the employee's final pay check, with the understanding that the deduction will not bring the employee's final net pay to below minimum wage. Any amount not able to be deducted may be set up on a payment plan with the Finance Department to be paid in full within 6 months (180 days).

Section 40-67

Allowances and Reimbursements

(a) The City Council may authorize the payment of an allowance to an employee. Examples of allowances may include, but not be limited to:

(1) Car allowance.

(2) Uniform or clothing allowance.

- a. The City of Rockport provides uniforms to all employees who are required to wear uniforms as a condition of employment. Employees will be responsible for the safekeeping of all uniforms they are furnished.
- b. Upon issue, uniforms become the responsibility of the employee for maintenance and care. In the event a uniform needs repair or replacement, employees will be required to return the uniform in exchange for a replacement. While normal wear and tear is expected, excessive damage or loss of uniforms may result in disciplinary action.
- c. Any employee transferring to a new department within the City, must turn in all uniforms before leaving their current department. They will then be issued new uniforms under the invoicing of the new department. If all issued uniforms are not returned, City of Rockport will deduct the cost of the uniforms from the employee's last paycheck paid under the current department's budget.
- d. Employees are required to return all issued uniforms upon termination of employment at or before the timesheet deadline for the pay period. If all issued uniforms are not returned, City of Rockport will deduct the cost of the uniforms from the employee's final paycheck. If the earnings are inadequate to cover the amount owed, it will be the employees responsibility to pay the remaining portion. Uniforms returned after final paycheck has been processed will not be reimbursed.

- e. Management is responsible for notifying payroll on Uniform return status at or before the timesheet deadline for the pay period
- (b) All employees are eligible for payment/reimbursement of job-related out-of-town travel before it occurs.
 - (1) Department Heads must approve out-of-town travel before it occurs.
 - (2) The City must directly benefit from the expenditure.
- (c) Eligible reimbursements include, but shall not be limited to:
 - (1) Out-of-town meals: The amount paid to employees for meals are a Per Diem based on the IRS regulations for allowable travel days. The Per Diem is paid before the travel days, and employees are not required to submit receipts unless an expense was charged to a City Purchasing card.
 - (2) When traveling in a City vehicle or on a commercial carrier, the actual cost of travel to and from the out-of-town training, meeting or conference.
 - (3) The per mile rate paid to employees of the State of Texas when a privately owned vehicle is used to travel to and from an out-of-town meeting, conference or training session.
 - (4) Housing and registration costs for training sessions and conference.
 - (5) Out-of-town parking expenses.
 - (6) Certain approved expenses of the City Secretary, City Manager and Department Heads.
 - (7) Long distance telephone calls charged to personal accounts only when the calls are for the purpose of conducting official city business.
 - (8) Reasonable laundry expenses when out of town trips last more than five days.
- (d) All requests for reimbursements must be approved by a Department Head, the City Manager, or the Mayor (or Mayor Pro-Tem), and the Finance department as appropriate before the reimbursement may be issued.

Section 40-68 Payroll Procedures

All employees of the City shall be paid biweekly with Friday being the end of the payroll period. Departments should turn into Finance all payroll information by 10:00 a.m. the following workday. Normally employees will be paid every other Wednesday for the two-week period ending the preceding Friday. The Finance Department shall publish a yearly schedule of paydays. Department heads shall post this scheduled in a place visible by

employees.

- (a) Department Heads are responsible for submitting accurate, totaled time sheets on all exempt and nonexempt employees to the Finance Department no later than 10:00 a.m. on the Monday proceeding a pay day. The payroll staff may change this as required due to holidays, vacations, etc.
- (b) Any employee who has a question about the amount paid any of the deductions from the paycheck or who wishes to change the amount of income tax withholding should consult with his or her Department Head before contacting the staff of the Finance Department
- (c) The Finance Department shall be responsible for distributing required federal income tax information forms to all employees during the month of January each year.

Section 40-69 Certification/Education Pay

- (a) It is the policy of the City of Rockport, Texas to encourage its employees to participate in advanced training and education. Additional training is important to the employees and is an overall benefit to the operation of the City of Rockport. Levels of training and certification for the training should be recognized. It is the intent of this policy to formally establish criteria by which compensation for certificates and education may be awarded.
The purpose of this policy is to provide for uniform standards of practice and procedure.
- (b) All certification pay additions, and/or deletions must be reviewed and approved by the City Council prior to implementation. All certifications pay plans are subject to and contingent upon City Council approval of an annual budget that funds these certifications. Certification pay is provided to all eligible full-time employees as outlined in this policy.
- (c) In order to receive compensation, the certificate or other documentation must be deemed beneficial to the City as a part of the employee's work responsibilities and must not be a minimum requirement for the employee's position. Should the employee transfer to a department where certification currently held becomes applicable, the employee may then be eligible for certificate pay. Certification pay shall be forfeited if a transfer places the employee where the certificate is not applicable.
- (d) All eligible employees are subject to a total certification and education pay cap of \$900 per month. Employees already receiving monthly certification/education pay amounts above the certification pay cap as of October 1, 2024 will be grandfathered in and allowed to keep their current certification and Education pay, but will be frozen at that amount and unable to add any further certification/education pays without first removing another. Also, providing that if those employees were ever to drop below the total \$900 cap, or are re-hired following a separation, they would then be subject to the cap.
- (e) Employees shall receive payment as outlined below:
 - (1) CERTIFICATE PAY:
 - i. All full-time, non-exempt employees are eligible to receive pay for certifications achieved during employment with the City of Rockport beyond the minimum requirements for their position. An inventory of approved licenses and certifications will be kept by Department Heads and

Human Resources. It is the sole responsibility of the employee to provide copies of licenses or certifications and to provide copies of renewals. Employees must provide evidence that licenses or certifications are current in order for compensation to be considered. If a license or certification has expired, the related compensation will stop. In no event will retroactive certification pay be awarded for changes in policy or an employee's failure to provide or maintain proof of current licenses and certifications in his/her personnel file.

- ii. If an employee acquires a higher level of a certification that they are already receiving pay for, the higher certification pay will take the place of the lower certification. No employee shall be paid for more than one level of the same certification.
- iii. All requests for license or certification pay must be done through a payroll change notice. These are to be filled out by the Department Head and signed by the City Manager. Completed forms are then submitted to the Human Resource Department. Approved Pay will be effective as of the date of request.

(2) EDUCATION:

- i. All Full-time employees, both exempt and non-exempt, are eligible for Degree pay.
- ii. Certification of an obtained degree (Associates, Bachelor, Masters, PhD) through an accredited higher education facility with the course or training session directly related to the employee's field of employment. To receive education pay, the degree held must not be a minimum requirement of the position.
- iii. If an employee acquires a higher degree than what they are already receiving pay for, the higher degree pay will take the place of the lower degree. No employee shall be paid for more than one degree at a time.
- iv. All requests for degree pay must be done through a payroll change notice. These are to be filled out by the Department Head and signed by the City Manager. Completed forms are then submitted to the Human Resource Department. Approved pay will be effective as of the date of request.

- (f) For a current list of the approved Certifications approved by the City Council to receive Certification pay, and Council Approved Education pay amounts, see the APPENDIX B.

DIVISION 5. JOB SAFETY AND WORKING CONDITIONS

Section 40-71 Employee Duty

It is the duty of all employees of the City of Rockport to conduct themselves in a safe manner while executing the duties and tasks assigned to them. When an individual accepts a position as an employee of the City, he is accepting the normal risk of physical harm or injury associated with that position.

Section 40-72 Supervisory Duty

It shall be the responsibility of all supervisors to ensure that the employees of the City of Rockport are not exposed to unsafe equipment, unsafe procedures, or hazardous working conditions.

Section 40-73 Safety Equipment

It shall be the duty of all employees and the responsibility of all supervisors to ensure that all employees wear the appropriate safety equipment. Employees who refuse to wear such safety equipment will be subject to disciplinary action. Supervisors who fail to ensure the use of safe procedures and the use of safety equipment shall be subject to disciplinary action.

Section 40-74 Safety and Accident Prevention Training Program

Department Heads shall ensure that a safety and accident prevention-training program is developed and implemented within their department. A record of attendance and a record of the subject material will be kept on all safety and accident prevention training sessions.

Section 40-75 Safety Inspections

It is the responsibility of all supervisors and Department Heads to ensure that safety inspections and timely preventive maintenance is completed on all City vehicles, other City equipment and on City owned facilities. The Fleet Operations & Maintenance Division shall keep a record of all preventive maintenance on vehicles and equipment. Department Heads shall ensure accurate records are kept of all safety inspections on equipment, vehicles and workspaces.

Section 40-76 Accident Investigation

When a serious accident or injury occurs involving a city employee while on duty, or while driving city equipment, a supervisor from the same department of the employee involved shall be called to the scene immediately, regardless of the time of day. In the case of all vehicle accidents within Rockport, or the immediate vicinity (i.e. Aransas County), the Rockport Police Department shall be notified. If the supervisor of the affected employee was present at the time of the incident, another supervisor from the same department shall be called to the scene. In the case where a Department Head, City Secretary or City Manager is involved in a traffic accident, another agency such as the

DPS will be called and asked to investigate the matter.

Section 40-77 **Accident Report**


- (a) The supervisor called to the scene shall be responsible for preparing a preliminary accident investigation report, which shall contain answers to the following questions:
 - (1) Who was involved?
 - (2) Where did the incident occur?
 - (3) What vehicle or equipment was involved?
 - (4) Was a separate police incident or accident investigation report prepared?
 - (5) What were the physical conditions in the area of the accident?
 - (6) Who witnessed the accident? (Supervisors may direct other employees to prepare a written statement; supervisors may ask non-employees if they would be willing to prepare a written statement).
 - (7) How did the accident/injury occur? (Be as objective as possible; develop a specific sequence of events if possible.)
- (b) The Employee involved will also be required to fill out an accident report. If the employee is injured and unable to fill out the report immediately, they will be required to fill out the report as soon as they are able.
- (c) Both accident reports are to be submitted to the Human Resources department, and City Manager. If a City vehicle or mobile equipment (i.e., tractor, mower, etc.) were involved the Fleet Manager and Risk Manager must also be notified.
- (d) On all accidents, Human Resources will advise if Drug and Alcohol testing are required based on the provisions of the Post Accident section of the Alcohol and Drug Free Work Environment Policy in Section II of this Handbook.

Section 40-78 **Full Investigation**

The Department Head shall determine, in conjunction with the City Manager, whether the preliminary accident/injury report is sufficient or whether a formal safety investigation should be conducted. If the latter is recommended, the City Manager shall appoint an individual to conduct a full investigation. Under normal circumstances, the appointee shall be the Risk Manager. The City Manager may ask the Chief of Police to appoint an investigator from the staff of the Criminal Investigation Division of the Police Department.

Section 40-79 **Notification**

The Personnel and Risk Manager shall be notified immediately during normal working hours, or as soon thereafter as possible of all accidents and injuries for the purpose of initiating worker's compensation or other insurance coverage.



DIVISION 6. EVALUATION

Section 40-81

General

- (a) Systematic evaluation procedures will be used for evaluating, as objectively as possible, the performance of all personnel. Informal evaluation of the employee is a continuous process. The formal evaluation will take place at least once annually. The immediate supervisor will discuss the results of each evaluation with the employee and the Department Head will review it. The original evaluation form will be forwarded to Human Resources for inclusion in the file the City maintains on the employee, unless it is performed in the Human Resources Information System (HRIS). Evaluations completed in the HRIS system will be stored in the system itself, until an employee separates from the City. The Evaluation can then be placed in the digital personnel file for retention purposes.
- (b) Ordinarily, a performance evaluation is conducted at the end of the initial six-month period of employment. However, a formal performance may be conducted at any time to recognize and document occasions of either unsatisfactory or outstanding performance.
- (c) Evaluators shall individually discuss the evaluation results with the employees and shall counsel them regarding their careers and any improvements in performance, which appear desirable or necessary. Employees dissatisfied with their performance evaluation may seek reconsideration by using the established grievance procedures.
- (d) Any time an employee receives a marginal or poor written evaluation; he must be asked to sign a statement acknowledging that he understands that the evaluation of his performance has been marginal or poor. The employee must also be given a Performance Improvement Plan (PIP) that outlines what must be done, the maximum time allowable to correct the deficiencies, and the consequences if the employee does not satisfactorily complete the PIP. Failure to provide a PIP may negate the impact of a marginal or poor evaluation when considering future formal performance-based personnel actions. A PIP should not be considered disciplinary, but as a tool to assist an employee in improving their performance. Lack of a PIP may or may not have anything to do with disciplinary measures taken. (PIP forms can be obtained from Human Resources.)
- (e) After discussion of the results of an evaluation, if an employee wants to set professional goals of training, growth, and developing their career goals they can create a Professional Development Plan with their supervisor or Department Head to help guide them. (Professional Development forms can be obtained from Human Resources.)
 - i. The employee and or the employee's manager can set goals for the employee in the HRIS system also.

Section 40-82

Employee Performance Evaluations


- (a) An employee shall be evaluated at least annually. Special evaluations may be made if

requested by the Department Head. All performance evaluation reports shall be permanently placed in the personnel file the City maintains on the employee.

- (b) Performance evaluations are designed to help the supervisors and employees measure how well work is being performed and to provide a tool for management decisions regarding pay increases, promotions and retention of employees.
- (c) Supervisors shall individually discuss the evaluation results with the employees and shall counsel them regarding their careers and any improvements in performance, which appear desirable or necessary.

Section 40-83 Merit Increases

Pay increases may be granted by the Department Head in accordance with the compensation plan as a reward for those employees demonstrating exceptional or above average job performance. These merit increases are intended to reward outstanding personnel and as an inducement to motivate employees in their performance and productivity. Merit Increases are not guaranteed. The amount and availability of merit increase will be determined annually by City Council as part of the budget process.



DIVISION 7. COMPUTER, INTERNET, EMAIL, AND CELL PHONE

Section 40-91 Computer

This policy seeks to protect the confidentiality, integrity, and availability of the City of Rockport information systems the computing or networking resources need to be accessible and secure for appropriate use consistent with the mission of the City of Rockport.

Users of information resources must protect their online identity from use by another individual, the integrity of information resources, and the privacy of electronic information. In addition, users must refrain from seeking to gain unauthorized access, honor all copyrights and licenses and respect the rights of other users of information resources.

(a) *Policy*

This computer Use Policy aims to achieve these outlined goals for the safety and security of the employees and the management of the City of Rockport.

- (1) To utilize the asset to its fullest potential while delivering quality work from the employees.
- (2) To maximize the investment of equipment to better serve our citizens and customers.
- (3) To ensure that all designated users of the assets are responsible and compliant with the City of Rockport security and equipment care guidelines.
- (4) To encourage employees to maximize the use of the asset only to benefit the City of Rockport and its citizens and customers.
- (5) To ensure that employees of the City of Rockport are aware of the proper and appropriate use of these assets.

(b) *Usage*

- (1) Electronic media may not be used for knowingly transmitting, retrieving or storage of any communications of a discriminatory or harassing nature, or which are derogatory to any individual or group, or which are obscene or X-rated communications, or are of a defamatory or threatening nature, or for 'chain letters,' or for any other purpose which is illegal or against company policy or contrary to the company's interest.
- (2) Electronic media and services are primarily for company business use.
- (3) Limited, occasional, or incidental use of electronic media (sending or receiving) for personal, non-business purposes is understandable and acceptable—as is the case with personal phone calls. However, employees need to demonstrate a sense of responsibility and may not abuse the privilege.

(c) Personnel Responsibilities

- (1) Employees will use these company-owned assets, namely laptops, computers, mobile computers (MDT), cell phones, and their peripherals, solely for the delivery of quality assignments and tasks exclusively for City of Rockport employees. Failure to comply with this policy will subject the employee to disciplinary action or up to termination.
- (2) All employees working under the City of Rockport should comply with the proper ethics and conduct established by the City of Rockport within and outside the City of Rockport online and offline premises. Employees will not engage in strictly prohibited and unprofessional activities such as pornography, cyberbullying, cybercrime, abuse, and threats using the City of Rockport asset to preserve the company's best image. Failure to comply with this policy will subject the employee to disciplinary action or up to termination.
- (3) The employee is strictly prohibited from executing or installing any programs or applications, not prescribed, and approved by the City of Rockport, on laptop, mobile unit (MDT), cell phone or computer. Installation of external programs is only permitted with advanced approval from the department head and IT department.
- (4) The designated user of the City of Rockport asset is required to properly log off or sign out of the system when not in use during or after office hours as part of security measures.
- (5) The designated user of the City of Rockport asset is required to log on or sign in with only their credentials. No employee will use another employee's credentials to login or sign in. Failure to comply with this policy will subject the employee to disciplinary action or up to termination.
- (6) The employee is expected to never commit to an act or object that will endanger the City of Rockport asset.
- (7) City of Rockport employee or employees acknowledge that the employee's life is more valuable than the City of Rockport asset. Should such unforeseen circumstances as natural disasters or crimes such as theft, hold up, or mugging happen, the employee will be investigated and required to submit a written explanation or incident report within 5 business days. The City of Rockport will provide a new set of equipment to the employees after 3 business days resting period.
- (8) The employee is required to submit an incident report should there be any suspicious activities made by other colleagues. The report can be done by email or as an anonymous report to our Human Resources department.

Section 40-92 The Internet

The Internet is a very large, publicly accessible network that has millions of connected users and organizations worldwide. To establish proper use of the Internet, the procedures and

principles presented in this policy apply to all City of Rockport Employees.

(a) *Policy*

Use of the Internet for personal gain or any other purpose which is illegal or against City policy or contrary to the City's best interest is prohibited. Conversely, the Internet is also replete with risks and inappropriate material. To ensure that all employees are responsible and productive and to protect the City's interests, the following guidelines have been established for using the Internet.

(b) *Establishing Accounts with Other On-Line Services*

Employees who need to establish an account with an on-line service via the Internet must use a different password than their city password.

(c) *Internet Access is a Privilege*

Unauthorized use of the Internet will result in the loss of access for the user and, depending on the seriousness of the infraction, may result in disciplinary action or up to termination.

(d) *Acceptable Use*

Employees using the Internet represent the City of Rockport. Employees are responsible for ensuring that the Internet is used in an effective, ethical, and lawful manner. Examples of acceptable use are:

- (1) Viewing training videos that directly relate to your job.
- (2) Attending a job-related webinar or meeting.
- (3) Using Web browsers to obtain business information from commercial Web sites.
- (4) Accessing databases for information as needed.

(e) *Personal Use*

Incidental and occasional personal use of the Internet as covered by this policy may be permitted at the discretion of the City of Rockport. However, such use shall be treated the same as official use, and thus, the employee shall have no expectation of privacy when using City of Rockport systems for personal use. As such, personal use is subject to the same access and review rights as any other use of these systems.

(f) *Unacceptable Use*

Employees must not use the Internet for purposes that are illegal, unethical, harmful to the City of Rockport, or nonproductive. Examples of unacceptable use include but are not limited to:

- (1) Conducting a personal business using City resources.
- (2) Transmitting any content that is offensive, pornographic, harassing, or fraudulent.

- (3) Accessing e-mail accounts from the Internet such as Gmail, Hotmail, Yahoo mail and any other Internet related mail accounts. Accessing e-mail in this manner bypasses the City's e-mail antivirus scanning software and introduces a risk of malware infection to the City of Rockport network.
- (4) Playing games or gambling is not permissible anytime whether over the Internet or on a stand-alone computer.
- (5) Downloading or receiving via e-mail non-business-related music files or video files.
- (6) Streaming Radio/music/video: An extensive amount of bandwidth is used to access these sites and is not permitted unless being conducted for official City business.
- (7) Downloading, receiving via e-mail, or importing into the City of Rockport via removable media, any type of screen saver, desktop themes, animated characters, etc. Some of the screen savers and desktop themes are not free, and if not purchased by the City, violates the software copyright law. Also, some of these programs can conflict with other programs existing on the computer.
- (8) File downloads from the Internet are not permitted unless specifically authorized by the Network Administrator.
- (9) Do not allow anyone access to your PC via the Internet. WebX applications enable a vendor to take control of your PC through the Internet. Typically, you access a web site, and then join a meeting with the vendor. At that time the vendor can take full control of your PC. This type of access is not permitted without prior consent from the Network Administrator.

(g) Monitoring

Technology Services monitor Internet access. Accessing Internet websites that are deemed unacceptable under this policy will result in disciplinary action

Section 40-93 Email

E-mail is considered a communication of the City of Rockport and, once retained pursuant to subsection C below, will be held to the same standard as formal letters or memorandum. IT (Information Technology) has the ability and authority to monitor employee e-mail activity as it applies to the normal course of business when there are reasonable grounds to do so per the request of proper management and/or human resources staff.

Users should not consider Internet e-mail to be either private or secure and should have no expectation of privacy.

(a) Internet E-Mail

Only employees with a valid network login and e-mail account can send/receive e-mail via the Internet.

(b) IT (Information Technology) Responsibilities

- (1) IT (Information Technology) shall perform an electronic backup of the City's e-mail system each evening.

The backup is a "snapshot" of the data contained on the e-mail server at the end of the business day. The backup is not a copy of all activity that occurred within the e-mail server during the day.

- (2) Information Technology shall maintain the electronic backups of the City's e-mail system for a period not longer than two (2) weeks. The backups of e-mail are NOT to be considered a backup for public records purposes. The purpose of backups is to provide a means of complete server recovery in the case of a system failure. Information Technology has established an e-mail management system that will automatically remove e-mail in the Deleted Items and Sent Items folders (and any subfolders), that are 30 days old, e-mail in the Inbox (and any subfolders) older than 90 days, and e-mail in user created folders in the mailbox older than 90 days.

(c) City Employee Responsibility for E-Mail Records Retention

- (1) The purpose of this policy for the use of electronic communications is to provide guidance to City of Rockport Employees regarding the proper and authorized use of the City's e-mail system in accordance with the requirements of the Public Records Act as well as the requirements of the City's Records Retention Schedule and the laws and regulations governing it, and other laws and regulations that apply to public agency information. E-mails may be subject to public disclosure under the Public Records Act, cooperation with law enforcement, or litigation.

If any employee has any questions regarding the implementation of this Policy, contact either: the City Attorney's office (for legal questions, such as an interpretation under the Public Records Act); the City Clerk's office (regarding the Records Retention Schedule); or Information Technology (regarding any technical issues related to the use of the e-mail system).

- (2) Do not forward a confidential e-mail to any unauthorized recipient. E-mail which contains confidential information may not be disclosed to non-City personnel except by the unless so authorized by the City Manager or his or her designee, or as required under law.
- (3) The e-mail system shall be used for transmission, communication, and organization of City of Rockport business that is transitory. The e-mail system shall not be used for storage of items subject to the City's Records Retention Schedule. The e-mail system is provided by the City of Rockport to employees as a convenient and efficient method of rapidly communicating transitory information in an electronic format. The e-mail system is specifically intended and designed to be a tool for transmission of

information, and not a tool for permanent storage. Since information on the e-mail system is automatically purged, the City shall consider every e-mail to be a preliminary draft, note, or memoranda and not retained in the ordinary course of business.

(d) City Employee Responsibility

- (1) Use e-mail for business contacts.
- (2) Compose e-mail in a professional manner.
- (3) Report changes to information included in the automatically generated e-mail signature in a timely manner.
- (4) Any employee receiving attachments via Internet e-mail shall treat those attachments as they would any unknown file by scanning it with the antivirus software BEFORE opening it. In addition to malware transmitted via e-mail, there is malware that is spread by being embedded in Word, Excel, photo, and PDF files.
- (5) Check incoming e-mail several times per day to ensure a timely response in answering unopened mail messages.
- (6) Clean out Inboxes, Sent Items and Deleted Items folders on a regular basis (weekly). Once the Deleted Items folder has been emptied, there is a seven (7) day period where the e-mail can still be recovered. After seven days, the e-mail cannot be retrieved by the user. If e-mail needs to be restored complete a help desk ticket and Technology Services may restore the e-mail.

(e) Unacceptable Use

- (4) Opening an e-mail attachment, you are not expecting to receive. The most destructive malware to date is e-mail malware hidden as an attachment and malware imported on a flash drive.
- (5) Sending or receiving any sexually oriented messages or images.
- (6) Sending e-mail containing offensive or harassing statements, including comments based on race, color, gender, age, physical or mental disability, religion, national origin, pregnancy, physical attributes, sexual preference, political beliefs, or any other protected status.
- (7) Taking actions that cause interference to the network or to the work of others.
- (8) Sending or forwarding chain e-mail, i.e., messages containing instructions to forward the message to others.
- (9) Sending messages in an attempt to “flood” receiver’s e-mail box.
- (10) Do not use your City of Rockport e-mail address for personal use, such as receiving

notifications for sales ads or mortgage rates. Giving out your City of Rockport e-mail address for personal use could increase the amount of SPAM the City receives. Use your City of Rockport e-mail address for official business only.

- (11) Sending e-mails to more than 100 recipients at a time or repeatedly sending a smaller number of e-mails that accumulate to 100. Behavior such as this makes the City of Rockport appear to be sending SPAM and will cause the City of Rockport to be blacklisted. Removing the City of Rockport from an e-mail blacklist is very time-consuming and results in lost productivity for all employees.

(f) *Use of Address Book*

- (12) Public Groups: Selection of the Public Groups feature will enable the employee to access distribution lists specifically created for use citywide. Information Technology is responsible for the creation of Public Groups.
- (13) Personal Group: Selection of personal group features will enable the employee to create, edit or delete his or her own Personal Groups.
- (14) Resources: Selection of the Resources feature will allow employees to request available Resources such as conference rooms, overhead projectors, and other types of equipment.
- (15) External Address: Selection of this feature is used for external addresses such as the Police Department external addresses are a citywide feature. If multiple employees have a need for an external address, Information Technology can place it in the External Address list.

(g) *Monitoring*

Because all computers, software and telecommunication systems remain the property of the City of Rockport and are for official use only, all records, files, transmissions, passwords and other products or contents of these systems are not confidential and may be reviewed at any time by City of Rockport management or its designee(s). Therefore, employees shall have no expectation of privacy in any documents or other materials they write, receive, store, or send in the use of these systems. All messages created, sent, or retrieved over the Internet are the property of the City of Rockport and may be regarded as public information. The City of Rockport reserves the right to access the contents of any messages sent over its facilities if the City of Rockport believes, in its sole judgment, that it has a business need to do so. All communications, including text and images, can be disclosed to law enforcement or other third parties without prior consent of the sender or the receiver. Therefore, do not put anything into your e-mail messages that you would not want to see on the front page of a newspaper or be required to explain in a court of law.

(h) *SPAM (Unsolicited e-mail)*

Unsolicited e-mail is known as SPAM. Information Technology has a system in place to block most of the SPAM. Approximately 70% of all e-mail entering the City of Rockport network is SPAM. People that create SPAM e-mail constantly devise ways to bypass anti-SPAM systems.

Information Technology makes every effort to block SPAM, but occasionally SPAM e-mail will slip past the system. Notify Information Technology if you consistently receive offensive SPAM; otherwise, just delete any SPAM you may receive.

Section 40-93 Cellphone Policy

(a) Personal cellphones

- (1) While at work, employees are expected to exercise discretion in using personal cellphones. Excessive personal calls during the workday can interfere with employee productivity and be distracting to others. Employees are encouraged to make any personal calls during non-work time when possible and to ensure that friends and family members are aware of City of Rockport policy.
- (2) The City of Rockport will not be liable for the loss of personal cellphones brought into the workplace.
- (3) Despite their benefits, personal cell phones may cause problems in the workplace. Employees who use their cell phones excessively may:
 - i. Get distracted from their work
 - ii. Disturb colleagues by speaking on their phones.
 - iii. Cause security issues from inappropriate use of company-issued equipment or misuse of our company's internet connection.
 - iv. Cause accidents when they illegally use their phones inside company vehicles or near areas where using phones is prohibited.

(b) Company-provided cellphones

Employees in possession of company-owned cellphones are expected to protect the equipment from loss, damage, or theft. Upon resignation or termination of employment, or at any time on request, the employee may be asked to produce the phone for return or inspection. Employee may not change apple ID or android accounts and password without IT permission.

(c) We advise our employees to:

- (4) Use company-issued phones for business purposes only and preserve them in perfect condition.
- (5) If a company provided cell phone is lost, stolen, or damaged, report it to IT immediately.
- (6) Surf the internet, text and talk on the phone only for a few minutes per day.
- (7) Turn off or silence their phones when asked.

- (8) Should not use a personal phone for business texting and or email. Subject to open records request.

(d) *Safety issues for cellphone use*

- (9) All employees are expected to follow applicable local, state, and federal laws and regulations regarding the use of cellphones.
- (10) Employees whose job responsibilities include regular or occasional driving and who are issued a cellphone for City business use are expected to refrain from using their phone while driving, except as may be needed for navigation or when handsfree operation is available. Safety must come before all other concerns. Employees unable to use hands-free operations are encouraged to pull off to the side of the road and safely stop the vehicle before placing or accepting a call. Employees are encouraged to refrain from discussion of complicated or emotional matters and to always keep their eyes on the road while driving. Special care should be taken in situations where there is traffic or inclement weather, or the employee is driving in an unfamiliar area.
- (11) Hands-free equipment will be allowed with City-issued phones to facilitate the provisions of this policy.
- (12)

(e) *We won't allow employees to:*

- (13) Play games on the cell phone during working hours.
- (14) Use their phones for any reason while driving a City vehicle, with the exception of GSP Navigation.
- (15) Use their cell phone's camera or microphone to record confidential information.
- (16) Use their phones in areas where cell use is explicitly prohibited (e.g. laboratories.)
- (17) Download or upload inappropriate, illegal or obscene material on a City-issued cell phone or using the City's server.

Employees violating this policy will be subject to discipline, up to and including termination of employment.

(f) *How to properly use cell phones in the workplace*

- (18) Employees can benefit from using cell phones. They're allowed to use their phones:
 - i. To make business calls.
 - ii. To use productivity apps.

- iii. To check important messages.
- iv. To make brief personal calls.

(g) *Consequences for Violators*

Employees violating this policy will be subject to discipline, up to and including termination of employment.

Section 40-94 Prohibited Applications Policy

(a) *Purpose*

To implement an information technology approach focused on protecting the City's sensitive information and critical infrastructure as required by Chapter 620, Texas Government Code, from technology believed to pose a threat to governmental infrastructure, by prohibiting and preventing the download or use of prohibited technologies on any City-owned or issued electronic device.

(b) *Roles and Responsibilities*

All City of Rockport employees are expected to be familiar with and adhere to the terms of this policy and all sub-policies and procedures.

City employees are prohibited *on any City-issued, owned or leased devices*, from downloading, installing or using the social media service TikTok, or any successor application or service developed, provided, or owned by ByteDance Ltd., such as Tik Tok, or any subsidiary or any prohibited software/applications/developers listed on <https://dir.texas.gov/information-security/prohibited-technologies> or a social media application/service, as referenced in Section 620.005 Texas Government Code. City staff may prohibit the use of TikTok on City devices by limiting network access to the application.

(c) *Exceptions*

Exceptions to the ban on prohibited technologies, as required by state law, may only be approved by the Police Chief or City Manager:

- 1) When the use of prohibited technologies is required for a specific business need, such as enabling criminal investigations or for developing or implementing information security measures.
- 2) Any such exception must detail and include (1) the use of measures to mitigate risks to the security of city information during the use of the covered application; and (2) the documentation of those measures.
- 3) To the extent practicable, exception- based use should only be performed on devices that are not used for other city business and on non-city networks. Cameras and microphones should be disabled on devices for exception-based use.

(d) *Compliance*

Compliance with this policy will be verified through various methods for City-owned, leased, and issued devices, including but not limited to, IT/security system reports. Violations of this policy will result in coaching and repeat offenses may result in disciplinary action up to and including termination of employment.

- 1) If the underlying statute, Texas Government Code §§620.001-.006, is declared unconstitutional, enforceable, or vacated by a court of competent jurisdiction, this policy is void.

DIVISION 8. DISCIPLINE AND APPEALS

Section 40-101

Work Ethic and Disciplinary Policy

- (a) The City expects its employees to accept reasonable and appropriate work assignments willingly and to perform them in a satisfactory manner. Employees are also expected to comply with all rules, regulations and policies pertaining to job performance standards and personal conduct on the job. If an employee fails to perform satisfactorily or if his or her personal conduct is unacceptable, disciplinary action may be taken.
- (b) All reasonable efforts will be made to ensure fairness to the employee. The City will attempt to review and resolve all employee problems as promptly and equitably as possible and at the lowest possible organizational/supervisory level. All employees will be provided with a fair, expedient, objective and consistent means of resolving work-related problems.

Section 40-102

Definitions

- (a) *Ethical Behavior*
Ethical behavior is characterized by honesty, fairness and equity in interpersonal and professional relationships. Ethical behavior respects the dignity, diversity and rights of individuals and groups of people. Other ethical duties include respect to practice, professional service delivery, and research.
- (b) *Unethical Behavior*
Unethical behavior is an action that falls outside of what is considered morally right or proper for a person, a profession, or an industry. Unethical practices may include but are not limited to illegal and dishonest business practices, theft of professional materials, acts that could be considered a conflict of interest, or an individual's behavior that disrespects the dignity, diversity, and rights of other individuals or groups.
- (c) *Gross Misconduct*
Refers to behavior that is intentional, wanton, willful, deliberate, reckless manner, or showing deliberate indifference to an employer's interest by illegal, unethical, or grossly negligent, and that causes significant harm to the company, its customers, or its employees. Some examples of gross misconduct may include theft, violence, sexual harassment, and falsifying company records.
- (d) *Insubordination*
A refusal to obey someone of higher rank, or position in the chain of command. Also known as disobedience, rebellion, willfully ignoring, refusing to follow direction, or defiance.
- (e) *Neglect of duties*
The failure to perform a duty or responsibility associated with a position or careless failure to perform responsibly or failure to act with the ordinary care that a reasonable

person would exercise under the same circumstances

(f) *Disciplinary Actions*

Responds to an employee's misconduct, unsatisfactory performance, and violation of workplace rules. When possible, disciplinary action is intended to correct an employee's behavior.

(g) *Termination or Dismissal*

Refers to the end of an employee's work with a company. Termination may be voluntary, as when a worker leaves of their own accord. Involuntary termination occurs when a company downsizes, makes layoffs, or fires an employee.

Section 40-103 Grounds for Disciplinary Action

The City Manager or Department Head may take disciplinary action against an employee for the following (Note: This list is to illustrate the more common causes and is not intended to be all-inclusive.):

- (1) Illegal, unethical, abusive or unsafe acts.
- (2) Violation of City rules, regulations, policies or procedures.
- (3) Insubordination.
- (4) Leave under false pretenses.
- (5) Neglect of duties.
- (6) Theft.
- (7) Participation in prohibited political activities.
- (8) Unauthorized soliciting while on duty.
- (9) Excessive or unauthorized absenteeism and tardiness.
- (10) Failure to conduct himself or herself in a courteous and proper manner while on duty.
- (11) Falsification of official documents or records.
- (12) Unauthorized use or disclosure of official information.
- (13) Unauthorized or improper use of official authority.

- (14) Possession, use or being under the influence of drugs or alcoholic beverages not prescribed by a physician while on duty.
- (15) Damaging City equipment, tools, machines and/or property.
- (16) Wasting materials and supplies.
- (17) Carelessness, recklessness and/or engaging in horseplay.
- (18) Immoral conduct or indecency.
- (19) Abuse of illness, injury, disability or other benefits.
- (20) Any threat of or actual physical attack on any supervisor or coworker.
- (21) Failure to properly document time and attendance records.
- (22) Sexual harassment.

Section 40-104 Types of Disciplinary Action

- (a) Formal disciplinary action taken shall be consistent with the nature of the deficiency or infraction involved and the record of the employee. Formal disciplinary action shall include written reprimand, suspension, reduction in pay, demotion and dismissal. Any of the foregoing types of formal disciplinary action may be invoked for a particular deficiency or the employee may be warned at any time that he or she may be dismissed or otherwise disciplined for further unsatisfactory performance and/or conduct. Nothing here shall prohibit the administration of informal disciplinary action, such as oral reprimands. Informal disciplinary action may be documented in the personnel file the City maintains on an employee at the discretion of the Department Head or the City Manager. All disciplinary action should be documented in writing, including date and time of disciplinary action. The written record should then be stored by the department and in the Human Resources personnel file for future reference in the case of further disciplinary action or dismissal.
- (b) Department Heads are encouraged to consider the following as normal disciplinary transitional steps in situations requiring disciplinary action:
 - (1) Verbal Warnings, which shall be noted in the personnel file the City maintains on each employee.
 - (2) Written Reprimands, which the Department Head must transmit through the City Manager or Human Resources before placing in the personnel file the City maintains on each employee.
 - (3) Suspension Without Pay or Reduction in Pay.
 - (4) Demotion and/or Dismissal.

- (c) Nothing herein is intended to negate the authority and responsibilities of a supervisor to take the disciplinary action they believe appropriate based upon the relevant circumstances, nor prohibit the supervisor from immediately discharging an employee for the first instance of gross misconduct.

Section 40-105 **Written Reprimand**

In the interest of good discipline, an employee may be formally reprimanded in writing. The reprimand shall describe the deficiency or infraction involved and shall state the likely consequences of further unsatisfactory performance and/or conduct. The employee will be informed of the written reprimand and given an opportunity to make written comments. The original of the reprimand shall be sent to Human Resources to be kept in the personnel file the City maintains on the employee.

Section 40-106 **Suspension**

An employee may be suspended with or without pay, depending upon the circumstances and severity of the offense. In the interest of good discipline, an employee may be suspended without pay for up to no more than thirty-(30) calendar days in any one (1) calendar year. A notice of suspension must be given to the employee which describes the deficiency or infraction involved and which states the likely consequence of further unsatisfactory performance and/or conduct. The suspension shall be permanently noted in the personnel file the City maintains on the employee.

When an employee is under investigation for a crime or official misconduct or is awaiting hearing or trial in a criminal matter, he or she may be suspended with or without pay for the duration of the proceedings when such suspension would be in the best interests of the City and the public. If the investigation or proceedings clear the employee, he or she shall be eligible for reinstatement with full pay and benefits restored.

Section 40-107 **Reduction in Pay**

In the interest of good discipline, an employee's pay may be reduced provided it is done within reason. A notice of reduction must be given to the employee which describes the deficiency or infraction involved and which states the likely consequences of further unsatisfactory performance and/or conduct. The reduction shall be permanently noted in the personnel file the City maintains on each employee, but the employee shall not be disqualified from consideration for later pay increases.

Section 40-108 **Disciplinary Demotion and Dismissal**

- (a) In the interest of good discipline, an employee may be demoted. A notice of demotion must be given to the employee which describes the deficiency or infraction involved and which states the likely consequences of further unsatisfactory performance and/or conduct. The demotion shall be permanently noted in the personnel file the City maintains on each employee, but the employee shall not be disqualified from condition for later advancement.
- (b) An employee may also be dismissed from the City employment in the interest of good discipline. A notice of dismissal must be given to the employee, which describes the deficiency or infraction involved.

Section 40-109**Appeals of Disciplinary Action**

- (a) An employee may appeal any disciplinary action taken against him or her if he or she feels that he or she has been disciplined unfairly, too harshly, or inappropriately; provided, it is appealed in writing to the City Manager within five (5) working days following such action. Such action may be stayed pending decision on the appeal or may take effect at any time after issuance of the notice as determined by the disciplinary authority. The City Manager, after careful investigation of the facts, shall have broad authority to approve, disapprove, modify or rescind any disciplinary actions taken or proposed. The City Manager shall attempt to resolve the issue within ten (10) calendar days. The City Manager's decision may be appealed in writing to the City Council; provided, notice of intention to appeal is made in writing within five (5) days following the City Manager's decision. There shall be no right of discrimination prohibited by law or these rules.

Section 40-109**Complaints Against Council Appointed Employees**

- a) Any official complaint filed against a City Council Appointee to include the City Manager, City Secretary, or appointed Judge by an employee must be made to the Director of Human Resources.
- b) The Director of Human Resources shall then inform the mayor of the complaint that has been filed.
- c) The complaint shall then be addressed to the City Council in the next Council meeting in executive session.
- d) If necessary, Council will work with the necessary parties to investigate the matter dependent up on the severity of the accusation. These parties may include but are not limited to the Director of Human Resources, the appointed Human Resources Attorney, and the Chief of Police.
- e) Upon the completion of the investigation, Council will decide if any action is to be taken.

DIVISION 9. TRAVEL AND TRAINING

Section 40-131 General.

- (a) It is the policy of the City of Rockport to ensure that all employees are given ample opportunity, within the parameters established in the annual budget, to obtain the training and education needed to be up-to-date in the skills and knowledge required to perform their assigned tasks effectively and efficiently.
- (b) It is also the policy of the City to ensure that it is fully protected from any allegation of negligent retention through careful attention and adherence to the training standards and requirements associated with the positions filled by the employees of the City of Rockport.

Section 40-132 Official Training Record.

Department Heads shall maintain the official training record of all employees of their departments. Duplicate copies of transcripts, certificates and licenses may be placed in the appropriate personnel record the City maintains on each employee. Under no circumstances will an employee be asked or directed to perform any task or skill for which he does not hold the state or federally required license or certification.

Section 40-133 Annual Training Plan.

In order to ensure that all required licenses and certificates are properly maintained, Department Heads are encouraged to develop an annual training plan for all employees of the department. When developing this plan, the following priorities should be utilized:

- (1) Mandatory training to retain a federal or state-required license or certificate already held by an employee;
- (2) Training required to qualify additional employees for a state required license or certificate;
- (3) Training required to upgrade the level of a license or certificate held by an employee;
- (4) Training recognized by the State of Texas or by a reputable professional association in which an employee may earn "Continuing Education Credits" (CEUs) or some other commonly recognized level of achievement and knowledge;
- (5) Training that will directly benefit the employee and the city in the completion of his or her current job assignment;

- (6) Training that will benefit the professional development and growth of the employee.

Section 40-134 Required Training and Requirements.

Paid appointees of the City Council shall be responsible for completing any required training associated with their positions. Failure to do so shall result in disqualification of the appointee to remain in the position or to be reappointed to the position. The City Secretary shall inform the City Manager of the required training for all appointed positions and shall maintain a copy of all appointee's training certificates and license. The City Secretary shall also notify the Council when an appointee has failed to complete any required training in a timely manner.

Section 40-135 Training Expenses.

- (a) Normally, employees and appointees will not be expected to pay for the training needed to maintain a state required license or certificate. Update or renewal training will be underwritten by the City as permitted within the parameters of the adopted budget, as amended. Generally, the City shall pay for:
 - (1) Tuition or conference registration fees;
 - (2) Housing and meals for off-site training and
 - (3) Travel expenses to/from the training site.

If any employee wishes to attend a training session for which the City cannot, or will not, pay all or a portion of the costs, the employee may request to take administrative leave or leave without pay. The employee's Department Head shall approve or deny these requests.



DIVISION 10. SEVERE WEATHER, AND EMERGENCY/NATURAL DISASTERS

Section 40-140

Definitions

- (a) *Severe Weather.* Any dangerous meteorological phenomenon with the potential to cause damage, serious work disruption, or loss of human life.
- (b) *Emergency Declaration.* Issued due to an emergency situation or natural disaster that calls for the protection of lives, property, public health, and safety, to lessen or avert the threat of catastrophe. Can be issued by City Mayor, County Judge, Governor or U.S. President. Such declaration activates the City's pre-established emergency provisions. The Governor's and Presidential Disaster Declaration are pre-requisites for state or federal grant assistance.
- (c) *Emergency Situation.* An urgent, unexpected, and usually dangerous situation that poses an immediate risk to health, life, property, or environment and requires immediate action.
- (d) *Natural Disaster.* Extreme sudden events caused by environmental factors including by not limited to storms, floods, drought, fires, and heatwaves.
- (e) *Hazardous Travel Conditions.* Conditions that adversely affect road traction, visibility, or safe passage normally caused by severe or hazardous weather.
- (f) *Major Disaster.* Any event including but not limited to hurricanes, tornadoes, floods, ice storms, earthquakes, fires, chemical accidents including hazardous materials spills, explosions, or any other disaster which is officially declared as such and greatly effect or threatens the safety of Rockport's citizens for an extended period of time.
- (g) *Actual Hours Worked:* Hours that are physically worked by an employee during an event whether it be on site or working remotely.
- (h) *On Stand by status:* Employee is required to be "by their phone" at all times leading up to, during, and possibly after an emergency event. This employee must be work ready, and available at all times during the event. This also means making sure that they are not mentally or physically impaired due to alcohol or drugs at all times. This employee may be on site working, or working remotely during the event. This usually applies to employees in leadership positions, but can be an employee in an Essential Services Position approved by the City Manager to be on stand by during the event. The City Manager will establish when "stand by status" will begin and when it will end.
- (i) *On-call Status:* Employees assigned as On-call duty during an event, shall be treated as normal "on call" employees. These employees will be paid as they normally would when on call. Employees who are assigned "on call" status must notify supervisors of locations where they can be contacted. Employees scheduled to be on call are expected to be fit for duty upon reporting to work.

Section 40-141

Policy

Severe Weather or Natural Disasters. The following guidelines shall apply to absences resulting from severe weather or natural disasters:

- (1) *Adverse Working Conditions Due to Weather or Hazardous Travel Conditions.* City Departments will remain open if possible. If the adverse weather or travel conditions significantly impair the productivity of a Department or the City, the City Manager may make the decision to allow employees to go home, or to close City offices.
 - a. *Voluntary:* Employees that voluntarily choose to go home for the day or not come into work due to adverse weather conditions, must select to be charged compensative time, vacation or excused leave without pay for the remainder of the workday, unless otherwise directed by the City Manager.
 - b. *Non-voluntary:* If the City Manager makes the decision to send employees home and shut down City offices due to an emergency, severe weather event, or natural disaster all full-time employees will be paid eight (8) hours for each regular workday, until the order is issued to resume office hours. These hours will count toward hours worked. Employees required to come in and work, or who are called out to work, will also be paid for any actual hours worked, and will be paid at one and a half times for any actual hours worked over 40 in a 7-day period (80 hours in a 14-day period for Police Officers).

Employee Determination of Hazardous Travel Conditions. If an individual employee believes it is too hazardous to make it to work due to weather or hazardous travel conditions, the Department Head has the option of charging the day(s) as compensative time, vacation or an excused absence without pay

- (2) *Closing Due to an Evacuation Order.* When an evacuation has been ordered, all non-emergency personnel will be released and encouraged to evacuate. Only those employees who are assigned essential functions necessary for the general public's welfare during an emergency situation will be required to work. Employees designated by their Department Head as Emergency Services Personnel will not be authorized to evacuate should an evacuation order be issued in accordance with Chapter 22 of the Texas Labor Code. Every effort will be made to arrange shelter for those employees required to remain. Shifts may be established according to departmental needs at the discretion of the Department Head. Employees who are assigned "on call" status must notify supervisors of locations where they can be contacted.
 - a. Employees designated by their Department Head as Emergency Service Personnel will be allowed to secure their families and property as scheduled by the Department Head, or designee before returning to duty.
- (3) *Return-to-Duty Phase.* By reporting to work as directed, each employee meets their responsibility to work with other City employees as a team in restoring the community to normal service levels following a disaster. Nonessential Service Employees who evacuated will report to work at the start of the next normal shift, or sooner as directed, following the announcement of the Return-to-Duty Phase by City officials. If an employee has received no instruction on when to return to work, he or she shall return to work at the start of his or her next normal shift upon announcement by City officials of the Return-to-Duty Phase. A telephone number will be established or announced prior to

evacuation for all employees to call for Return-to-Duty information. If an employee has an impediment to being able to return when directed, they should contact their Department Head for further instructions.

(1) *Violation of this Policy.* An employee violates this Policy by:

- a) Refusing to perform assigned duties required by this Policy or to obey any order or directive made or given by a supervisor; or
- b) Failing to report for duty as directed during any applicable phase of this Policy; or
- c) Failure to abide by City Policy, departmental rules or regulations; or
- d) Any conduct that interferes with or might reasonably be expected to interfere with the proper and orderly conduct of the City's business or brings, or might reasonably be expected to bring, discredit on the public service.
- e) Consequences for Violation of this Policy. A violation of this Policy shall be considered a violation of City Policy, departmental rules, or regulations for which disciplinary action up to and including termination may be taken by the applicable Department Head, with the concurrence of the City Manager.

Section 40-142

Emergency and Disaster Pay

Exempt and Nonexempt Employees will be paid as follows unless otherwise directed by the City Manager or City Council.

(1) *Nonexempt employees.*

- a) All actual hours worked by nonexempt employees over 40 hours in a 7-day work period (80 hours in a 14 day period for Police Officers) shall be compensated at the overtime rate of one and one-half of the employee's hourly rate as provided in the City's overtime policy.

Whether overtime will be paid or granted as compensatory time will be determined and communicated to employees by their Department Head and/or supervisor prior to the overtime being worked.

- b) Unless notified in advance, City employees holding Essential Services Position will be required to report to work in emergency conditions including hurricanes, tornadoes, floods, ice storms, earthquakes, fires, chemical accidents including hazardous materials spills or any other disaster which threatens the safety of Rockport's citizens. Nonexempt employees who report under these circumstances, who are subsequently released from duty due to emergency conditions, shall be paid a minimum of three (3) hours at the regular rate of pay, or for the number of actual hours worked, whichever is greater, and allowed to use accrued vacation, available personal leave, if any or leave

without pay if paid leave is exhausted, to cover work hours missed during that work period, unless otherwise directed by the City Manager or City Council.

- c) Non- exempt employees sent home and designated as On-call shall be treated as normal “on call” employees. Employees who are assigned “on call” status must notify supervisors of locations where they can be contacted.
- d) Nonexempt employees may request that accrued compensatory time be used for this purpose.

(2) *Exempt Employees.*


- a) Upon activation of emergency situation through written or verbal notification by the City Manager, exempt employees who exceed 40 actual hours of work in a 7-day work period, as defined in the policy, shall be eligible for overtime at the rate of one and one-half time of the employee’s hourly rate or by compensatory time at the rate of one and one-half hours for each hour actually worked over 40 hours in a 7-day work period. Compensatory time earned is to be scheduled as soon as practical in each department. This provision for exempt employees will be enacted upon written notification to department heads by the City Manager.
- (3) Employees required to be on “on standby” status for the entirety of the event will be paid for all actual hours they are designated under that status.
- a) Department Heads will be considered in “on standby” status for the duration of the event until released by the City Manager. Department Heads that choose to evacuate are to remain available by phone and email for the duration of the event and stay in contact with their staff. Any Department Head that was considered off duty, was unreachable, or unavailable during the event, will not be considered to have been in “on standby” status and will be paid their regular salary based on hours worked.
- (4) *Contract workers.* Contracted workers will be considered case by case based on their role during the event. If it is determined that they were considered essential personnel, and required to work extra hours during the event, the City Manager may approve additional pay for their work during the event.
- (5) Pay under Special Emergency Situations or Natural Disaster Declarations
- a) If an emergency situation or natural disaster that effects the City is declared a major disaster, the City Manager, or Mayor may issue an order to pay personnel required to work during the event, and recovery process a rate up to but not to exceed double time and one-half for actual hours worked until the City Manager, or Mayor rescinds the pay order.

Section 40-143**Department Policy Requirement**

- (1) All departments are required to compose a Emergency/Disaster Policy and procedure for their department and staff, and submit it to the City Manager. This policy should be reviewed annually and updated as necessary.
- (2) All departments should require each employee to designate if they are able to work during an emergency or disaster, including the following information:
 - (a) Availability to work during a disaster.
 - (b) Emergency contact information
 - (c) Other phone numbers where they can be reached.

Section 40-144**Subject to Change**

The above policies are subject to change dependent upon the nature or the severity of the emergency or disaster. The City reserves the right to interpret, change, rescind or depart from this policy in whole or in part without notice. Any changes must be made by the City Manager, or Mayor, and must be stated in writing to be included with the records of the event.



DIVISION 11. POST EMPLOYMENT

Section 40-151

Retirement

- (a) The City shall pay for retiree health insurance based on the number of years of service to the citizens of Rockport, as well as their age at the time of retirement. Retiree insurance will be broken into two categories, Pre-65 and Post 65. .

(1) Pre-65 Retirees:

- (a) Pre 65 retiree insurance will be paid at a percentage based on the number of years of continuous service to the City of Rockport as seen below.

Continuous Service to City	Percentage of Premium paid by City
Less than 10 years' service	0%
11 years' service	50%
12 years' service	55%
13 years' service	60%
14 years' service	65%
15 years' service	75%
16 years' service	80%
17 years' service	85%
18 years' service	90%
19 years' service	95%
20+ years' service	100%

(2) Post-65 Retiree's:

- (a) The city of Rockport will pay a contribution of \$268.08 a month of the post-65 retiree supplement plan offered by the City, as adopted by City council Ordinance 1458 which froze the amount paid by the City toward post-65 retiree insurance.
- (b) Retirees that choose to forfeit participation in City retiree insurance coverage either at time of retirement or at a later date will not be eligible to re-elect participation following termination of coverage.
- (c) Eligibility for retirement shall be predicated upon the criteria established by the Texas Municipal Retirement System.

- (d) The City elects to provide health benefits coverage to its retirees through their current insurance carrier for Pre-and Post- 65 insurance.
- (e) The City adopts the following benefit plans to be provided to its retirees through the Texas Municipal League Intergovernmental Employee Benefits Pool:
 - (1) The same medical plan(s) offered to active employees until their 65th birthday.
 - (2) Retiree Basic life insurance with the current life insurance carrier of an amount of \$2000.
 - (3) Retiree Optional Basic Life – the maximum policy amount offered by the current life insurance carrier.
- (f) Final payments for vacation and sick leave are outlined in Division 7 of this Chapter.
- (g) If at the time of retirement the stability payments for that fiscal year have not been made, the stability pay due to the retiree shall be included with his last paycheck.

Section 40-152 **Recommendations**

All requests for references shall be referred to the Human Resources Department. The Human Resources Department may refer such requests to the City Manager if necessary. The only information that will be provided by the City to any outside source shall be:

- (1) Beginning and ending dates of service.
- (2) Last position held with the City.

Section 40-153 **Closing of Records**

Upon retirement, resignation or termination of an employee, the Human Resources Department shall combine scan personnel records of the individual into the digital personnel record, and destroy any hard copies in accordance with the Records Retention Schedules of the City of Rockport, and State of Texas.

DIVISION 12. REPORTS AND RECORDS

Section 40-171

Reports

- (a) Required reports are identified throughout this Manual. It is the intent of this Policy Manual to keep the number of reports to an absolute minimum. However, it is important to the employee and to the City that accurate documentation to be kept on personnel-related matters.
- (b) Listed below are the reports cited throughout this Manual:
 - (1) Organization Chart.
 - (2) Staffing Level.
 - (3) Training Plan.
 - (4) Summary Memo Upon Hiring a New Employee.
 - (5) Report of Safety/Accident Prevention Training.
 - (6) Accident/Injury Investigation Report.
 - (7) Report of Alleged/Actual Violation of Civil Rights.
 - (8) Report of Alleged/Actual Violation of Fair Labor Standards.
 - (9) Report of a Formal Conference with a Department Head or the City Manager.
 - (10) Report of a Grievance Panel.
 - (11) Monthly Report of Vacation and Sick Leave Taken.
 - (12) Memorandum for Record – Pre-Termination Conference.
- (c) In addition to the reports cited above, the Personnel and Risk Manager and Finance Department staff shall be responsible for compiling, preparing and submitting all personnel related reports required by the State of Texas, the City's insurance carriers or its affiliates and the Federal Government.

Section 40-172

Records

- (a) Employee and personnel records are as important as the Reports cited throughout this Manual and (re)listed above. Different types of records are also cited throughout this Manual. The intent is to retain the essential information in the easiest and most accurate manner.
- (b) The records mentioned in this Manual include:
 - (1) Training Records.
 - (2) Licenses.
 - (3) Certificates.
 - (4) Vacation Records.
 - (5) Sick Leave Records.
 - (6) Time Sheets.

(7) Records of Formal Disciplinary Action.

Section 40-173 **Retention of Personnel Records**

Unless otherwise specified by law, personnel records will be kept for a period of three years after the end of employment. At the end of the three-year period, the personnel records will be removed and destroyed.

Adopted on April 23, 2002.

Amended Section 40-63(3) on December 14, 2004

Amended Section 40-65(a)(2) on August 28, 2007

Amended Section 40-61(b); 40-61(c); 40-65(a)(1) on September 27, 2011

ATTEST:

/s/ Irma G. Parker, City Secretary

Amended Section 40-43 on January 18, 2019

Amended Section 40-62(e) on January 14, 2020

ATTEST:

/s/ Teresa Valdez, City Secretary

Amended Entire Handbook, all Sections and Divisions on March 11, 2025

ATTEST:

/s/ Shelley Goodwin, City Secretary

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Z

Appendix A:

Position Requisition Preparation and Approval Process Policy



Human Resources Department

Scope:

This policy applies to all departments and all positions, including regular full-time, regular part-time, and all temporary positions.

General Procedure:

Directors are required to fill out and complete the Personnel Requisition form, including all approval signatures, whenever a department has a need:

1. To create or fill a new position, or
2. Fill an existing position with revisions to the Job Description, or
3. Refill an existing position when an employee is terminated or leaves employment, or
4. When a temporary employee is needed, or
5. When a position is to be frozen because of a budget constraint, or other circumstance.

Approval Process:

The requisition approval process is completed as follows:

1. Department Request:
 - Department directors will fill out the “Department Request” section indicating the position that needs to be filled and all the details associated with it, or if a position is being placed on Freeze (see Freeze Procedure).
 - This will also indicate if this is a current position or a new position that needs to be approved by council, as well as expected budget impact.
 - The requisition should also include a copy of the current job description or amended job description if changes are being made.
 - Once the department has completed their part (including all approval signatures), the form should then be submitted either in hard copy or electronically to Finance for review.
2. Finance Review:
 - The Finance Department will complete the “Finance Review” section and review the request for “Max Budgeted Salary Available”.
 - If a request indicates that the position is being put on Freeze, or is being released from Freeze, Finance will mark the appropriate box, i.e. Acknowledging Freeze Placed, or Acknowledging Freeze Released.
 - After review and all approval signatures are completed, the Finance Department will then forward the requisition to Human Resources either in hard copy or electronically, for final review and processing.
3. Human Resource (HR) Review:
 - Human Resources will complete the “Human Resources Review” section, making certain the request is consistent with the job description as described. If needed, HR will make recommended changes and work with the department to revise the request.

- Once approval is finalized, the department will receive an email from HR with a copy of the request and posting details. It is the department director's responsibility to check the information is correct and contact HR to make any changes.
- HR will then proceed with posting and advertisement of the position as normal.
- If a position is placed on Freeze, HR will keep the documentation on file until the Freeze is released and a new request to fill the position is received.

Freeze Procedure:

If a position is to be frozen because of a budget constraint or other circumstance, the department director will need to fill out the Personnel Requisition form and indicate "Freeze" and the effective date in the Department Request section, and then forward as normal to Finance. Finance will then acknowledge freeze of the position, and forward to Human Resources. HR will then indicate on the form that the position is under a hiring freeze and email a copy to the department director.

Once the department is ready to unfreeze the position, a new request will then need to be submitted indicating "Unfreeze" and the effective date in the Department Request section. Finance will then acknowledge the release, and HR will then proceed as normal once the request is approved.

Note:

The budgeting process for new positions happens each year and is adopted by Council in September for the following fiscal year. All new positions should go through the normal annual budgeting process for planning and approval. If a department encounters a need for a new position outside of these processes, additional written justifications and approvals will need to be submitted with the Position Requisition form for review by the City Manager. If approved by the City Manager, the request will then go before City council for approval before it can be filled.

If a position is requested without the Personnel Requisition Form, Human Resources will require the department to complete the form before proceeding. Human Resources may not start the candidate sourcing process for any position until all documentation and approval signatures have been received.

Appendix B:

List of Current Council Approved Certification & Education Pay



Human Resources Department

<u>List of Approved Certifications</u>	<u>Approved Pay Per Month</u>
EDUCATION COMPENSATION	
Associate Degree	\$250.00
Bachelor's Degree	\$350.00
Master's Degree	\$450.00
CITY MANAGER	
Certified Public Manager	\$300.00
Administrative Assistant Certification	\$100.00
POLICE DEPARTMENT CERTIFICATION/LICENSES	
State Certified Fire Marshall	\$150.00
FBI National Academy Certificate	\$150.00
Administrative Assistant Certification	\$100.00
Intermediate Police Certificate	\$100.00
Advanced Police Certificate	\$200.00
Master Police Certificate	\$300.00
School of Police Supervision	\$100.00
Law Enforcement Management Institute of Texas (LEMIT)	\$125.00
Field Training Officer (FTO) (only 6 at a time: 1 Sup, 5 Officers)	\$50.00
Breath Test Operator	\$30.00
Physical Fitness (Top tier DPS standards)	\$50.00
Critical Incident Stress Management (CISM) Certificate	\$30.00
Advanced Marine Safety Officer	\$50.00
Certified Records Analyst	\$100.00
Certified Records Manager	\$150.00
TELECOMMUNICATIONS OPERATOR CERTIFICATION/LICENSES	
Intermediate TCOLE Certificate	\$100.00
Advanced TCOLE Certificate	\$200.00
Master TCOLE Certificate	\$300.00
Communications Training Officer (CTO) (to be paid while actively training)	\$100.00
Critical Incident Stress Management (CISM) Certificate	\$30.00

PUBLIC WORKS DEPARTMENT CERTIFICATION/LICENSES	
------------------------------------------------	--

Class D Water Operator	\$45.00
Class C Water Operator	\$175.00
Class B Water Operator	\$260.00
Class A Water Operator	\$350.00
Class D Wastewater Operator	\$45.00
Class C Wastewater Operator	\$175.00
Class B Wastewater Operator	\$260.00
Class A Wastewater Operator	\$350.00
Wastewater Collection Operator I	\$45.00
Wastewater Collection Operator II	\$175.00
Wastewater Collection Operator III	\$260.00
Backflow Prevention Assembly Tester Certification	\$45.00
Stormwater Inspector	\$45.00
Hazmat Certification	\$45.00
CSI Certification	\$45.00
Herbicide/Pesticide Certification	\$45.00
Commercial Driver's License	\$45.00
Administrative Assistant Certification	\$100.00

PARKS DEPARTMENT CERTIFICATION/LICENSES	
-----------------------------------------	--

Herbicide/Pesticide Certification	\$45.00
Master Gardner's Certification	\$45.00
Master Naturalist's Certification	\$45.00
Commercial Driver's License	\$45.00
Administrative Assistant Certification	\$100.00
Certified Water or Waterfront Lifeguard Instructor	\$45.00
Certified Water or Waterfront Lifeguard Instructor Trainer	\$45.00
Certified Water or Waterfront Safety Instructor	\$45.00
Certified Water or Waterfront Safety Instructor Trainer	\$45.00
Certified First Aid/CPR/AED Instructor	\$45.00
Certified First Aid/CPR/AED Instructor Trainer	\$45.00
Certified Aquatic Facility (AFO) Operator	\$45.00
Certified Pool Operator	\$45.00
Certified Festival & Event Associate (CFEA)	\$45.00
Certified Festival & Event Executive (CFEE)	\$45.00

BUILDING AND DEVELOPMENT, INSPECTION CERTIFICATION/LICENSES	
-------------------------------------------------------------	--

ICC Certified Building Official	\$100.00
ICC Certified Mechanical Inspector	\$45.00
ICC Certified Residential Electrical Inspector	\$45.00

ICC Certified Commercial Electrical Inspector	\$45.00
ICC Certified Commercial Energy Plans Inspector	\$45.00
TFMA Certified Floodplain Manager	\$45.00
State Licensed Plumbing Inspector	\$45.00
State Licensed Master Electrician	\$45.00
State Licensed HVAC Contractor	\$45.00
Administrative Assistant Certification	\$100.00
CODE ENFORCEMENT CERTIFICATION/LICENSES	
State Certified Code Enforcement Officer	\$100.00
CITY SECRETARY DEPARTMENT CERTIFICATION/LICENSES	
City Secretary TRMC Certification	\$150.00
City Secretary CMC IIMC Certification	\$125.00
City Secretary MMC IIMC Certification	\$150.00
NAGARA	\$50.00
All other Records Management Certification CRM or CRA or ICRM or IGP	\$150.00
HUMAN RESOURCES DEPARTMENT CERTIFICATION/LICENSES	
Human Resources Certification – SHRM-CP	\$ 100.00
Human Resources Certification – SHRM-SCP	\$200.00
IPMA-HR Certified Professional/SR Certified Pro.	\$175.00
Administrative Assistant Certification	\$100.00
MUNICIPAL COURT DEPARTMENT CERTIFICATION/LICENSES	
Municipal Court Clerk Level 1	\$45.00
Municipal Court Clerk Level 2	\$90.00
Municipal Court Clerk Level 3	\$135.00
FLEET DEPARTMENT	
Underground Storage Tank Operator	\$45.00
INFORMATION TECHNOLOGY	
Microsoft Certification	\$25.00
Microsoft 365 Certified: Fundamentals	\$25.00
Microsoft 365 Certified Security Administrator Assoc.	\$25.00
Microsoft 365 Certified Teams Administrator Assoc.	\$25.00
MTA: Windows Server Administration Fundamentals	\$25.00
MTA: Security Fundamentals	\$25.00

MTA: Networking Fundamentals	\$25.00
MTA: Windows Operating System Fundamentals	\$25.00
MTA: Mobility and Device Fundamentals	\$25.00
NSE3: Cybersecurity Awareness Certification	\$25.00
A+ Certification	\$25.00
Network Plus	\$50.00
Microsoft 365 Certified: Modern Desktop Administrator Assoc.	\$50.00
NSE6: Cybersecurity Technical Certification	\$50.00
CCENT (Cisco Certified Entry Networking Technician)	\$65.00
Microsoft 365 Certified Messaging Administrator Assoc.	\$75.00
Microsoft 365 Certified Teamwork Administrator Assoc.	\$75.00
Security + Certification	\$100.00
MCSA: Windows Server 2016	\$100.00
Microsoft 365 Certified: Enterprise Administrator Expert	\$100.00
NSE7: Cybersecurity Advanced Certification	\$100.00
CCNA	\$100.00
MCSE Productivity Solutions Expert	\$125.00
MCSE: Core Infrastructure	\$125.00
NSE8: Cybersecurity Expert Certification	\$125.00
CCNP	\$200.00
CCIE	\$300.00
GAS DEPARTMENT	
Operator – Level I	\$45.00
Operator – Level II	\$100.00
Operator – Level III	\$150.00

Appendix C:

First Responders Mental Health Leave Policy



Human Resources Department

Scope:

The purpose of this policy is (1) provide clear and objective guidelines establishing the circumstances under which a Peace Officer and full-time Telecommunicator is granted and may use mental health leave; (2) entitle a Peace Officer and Telecommunicators to mental health leave without a deduction in salary or other compensation; (3) enumerate the number of mental health leave days available to a Peace Officer and Telecommunicators; and (4) detail the level of anonymity for a Peace Officer/Telecommunicator who takes mental health leave.

Definitions:

- 1) Mental Health leave – administrative leave with pay granted in response to a traumatic event that occurred in the scope of the peace officer’s employment.
- 2) Mental Health Professional – a licensed social or mental health worker, counselor, psychotherapist, psychologist or psychiatrist.
- 3) “Peace Officer” means police officers regardless of rank or position licensed by the Texas Commission on Law Enforcement and employed by the city.
- 4) Telecommunicator: *a person (employee) that receives calls and obtains information from people in need of assistance. They are also called 911 or public safety dispatchers.*
- 5) Traumatic event – an event which occurs in the peace officer(s) and Telecommunicators scope of employment when the officer is involved in the response to, or investigation of, an event that causes the officer to experience unusually strong emotional reactions or feelings which have the potential to interfere with their ability to function during or after the incident.

Trauma events may include, but are not limited to, the following:

- a) Major disasters which may include response to weather related events involving multiple casualties; or explosion with multiple casualties; or search and recovery missions involving multiple casualties;
- b) Incidents involving multiple casualties which may include shootings or traffic accidents;
- c) Line of duty death or suicide of a department member;
- d) Death of a child resulting from violence or neglect;
- e) Officer(s) involved shooting of a person.

(Ref. Texas Local Gov’t Code 180.008(a); 143.003(4)(A); Tex. Health & Safety Code 121.021; Tex. Code Crim. Pro. Art. 2.12.)

Mental Health Leave:

A peace officer/telecommunicator of the Department may request up to three (3) working days of paid leave under this policy following a Traumatic Event. During the duration of Mental Health Leave, the peace officer/telecommunicator will not face a deduction in salary or other

compensation, and the peace officer/telecommunicator will not face any change in other benefits, including other leave accrual.

The officer/telecommunicator shall not be permitted to take more than a total of nine (9) working days of Mental Health Leave in a calendar year.

Requesting Mental Health Leave:

An officer or full-time Telecommunicator directly involved in a traumatic event may request the use of mental health leave. The request shall be made in writing to the Director of the Department (Chief of Police, or Director of the Communications Center). The request may be approved by the Director, City Manager, or Human Resources. The request shall be treated as a priority matter and a decision on the granting of leave shall be made no later than 24 hours following the submission of the request. The request shall be granted unless the chain of command can articulate specific compelling reasons to deny granting the leave. Once granted, a copy of the request and approval shall be forwarded to the Human Resources department to be kept in the employee's personnel file.

A supervisor or coworker who becomes aware of behavioral changes in an officer directly involved in a traumatic event should suggest to the officer that he or she seek mental health leave and the assistance of a mental health professional.

Extensions and Additional Leave:

To the extent prescribed in writing by a Mental Health Professional, the Department shall grant extensions of a peace officer/telecommunicator's Mental Health Leave for up to three (3) working days at a time. Requests for extensions of Mental Health Leave should be submitted in same manner as the original request, but should require documentation from a Mental Health Professional justifying the need for the extension. An additional extension may be granted, but in no event shall the peace officer/telecommunicator be permitted to take more than two (2) extensions for a particular Traumatic Event.

To the extent an officer/telecommunicator desires to take additional leave outside of the Mental Health Leave provided by this Policy, the officer/telecommunicator may use additional paid or unpaid leave under the City's and/or Department's policies. To the extent an officer/telecommunicator needs additional assistance with mental health due to a Traumatic Event, the City encourages the officer to contact Human Resources to seek information on available assistance programs.

Nothing in this Policy shall limit an officer/telecommunicator's ability to utilize leave under the Family and Medical Leave Act (FMLA), to request accommodations for a disability under the Americans with Disabilities Act (ADA), or to utilize any other benefits provided to him or her under the City's or Department's policies.

Benefits During Leave:

Patrol Officers and Telecommunicators that are on Mental Health Leave will continue to be eligible for all employment benefits and compensation, including continuing their leave accrual, pension benefits, and eligibility for health benefit plan benefits for the duration of the leave. While on paid Mental Health Leave, the First Responders will not be required to use any other paid leave type (vacation, sick, holiday, compensatory time). Mental Health Leave shall not be counted at time worked toward over-time calculations.

An employee on Mental Health Leave may not work a second job, including self-employment or participate in volunteer work.

Confidentiality of Request:

The City and Department will keep requests to take Mental Health Leave, whether granted or not, and any medical information related to such request confidential to the extent allowed by law and separate from the officer/telecommunicator's general personnel file. Anonymity of the information that is otherwise public or necessary to carry out the City's and/or Department's duties under the law cannot be guaranteed. Any officer/telecommunicator or supervisor who becomes aware of behavioral changes and suggests the officer seek mental health leave shall not discuss that matter with any third party. Any breach of this confidentiality shall be grounds for discipline.

Return from Mental Health Leave:

Following use of Mental Health Leave, a peace officer/telecommunicator shall return promptly to duty on the next working day. To the extent the officer/telecommunicator takes more than three (3) working days of Mental Health Leave, the officer/telecommunicator must submit to the Department return-to-work documentation from the officer/telecommunicator's Mental Health Provider. The City may require a psychological examination by a Mental Health Professional of the City's choosing to determine that the officer/telecommunicator is able to perform all the essential functions of his/her job safely throughout their shift as permitted by applicable laws.

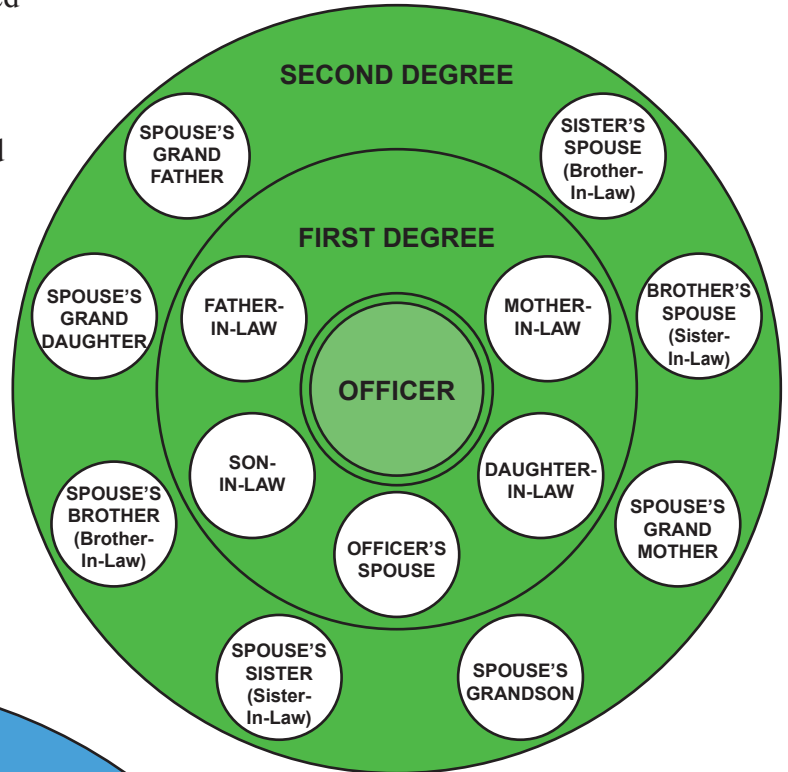
NEPOTISM CHART

The chart below shows:

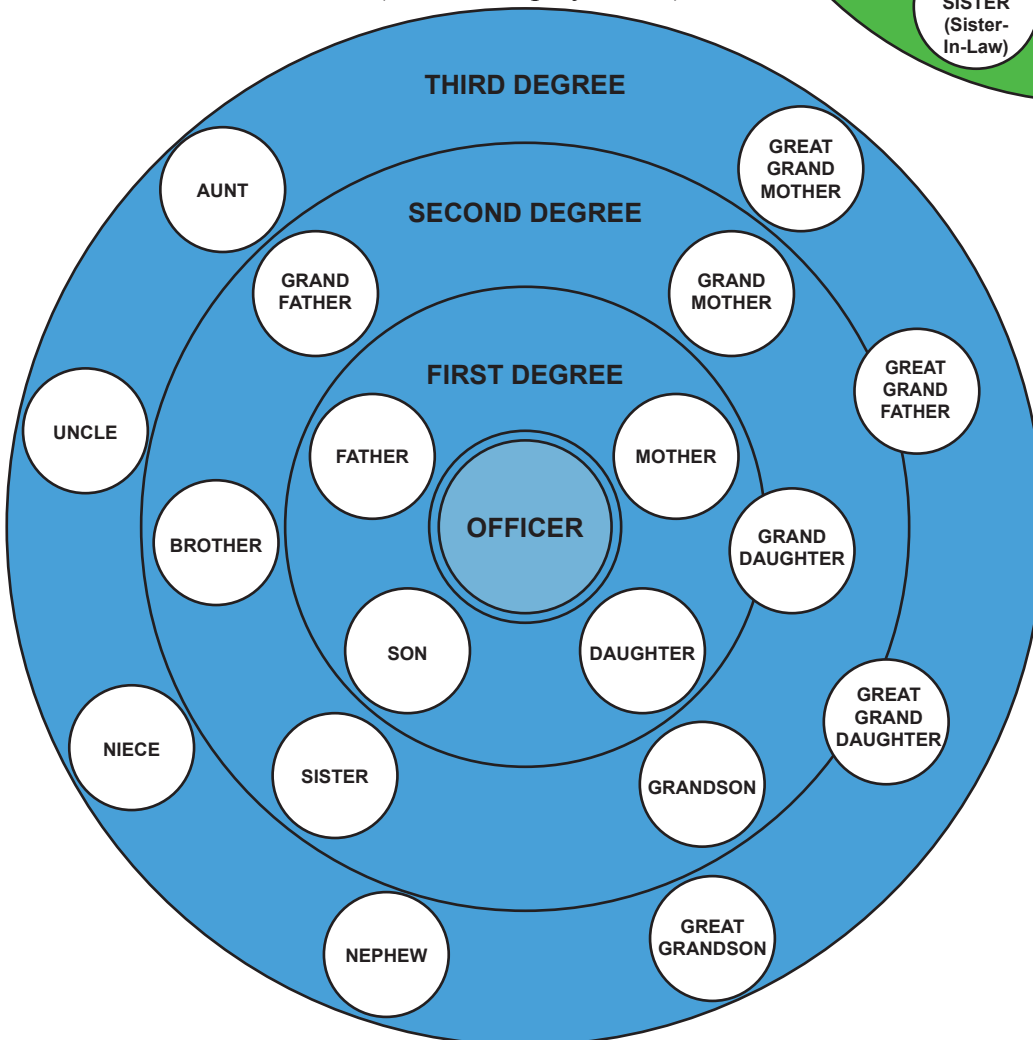
- **Affinity Kinship** (relationship by marriage)
- **Consanguinity Kinship** (relationship by blood)
for purposes of interpreting nepotism as defined
in VTCA Government Code, Chapter 573,
§§573.021 - .025

Also applicable to Conflict of Interest as outlined
in Chapter 171 of the Local Government Code

Affinity Kinship
(Relationship by Marriage)



Consanguinity Kinship
(Relationship by Blood)



Alcohol & Drug Free Work Environment

Employee Handbook

Section II

Adopted by City Council on February 27, 2007
Ordinance 1370

Amended Section:

Chapter 40 Article II "Alcohol & Drug-Free Work-
place Policy" - Ordinance 1748

New Effective date January 22, 2019



ALCOHOL & DRUG FREE WORK ENVIRONMENT

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DIVISION 1. GENERALLY

Section 40-300 Purpose

It is the purpose of the City of Rockport (the City) to help provide a safe and alcohol- and drug-free work environment for our clients and our employees. With this goal in mind and because of the serious drug abuse problem in today's workplace, the City of Rockport has established a policy for existing and future employees.

Section 40-301 Possession Prohibited

- a) The use, possession, solicitation for, or sale of narcotics or other illegal drugs, alcohol, or prescription medication without a prescription on City or customer premises or while performing an assignment.
- b) Being impaired or under the influence of legal or illegal drugs or alcohol away from the City or customer premises, if such impairment or influence adversely affects the employee's work performance, the safety of the employee or of others, or puts at risk the City's reputation.
- c) Possession, use, solicitation for, or sale of legal or illegal drugs or alcohol away from the City or customer premises, if such activity or involvement adversely affects the employee's work performance, the safety of the employee or of others, or puts at risk the City's reputation.
- d) The presence of any detectable amount of prohibited substances or an alcohol concentration greater than 0.02 in the employee's system while at work, while on the premises of the City or its customers, or while on City business. "Prohibited substances" include illegal drugs, alcohol, or prescription drugs not taken in accordance with a prescription given to the employee.

Section 40-303 Reservation of Rights

The City reserves the right to interpret, change, rescind or depart from this policy in whole or in part without notice. Nothing contained in this policy shall be construed as creating or constituting a contract with any employee, whether expressed or implied.

Section 40-304 Definitions

Alcohol means alcohol, or any beverage, containing more than one-half of one percent of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted.

Alcohol abuse means use of alcohol in any quantity during working time or reporting for work under the influence of alcohol.

Alcohol testing means testing for alcohol contents by a breathalyzer instrument device, urinalysis, or a blood sample analysis.

City property means all City buildings and adjacent land, parking lots, all other City-owned land and

City vehicles.

Department head shall also include any person designated by the department head to take any action necessary under this policy in the absence of the department head.

Controlled substance or drugs includes, but is not limited to, marijuana, hashish, cocaine, heroin, morphine, codeine opiates, phencyclidine, amphetamines, inhalants, barbiturates and hallucinates.

Drug testing means the collection of a urine sample by medical personnel and laboratory analysis of that sample or testing by other accepted methods.

Employee means an individual employed by the City in a full-time or part-time position.

Medical Review Office is the City's designated physician to review and interpret drug and/or alcohol tests.

Motorized Equipment means equipment powered by a motor, including tools.

Proper medical authorization means a prescription, or their written approval from a physician, for the use of a drug in the course of medical treatment.

Reasonable suspicion means a conclusion based on personal observation of a specific objective instance, or instances, of employee conduct on or off duty, which shall be confirmed in a sworn (notarized) statement signed by two or more individuals in a supervisory role that has observed the impaired conduct. On duty observation must be corroborated and documented in writing, that an employee is unable to satisfactorily perform his/her duties due to the use of controlled substances or alcohol. Such inability to perform may include, but is not limited to, a drop- in employee's performance level or an indication of impaired judgement, reasoning, level of attention or behavioral change or decreased ability of the senses.

Safety sensitive position means jobs where employees' use of drugs or alcohol could render the employee unfit to perform assigned duties and could create a safety hazard to the employee, other employees, citizens or damage to property.

Substance abuse is exemplified by, but not limited to, the following:

- (1) Ingestion, inhalation or injection of a controlled substance during work hours, in a City vehicle or on City property.
- (2) Ingestion of alcohol in a City vehicle or on City property.
- (3) Ingestion, inhalation or injection of a controlled substance or alcohol during non- working hours which causes an employee to be unable to work in a safety sensitive manner during working hours.
- (4) Use of prescription or over-the-counter medication in a manner in which it was not intended.

Tampering with a urine specimen includes, but is not limited to, diluting the specimen with water, adding any other substance to the specimen, or substituting urine. Possession of a urine sample when

an employee or applicant reports to the laboratory shall constitute tampering.

Under the influence or impaired is defined as abnormal behavior during working hours which results from indulging, in any degree, in alcohol or in any controlled substance or other drug including prescription or over-the-counter medication which, to any degree, may limit an employee's ability to safely and efficiently perform his or her duties or poses a threat to the safety of the employee, other employees, citizens or property.

Section 40-305 **Administrative Authority**

The City of Rockport is authorized to develop, administer and modify testing procedures for drug and alcohol testing.

Section 40-306 **Alcohol/Controlled Substance Use Prohibited**

- a) The use, sale or personal possession (such as on the person or in a tool box, desk, etc.) of controlled substances or alcohol while on duty or on City property at any time is a dischargeable offense.
- b) Employees taking prescription or non-prescription drugs must report this use to the department head when the use of such drugs is likely to affect the workers' ability to perform assigned duties. It is the employee's responsibility to ascertain from his or her physician whether the prescription drug can or is likely to have adverse impact on the employee's performance of his or her duties. This provision is intended to protect the safety of each employee, and his or her co-workers, property and the public. Employees failing to follow this policy may be subject to disciplinary action up to, and including, termination. Any information received from an employee under this provision will be kept confidential except to the extent it may be shared with individuals who are in a "need to know" position, such as the immediate supervisor, or as required by state or federal law.
- c) Any use of controlled substances and alcohol abuse that has an adverse effect on the employee's performance or that could jeopardize the safety of others, City equipment or the City's relations with the public, will be a violation of this policy and the employee may be subject to disciplinary action up to, and including, termination.
- d) No employee who is required to drive any City vehicle or motorized equipment shall consume alcohol during the four (4) hours before driving such vehicle or equipment. The employee may be subject to disciplinary action, and including, termination for violating this policy.
- e) No employee shall report to work with the odor of alcohol on his or her breath. The employee may be subject to disciplinary action up to, and including, termination for violating this policy.

Section 40-307 **Employee's Responsibilities**

- a) While at work, each City employee has a responsibility to deliver service in a safe, efficient and conscientious manner. Therefore, the use, sale, distribution, possession or being under the influence of alcohol or any controlled substances, including prescription medication (when use of such prescribed medication is likely to affect the employee's ability to perform assigned duties)

during working hours, as outlined in the provisions of this policy, is strictly prohibited and may result in disciplinary action up to, and including, termination.

- b) Employees in need of assistance, in relation to controlled substances or alcohol abuse, are encouraged to explore the use of leave time and medical benefits in obtaining assistance through public and private referral agencies specializing in chemical dependency before the problem affects their job.
- c) Employees scheduled to be on call are expected to be fit for duty upon reporting to work. An employee scheduled to be on call who is called out is subject to the provisions of this policy.
- d) An employee not scheduled to be on call who is called out and is under the influence of legally prescribed drugs or who is impaired by alcohol must so advise his or her supervisor and will not be required to report to work. An employee, who is called out and who report to work, but fails to notify his or her supervisor that he or she is under the influence or impaired, may be subject to disciplinary action up to, and including, termination.
- e) An employee shall not consume any alcohol for at least eight (8) hours following any accident or until he or she undergoes post-accident testing. An employee who consumes any alcohol prior to eight (8) hours following this accident or until a post-accident test has been administered may be subject to disciplinary action up to, and including, termination if such person tests above the allowable alcohol limits.

Section 40-308 **Special Exemption**

Any police officer who is required to be in possession of alcohol and/or drugs in the course and scope of his or her employment will be exempt from the provisions of this policy pertaining to possession of alcohol and/or drugs. Specific guidelines will be established by Police Department internal operating procedures.

Section 40-309 **City Approved Laboratory**

- a) The City will select a laboratory which follows a chain of custody procedure in conducting and preserving the tests required under this policy.
- b) The laboratory will report each test result to the Medical Review Officer who will notify Human Resources of the results.
- c) An employee who does not pass the drug or alcohol test may request that the original urine or blood sample be analyzed again. An employee requesting a retest must submit a written request within two (2) days of the employee's notification of the test result.
- d) An employee making a request for a retest will be required to pay the cost of the additional analysis and all costs associated with the transfer of the specimen to another certified, qualified laboratory, including shipping and handling. If the request results in the employee passing the drug or alcohol test, the City will reimburse the employee for laboratory expenses.

Section 40-310 **Breath Alcohol Technician Requirements**

Any individual qualified as a breath alcohol technician may be used to conduct alcohol tests. Law enforcement officers certified by the State of Texas to conduct breath alcohol testing are deemed to be qualified as a breath alcohol technician.

Section 40-311 **Confidentiality of Information**

The following procedures will be used to assure that records relating to the drug and alcohol testing process are kept confidential:

1. Test results and other written material concerning a particular drug test will not be kept in the personnel file the City maintains on each employee.
2. No test results may be released except to the employee's department head and supervisor, any other individuals involved in a disciplinary action, in an appeal process and to state or federal agencies, as necessary or required.
3. Staff who are authorized to have access to drug test results will maintain complete confidentiality. Breach of confidentiality relating to drug test results, or any other personnel related matter, will subject that employee to disciplinary action up to, and including, termination.

Section 40-312 **Employee Drug Convictions**

Any employee convicted of a violation of a criminal drug statute for conduct occurring while on duty or on City property must notify the City of such conviction within five (5) days of the conviction occurring. If an employee fails to report such conviction, the employee will be subject to disciplinary action up to, and including, termination.

Section 40-313 **Employee Search Policy**

The City reserves the right to search for illegal drugs and alcohol on any employee, City vehicles and equipment, the employee's personal effects, and the employee's other property located on City premises or worksites, include, but not limited to private vehicles located on City premises or worksites, City or personal lockers, desks, file cabinets, lunch boxes, purses, or other containers brought on City premises or worksites. All searches must be performed by the Rockport Police Department in accordance with the law.

DIVISION 2. TESTING

Section 40-341 **Drug Testing**

The City will conduct drug testing under any of the following circumstances:

- 1) *Pre-Employment Testing.* All applicants for employment will be informed by posted notice that a negative pre-employment drug test is a condition of employment. An offer of employment is contingent upon agreement to submit to drug testing within 72 hours of offered employment. A new applicant may not begin work until the results of the test are received.
- 2) *Post-Accident Testing.* Any employee involved in an on-the-job accident or injury under circumstances that suggest possible use or influence of drugs or alcohol in the accident or injury event may be asked to submit to a drug and/or alcohol test. This also included any motorized equipment accidents or motorized vehicle accidents that meet the criteria under Section 40-344. "Involved in an on-the-job accident or injury" means not only the one who was injured, but also any employee who potentially contributed to the accident or injury event in any way.
- 3) *Reasonable Suspicion Testing.* The City may ask an employee to submit to a drug test at any time it feels that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances: evidence of drugs or alcohol on or about the employee's person or in the employee's vicinity, unusual conduct on the employee's part that suggests impairment or influence of drugs or alcohol, negative performance patterns, or excessive and unexplained absenteeism or tardiness.
- 4) *Random Drug Testing.* The primary purposes of random testing are to deter prohibited drug use and to ensure a drug free workforce. Employees in safety sensitive positions regulated by the Pipeline & Hazardous Materials Safety Administration (PHMSA) or Federal Motor Carrier Safety Administration (FMCSA), shall be subject to drug testing on an unannounced and random basis. Employees covered under this policy are subject to random testing with the Anti-Drug and Alcohol Misuse Prevention Policy (included in Employee Handbook available in the Human Resources office & provided to employee on date of hire) and any other applicable federally mandated testing. Employees covered under this policy are subject to random testing with the Policy For Employees Required To Possess A Commercial Driver's License (included in Employee Handbook available in the Human Resources office & provided to employee on date of hire) and any other applicable federally mandated testing.
- 5) *Return-to-Duty / Testing after Rehabilitation.* The City will ensure that before an employee returns to duty after engaging in prohibited conduct concerning drugs, or after completion of a rehabilitation program, the employee must take a return to duty drug test with a result indicating a verified negative result for drugs and must take a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02%.
- 6) *Positive Testing Outside of Employment.* If an employee is tested for drugs or alcohol

outside of the employment context and the results indicate a violation of this policy, the employee may be subject to appropriate disciplinary action, up to and possibly including discharge from employment. In such a case, the employee will be given an opportunity to explain the circumstances prior to any final employment action becoming effective.

Section 40-342 Conditions Applicable To All Testing

- a) Human Resources, will arrange for drug screenings with a certified laboratory.
- b) A urine sample will normally be given to test for the presence of controlled substances or alcohol. However, breath testing for alcohol may also be used. Also, other acceptable testing methods (e.g., blood samples or hair follicle) may be ordered.
- c) Any person who tampers with, or attempts to tamper with, a urine/blood specimen or breath test in any manner shall be disqualified from employment with the City and shall be barred for any future consideration for employment with the City or, if currently employed by the City, shall be subject to disciplinary action up to, and including, termination.
- d) Prescription or over the-counter drugs taken by the person to be tested will not be considered if the drug affects the testing, unless the use of such drugs, in the judgment of the Medical Review Officer, would be potentially harmful to the safety of the person being tested, or others.
- e) All positive urine samples will be confirmed by the use of the gas chromatography/mass spectrometry (GC/MS) method. The additional testing (GS/MS) will be at the City's expense.

Section 40-343 Pre-Employment Testing

- a) All persons offered a position with the City shall be required to submit to a drug and/or alcohol test.
- b) Prior to the test, all applicants shall be required to sign a written consent form authorizing a urine or breath test for the presence of controlled substances and alcohol or other acceptable testing method. A job applicant refusing to sign a requested consent form will not be considered for employment.
- c) Test results shall be sent marked "Personal and Confidential" from the Medical Review Officer to Human Resources and shall be treated in a highly confidential manner. An applicant shall not be placed on the City payroll or otherwise allowed to report to work until negative test results have been received.
- d) If test results are positive, the department head shall be contacted by Human Resources and told nothing more than that the applicant did not successfully pass the test. If negative test results are returned, and the applicant otherwise passes the test, the Human Resources shall notify the hiring supervisor and process the appointment of the applicant.
- e) In the case of positive test results, disclosure of the results shall be made to the applicant by Human Resources. The applicant shall be told by Human Resources that he or she is disqualified for employment with the City for a one-year period, and to be reconsidered.

Section 40-344**Post Accident Testing**

- a) Employees who drive City vehicles or equipment on or off duty will be subjected to testing for motor vehicle accidents as described herein.
- b) Drug/alcohol testing will be required of employees following motor vehicle or motorized equipment accidents in any of the following circumstances:
 - 1) when the employee was driving the vehicle, meaning that the vehicle was not parked.
 - 2) when a fatality or bodily injury occurs;
 - 3) when a third party (non-employee) is involved;
 - 4) when any significant damage to a City vehicle or equipment occurs;
 - 5) when a City driver receives a citation under state or local law for a moving traffic violation arising from an accident;
 - 6) when an employee who, in the judgement of the department head, is involved in a traffic accident without justifiable cause or cannot be discounted as a contributing factor to an accident; or
 - 7) when an employee who, in the judgement of the department head, could have prevented the accident by being more alert.
- c) Procedures for Post Vehicle or Motorized Equipment Accident Testing.
 - 1) The employee(s) involved in the accident and the employee(s) from the department whose employee and vehicle are involved in the accident, first arriving at the accident site are required to inform the department head of the accident immediately, but not longer than two (2) hours following the accident. If the department head or his or her designee is not available in that period of time, the employee(s) shall notify the city manager of the accident. Human Resources must be notified to determine if drug or alcohol testing is required.
 - 2) The employee(s) involved in the accident shall be prohibited from working or continuing to work until reporting to the office of the Medical Review Officer or, if the accident occurs when the Medical Review Officer's office is closed, to the City-approved testing facility.
 - 3) Alcohol testing must be administered within two (2) hours of the accident and in no event more than eight (8) hours after the accident. Drug tests must be administered within eight (8) hours after the accident and in no event more than thirty-two (32) hours after the accident. If this deadline for alcohol or drug tests cannot be administered, such tests shall not then be conducted.
 - 4) The supervisor or a designated person not involved in the accident shall take the employee from the accident site and drive him or her to the Medical Review Officer or, if the accident occurs after working hours, a City-approved laboratory for the drug test.

Under no circumstances will the employee be allowed to drive to the Medical Review Officer's office or testing facility. (If an employee is seriously injured or unconscious, he or she will be taken to a hospital by emergency medical personnel for treatment. The first consideration will be the health and welfare of the employee. In such case, a urine test will be given at the hospital laboratory, if possible).

- 5) If the employee, in the judgment of the Medical Review Officer, exhibits physical and/or emotional impairments such that his or her safety or the safety of others could be in jeopardy if the employee returns to work, the employee shall not be allowed to return to work. In that situation, after being tested, the employee will be driven home by the supervisor or other designated person. The employee shall not be allowed to drive home.
- 6) Refusal to submit to a post-accident drug or alcohol test will be grounds for disciplinary action up to, and including, termination.
- 7) An investigation surrounding the circumstances of the accident leading to a drug or alcohol test will automatically be conducted by the department head and/or the city manager.

Section 40-345

Reasonable Suspicion Testing

All employees suspected of controlled substance use or alcohol abuse will be required to provide a urine/blood sample for testing or to submit to a breath test.

- a) A written record of specific, observable facts will be required before a drug or alcohol test can be ordered based on reasonable suspicion. This written record must be signed by a minimum of two individuals in a supervisory capacity or higher. One of these individuals must be either the employee's department head, the City Manager, or a Human Resources representative. The documenting individuals will document the exact reasons why he or she suspects that a certain employee has violated the controlled substances and alcohol abuse policy, including the symptoms exhibited by the employee, the actions of the employee, statements from other employees or third parties, and other evidence which tends to establish a reasonable suspicion of controlled substances or alcohol abuse.
- b) When it has been determined that reasonable suspicion exists and the employee should be tested, that decision must be approved by the city manager. In the event that these individuals are inaccessible within a reasonable period of time, the department head is authorized to require the employee to submit to a drug or alcohol test. Prior to such testing, the employee will be required to sign a form consenting to testing. Failure or refusal to sign the consent form or to submit to testing may result in disciplinary action, up to and including, termination.
- c) The supervisor or a designated person will drive the employee to the testing facility (i.e., either the office of the Medical Review Officer or when the Medical Review Officer's office is closed, a City-approved laboratory). Under no circumstances will the employee be allowed to drive.
- d) The department head or a designated person shall stay with the employee being tested and shall drive him or her back to work. If the Medical Review Officer, after observation and examination of the employee, determines the department head's suspicion is well founded, the department

head or a designated person shall arrange for the employee to be driven home.

- e) An employee tested for controlled substances or alcohol under the reasonable suspicion standard will be placed on leave of absence with pay until the results of the test are received.
- f) All department heads and supervisors will prepare statements to be filed with Human Resources describing the circumstances and conditions used as a basis for the required testing.

Section 40-346 Random Testing

- a) Random tests will be unannounced and reasonably spread throughout the year. There will be no pattern to when random tests will be conducted, and all employees in safety sensitive positions regulated by the Pipeline & Hazardous Materials Safety Administration (PHMSA) or Federal Motor Carrier Safety Administration (FMCSA), will have an equal chance of being selected for testing from the random pool each time random tests are conducted.
- b) Selection Process:
 - 1) Employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing. Each covered employee shall have an equal chance of being tested each time a random drug testing list is generated.
 - 2) Employees to be tested shall be selected by a computer-based random number generator that is matched with an employee's social security number or employee identification number.
 - 3) Random test shall be unannounced. Selected employees shall be notified after they report for duty on the day of collection.
 - 4) City employees who are covered under more than one DOT agency's random drug testing regulations shall be included in separate DOT pools for each regulation for random selection, with each pool containing the names of covered employees who are subject to testing at the specific percentage drug testing rate as set annually by DOT and required for each specific pool.
- c) Steps for Random Testing:
 - 1) The Drug Program Administrator (DPA) or designee, on a pre-determined date, shall use the random selection procedures to compile a list of covered employees selected for random testing during that testing cycle.
 - 2) The DPA, or designee, shall ensure that the list of social security numbers or employee identification numbers will identify the correct employee who are to be randomly tested during the testing cycle.
 - 3) Employees shall be notified by the DPA, or designee, of their selection of random testing after they have reported for duty. Employees should immediately report to the collection site or within 30 minutes, plus travel time, once notified of selection status.

- 4) The list of employees selected shall be retained by the DPA or designee in a secure location.

Section 40-347 **Return-to-Duty / Testing after Rehabilitation**

- a) The City will ensure that before an employee returns to duty after engaging in prohibited conduct concerning alcohol, or after completion of a rehabilitation program, the employee must take a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02%.
- b) The City will ensure that before an employee returns to duty after engaging in prohibited conduct concerning drugs, or after completion of a rehabilitation program, the employee must take a return to duty drug test with a result indicating a verified negative result for drugs. Prior to such testing, employees will be required to sign a form consenting to testing.

DIVISION 3. REHABILITATION & EMPLOYEE ASSISTANCE PROGRAM

Sections 40-356 Rehabilitation Program as Condition of Employment

Employees who test positive for drugs or alcohol may be permitted an opportunity to enter a rehabilitation program, at the sole discretion of the City. If the City decides to continue the employment of the employee, the City may require the employee to participate in a rehabilitation program as a condition of continued employment.

- a) The Employee Health Benefit Plan in effect on the date of adoption of this policy provides benefits for the treatment of chemical dependency conditions, both in-patient and out-patient. Employees may contact Human Resources for details.
- b) Any employee who has completed a rehabilitation program must remain alcohol- and drug-free. Any relapse by an employee will be a violation of this policy and the employee may be subject to disciplinary action up to, and including, termination.
- c) An employee's decision to seek assistance by entering a rehabilitation program before work performance or behavior difficulties occur will be kept confidential. Once work performance or behavior difficulties affecting the job or the City do occur, the subsequent voluntary entrance into a rehabilitation program will not necessarily prevent disciplinary action up to, and including, indefinite suspension or termination. Any employee who tests positive and who refuses to enter a rehabilitation program, who fails to complete the rehabilitation program, or who refuses to cease using or abusing controlled substances or alcohol, will be indefinitely suspended or terminated.

Section 40-357 Leave Available

Employees who seek controlled substance or alcohol abuse assistance and rehabilitation and cannot report for work while undergoing such rehabilitation may request sick leave, vacation leave in the amount accrued or leave without pay. All sick and vacation leave shall be exhausted prior to granting the use of approved leave without pay, including leave under the Family and Medical Leave Act. Requests for, and approval of, leave without pay are governed by the City's Personnel Policy.

Section 40-358 Working While Enrolled in Rehabilitation Program

Employees who are involved in rehabilitation and are able to report for work may do so under the following conditions:

- 1) An employee may resume regular duties only after the employee tests negative for a drug test administered by the Medical Review Officer or a City-approved laboratory and can provide a release to return to work from an appropriate substance abuse treatment facility or confirmation of continued and on-going participation in a recognized substance abuse assistance program.
- 2) Prior to being allowed to return to work, the employee shall be required to meet with his or

| her department head or ~~designate~~designee to receive an explanation of the terms of continued

employment.

- 3) An employee may, at the City's request, be required at any time to submit to interviews and physical examinations by the Medical Review Officer and/or evaluation by the professional staff at an appropriate chemical dependency treatment facility.
- 4) Any employee will be required to submit to unannounced drug and alcohol testing up to sixty (60) months after resuming duties.

Adopted on February 27, 2007

ATTEST:

/s/ Irma G. Parker, City Secretary

Amended Section 40, Article II on January 22, 2019

ATTEST:

/s/ Teresa Valdez, City Secretary

Anti-Drug and Alcohol Misuse Prevention Plan

Original Date of Implementation: 04/29/2014

New Effective Date: 01/01/2019

Employee Handbook

Addendum I



ANTI-DRUG AND ALCOHOL MISUSE PREVENTION PLAN

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE & HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)

PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF:

49 CFR PART 199

49 CFR PART 40

City of Rockport

2751 SH 35 BYP, Rockport, TX 78382

361-729-2213

Original Date of Implementation: 4/29/2014

New Effective Date: 01/01/2019

PLAN REVISION DATE: January 1, 2018

REVISION DATE MODIFIED BY NCMS ONLY.

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I. INTRODUCTION

1. Development of "Combined" Plan

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the agency within the Department of Transportation (DOT) that regulates operators in the natural gas and hazardous liquid pipeline industry. PHMSA's Drug and Alcohol Testing Regulation, 49 CFR Part 199¹ requires each operator to develop, maintain, and follow an Anti-Drug and an Alcohol Misuse Prevention Plan. Historically, companies have produced these plans as two separate documents. This "combined" Anti- Drug and Alcohol Misuse Prevention plan, merges both PHMSA-required plans into a single document.

Authorization for a combined plan was granted by PHMSA's Office of Pipeline Safety stating: "PHMSA will allow the combining of the two plans into one written plan, as long as all requirements of each regulation are met." The "requirements of each regulation" means the requirements of Part 199 and the requirements of DOT's "Procedures for Transportation Workplace Drug and Alcohol Testing," 49 CFR Part 40².

The Anti-Drug and Alcohol Misuse Prevention Plan henceforth referred to as the "Plan," meets the requirements of Part 199 and Part 40.

2. Approach

The Plan will use the generic word "Company" in reference to the operator or contractor, as applicable, for which it's written. PHMSA's requirement for plan development and implementation applies equally to each operator and contractor that performs safety-sensitive operations, maintenance, or emergency- response functions on a pipeline or LNG facility within the natural gas and hazardous pipeline industry. The Plan will describe how the Company will comply with government requirements.

The Plan will identify "Company-additional" requirements - those that go beyond the minimum requirements of DOT. Company-additional requirements will be underscored. Therefore, consider anything that is not underscored a requirement of DOT or a process put in place by the Company to meet a DOT requirement. Appendix D outlines the Company disciplinary actions and additional procedures.

The Plan is written in "plain language" and follows the requirements of each rule. However, the Plan does not repeat the language of either Part 40 or Part 199. Doing so would require the Company to produce a new plan every time DOT or PHMSA issued a change to their respective rule. The goal of DOT is to know that the company understands the requirements of the rules and how the Company will go about achieving compliance. The Plan makes use of existing DOT language in places where summaries are used to explain a more detailed process (e.g., specimen collection and alcohol test procedures are extracted from DOT's "Employee Guide").³

Cross references are made linking the Plan to the PHMSA Inspection Form⁴ for the purpose of assisting inspectors with specific areas of Plan compliance. The cross references will appear in the Plan as superscripted "endnotes". Each endnote matches an inspection number and description from the PHMSA Inspection Form. The Inspection Form cross references is found in Appendix E.

¹ Title 49 Code of Federal Regulations (CFR), Part 199, "Drug and Alcohol Testing Requirements," Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

² Title 49, Code of Federal Regulations (CFR), Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," Office of the Secretary, Department of Transportation.

³ "What Employees Need To Know About DOT Drug & Alcohol Testing," ODAPC, DOT.

⁴ "Substance Abuse Program: Comprehensive Audit and Inspection Protocol Form, Combined Anti-Drug and Alcohol Misuse Programs, Form No.: 3.1.11", Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety.

3. Background

Safety. The DOT requires transportation employers to develop and implement drug and alcohol testing programs in the interest of public safety. Safety is the highest priority for DOT. One of the means by which the DOT helps ensure safety is by subjecting those workers responsible for transportation safety to drug and alcohol testing. Workers tested under the DOT program have a direct impact on the safety of the traveling public or the safety of those potentially affected by the transportation of hazardous products, such as natural gas, liquefied natural gas (LNG) and hazardous liquids.

Test Procedures. The overall responsibility for management and coordination of the DOT program resides within the Office of the Secretary of Transportation's (OST), Office of Drug and Alcohol Policy and Compliance (ODAPC). ODAPC issues Part 40. Whether the transportation employee is a pipeline worker, truck driver, or airline pilot, their drug and alcohol tests are conducted using the same Part 40 procedures. This consistency benefits all employees affected by DOT regulations in each agency's regulations must adhere to DOT's testing procedures. Better known simply as "Part 40", this rule has become the standard for workplace testing in the United States.

Compliance Enforcement. Regulation and enforcement within the different transportation industries is the responsibility of the DOT agency that has authority over the particular industry. The regulatory authority requiring drug and alcohol testing of safety-sensitive employees in aviation, trucking, railroads, and mass transit industries is the Omnibus Transportation Employee Testing Act of 1991⁵ (OTETA). The OTETA did not specifically address the pipeline industry. PHMSA has regulatory authority over the pipeline industry and conveyed their authority, for drug and alcohol testing, through the issuance of their regulation - Part 199. Part 199 spells out *who* is subject to testing, *when* and in *what* situations. Operators, and in turn, their associated contractors, implement the regulations.

II. GENERAL

1. Scope

Operators of pipeline facilities subject to 49 CFR Parts 192⁶, 193⁷, or 195⁸ are required to test covered employees for the presence of prohibited drugs and alcohol. Contractors doing similar work on the behalf of their operators are subject to the same requirements. Part 199 requires of each operator the assurance that any contractor performing any DOT safety-sensitive work for that operator, under Parts 192, 193, or 195, is in full compliance with the provisions of the DOT's drug and alcohol program, as applicable.

2. Applicability

Part 199, and the provisions of the Plan, applies to operators and contractors only with respect to their employees located within the territory of the United States, including those employees located within the limits of the "Outer Continental Shelf". Part 199 and the provisions of the Plan do not apply to covered functions performed on master meter systems or pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.

⁵ Public Law 102-143, October 28, 1991, Title V – Omnibus Transportation Employee Testing, 105 Stat. 952-965; 49 U.S.C. 45104(2).

⁶ Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards

⁷ Part 193 – Liquefied Natural Gas Facilities: Federal Safety Standards

⁸ Part 195 – Transportation of Hazardous Liquids by Pipeline

3. Compliance^{1 2}

Plan Development. The Plan meets the requirements of Part 199, paragraphs §199.101 and §199.202, respectively, to develop a written anti-drug and a written alcohol misuse prevention plan. The Plan describes the methods and procedures for compliance with the drug and alcohol program requirements of the DOT, including the employee assistance program. The Plan covers the operational, day-to-day requirements that are found in Part 199, and the procedural, testing requirements that are found in Part 40. The Plan provides appendices for the name and address of each laboratory that analyzes specimens for the Company, the Company's Medical Review Officer, and Substance Abuse Professionals. The Plan communicates to employees, Company officials, and DOT officials the path that the Company will follow in order to comply with the requirements for a successful DOT drug and alcohol program.

Plan Availability. The Plan will be posted in a common place, selected by the Company, for employee review and feedback. A copy of the Plan will be made available to all covered employees. Any covered employee desiring a copy of Part 40 and/or Part 199 must contact the Designated Employer Representative (see Appendix B). The Plan provides a basic description of the rules and testing requirements, and shows how the Company implements and follows them. The Plan is not meant as a substitute for the detail provided in either rule. If there is any difference in instruction or interpretation between the Plan and the rules, the rules prevail. The Plan will be updated at any time its language, or the intent of its language, differs from that of either Part 40 or Part 199. Employees are encouraged to obtain and read Part 40 and Part 199 on their own.

4. "DOT" vs. "PHMSA"

All DOT workplace testing procedures will follow Part 40 requirements. All DOT procedural responsibilities for pipeline operators and contractors will follow Part 199. In the Plan, the term "DOT" will be used for reference to general requirements (e.g., testing procedures) placed on all transportation employers, including operators and contractors. The use of the term "PHMSA" will be to distinguish specific, unique administration requirements versus general, DOT requirements (e.g., random alcohol testing is not authorized by PHMSA).

5. DOT Procedures

The company will assure that the procedures of Part 40 are followed for drug and alcohol testing conducted under the requirements and authority of Part 199; a violation of Part 40 is a violation of Part 199. If the Company employs a Consortium/Third-Party Administrator (C/TPA) to assist in program development, implementation, and management, the C/TPA will, likewise, follow all the requirements of Part 40 and Part 199. It is the Company's goal to establish and maintain compliance with the DOT drug and alcohol program.

6. Stand-down Waiver³

DOT "stand-down" is not in effect for this Company. The Company does not hold a stand-down waiver under Part 40, and has not applied for one. Should this status change, the Company will notify all covered employees and Company officials, in accordance with Part 40 requirements.

7. Preemption of State and Local Laws

Part 40 and Part 199 are Federal laws. Federal law preempts any state or local law, rule, regulation or order to the extent that: (a) compliance with both the state or local requirement and Part 40 or 199 is not possible; or (b) compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement of Part 40 or 199; or (c) the state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities. This provision does not preempt provisions of state criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

8. Definitions

Definitions from Parts 40, 191, 195, and 199 have been combined in alphabetical order and are provided in a single listing. For purposes of the Plan the following definitions apply:

Accident/Incident - An incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an accident reportable under Part 195 involving hazardous liquid pipeline facilities.

a) (§191.3) – An accident on a gas pipeline or LNG facility is defined as an "incident," as follows:

- (1) An event that involves a release of gas from a pipeline, **gas from an underground natural gas storage facility**, liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
 - (a) A death, or personal injury necessitating inpatient hospitalization; or
 - (b) Estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;
 - (c) Unintentional estimated gas loss of three million cubic feet or more;
- (2) An event that results in an emergency shutdown of an LNG facility **or an underground natural gas storage facility**. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.
- (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).

b) (§195.50) – An accident report is required for each failure in a pipeline system in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

- (1) Explosion or fire not intentionally set by the operator.
- (2) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if this release is:
 - (a) Not otherwise reportable under this section;
 - (b) Not one described in §195.52(a)(4);
 - (c) Confined to Company property or pipeline right-of-way; and
 - (d) Cleaned up promptly;
- (3) Death of any person.
- (4) Personal injury necessitating hospitalization;
- (5) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

Administrator - The Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA) or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

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

Affiliate - Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other or a third party controls or has the power to control both. Indicators of control include, but are not limited to: interlocking management or ownership; shared interest among family members; shared facilities or equipment; or common use of employees. Following the issuance of a Public Interest Exclusion (PIE), an organization having the same or similar management, ownership, or principal employees as the service agent concerning who public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Part 40, Subpart R.

Air blank - In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol concentration - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

Alcohol confirmation test - A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

Alcohol screening device (ASD) - A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.

Alcohol screening test - An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Alcohol testing site - A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

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

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

Breath Alcohol Technician (BAT) - A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

Cancelled test - A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Chain-of-custody (or Custody and Control Form (CCF)) - The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

Collection Container - A container into which the employee urinates to provide the specimen for a drug test.

Collection Site - A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

Collector - A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

Confirmatory drug test - A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test - A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Confirmed drug test - A confirmation test result received by an MRO from a laboratory.

Consortium/Third-Party Administrator (C/TPA) - A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers" for purposes of Part 40.

Continuing education - Training for medical review officers (MROs) and substance abuse professionals (SAPs) who have completed qualification training and are performing MRO or SAP functions, designed to keep MROs and SAPs current on changes and developments in the DOT drug and alcohol testing program.

Covered function (or safety-sensitive function) - An operations, maintenance, or emergency- response function regulated by 49 CFR Part 192, 193, or 195 that is performed on a pipeline or on an LNG facility.

Designated employer representative (DER) - An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40. Service agents cannot act as DERs.

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

DOT Procedures (or Part 40) - The Procedures for Transportation Workplace Drug and Alcohol Testing Program published by the Office of the Secretary of Transportation in 49 CFR Part 40.

DOT, The Department, DOT agency - These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of this part, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency. These terms include any designee of a DOT agency.

Drugs - The drugs for which tests are required under Part 40 and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and **opioids**.

Employee (covered employee) - Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety- sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under Part 40, the term employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services. For the purposes of regulation under Part 199, the term employee means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors. This includes full-time, part-time and temporary employees. It also includes any applicant for a covered function.

Employer - A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with Part 40. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of Part 40.

Error Correction Training - Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.

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

HHS, Department of Health and Human Services - The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Initial drug test (also known as a "Screening drug test") - The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

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

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

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

Limit of Detection (LOD) - The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation - For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

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

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

Non-negative specimen - A urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

Office of Drug and Alcohol Policy and Compliance (ODAPC) - The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of Part 40.

Operator - A person who owns or operates pipeline facilities subject to 49 CFR Part 192, 193, or 195.

Oxidizing adulterant - A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performs a covered function - Actually performing, ready to perform, or immediately available to perform a covered function.

Pipeline - All parts of those physical facilities through which gas, hazardous liquids or carbon dioxide moves in transportation, including, but limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, pumping units, breakout tanks and fabricated assemblies.

Pipeline facility - New and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas, or transportation of hazardous liquids or carbon dioxide during the course of transportation.

Positive rate for random drug testing - The number of verified positive results for random drug tests conducted under Part 199, plus the number of refusals of random drug tests required by Part 199, divided by the total number of random drug tests conducted plus the number of refusals of random tests under Part 199.

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

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

Prohibited drug - Any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana, cocaine, **opioids**, amphetamines, and phencyclidine (PCP).

Qualification Training - The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD- ROM, video).

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

Refresher Training - The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning Part 40 and DOT agency drug and alcohol testing regulations (e.g., Part 199). Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

Refusal to submit, refuse, or refuse to take - Behavior consistent with Part 40 concerning refusal to take a drug test or refusal to take an alcohol test.

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

Screening drug test - See Initial drug test definition above.

Screening Test Technician (STT) - A person who instructs and assists employees in the alcohol testing process and operates an ASD.

Secretary - The Secretary of Transportation or the Secretary's designee.

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

Shipping container - A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

Specimen bottle - The bottle that, after being sealed and labeled according to the procedures in Part 40, is used to hold the urine specimen during transportation to the laboratory.

Split specimen - In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

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

State agency - An agency of any of the several states, the District of Columbia, and the Commonwealth of Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.)

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

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

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

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

III. POLICY AND RESPONSIBILITIES

1. Company Policy

Policy Statement. The Company has a long-standing commitment to maintain the highest standards for employee safety and health. The use of controlled substances and the misuse of alcohol are contrary to these high standards. The use of possession of illegal controlled substances or alcoholic beverages while on Company property, or in any Company vehicle, or on Company time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.

DOT Compliance. The Company is aware that it is ultimately responsible for meeting the requirements of Part 40 and 199. The DOT authorizes transportation employers to use a service agent(s) to perform tasks necessary to comply with the Plan. The Company understands that, under the DOT regulations, it is responsible for the actions of its service agents. The Company is responsible for developing and implementing a successful and comprehensive DOT workplace drug and alcohol program. Components of the Company's program include clear policies, provisions for education and training, drug and alcohol testing, and when needed, referral for evaluation, education, and treatment. The Company shall ensure that all covered employees are aware of the provisions and coverage of the Plan.

2. Responsibilities of Key Personnel

The Company will convey to responsible individuals -- the Designated Employer Representative(s) and affected supervisors - that, to the best of their ability, the privacy and confidentiality of any covered employee subject to the Plan must be maintained at all times.

Designated Employer Representative (DER). Appendix B contains the name, address, and phone number of the DER(s). The DER is:

- a. the key employee for the Company's drug and alcohol program functions, and has the knowledge and authority to make decisions about the testing process and answer questions about it.
- b. **not** a service agent.
- c. one or more employees of the Company assigned to ensure adequate coverage on all shifts and at all locations.
- d. responsible for the preparation of the Plan, as well as providing oversight and evaluation on the Plan.
- e. responsible to review all adverse personnel action or discipline applied under the Plan for consistency and conformance to human resources policies and procedures.
- f. responsible for scheduling random, return-to-duty and follow-up testing, as applicable, and is authorized to receive and maintain, in a secure file system, all drug and alcohol testing results.
- g. responsible for providing answers to employee questions regarding the testing program, and information on the resources available for drug and alcohol counseling.
- h. responsible for overseeing the employee assistance program (EAP).

Supervisor. A Company individual(s) responsible for observing the performance and behavior of employees that is suggestive enough to lead to reasonable suspicion/cause drug and/or alcohol testing. Supervisors who will determine whether an employee must be drug tested and/or alcohol tested based on reasonable suspicion/cause will be trained in the "signs and symptoms" of each substance. The supervisor is required to document a reasonable suspicion/cause event. The supervisor may also be responsible for requests as the second supervisor for substantiation and concurrence for reasonable suspicion/cause drug test, if applicable.

3. Responsibilities of Covered Employees⁴

Compliance. Each covered employee must comply with the requirements of the Plan, and the DOT drug and alcohol rules it pertains to, in order to remain eligible to work in a DOT safety-sensitive position. Each covered employee has the responsibility to read, be knowledgeable of, and comply with, the requirements of the Plan, and Parts 40 and 199. Committing a DOT violation will result in the employees' immediate removal from the covered function, and remain so until successfully completing the DOT return-to-duty conditions of Part 40. The Plan describes circumstances for being tested, violations, prohibited conduct and their subsequent consequences. The Plan describes what is available to each covered employee as services (e.g., EAP) in such cases where the employee has a potential problem with drugs or alcohol prior to a drug or alcohol test. It is a condition of employment for all covered employees to sign the Acknowledgement/Receipt Form (Appendix A). In doing so, the employee attests to comply with the drug and alcohol program requirements of the Company and the requirements of the Plan. Failure to comply with this condition may result in disciplinary action up to and including termination.

4. Use of Service Agents^{5 6}

Compliance. The Company will contract with service agents to accomplish many of the requirements of Parts 40 and 199. Appendix B (Designated Personnel and Service Agents) provides the names and addresses of service agents that are under contract. Contracts will contain a provision that the service agent will comply with Parts 40 and 199 in the services provided. The work of any service agent providing services to the Company will be open to inspection by the Company. The service agent must allow access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of Part 199. No service agent will serve as DER for this Company.

Public Interest Exclusion. The Company will not use a service agent against whom a Public Interest Exclusion (PIE) has been issued. The Company will stop using the services of a service agent no later than 90 days after the DOT has published the decision in the Federal Register or posted it on its web site that a PIE has been issued. The Company may apply to the ODAPC Director for an extension of 30 days if it is demonstrated that a substitute service agent cannot be found within 90 days.

Consortium/Third Party Administrator. The Company may employ the service of a Consortium/Third Party Administrator (C/TPA) to assist the DER with overall program management and consultation on any program issue. While the C/TPA will not serve as the DER, the C/TPA may support the DER by explaining the regulations and offering guidance on program-compliance issues.

5. Critical Service Agent Positions^{7 8}

Compliance. The Company recognizes the significance of critical service agent positions within the DOT drug and alcohol program. The Company understands the importance of each service agent meeting their initial qualifications, as applicable, and then maintaining compliance throughout the conduct of their program functions, all in accordance with Part 40 and Part 199 requirements. The Company will ensure that the follow critical positions meet DOT rule requirements.

- a) Medical Review Officer (MRO) (§40.121 and §199.109(b));
- b) Substance Abuse Professional (SAP) (§40.281);
- c) Urine Specimen Collector (§40.33);
- d) Screening test Technician (§40.213); and,
- e) Breath Alcohol Technician (§40.213)

6. "Non-DOT" Testing Program^{9 10}

Compliance. The Company may implement an additional drug and/or alcohol testing program, referred to as a "non-DOT program". Any additional testing program would be completely independent of the DOT testing program. Such a testing program would be developed under the Company's own authority and kept separate from the DOT program. All DOT testing would be accomplished first; the Company's non-DOT program would commence afterwards. The non-DOT program would use different forms and not use the Federal Custody and Control Form or the DOT Alcohol Testing Form. The non-DOT program could test different people, for different drugs, and different reasons-for-testing. If the Company implements its own non-DOT testing program, the Company will define the program and notify all employees through a through a non-DOT Program Plan.

IV. DOT PROGRAM REQUIREMENTS

1. Employees Subject to Testing^{11 12}

Compliance. Any employee who would perform an operations, maintenance, or emergency-response function, regulated by Part 192, 193, or 195, on a pipeline or LNG facility, is subject to mandatory DOT drug and alcohol testing under this program. Such individuals are subject to DOT testing because their job functions have been determined to be a covered, safety-sensitive, transportation function. Appendix C (Covered Positions) provides specific employee titles, for this Company, of those subject to testing under this program. However, it is the work that an individual performs, not their title of their job, which determines whether their work is covered and therefore subject to drug and alcohol testing

Operator or Contractor. Covered employees may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor; this includes full-time, part-time and temporary employees and includes any applicant for a covered function.

2. Acknowledgement/Receipt Form

The "Acknowledgement/Receipt Form", (Appendix A), applies to all drug and/or alcohol tests, or related foregoing or subsequent DOT procedures, while the employee is in a covered function with the Company. The signed form will be maintained by the Company. For any test, the expectations placed on the employee by the Company are to "follow all instructions" in order to accomplish the test.

3. History-check Requirement ^{13 14}

Compliance. Prior to the first time that the Company uses an employee to perform safety-sensitive duties (i.e., a new hire or an employee transferring into a safety-sensitive position) the Company will require a "history check" of the employee. The history check will look back into the employee's past two years of DOT employment for DOT violations. History checks are conducted only after obtaining the employee's written authorization to do so. Any employee refusing to provide written consent will not be permitted to perform safety-sensitive functions. The Company will not allow the covered employee to perform their functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless the Company has obtained or made and documented a good faith effort to obtain alcohol and drug testing information from previous DOT-regulated employers.

Information request. The Company will request the following information about the employee:

- a) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- b) Verified positive drug tests;
- c) Refusals to be tested (including verified adulterated or substituted drug test results);
- d) Other violations of DOT agency drug and alcohol testing regulations; and
- e) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty and follow-up testing requirements.

The Company will make at least one attempt by telephone, e-mail or fax, and maintain documentation associated with the attempt to obtain history-check information (e.g., date and time of the attempt, persons contacted). If the Company finds evidence of past DOT violations, those violations may be used as the sole reason for not hiring the individual or for termination.

Violation Consequences. The Company will not use any employee in a DOT safety-sensitive position that has had a past DOT violation and has not complied with DOT eligibility standards for returning to safety-sensitive work. The Company will also ask the employee if they had any pre-employment test that was positive for which the previous employer did not hire them. The employee's answer to this question will be maintained as part of the employee's history-check information.

4. Employee Notification of Tests

Employees will be notified directly when a test must be conducted. While the circumstances for a test will differ by its reason-for-test, the Company will endeavor to conduct all tests with only a limited number of Company personnel having knowledge of the reason for the test.

All testing will be unannounced until the last possible moment. The timing will vary in conjunction with the reason-for-test. For example, a pre-employment test will be announced during the job application; a random test is announced within the test period, but just prior to the test, to maintain the element of surprise; and, announcements of post-accident or reasonable suspicion tests are controlled by the circumstances that come to light around the time of the event (e.g., accident). All alcohol tests will be conducted just prior to, during, or just after the performance of safety-sensitive duties. Drug tests may be conducted anytime the employee is at work.

The DER and Company supervisors will be responsible for notifications and to help maintain the element of confidentiality. When an employee is notified for a test, the employee must proceed to the collection site immediately. Immediately means that after notification, all the employee's actions must lead to an immediate specimen collection (or test).

The Company considers "travel time to the collection site, plus 30 minutes" as the maximum acceptable interval of time between notification and testing.

In test situations such as post-accident and reasonable suspicion/cause, where the employee's job performance is called into possible question, supervisors will use their discretion and training to minimize further confrontation. A reasonable attempt will be made by the supervisors to isolate and inform the employee of the decision to test, the steps that must be taken to accomplish the test, and the consequences of refusing the test. If possible, for post-accident and reasonable suspicion tests, the Company will have the DER or a supervisor accompany the employee to the collection site.

5. DOT Drug Violations

Drug Violations. The following provides a listing of DOT drug violations prohibited of covered employees:

- a) A verified positive drug test result;
- b) A refusal to be tested, determined by:
 - (1) Having a verified adulterated or substituted drug test result;
 - (2) Failing to appear for any drug test (except a pre-employment test) within a reasonable time, as determined by the Company, after being directed to do so by the Company;
 - (3) Failing to remain at the drug testing site until the testing process is complete;
 - (4) Failing to provide a urine specimen for any drug test;
 - (5) Failing to allow a directly observed or monitored collection in a drug test that requires such a collection procedure;
 - (6) Failing to provide a sufficient amount of urine for a drug test when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
 - (7) Failing or declining to take an additional drug test the Company or collector has directed the employee to take;
 - (8) Failing to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER; or,
 - (9) Failing to cooperate with any part of the testing process (e.g., refuse to empty pockets or failure to wash hands when so directed by the collector, behave in a confrontational way that disrupts the collection process, tampering with a specimen).
 - (10) For an observed collection, fail to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process.
 - (11) Possess or wear a prosthetic or other device that could interfere with the collection process;
 - (12) Admit to the collector or MRO that a specimen has been adulterated or substituted.

6. DOT Alcohol Violations and Prohibited Conduct^{15 16}

Alcohol Violations. The following provides a listing of DOT alcohol violations prohibited of covered employees:

- a) A test result of 0.04 or higher alcohol concentration;
- b) A refusal to be tested, determined by:
 - (1) Failing to appear for any alcohol test (except a pre-employment test) within a reasonable time, as determined by the Company, after being directed to do so by the Company;
 - (2) Failing to remain at the alcohol testing site until the testing process is complete;
 - (3) Failing to provide an adequate amount of saliva or breath for an alcohol test;
 - (4) Failing to provide a sufficient amount of breath for an alcohol test when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
 - (5) Failing to undergo a medical examination or evaluation, as directed by the DER;
 - (6) Failing to sign the certification statement on the Alcohol Testing Form; or,
 - (7) Failing to cooperate with any part of the testing process.

- c) On-duty use of alcohol while performing covered functions.
- d) Pre-duty use of alcohol within four (4) hours prior to performing covered functions, or if the employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty.
- e) Use of alcohol within eight (8) hours following an accident in which the performance of covered functions has not been discounted by the Company as a contributing factor to the accident, unless the employee has already been given a post-accident alcohol test.

Alcohol Prohibited Conduct. The following is prohibited conduct of DOT covered employees:

- a) A test result of 0.02 or greater alcohol concentration, but less than 0.04.

7. Violation Consequences and Company Actions^{16 17}

After DOT Rule Violations. The Company will not allow any covered employee who has a DOT drug or alcohol violation to perform safety-sensitive duties for the Company. Immediately upon learning of the violation, the DER shall assure the removal of the employee from all safety-sensitive duties. That employee will be ineligible to work in any DOT safety-sensitive function for the Company until the employee has successfully completed the DOT return-to-duty process; however, whether or not to do so is a business decision of the Company, not DOT. The company will refer the employee to a Substance Abuse Professional (SAP) as soon as practicable after the verified violation report.

If the Company has a zero tolerance policy, any covered employee who has a DOT drug or alcohol violation will be terminated upon such violation (refer to Appendix D, Company Disciplinary Actions and Additional Procedures). However, the employee will be referred to a SAP. The employee will be made aware that they must complete the DOT return-to-duty process prior to again performing safety sensitive work for a company that is subject to the DOT alcohol and drug testing regulations.

After DOT Alcohol Prohibited Conduct. The Company will not allow any covered employee to perform, or continue to perform, any function covered by Part 199 when the employee is found to have an alcohol concentration of 0.02 or higher, but less than 0.04. The Company may continue testing the employee until the alcohol concentration is less than 0.02, or the Company may not use the employee in a safety-sensitive function until the start of the employees next regularly scheduled shift, which must be not less than eight hours follow the test that indicated "prohibited conduct".

V. ANTI-DRUG PROGRAM

1. DOT-Required Drug Tests

Compliance. The Company will ensure that each employee who performs a DOT-covered function will be drug tested for the following reasons when called for by Part 199: All drug tests will be conducted following the procedures of Part 40. Only urine specimens screened and confirmed at HHS certified laboratories are allowed for drug testing. Point-of-collection urine testing or instant tests are not authorized.

Pre-Employment Testing.¹⁸ A pre-employment drug test will be conducted before an individual is hired or contracted into a covered position and when an individual is transferred or promoted from a non-covered to a covered position. This includes when an individual switches back and forth from a covered position to a non-covered position and back again. This also applies to employees returning from a leave of absence greater than 30 days who have not been participating in the Company's drug program and subsequently subject to the random selection process.

A negative DOT urine drug test results is required prior to performing a covered functions. DOT does not allow the use of a "quick test" (e.g., a urine test that produces an immediate test results) or any other methodology other than urine. Pre-employment tests are normally unobserved by the collector. However, provisions will be available at the collection site for a directly observed collection to take place should the circumstances requires such action.

City of Rockport - PHMSA DRUG/ALCOHOL PLAN

Post-Accident Testing.¹⁹ As soon as possible but no later than 32 hours after an accident, the Company will drug test each surviving covered employee whose performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The Company may decide not to test under this paragraph but such a decision will be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident. The Company will document the decisions that support the determination not to conduct a post-accident drug test.

If a test required by this section is not administered within the 32 hours following the accident, the company will prepare and maintain its decision stating the reasons why the test was not promptly administered. If a test required by the above paragraph of this section is not administered within 32 hours following the accident, the Company will cease attempts to administer a drug test and will state in the record the reasons for not administering the test. Refer to Appendix F: *Post-Accident or Reasonable Cause/Suspicion Supervisor Written Record*.

The Company must take all reasonable steps to obtain a urine specimen from an employee after an accident, but any injury should be treated first. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident, to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

The affected employee will not be allowed to proceed alone to or from the collection site. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the Company or Company's representative of their location if they leave the scene of the accident prior to submission to such a test, may be deemed by the Company to have refused to submit to testing. Post-accident tests are normally unobserved by the collector. However, provisions will be available at the collection site for a directly observed collection to take place should circumstances require such action. Depending on the circumstances of the accident, and if feasible, the employee will not be allowed to perform covered functions pending the results of the drug test.

Random Drug Testing:^{20 21 22 23}

The company will conduct a number of random tests each calendar year that meets or exceeds the current minimum annual percentage random testing rate. The minimum rate for random drug testing, set by the PHMSA regulation, is 25 percent of the Company's covered employees. If the industry random drug testing positive rate is above 1 percent, PHMSA will raise the annual percentage rate for random drug testing to 50 percent of all Company's covered employees. **The current annual random drug testing rate is 50 percent.**

The Company may use the services of the C/TPA to manage all aspects of the Company's random testing program. If the Company conducts random testing through a C/TPA, the number of employees to be tested may be calculated for each individual Company or may be based on the total number of covered employees covered by the C/TPA who are subject to random testing (e.g., consortium random testing pool).

All covered employees will be immediately placed in the random pool after obtaining a negative result on their pre-employment test. Covered employees will remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing. The selector of employees shall be made by using a computer-based, scientifically valid method (e.g., random number generator or equivalent random selection method) that is matched with an employee's social security or employee ID number.

The DER will assure the pool contains employee social security number or employee ID numbers that are current, complete, and correct. Employees will have an equal chance of being selected for testing.

Random testing will occur on a quarterly basis. Prior to selection, the DER shall ensure that the random testing pool has been updated to include all current covered employees in the Company's workforce. The number of tests to be conducted will be based on the number of covered employees at the beginning of each quarter's test cycle. The DER, or C/TPA, shall use the random selection procedures to compile a list of covered employees selected for testing in each testing cycle. The number of employees selected shall be sufficient to assure that the minimum number of required tests can be achieved. The list of employees selected will be retained by the DER in a secure location until the time of testing when the list will be provided to the appropriate division manager, department head, or supervisor who will, in turn, notify the employee(s) to report for testing.

Random testing is unannounced, with employees being notified that they have been selected for testing after they have reported for duty on the day of collection. Specimen collection will be conducted on different days of the week throughout each test cycle to prevent employees from matching their drug use patterns to the schedule for collection. Random tests are normally unobserved by the collector. However, provisions will be available at the collection site for a directly observed collection to take place should circumstances require such action.

Once notified by the appropriate Company official, employees will be instructed to report immediately to the collection site.

Reasonable Suspicion/Cause Testing.²⁴ The Company will conduct reasonable suspicion testing, also known as reasonable cause testing, based on the Company's observation of "signs and symptoms" of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. At least two Company supervisors, one of whom is trained in detection of the possible signs and symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. If the Company has 50 or fewer employees subject to testing under PHMSA regulations, only one supervisor, trained in detecting possible drug use signs and symptoms, is needed to make the decision to test.

The supervisor making the determination to test shall document, in writing, the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion/cause test. This documentation of the employee's conduct shall be prepared and signed within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier. Refer to Appendix G: Reasonable Cause/Suspicion Observation Checklist. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity in route to the collection site for the employee to compromise the test through any method of tampering that could affect the outcome of the test results. Reasonable suspicion/cause tests are normally unobserved by the collector. However, provisions will be available at the collection site for a directly observed collection to take place should circumstances require such action.

The employee shall not perform a covered function pending the receipt of the drug test results. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable belief that the employee may be under the influence of a drug. If the employee insists on driving, a supervisor should notify the proper local law enforcement authority that an employee believed to be under the influence of a drug is leaving the Company premises driving a motor vehicle.

Return-to-Duty Testing.²⁵ The Company will conduct a return-to-duty test prior to an employee returning to safety-sensitive duty following a DOT violation. When an employee has a DOT violation the employee cannot work again in any DOT safety-sensitive function until successfully completing the Substance Abuse Professional (SAP) return-to-duty requirements. Only after the SAP has reported to the Company that the employee is eligible to return to safety-sensitive duties is the Company authorized to return the employee to a covered function. However, whether or not to do so is a business decision of the Company, not the DOT. When the Company makes the decision to return the employee to safety-sensitive duty, the Company will initiate the order for the return-to-duty test. All return -to-duty tests will be conducted using direct-observation collection procedures.

A return-to-duty test, as a minimum, will be for the substance associated with the violation. A return-to-duty test may, however, be for both drugs and alcohol. The decision belongs solely to the SAP from information gained during the SAP-evaluation/treatment processes. The results of a return-to-duty drug test must be negative in order "to count" and allow the employee to return to work. A cancelled test must be recollected; a positive test or refusal-to-test will be considered as a new, separate violation.

When the employee "passes" their return-to-duty test, their name is immediately placed into the Company's random testing pool.

If the Company has a zero tolerance policy, any covered employee who has a DOT drug or alcohol violation will be terminated upon such violation (refer to Appendix D, Company Disciplinary Actions and Additional Procedures). However, the employee will be referred to a SAP. The employee will be made aware that they must complete the DOT return-to-duty process prior to again performing safety sensitive work for a company that is subject to the DOT alcohol and drug testing regulations.

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Follow-up Testing. The Company will conduct follow-up testing, as a series of tests that occur after an employee returns to safety-sensitive work, following a negative result on the return-to-duty drug and/ or alcohol tests. Follow-up testing, as a minimum, will be for the substance associated with the violation. In addition, follow-up testing may be for both drug and alcohol, as directed by the SAP's written follow-up testing plan.

Follow-up testing is the Company's responsibility to conduct. Follow-up testing will run concurrently with random testing. All follow-up tests will be conducted using direct-observation collection procedures.

The number and frequency of the follow-up tests will be determined by the SAP, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. The follow-up plan will give both the number of tests and their frequency; the Company will select the actual day and time of the test and the tests are unannounced. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines that such testing is no longer necessary.

Even if the Company has a zero tolerance policy, in the case where the Company hires an employee who previously had a positive test and successfully completed the return-to-duty process and has an acceptable SAP evaluation, the Company must follow the follow-up testing procedure in accordance with the DOT alcohol and drug testing regulations.

2. Drug Tests That Require Direct Observation Procedures²⁸

Compliance. The Company will conduct all return-to-duty and follow-up drug tests using the direct observation collection procedures specified by Part 40. Pre-employment, post-accident, reasonable suspicion/cause and random drug tests are normally conducted by giving the employee the privilege of privacy when providing the urine specimen. However, should it become required that these collections be conducted under direct observation procedures, the Company will explain to the employee the reason(s) and convey instructions to the collector to ensure that this done. Direct observation procedures will also be used for collections when a specimen is provided and the temperature is out of range, when the specimen appears to have been tampered with or when a previous specimen has been reported as invalid, adulterated, substituted or negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, as defined in Part 40.

If a service agent is aware that a directly observed collection should have been collected but was not, the service agent will inform the Company to direct the employee to have an immediate recollection under observation.

3. Specimen Collection Procedures

Compliance. The Company will follow the requirements of Part 40 for its DOT collections. A full description of DOT collection requirements that collectors will follow can be found in Part 40, Subpart C ("Urine Collection Personnel"), and Subpart D ("Collection Sites, Forms, Equipment and Supplies Used in a DOT Urine Collection"), and Subpart E ("Urine Specimen Collections").

Collection Site Personnel. ^{29, 30}

The Company will ensure that collection sites utilized by its employees are aware of their responsibilities with regard to the DOT specimen collection process. These responsibilities are to collect urine specimens using Part 40 procedures, current "DOT Urine Specimen Collection Procedures Guidelines" and applicable DOT agency regulations, ship the specimens to a Department of Health and Human Services (HHS) certified laboratory for analysis, and distribute copies of the Federal Drug Testing Custody and Control Form (CCF) to the laboratory, Medical Review Officer, employer or employer's C/TPA and employee in a confidential manner. All attempts are made to use collectors who have been trained in accordance with Part 40. The Company, or the Company's C/TPA, will ask the collection sites conducting DOT collections to attest to the fact that they comply with DOT standards of practice. The direct supervisor of a covered employee shall not serve as a collector in conducting any required drug test unless it is otherwise impracticable. Collectors will complete requalification/certification every five years. Collectors will subscribe to the ODAPC list-serve website to keep current on any changes to the DOT alcohol and drug testing regulations.

Collection Site, Forms, and Specimen. The Company will provide the employee with the specific location of the collection site where the drug test will take place. The collector will select or allow the employee to select an individually wrapped or sealed collection container from collection kit materials. In most cases, the Company will provide the employee with a drug testing kit, which includes the CCF, to present to the collector. The only specimen that will be conducted for any DOT collection is urine; the only form that will be used is the Federal CCF.

Collections. The Company will inform every employee that they are required to carry and present a current valid photo ID, such as a driver's license, passport, or employer-issued picture ID to the collection site. The employee will be advised that the collector will ask them to empty their pockets, remove any unnecessary garments (the employee may retain their wallet) and wash and dry their hands prior to the collection. The employee will be instructed to follow the collector's instructions throughout the collection process. Normally, the employee will be afforded privacy to provide a urine specimen. Exceptions to the rule generally surround issues of attempted adulteration or substitution of a specimen or any situation where questions of specimen validity arise, like an unusual specimen temperature.

After the employee has provided the specimen (a minimum of 45 mL) of their urine into a collection container, the collector will check the temperature and color of the urine. All DOT collections are "split specimen collections." The collector will pour the urine into two separate bottles (bottle "A" as the primary specimen and bottle "B" as the split specimen), seal them with tamper-evident tape, and then ask the employee to initial the seals after they have been placed on the bottles. (Remember: Neither the employee nor the collector should let the specimen out of their sight until it has been poured into two separate bottles and sealed.) Next, the employee will write their name, date of birth, and daytime and evening phone numbers on the MRO Copy (Copy 2) of the CCF. This is so the MRO can contact the employee directly if any questions arise about their test.

Lastly, the collector will complete the necessary documentation on Copy 1 of the CCF and package the CCF and the two specimen bottles in the plastic bag and seal the bag for shipment to the laboratory. Copies of the CCF will be distributed: Copy 2 to the MRO and Copy 4 to the employer or the employer's C/TPA; the collector keeps Copy 3; and the employee gets Copy 5. The employee may list any prescription and over-the-counter medications they may be taking on the back of their copy of the CCF (this may serve as a reminder for the employee in the event the MRO calls to discuss their test results).

Possible collection issues. If the employee is unable to provide 45mL of urine on the first attempt, the time will be noted, and they will be required to remain in the testing area under the supervision of the collection site personnel, their supervisor, or a representative from their Company (e.g., supervisor accompanying the employee). Leaving the testing area without authorization may be considered a refusal to test. The employee will be urged to drink up to 40 oz. of fluid, distributed reasonably over a period of up to three hours, and asked to provide a new specimen (into a new collection container). The previous insufficient specimen shall be discarded. If the DER is contacted, the DER should instruct the employee to remain at the collection site to complete the collection process. If the employee does not provide a sufficient specimen within three hours, the DER, in consultation with the MRO, will direct the employee to obtain a medical evaluation within five days to determine if there is an acceptable medical reason for not being able to provide a specimen. If it is determined that there is no acceptable physiological or pre-existing psychological reason for not providing a urine specimen, it will be considered a refusal to test.

If an employee urine specimen is out of temperature range or shows signs of tampering, the collector will discard the specimen. The collector will complete the remarks section of the CCF to indicate the fact that the employee provided an "out of temperature range specimen" or "specimen shows signs of tampering" and the specimen has been discarded. The collector will distribute the CCF to the MRO and the DER.

Directly observed collections. If a direct observation collection is required of the employee, the Company will ensure that the DOT requirements (i.e., direct observation by the same-sex collector, observation of body-to-bottle urination, and use of full turn-around observation) procedures are followed.

4. PHMSA Inspection Protocol for Specimen Collection Sites

Compliance. PHMSA's Substance Abuse Program: Comprehensive Audit and Inspection Protocol Form, Combined Anti-Drug and Alcohol Misuse Prevention Programs, Form No." 3.1.11 provides a separate inspection protocol for Specimen Collection Sites. The Company provides this protocol to correspond with the detail found in the PHMSA Inspection Form. As previously stated, the Company will ensure that all DOT drug tests comply with Part 40 requirements.

Collection Personnel. The Company will ensure that only qualified collectors are used to conduct Company DOT tests. An immediate supervisor of an employee may be used in cases where there are no qualified collectors available, and where their use is the only way to get the test conducted. Collectors will maintain documentation to verify they meet training requirements and will make that documentation available to the Company on request.³¹ If an error occurs causing a test to be cancelled and the error is directly attributed to the collector, the collector will undergo error-correction training within 30 days of the date of notification of the error that led to the need for training.³²

Collection Sites, Forms and Supplies. The Company will use designated collection sites that meet DOT requirements.³³ If the collection site uses a facility normally used for other purposes, the collector will ensure that it meets DOT standards before continuing the collection.³⁴

Access to collection materials and specimens will be restricted, and the facility will be secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs will be posted as necessary. The collector will maintain personal control over each specimen and CCF throughout the collection process and will prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.³⁵ The current CCF and a collection kit, that meets the requirements of Appendix A to Part 40, will be used for DOT collections.^{36, 37}

Specimen Collections. Collectors will explain the basic collection procedures to the employee, including showing the employee the instructions on the back of the CCF.³⁸ In most all collections, the Company will provide the employee with a kit and CCF to carry to the collection site. In other collections, collectors will provide the employee with an individually wrapped or sealed collection container from the collection kit materials.³⁹

Precautions will be taken to ensure that unadulterated specimens are obtained and correctly identified. Specimen integrity will be maintained by: bluing agents being added in the toilet tank and all water sources secured; positive photo identification of the employee for collection, notification of the DER if the employee fails to arrive at the assigned time; having the employee remove any unnecessary outer garments (purses or briefcases will remain with the outer garments); having employees wash and dry their hands; and, to the greatest extent possible, the collector will keep an employee's collection container within view of both the collector and the employee between the time the employee has urinated and the specimen is sealed. Any unusual behavior will be noted on the CCF.⁴⁰

Following the collection, the specimen will be checked for sufficient volume (i.e., 45 mL), acceptable temperature range (i.e., between 90-100 degrees F), and shows no signs of tampering (e.g., color, odor).⁴¹ Having problematic issues with specimen volume, the collector will follow DOT's "shy bladder" procedures⁴²; problems with temperature or tampering will result in the collector conducting a second collection under direct observation (see Section V.2, "Drug Tests That Require Direct Observation Procedures").⁴³ Direct observation procedures will be used for all collections where the reason-for-test is either return-to-duty or follow-up. Direct observation procedures will also be used for collections when a specimen is provided and the temperature is out of range, when the specimen appears to have been tampered with or when a previous specimen has been reported as invalid, adulterated, substituted or negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL, but less than or equal to 5mg/dL, as defined in Part 40. If the collector does a monitored collection, same gender monitors will be used if the monitors are non-medical personnel.⁴⁴

All collections are completed by the specimens being sealed and labeled, the CCF being properly executed, and the specimens and the CCF being sealed in a plastic bag for shipment to the laboratory.⁴⁵

5. Drug Testing Laboratory

Compliance. PHMSA's Substance Abuse Program: Comprehensive Audit and Inspection Protocol Form, Combined Anti-Drug and Alcohol Misuse Prevention Programs, Form No.: 3.1.11 provides a separate inspection protocol for Specimen Collection Sites. The Company provides this protocol to correspond with the detail found in the PHMSA Inspection Form. As previously stated, the Company will ensure that all DOT drug tests comply with Part 40 requirements.

Laboratory.^{46, 47} The Company shall ensure that all DOT testing is conducted only by a laboratory that is certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program (NLCP). Doing so ensures that the Company complies with the requirements of Part 40 and with all applicable requirements of HHS in testing DOT specimens, whether or not those requirements are explicitly stated in the Plan. The laboratory used by this Company is specified in Appendix B. The laboratory will report the certified results to the MRO and only to the MRO, at the address provided on the Federal CCF. Results will not be reported directly to the Company or to or through another service agent, such as the C/TPA.

Specimen. Urine is the only specimen that is authorized for DOT drug testing. The Company will not use any other specimen (e.g., hair or saliva) for a DOT-required drug test. A "quick test" (e.g., a urine test that produces an immediate test result) is also prohibited by DOT.

Drug Testing.⁴⁸ The laboratory will ensure that, on each DOT test, each specimen is tested for **marijuana, cocaine, amphetamines, opioids, and phencyclidine (PCP)**. (See Table 1) The testing is a "two step" process: all presumptive positive results on the initial test must be confirmed by a confirmation test. The initial and the confirmation tests use different chemical principles, and separate portions of the original specimen, for test. DOT specimens will not be tested for any other drugs. DOT specimens will not be subjected to DNA testing.

Validity Testing. The laboratory will ensure that, on each DOT test, each specimen is also subjected to "validity testing". The purpose of validity testing is to determine if the employee tampered with their specimen during the collection process. Validity testing measures the creatinine concentration and specific gravity to detect a diluted or substituted specimen; pH is measured as one criterion established to detect an adulterated specimen. Validity testing also incorporates HHS criteria (used by DOT) in testing for specific adulterants such as nitrites, chromates, surfactants, and other active chemical compounds.

Laboratory specimen handling and reporting. When the laboratory receives a DOT specimen they will unpack and enter it into the testing process. Part of that process is to examine the condition of the specimen bottles and accompanying CCF. The laboratory will look closely for any specific reason to stop the testing process (e.g., "fatal flaws"). If the laboratory determines a fatal flaw exists, the specimen is rejected for testing and the test is cancelled by the MRO. If a fatal flaw does not exist, the specimen will be tested. **The following are DOT "fatal flaws":**

- a) There is no CCF;
- b) In cases where a specimen has been collected, there is no specimen submitted with the CCF;
- c) There is no printed collector's name and no collector's signature;
- d) Two separate collections are performed using one CCF;
- e) The specimen ID numbers on the specimen bottle and the CCF do not match;
- f) The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be re-designated, (see §40.83(h))); and
- g) Because of leakage or other causes, there is an insufficient amount of urine in the primary specimen bottle for analysis and the specimens cannot be re-designated, (see §40.83(h)).

The laboratory will open only the primary specimen (Bottle "A") to conduct the two tests (initial and confirmatory). If the specimen tests negative in either test and does not have any specimen validity issues, the result will be reported to the MRO as negative. Only if the specimen test results are positive, adulterated, substituted, and/or invalid under both tests will the specimen be reported to the MRO as positive, adulterated, substituted, and/or invalid, respectively. These results are also referred to as "non-negative" results.

Required DOT Drug Tests & Cutoffs

TYPE OF DRUG Initial Test Analyte	INITIAL TEST Cutoff Concentration ⁹	CONFIRMATORY TEST Analyte	CONFIRMATORY TEST Cutoff Concentration
Marijuana metabolites (THCA) ¹⁰	50 ng/mL ¹¹	THCA	15 ng/mL
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ¹¹	Benzoylecgonine	100 ng/mL
Opioids:			
Codeine/Morphine	2000 ng/mL	Codeine	2000 ng/mL
		Morphine	2000 ng/mL
Hydrocodone/Hydromorphone	300 ng/mL	Hydrocodone	100 ng/mL
		Hydromorphone	100 ng/mL
Oxycodone/Oxymorphone	100 ng/mL	Oxycodone	100 ng/mL
		Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamine/Methamphetamine	500 ng/mL	Amphetamine	250 ng/mL
		Methamphetamine	250 ng/mL
MDMA ¹² /MDA ¹³	500 ng/mL	MDMA	250 ng/mL
		MDA	250 ng/mL

Table 1

⁹ For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

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

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

¹⁰ An immunoassay must be calibrated with the target analyte Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA)

¹¹ *Alternate technology (THCA and benzoylecgonine):* When using alternate technology to test for THCA and Benzoylecgonine, the screening and confirmatory test cutoff concentrations must be the same respectively (i.e., 15 ng/mL for THCA and 100 ng/mL for Benzoylecgonine).

¹² Methylenedioxymethamphetamine (MDMA)

¹³ Methylenedioxyamphetamine (MDA)

6. Laboratory Retention Periods and Reports

Specimen retention.⁴⁹ Specimens that are confirmed by the laboratory to be positive, adulterated, substituted, or invalid will be retained by the laboratory in properly secured, long-term, frozen storage for at least one year. Any employee split specimen not sent to another laboratory for testing, will be retained by the laboratory for the same period of time that the primary specimen is retained and will be maintained under the same storage conditions. Within this one-year period, the MRO, the employee, the Company, PHMSA or other state agencies with jurisdiction, may request in writing that the specimens be retained for an additional period. If the laboratory does not receive the request to retain the specimen within the one-year period, the specimen will be discarded.

Record retention.⁵⁰ All laboratory records pertaining to any test for this Company on its covered employees will be retained for two years. The employer-specific data that is created by the laboratory for the laboratory statistical summary will be retained for two years. Within this two-year period, the MRO, the employee, the Company, PHMSA or other state agencies with jurisdiction, may request in writing that the records be retained for an additional period. If the laboratory does not receive the request to retain the records within the two-year period, the records will be discarded.

Semi-annual reports.⁵¹ The laboratory will prepare and send to the Company the aggregate employer- specific summary on a semi-annual basis. The format for this report is found in Part 40, Appendix B.

7. Laboratory Quality Control

Inspections. The laboratory shall permit inspections by the Company, the PHMSA Administrator, or if the Company is subject to the jurisdiction of a state agency, a representative of the state agency. Additionally, if the Company uses a C/TPA, that C/TPA may conduct a periodic inspection of the laboratory on the behalf of the companies that are clients of the C/TPA.

8. MRO Review of Drug Test Results

Compliance.⁵³ The Company will have, on staff or contract for the services of, an MRO who is a licensed physician with knowledge of drug abuse and is qualified under Part 40. The MRO will follow the requirements of Part 40 in carrying out the functions of the “independent and impartial gatekeeper of the drug testing process”. A full description of the DOT MRO requirements can be found in Part 40, Subpart G (“Medical Review Officers and the Verification Process”, and Subpart H (Split Specimen Testing). The MRO will complete requalification/certification training every five years. The MRO will subscribe to the ODAPC list-serve website to keep current on any changes to the DOT alcohol and drug testing regulations.

The MRO will act to investigate and correct problems where possible and notify appropriate parties (e.g., HHS, DOT, employers, service agents) where assistance is needed (e.g., cancelled or problematic tests, incorrect results).

Duties.⁵⁴ All confirmed drug test results for the Company are received by the MRO directly from the laboratory. The MRO is responsible for the review of both negative and non-negative test results, review of the CCFs associated with each test, and to conduct quality control reviews of the MRO staff. The MRO will review and interpret confirmed positive, adulterated, substituted, and invalid test results. The MRO will verify a confirmed positive test result for marijuana, cocaine, amphetamines, semi-synthetic opioids (i.e., hydrocodone, hydromorphone, oxycodone and oxymorphone), and/or PCP unless the employee presents a legitimate medical explanation for the presence of drug(s)/metabolite(s) in his or her system. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive, adulterated, substituted or invalid test result. This action would include conducting a medical interview with the employee and review of the employee's medical history, or review of any other relevant biomedical factors, such as the results of a physical examination following an opioid positive. If the MRO determines that it is necessary, the MRO will request the laboratory test for D, L stereoisomers of amphetamine and methamphetamine or testing for tetrahydrocannabinavarin (THC-V) when verifying lab results.

The MRO shall review and take all reasonable and necessary steps to verify the authenticity of all medical records made available by the tested employee when the source of the confirmed result could have been from legally prescribed medication. The MRO shall not, however, consider the results of urine or other specimens that are not obtained or processed in accordance with DOT regulations.

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Results. The MRO will use staff under his direct supervision to handle administrative processes for negative test results including receiving the result from the laboratory, reviewing the paperwork for accuracy, and reporting of the result to the DER.

The MRO staff may make the initial contact with employees having confirmed positive, adulterated, substituted, and invalid test results, for the purposes of setting up an interview for the MRO. The MRO will personally conduct the interview with the employee to determine whether there is a legitimate medical explanation for these results. This interview will be conducted, in most cases, before the Company is notified. If the result is confirmed positive by the laboratory, and a legitimate medical explanation is established, the MRO will report the result to the DER as negative. If not, the MRO will report the result to the DER as positive. If the confirmed result is adulterated or substituted, and a legitimate medical explanation is established, the MRO will report the result to the DER as cancelled and notify ODAPC, in accordance with Part 40 procedures. If not, the MRO will report the result to the DER as a refusal to test. If the result is invalid, and an acceptable reason is established, the MRO will report the result to the DER as cancelled and the process will stop, unless a negative test result is needed (e.g., pre-employment, return-to-duty and follow-up). If an acceptable reason is not established, the MRO will report the result to the DER as cancelled and order an immediate recollection under direct observation.

Reports.⁵⁷ All drug test results will be reported to the Company DER in a confidential and timely manner. Before reporting any results, the MRO will have received a copy of the CCF showing where the employee has signed the form. The time period from collecting the specimen to reporting the verified test result is generally shorter for negatives than for non-negatives. Non-negatives will not be reported to the DER until all information required for the employee interview is received and approved by the MRO. The MRO will transmit the report(s) of verified tests to the Company DER within two days of verification by the MRO. The Company may use a C/TPA as its intermediary in receiving drug test results. If so, those reports will be handled in accordance with Part 40 requirements. If the MRO does not use Copy 2 of the CCF for reporting results, the MRO will maintain a copy of the signed or stamped report in addition to the signed or stamped and dated Copy 2. If the MRO uses an electronic data file to report negatives, the MRO will maintain a retrievable copy of that report in a format suitable for inspection and auditing by a DOT representative.

9. Split Specimen Testing

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Split Specimen. When the MRO has verified a result as positive, adulterated, or substituted, the MRO will notify the employee of their right to have the split specimen tested. The employee must notify the MRO within 72 hours of the result being verified in order to have this testing conducted. If the employee requests that the split specimen be tested within the 72-hour period, the MRO will ensure that the split specimen is tested. Testing of the split specimen is only conducted at the request of the employee, and then only after using the MRO as the requesting agent for the employee. The MRO will select the second laboratory. The MRO will immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to the second HHS-certified laboratory. The MRO will document the date and time of the employee's request.

The Company is responsible for making sure that the MRO, first laboratory, and second laboratory perform the functions noted in Part 40 in a timely manner, once the employee has made a timely request for a test of the split specimen (e.g., by establishing appropriate accounts with laboratories for testing split specimens).

The Company must not condition compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement for reimbursement of the costs of testing. For example, if the Company's asks the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, the Company must ensure that the test takes place in a timely manner, which means that the Company will pay for the split testing.

The Company may seek payment or reimbursement of all or part of the cost of the split specimen from the employee. Part 40 takes no position on who ultimately pays the cost of the test, so long as the Company ensures that the testing is conducted as required and the results released appropriately.

Laboratory.⁵⁹ The testing of the split specimen will be conducted at another HHS-certified laboratory, different from the original laboratory. **The MRO will select the second laboratory.** The split specimen will be tested for the same substance or condition that was found in the primary specimen. The MRO will report back to the DER and the employee whether the split reconfirms the primary. If the test of the split does not reconfirm the primary, both tests will be cancelled as if they never occurred.

10. Medical or Recreational Marijuana

The DOT and the Company does not accommodate the use of medical or recreational marijuana by DOT-covered employees.

VI. ALCOHOL MISUSE PREVENTION PROGRAM

1. DOT-Required Alcohol Tests

Compliance. The Company will ensure that each employee who performs a DOT-covered function will be alcohol tested for the following reasons when called for by Part 199. All alcohol tests will be conducted following the procedures of Part 40.

Pre-Employment Testing.⁶⁰ PHMSA does not mandate a pre-employment alcohol test for covered employees in the pipeline industry. PHMSA does give operators and contractors who wish to conduct a pre-employment alcohol test the authority to do so. If the Company decides to conduct pre-employment alcohol testing, all applicants will be advised of the test prior to the test occurring, and all tests will be conducted before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions). The Company will treat all covered employees the same for the purpose of pre-employment alcohol testing; the Company will not test some covered employees and not others. The Company will conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test. A result of less than 0.02 alcohol concentration is required prior to performing covered functions.

Post-Accident Testing.⁶¹ As soon as possible, the Company will alcohol test each surviving covered employee whose performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The Company may decide not to test under this paragraph but such a decision will be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident. The Company will document the decisions that support the determination not to conduct a post-accident alcohol test.

If a test required by this section is not administered within the 8 hours following the accident, the Company will prepare and maintain its decision stating the reasons why the test was not promptly administered. If a test required by the above paragraph of this section is not administered within 8 hours following the accident, the Company will cease attempts to administer an alcohol test and will state in the record the reasons for not administering the test. Refer to Appendix F: *Post-Accident or Reasonable Cause/Suspicion Supervisor Written Record*.

If the alcohol test is not completed within 2 hours the Company will prepare and maintain a written statement documenting the reason the test was not conducted. If the test is not completed within 8 hours the Company shall cease attempts to do so. The Company will take all reasonable steps to obtain a breath test from an employee after an accident, but any injury should be treated first. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident, to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

The affected employee will not be allowed to proceed alone to the testing site. A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the Company or Company's representative of their location if they leave the scene of the accident prior to submission to such test, may be deemed by the Company to have refused to submit to testing.

Random Testing. PHMSA does not authorize random alcohol testing of covered employees within the natural gas and hazardous liquids pipeline industry. The Company will not conduct DOT random alcohol testing of their PHMSA-regulated employees.

Reasonable Suspicion/Cause Testing.^{62 63 64} The Company will conduct reasonable suspicion testing, also known as reasonable cause testing, based on the Company's observation of "signs and symptoms" of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. A supervisor trained in detection of the possible signs and symptoms of alcohol use shall make the decision to test an employee. The decision to test will only be made on an employee during, just before, or just after his performance of DOT functions.

The supervisor making the determination to test shall document, in writing, the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion/cause test. This documentation of the employee's conduct should be prepared and signed within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier. Refer to Appendix G: Reasonable Cause/Suspicion Observation Checklist. The potentially affected employee should not be allowed to proceed alone to or from the test site.

If the reasonable suspicion test is not administered within 2 hours following the determination, the Company will prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within 8 hours, the Company will cease attempts to administer an alcohol test and record the reasons for not testing.

If the test results are 0.02 or greater, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable belief that he may be under the influence of alcohol. If the employee insists on driving, a supervisor should notify the proper local law enforcement authority that an employee believed to be under the influence of alcohol is leaving the Company premises driving a motor vehicle.

Return-to-Duty Testing.⁶⁵ The Company will conduct a return-to-duty test prior to an employee returning to safety-sensitive duty following a DOT violation. When an employee has a DOT violation the employee cannot work again in any DOT safety-sensitive function until successfully completing the SAP/return-to-duty requirements. Only after the SAP has reported to the Company that the employee is eligible to return to safety-sensitive duties is the Company authorized to return the employee to a covered function. However, whether or not to do so is a business decision of the Company, not the DOT. When the Company makes the decision to return the employee to safety-sensitive duty, the Company will initiate the order for the return-to-duty test.

A return-to-duty test, as a minimum, will be for the substance associated with the violation. A return-to-duty test may, however, be for both drugs and alcohol. The decision belongs solely to the SAP from information gained during the SAP-evaluation/treatment processes. The results of a return-to-duty alcohol test must be less than 0.02 in order "to count" and allow the employee to return to work. A cancelled test does not meet this criterion and requires a retest; a result greater than 0.02 but less than 0.04 must be retested until the result is less than 0.02; a result of 0.04 or greater is a new, separate violation.

If the Company has a zero tolerance policy, any covered employee who has a DOT drug or alcohol violation will be terminated upon such violation (refer to Appendix D, Company Disciplinary Actions and Additional Procedures). However, the employee will be referred to a SAP. The employee will be made aware that they must complete the DOT return-to-duty process prior to again performing safety sensitive work for a company that is subject to the DOT alcohol and drug testing regulations.

Follow-up Testing. ^{66 67} The Company will conduct follow-up testing, as a series of tests that occur after an employee returns to safety-sensitive work, following a negative result on the return-to-duty drug and/or alcohol tests. Follow-up testing, as a minimum, will be for the substance associated with the violation. In addition, follow-up testing may be for both drugs and alcohol, as directed by the SAP's written follow-up testing plan.

Follow-up testing is the Company's responsibility to conduct. The number and frequency of the follow-up tests will be determined by the SAP, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. The follow-up plan will give both the number of tests and their frequency; the Company will select the actual day and time of the test and the tests are unannounced. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines that such testing is no longer necessary.

2. Alcohol Test

Compliance. The Company will follow Part 40 procedures for alcohol testing. A full description of DOT alcohol testing requirements can be found in Part 40, Subpart J ("Alcohol Testing Personnel"); Subpart K ("Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing"); Subpart L ("Alcohol Screening Tests"); Subpart M ("Alcohol Confirmation Tests"); and, Subpart N ("Problems in Alcohol Testing"). These procedures apply to all DOT alcohol tests regardless of the reason for the test.

Personnel and Testing Devices. ^{68 69} The Company will only use qualified Screening Test Technicians (STT) or Breath Alcohol Technicians (BAT) for DOT alcohol tests. **Technicians will complete requalification/certification training every five years. The technicians will subscribe to the ODAPC list-serve website to keep current on any changes to the DOT alcohol and drug testing regulations.** These technicians will only conduct the test using DOT-approved devices. Devices are approved by the National Highway Traffic Safety Administration (NHTSA), an agency of DOT, and placed on the Conforming Products List (CPL). ¹⁴ The devices used by the Company will be maintained according to the particular manufacturer's specifications in the Quality Assurance Plan (QAP). External calibration checks will be performed at the intervals specified in the manufacturer's instructions for any EBT used for DOT- required alcohol confirmation testing.

Testing Site, Forms, and Specimen. The Company will provide the employee with the specific location where the test will take place. Tests will be conducted in an area to prevent unauthorized people from hearing or seeing the employee's test result. The Company will remind the employee that failure to sign the DOT Alcohol Testing Form (ATF) at the instruction of the testing technician will be viewed as a refusal to test. The alcohol screening test may be conducted with breath or saliva, as applicable for the device used by the testing technician. Only breath will be used for the confirmation test, which is conducted by a BAT using an EBT.

Test. The Company will inform the employee that they are required to carry and present a current valid picture ID, such as a driver's license, passport, or employer-issued picture ID to the testing site. The testing technician will perform a screening test and show the employee the test result. If the screening test result is an alcohol concentration of less than 0.02, no further testing is authorized, and there is no DOT action to be taken. The technician will document the result on the ATF, provide the employee a copy and also provide the Company and/or the Company's C/TPA a copy. If the screening test result is 0.02 or greater, the employee will be required to take a confirmation test, which can only be administered by a BAT using an EBT. The BAT will wait at least 15-minutes, but not more than 30 minutes, before conducting the confirmation test. During that time, the employee will not be allowed to eat, drink, smoke, belch, put anything in their mouth or leave the testing area. Leaving the testing area without authorization may be considered a refusal to test. The BAT will perform an "air blank" (which must read 0.00) on the EBT device to ensure that there is no residual alcohol in the EBT or in the air around it. The confirmation test result is the final result of the test, and the will be shown to the employee and on the printout from the EBT. If the result is less than 0.02, no action is taken under Part 199. Any result of 0.02 or greater will be immediately reported to the Company.

¹⁴ National Highway Traffic Safety Administration, Conforming Products List for Evidential Breath Measurement Devices.

3. PHMSA Inspection Protocol for Alcohol Testing Sites

Compliance. PHMSA's Substance Abuse Program: Comprehensive Audit and Inspection Protocol Form, Combined Anti-Drug and Alcohol Misuse Prevention Programs, Form No.: 3.1.11 provides a separate inspection protocol for Alcohol Testing Sites. The Company provides this protocol to correspond with the detail found in the PHMSA Inspection Form. As previously stated, the Company will ensure that all DOT alcohol tests comply with Part 40 requirements.

Alcohol Testing Personnel. The Company will ensure that only qualified STTs and BATs are used to conduct Company DOT tests. STTs and BATs are responsible to maintain their own verification documentation and will make it available to the Company on request.⁷⁰ A supervisor of an employee may not be used to conduct a reasonable suspicion/cause test if that supervisor was the one who made the determination to test.⁷¹

Alcohol Testing Sites, Forms and Supplies. The testing site will ensure visual and aural privacy to the employee being tested to prevent unauthorized persons from seeing or hearing test results. The site will have the needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing. The site will be able to prevent unauthorized personnel from entering the testing site, and ensure no unauthorized employee has access to an unsecured EBT, and that when an EBT or ASD is not being used for testing, it is stored in a secure place. Tests will be conducted on only one employee at a time.⁷²

Only EBTs and ASDs listed on the NHTSA CPL will be used for DOT alcohol testing, and only an EBT must be used for conducting the confirmation tests.⁷³ The QAP and associated manufacturer's instructions will be followed for all EBTs and ASDs used by the Company.⁷⁴ It is the responsibility of the testing sites used by the Company to carry out this responsibility for the Company.⁷⁵

Alcohol Screening Tests. Only the DOT-approved ATF will be used for all Company alcohol tests.⁷⁶ The employee will provide a positive identification through the use of photo ID or by employer representative prior to the test.⁷⁷ The BAT or STT shall explain the testing process to the employee, including showing the employee the instructions on the back of the ATF.⁷⁸ If the employee has a designated testing time and does not appear, the BAT or STT will notify the DER. Testing will begin without undue delay. An alcohol test will be given prior to a drug test and medical attention, if it is required, will not be delayed in order to conduct a test. The testing technician will explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.

The ATF will be completed and the employee will be asked to sign the ATF. Failure to sign is a refusal to test. The BAT or STT will select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials and insert it into the device in accordance with the manufacturer's instructions. The employee will be instructed to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained. The employee will be shown the displayed test result. The device will print a label with, or the technician will write, the result and pertinent information on the ATF.⁷⁹

Alcohol Screening with an ASD.⁸⁰ It is not the intent of the Company to use an ASD for an alcohol test. However, it is possible that, when necessary, one may have to be used to conduct the test. In those cases the STT or BAT will follow the manufacturer's instructions, and only use a device that has been under their control. The ASD may be either a saliva device or a breath tube. The expiration date will be shown to the employee. A device will not be used after its expiration date. The device will be opened in the presence of the employee, and the employee will be offered the opportunity to use the device, according to instructions. In any case where the technician uses the device, the device will be inserted into the employee's mouth and gather saliva, with the technician wearing single-use examination gloves while doing so and change them following each test. Assurance will be made that the device has properly activated and that the correct amount of time will be allowed to elapse before reading the result. If problems occur (e.g., the device does not activate, it is dropped on the floor), it will be discarded and a new test will be conducted using a new device.

The STT or BAT will note on the ATF the reason for the new test. If efforts to get the ASD to work properly fail, the technician will direct the employee to take a new test immediately, using an EBT for the screening test. Devices, swabs, gloves or other materials used in the prior saliva or breath tube testing will not be used in subsequent tests.

Alcohol Screening Results.⁸¹ A result with an alcohol concentration of less than 0.02 will be recorded on the ATF; the result will be transmitted to the DER, with the test concluded without consequence. A result with an alcohol concentration of 0.02 or higher requires the employee to take a confirmation test. If the same BAT who conducted the alcohol screening test will also conduct the confirmation test, the test will begin immediately. If a different BAT will conduct the confirmation test, the technician conducting the screening test will direct the employee to the site where the test will take place. The technician will also advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into the employee's mouth, or belch, during the 15-minute waiting period until the test occurs. The different BAT will require positive identification of the employee, explain the confirmation procedures, and use a new ATF. The BAT will note on the "Remarks" line of the ATF that a different BAT or STT conducted the screening test. The employee will be observed by the technician or an employer representative on the way to the confirmation testing site. The employee will be directed not to attempt to drive a motor vehicle to the confirmation testing site.

Alcohol Confirmation Test.^{82 83}

All alcohol confirmation tests will be conducted by BATs using EBTs. The BAT will ensure that the time since the screening test has been at least 15 minutes, and the employee has been advised not to eat, drink, put anything (e.g., cigarette, chewing gum) into the employee's mouth, or belch. The BAT will conduct an air blank on the EBT in the presence of the employee. The reading must be 0.00 for the test to proceed. If the reading is greater than 0.00, another air blank must be conducted; the EBT must not be used (taken out of service) if the second reading is greater than 0.00. The EBT cannot be used for testing until it is found to be within tolerance limits on an external check of calibration. A new sealed mouthpiece will be opened, in view of the employee, and used for the test. The employee will be instructed to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained. The results will be shown to the employee and printed for application to the ATF.

Alcohol Confirmation Results. If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. If the alcohol confirmation test result is 0.02 or higher, the BAT will immediately transmit the result directly to the DER in a confidential manner.

Problems in Alcohol Testing.^{84, 85, 86} The Plan addresses the situations in which an employee has refused to take an alcohol test. See Section IV.6, "DOT Alcohol Violations and Prohibited Conduct." In situations where an employee is unable to provide sufficient saliva to complete a screening test, the Company will ensure that the employee takes a breath test immediately. In situations where an employee is unable to provide sufficient breath to complete a test, the employee will be sent for an evaluation, within five days, by a licensed physician who is acceptable to the Company. The physician will have expertise in the medical issues raised by the employee's failure to provide a breath specimen, as well as be apprised of the consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test. The physician will provide the Company with a signed statement of their conclusions. If it is the reasonable medical judgment of the physician, that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath, the test will be canceled by the Company. If there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath, this constitutes a refusal to test.

Canceling an Alcohol Test.⁸⁷ The Company will ensure that an alcohol test is canceled if a fatal flaw occurs. Fatal flaws are: 1) in the case of a screening test conducted on a saliva ASD or a breath tube ASD, the STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer; the saliva ASD does not activate; the device is used for a test after its expiration date; or, in the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result; 2) in the case of a confirmation test the BAT conducts the confirmation test before the end of the minimum 15-minute waiting period; the BAT does not conduct an air blank before the confirmation test; there is not a 0.00 result on the air blank conducted before the confirmation test; the EBT does not print the result; or, the next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is canceled.

The Company will ensure that an alcohol test is canceled if a correctable flaw occurs and is not corrected. Correctable flaws are: the BAT or STT does not sign the ATF; the BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained; and, the BAT or STT uses a non-DOT form for the test.

Corrected Alcohol Problems.⁸⁸ The Company will ensure that BATs and STTs will try to successfully complete each alcohol test for an employee. If they become aware of a problem that will cause the test to be canceled, they will try to correct the problem promptly, if practicable. Repeating the test is an acceptable part of this process. If repeating the testing process is necessary, a new test (new ATF, new device) must begin as soon as possible. If repeating the testing process is necessary, the technician is not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process. If another testing device is not available for the new test at the testing site, the technician will immediately notify the DER and advise the DER that the test could not be completed. The DER will make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible. If the Company or its service agent administering the testing process becomes aware of a correctable flaw that has not been corrected, all practicable action will be taken to correct the problem so that the test is not cancelled. If the problem resulted from the omission of required information, the person responsible for providing the information must supply in writing the missing information and a signed statement that it is true and accurate.

If the problem is the use of a non-DOT form, the technician must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. The technician must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond the technician's control, and the steps the technician has taken to prevent future use of non-DOT forms for DOT tests. The technician must supply this information on the same business day on which the collector was notified of the problem, transmitting it by fax, e-mail or courier. If the technician cannot correct the problem, the technician must cancel the test.

VII. PROGRAM ELEMENTS COMMON TO DRUG AND ALCOHOL

1. Substance Abuse Professional

Compliance. The Company will follow the requirements of Part 40 for its Substance Abuse Professional (SAP) obligations. A full description of the SAP requirements is in Part 40, Subpart O ("Substance Abuse Professionals and the Return-to-Duty Process").

Qualifications.⁸⁹ The Company will refer employees only to SAP's who have the credentials, basic knowledge, and qualification training, including fulfilling obligations for continuing education courses, for DOT violations. **The SAP will subscribe to the ODAPC list-serve website to keep current on any changes to the DOT alcohol and drug testing regulations.** The SAP will not be an advocate for the Company or the employee. The SAP's function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

SAP Referral.⁹⁰ The Company will provide to each employee who violates a DOT drug and alcohol regulation a listing of SAP's readily available to the employee and acceptable to the Company. The list will include SAP names, addresses, and telephone numbers. There will not be a charge to the employee for compiling or providing this list. The Company may use its C/TPA or other service agent to provide this information. Any covered employee who has violated DOT drug and alcohol regulations cannot again perform any DOT safety-sensitive duties for this Company until and unless the employee successfully completes the SAP evaluation, referral, and education/treatment process.

Payment. The Company is not required to pay for a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.

Company Responsibility. The Company is only bound by DOT to ensure that if the employee is provided an opportunity to return to a DOT safety-sensitive duty following a violation, that the Company ensure that the employee receives an evaluation by a SAP meeting the requirements of Part 40 and that the employee successfully complies with the SAP's evaluation recommendations before returning to the safety-sensitive job. Even if a SAP believes that the employee is ready to return to safety-sensitive work, the Company is under no obligation to return the employee to work. Under the DOT regulations, hiring and reinstatement decisions are left to the employer. The DOT leaves all payment issues for SAP evaluations and services to the Company and the employee to resolve.

SAP Process. The SAP will make a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use. The SAP will refer the employee to an appropriate education and/or treatment program. At the completion of the education and/or treatment, the SAP will conduct a face-to-face follow-up evaluation to determine if the employee actively participated in the education and/or treatment program and demonstrated successful compliance with the initial assessment and evaluation recommendations.

Reports will be provided to the Company on both the initial requirements and the outcome of the follow-up evaluation. The report will be specific and will include all of the Part 40 requirements of a written SAP report. The SAP will provide the DER with a written follow-up drug and/or alcohol testing plan for the employee and, if deemed necessary, will also provide the employee and the Company with recommendations for continuing education and/or treatment.

2. Employee Assistance Program^{91 92}

The Company will provide an Employee Assistance Program (EAP) for its employees and supervisors. The EAP may be established "in house," as part of internal personnel service or may be contracted to an entity that provides EAP services at other locations. The function of the EAP will be to provide employees with informational material on the awareness and danger of drug and alcohol use. General EAP-information material, such as the availability of brochures or videos, and community service "hotline" telephone numbers will be displayed in common areas and distributed to employees. Employees will be encouraged to call the hotline if needed. Additionally, this Plan will be displayed and made available to all employees. The Plan contains the employer's policy regarding the use of prohibited drugs and alcohol misuse. The areas and places in which the above material will be displayed include employee bulletin boards, break rooms, locker rooms, or other areas designated by the Company.

3. Supervisor Training^{93 94 95}

Each supervisor who will determine whether an employee must be drug tested and/or alcohol tested based on reasonable suspicion/cause will be trained in the "signs and symptoms" of each substance. Each supervisor will receive one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable *drug* use and one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable *alcohol* use. The two 60-minute training periods may run concurrently.

4. Contractor Monitoring^{96 97}

Compliance. Operators are responsible for ensuring that contractors and contractor employees working for, and/or on the properties of, the operator are in compliance with the requirements of Part 40 and 199. With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that all requirements of Part 40 and 199 will be carried out by the contractor.

To assure that the contractor is in full compliance, the contractor will allow access to property and records by the operator, the operator designee, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of Part 40 and 199. The operator will ensure that all contractors are qualified prior to commencing, as well as during the performance of, covered functions for the operator.

Qualifying Potential Contractor. Qualifications of the potential contractor as it pertains to drug and alcohol testing policies and procedures are assured by requesting the potential contractor to submit a copy of its Plan for review and compliance with PHMSA regulations. After review of the Plan is completed, written correspondence to the contractor will advise whether or not it is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor Plan shall be completed utilizing the criteria established by PHMSA.

Monitoring Contractor's Compliance. The contractor may be required to provide information on their employees who will perform covered functions for the operator. This information will include, as a minimum, the name, type of test and test date of the employees who will perform any work or functions covered by Part 199 under that contract. A list of each contractor's covered employees may be distributed to appropriate Company field management. All contractors will be required to submit drug and alcohol testing statistical information on a periodic basis, which may be based on the duration of the contract. Typically, this requirement will be on a semi-annual basis. The Company may require a more frequent schedule for submission of drug and alcohol testing data should they determine a need for such statistics. The Company shall maintain a complete file on each contractor's statistical drug and alcohol testing reports. The Company shall make these reports available when requested by a PHMSA agency-designated representative, or representatives of those state agencies under which jurisdiction the Company operates. The operator will also submit contractor Management Information System (MIS) reports to PHMSA by March 15th each year.

The contractor will cooperate with the operator, or the operator's designee, if additional information is requested to further verify compliance of the regulations.

5. Recordkeeping^{98 99 100}

Compliance. The Company will ensure that all records required by the DOT are maintained in a location with controlled access. The Company is not required to keep records related to a program requirement that does not apply to Part 40 or 199. The Company or its C/TPA will maintain the records in a locked file system and will be accessed only on a strict "need to know" basis. The Company or its C/TPA will not release an employee's drug and alcohol records to third parties without the employee's specific written consent. A "third party" is any person or organization to whom Parts 40 or 199 do not explicitly authorize or require the transmission of information in the course of the drug and alcohol testing process. "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time.

The Company or its C/TPA will release the employee's information without consent to DOT, PHMSA, or other government agency having regulatory authority over the Company or employee without consent. The Company or its C/TPA will release the employee's information without consent as a part of an accident investigation by the National Transportation Safety Board. The Company or its C/TPA will release the employee's information without consent in certain legal proceedings. These proceedings include a lawsuit, grievance, administrative proceeding (e.g., an unemployment compensation hearing brought by or on behalf of an employee resulting from a positive drug or alcohol test or refusal to test), a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the Company to produce the information. In such a proceeding the information will be released to the decision maker in the proceeding with a binding stipulation that the decision maker to whom it is released will make it available only to parties to the proceeding. After releasing the information, the Company or its C/TPA will notify the employee.

If the Company uses a C/TPA to maintain the records, the Company will ensure that the C/TPA can produce these records at the Company's principal place of business in the time required by the DOT agency for an inspection. The records will be provided within two business days after receipt of the request. Most records will be stored electronically, where permitted by Part 40 and 199. The Company will ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria for the DOT inspector, the Company will convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.

Records and Retention Periods. The Company or its C/TPA will maintain the following records for the noted time periods, as a minimum:

- a) Records kept for **five** years:
 - (1) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;
 - (2) Records of the inspection, maintenance, and calibration of EBTs;
 - (3) Records of verified positive drug test results;
 - (4) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
 - (5) SAP reports;
 - (6) Follow-up tests and schedules for follow-up tests; and,
 - (7) Statistical data related to the Company's testing program, entitled "Management Information System," will be available to a representative of DOT, PHMSA, or a state agency having regulatory authority over the Company upon request.
- b) Records kept for **three** years:
 - (1) Records of information obtained from previous employers under Part 40 concerning drug and alcohol test results of employees;
 - (2) Records that demonstrate the drug-testing collection process; and,
 - (3) Records related to "signs and symptoms" alcohol and drug training for supervisors;
 - (4) Records related to employee education and training;
 - (5) Records of decisions not to administer post-accident covered employee alcohol and drug tests.
- c) Records kept for **two** years:
 - (1) Records related to the alcohol collection process (i.e., calibration documentation for evidential breath testing devices, documentation of breath alcohol technician training, documents generated in connection with decisions to administer reasonable suspicion alcohol tests, documents generated in connection with decisions on post-accident tests, and documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing); and,
- d) Records kept for **one** year:
 - (1) Negative and cancelled drug test results.
 - (2) Alcohol results less than 0.02.

Employee Request for Records. All employees have the right to request and obtain copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests, and copies of SAP reports. Requests for records must be made in writing to the DER. A laboratory must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (i.e., laboratory report and data package). Service agents providing records may charge no more than the cost of preparation and reproduction for copies of these records. SAPs must redact follow-up testing information from the report before providing it to the employee.

6. Management Information System ^{101 102 103}

Compliance. The Company will prepare and maintain the DOT Management Information System (MIS) report for its drug and alcohol testing program. This report will be submitted to PHMSA in accordance with annual submission requirements. If the Company uses a C/TPA then the C/TPA may prepare and maintain the MIS, reporting the MIS as the Company requires. The DER will certify each report submitted by a C/TPA for accuracy and completeness. **The MIS report will be submitted electronically through the DAMIS portal.**

Contractor Reporting for MIS. If the Company is an operator, it will verify and identify all contractors who performed covered functions, as defined under Part 199, for this Company in a given calendar year. If required, by either mandated annual or PHMSA written request, the Company will submit an MIS report for each of these contractors on or before March 15th. **The contractor MIS reports will be submitted electronically through the DAMIS portal.**

VIII. Appendix A - Acknowledgement/Receipt Form

I acknowledge, by signing this form, that my full compliance with the Anti-Drug and Alcohol Misuse Prevention Plan (the "Plan") and DOT drug and alcohol regulation requirements is a condition of my initial and continued employment with the Company. I understand and agree that I may be discharged or otherwise disciplined for any drug and/or alcohol violation, committed by me, as cited in the Plan and/or in the DOT drug and alcohol regulatory requirements.

I also acknowledge, by signing this form, that a copy of the Plan has been made available to me and that I have read and understand the requirements of the Company and DOT drug and alcohol program. I have also been provided with informational materials on the dangers and problems of drug abuse and alcohol misuse.

Signed, this the _____ day of _____, 20_____.

Employee Name (Please Print)

Employee Signature

Company Representative Name (Please Print)

Company Representative Signature

IX. Appendix B - Designated Personnel and Service Agents

CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)

Name: Texas Alcohol & Drug Testing Service, Inc

Address: 411 Lantern Bend Dr Ste 210, Houston, Tx 77090

Phone Number: 281-444-6600

DESIGNATED EMPLOYER REPRESENTATIVE (DER)/ALCOHOL & DRUG PROGRAM MANAGER

Name: Ruby Beaven

Address: 622 E. Market St, Rockport, TX 78382

Phone Number: 361-729-2213

MEDICAL REVIEW OFFICER (MRO)

Name: Nationwide Medical Review - Steven Paschall MD

Address: 7160 Graham Rd. Indianapolis, IN 46250

Phone Number: 317-547-8620

SUBSTANCE ABUSE & MENTAL HEALTH ADMINISTRATION (SAMHSA/HHS) LABORATORY

Name: Quest Diagnostics

Address: 10101 Renner Blvd, Lenexa, KS 66219

Phone Number: 1-800-873-8845

COLLECTION SITE(s) - DRUG AND BREATH ALCOHOL

Name: Texas Alcohol and Drug Testing Service

Address: 1605-D U.S. Highway 181, Portland, TX 78374

Phone Number: 830-278-5800

Collection site procedures, processes and personnel requirements will follow Part 40, Subpart C, Subpart D, Subpart E, Subpart J, Subpart K, Subpart L, Subpart M and Subpart N. A list of collection site facilities, utilized by the Company, will be available upon request.

LIST OF APPROVED EVIDENTIAL BREATH TESTING DEVICES (EBTS) UTILIZED:

EBT Manufacture Name and EBT Model Name: Intoximeter RBT-IV

The Company will only utilize alcohol testing technicians who conduct the testing using DOT-approved devices. These devices are approved by the National Highway Traffic Safety Administration. A list of breath testing devices, utilized by the Company, will be available upon request.

SUBSTANCE ABUSE PROFESSIONAL (SAP)

Name: American Substance Abuse Professionals (ASAP)

Address: www.go2asap.com or www.saplist.com

Phone Number: 1-800-873-8845

EMPLOYEE ASSISTANCE PROGRAM (EAP)

Name:

Address:

Phone Number:

X. Appendix C - Covered Positions

EMPLOYEE/SUPERVISOR* POSITIONS SUBJECT TO ALCOHOL & DRUG TESTING

JOB CLASSIFICATIONS/TITLES SUBJECT TO 49 CFR PART 192, 193 or 195)

***SUPERVISOR POSITIONS THAT HAVE RECEIVED ALCOHOL AND DRUG TRAINING (60 MINUTES DRUG, 60 MINUTES ALCOHOL)**

[illegible]

XI. Appendix D - Company Disciplinary Actions and Additional Procedures

1. Company Discipline

Under the Anti-Drug and Alcohol Misuse Prevention Plan, the Company is committed to a drug and alcohol free workplace. Violations to this Plan include:

a) The presence in the body, possession, use, distribution, dispensing, and/or unlawful manufacture of prohibited drugs and the misuse of alcohol is not condoned while conducting Company business, or while in work areas or Company vehicles on or off Company premises. No employee will work under the influence of prohibited drugs and alcohol.

b) An employee or applicant who tests positive for drugs, has an alcohol concentration of 0.04 or higher, or refuses to take any drug or alcohol test as directed by the Company.

c) The prohibited use of alcohol with a test result of 0.02 or greater, but less than 0.04.

The Company will direct an employee to take another test immediately if the test is negative-dilute and the creatinine concentration is greater than 5 mg/dL as permitted under 49 CFR Part 40.197.

Employees violating this Plan will be subject to disciplinary actions up to and including termination. Disciplinary action may include, but is not limited to: removal from working in a covered position, suspension, loss of pay, and termination of employment.

2. Additional Company Procedures

Reservation of Rights. The Company reserves the right to interpret, modify, or revise this policy statement in whole or in part without notice. Nothing in this policy statement is to be construed as an employment contract nor does this alter an employee's employment at-will status. The employee remains free to resign his/her employment at any time for any or no reason, without notice. Similarly, the Company reserves the right to terminate any employee's employment, for any or no reason, without notice.

Compliance with All Laws. This policy statement will be amended from time to time to comply with changes in Federal and State laws.

The Company reserves the right to revise or amend this policy with or without notice at any time.

THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK TO ADD ADDITIONAL COMPANY DISCIPLINARY ACTIONS AND PROCEDURES IF NEEDED.

NCMS

XII. Appendix E – PHMSA Inspection Plan Cross-Reference Endnotes and Changes to Model Plan.

1 A.01.a Verify that the operator maintains and follows a written Anti-Drug Plan that conforms to Part 199 and Part 40 and that the plan contains the following [§199.101]: 1) Methods and procedures for compliance with all the requirements of Part 199, including the employee assistance program; 2) The name and address of each laboratory that analyzes the specimens collected for drug testing; 3) The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and Procedures for notifying employees of the coverage and provisions of the plan.

2 H.01.a. Verify that the operator maintains and follows a written Alcohol Misuse Plan that conforms to Part 199 and Part 40 and that the plan contains methods and procedures for compliance with required testing, recordkeeping, reporting, education and training elements [§199.202].

3 A.02.a. Verify that "stand-down" is prohibited before the MRO has completed the drug test verification process or that an approved waiver is granted per the requirements of [§40.21] and [§199.7].

4 H.02.e. Verify that the educational materials made available to covered employees includes detailed discussion of at least the following [§199.239(b)]: 1) The identity of the person designated by the operator to answer covered employee questions about the materials; 2) The categories of employees who are subject to the provisions of this subpart; 3) Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this subpart; 4) Specific information concerning covered employee conduct that is prohibited by this subpart; 5) The circumstances under which a covered employee will be tested for alcohol under this subpart; 6) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee; 7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart; 8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences; 9) The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under §199.243; 10) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04; and 11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

5 A.01.e, B.01.b., H.01.e Verify that a service agent is not used to fulfill the function of a DER [§40.15(d)]. Services provided by a service agent must meet the requirements of the DOT agency drug and alcohol testing regulations. If the service agent does not comply, DOT may take action under the PIE procedures of Subpart R or applicable provisions of other DOT agency regulations. [§40.341].

6 N.01.a. Verify that an employer who is using a service agent concerning whom a PIE is issued stops using the services of the service agent no later than 90 days after the Department has published the decision in the Federal Register or posted it on its web site. The employer may apply to the ODAPC Director for an extension of 30 days if it is demonstrated that a substitute service agent cannot be found within 90 days [§40.409(b)].

7 B.01.a. Verify that critical positions meet the applicable qualifications of Part 40 and 199; 1) Medical Review Officer (MRO), (§40.121 and §199.109(b)); 2) Substance Abuse Professionals (SAP), (§40.81) 3); 3) Urine Specimen Collectors (§40.33).

8 I.01.a. Verify that Alcohol Misuse Prevention Program positions meet the applicable qualification requirements of Part 40 and Part 199 as follows: 1) Screening Test Technician (§40.213); 2) Breath Alcohol Technician (§40.213); and, 3) Substance Abuse Professional (SAP) (§40.281).

9 A.01.d. Verify that DOT tests are completely separate from non-DOT tests in all respects [§40.13].

10 H.01.d. Verify that the Alcohol Misuse Prevention Program ensures that the DOT tests are completely separate from non-DOT tests in all respects [§40.13].

11 A.01.b. Verify that the Plan identifies covered employees (as defined in §199.3), required to be tested for drugs, are identified [§199.1].

12 H.01.b. Verify that the Alcohol Misuse Prevention Program identifies the covered employees (as defined in §199.3) that are required to be tested for the presence of alcohol [§199.1].

13 C.01.a. Verify drug testing information [§40.25(b)] is requested from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time (i.e., a new hire or an employee transfer) [§40.25(a)]. Covered employee must not perform their functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless a good faith effort to obtain the information has been made and documented.

14 J.01.a. Verify that alcohol testing information [§40.25(b)] is requested from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time (i.e., a new hire or an employee transfer) [§40.25(a)]. In addition, verify that a covered employee must not perform their functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain alcohol testing information from previous DOT-regulated employers.

15 H.02.a. Verify that the Alcohol Misuse Plan ensures that a covered employee is not permitted to perform covered functions if the employee has engaged in violations of §§199.215 through 199.223 (see below) or an alcohol misuse rule of another DOT agency [§199.233]. 1) Having an alcohol concentration of 0.04 or greater [§40.23(c), §40.285 and §199.215]; 2) Using alcohol while performing covered functions [§199.217, On-duty use]; 3) Using alcohol within 4 hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty [§199.219, Pre-duty use]; 4) A covered employee, who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident, is prohibited from using alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under §199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident [§199.221, Use following an accident]; and, 5) Upon refusal of a covered employee to submit to a post-accident alcohol test required under §199.225(a), a reasonable suspicion alcohol test required under §199.225(b), or a follow-up alcohol test required under §199.225(d) [§40.285 and §199.223, Refusal to submit to a required alcohol test].

16 H.02.c. Verify that the Alcohol Misuse Prevention Program assures that a covered employee is prohibited from performing or continuing to perform covered functions when found to have an alcohol concentration of 0.02 or greater but less than 0.04, until: The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under §199.225(e); or The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test [§40.23(c) and §199.237(a)].

17 A.02.b. Verify that a covered employee that violates DOT drug regulations is removed from performing safety-sensitive functions [§40.23 and §199.7]. A verified positive DOT drug test result or a refusal to test (including by adulterating or substituting a urine specimen) constitutes a violation of DOT drug regulations [§40.285(b) and §199.103(a)]. If a covered employee violates a DOT drug regulation, a listing of SAPs that are readily available is provided to the employee [§40.287].

18 C.01.b. Verify no new personnel (new hire, contracted, or transferred employees) are used to perform covered functions unless that person receives a negative drug test and or is covered by the Plan that conforms to Part 199 [§199.105(a)]. Procedures are in place for direct observation when required under §§40.67(a), (b) and (d).

19 C.02.a. Verify post-accident drug testing is performed, as soon as possible but no later than 32 hours after an accident (§ 195.50) or incident (§ 191.3), for each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident [§199.105(b)]. In addition, procedures are in place for direct observation when required under §§40.67(a), (b) and (d).

20 C.03.a. Verify the minimum annual percentage rate used for random drug testing of covered employees complies with §199.105 (c) (1) through (4).

21 C.03.b. Verify the selection of employees for random drug testing is based on a scientifically valid method, such as a random number table or a computer-based random number generator matched with employee identification data [199.105(c)(5)].

22 C.03.c. Verify a sufficient number of covered employees will be selected for random testing during each calendar year to equal an annual rate not less than the required minimum annual percentage rate (see Protocol C.03.a.) [199.105(c) (6)]. The total number of covered employees eligible for random testing throughout the year will be calculated by adding the total number of covered employees eligible for testing during each random testing period for the year and dividing that total by the number of random testing periods [199.119(c)].

23 C.03.d. Verify random drug tests are unannounced and that the dates for administering the tests are spread reasonably throughout the calendar year [199.105(c) (7)].

24 C.04.a. Verify decisions to test are reasonable and articulable, and based on specific contemporaneous physical, behavioral or performance indicators of probable drug use. At least two supervisors, one of whom is trained in detection of the symptoms of drug use, substantiate and concur in the decision to test an employee who is reasonably suspected of drug use [§199.105(d)].

25 C.05.a. Verify a covered employee that violates DOT drug regulations does not return to duty for a covered function until the employee: 1) Completes a SAP evaluation, referral, and education/treatment process [§40.285(a), §40.289(b), and §199.105(e)]; 2) After completion of the SAP process above, successfully completes a return-to-duty drug test [§40.305(a) and §199.105(e)]; and 3) All return-to-duty testing will be performed under direct observation [§40.67(b)].

26 C.06.a. Verify SAP will establish a written follow-up testing plan for a covered employee that violates DOT drug regulations and seeks to return to the performance of a covered function [§40.307(a)]. All follow-up testing will be performed under direct observation [§40.67(b)].

27 C.06.b. Verify follow-up testing is performed on an unannounced basis, at a frequency established by the SAP, for a period of not more than 60 months. At least six tests must be conducted within the first 12 months following the covered employee's return to duty. [§40.307, §40.309, and §199.105(f)].

28 C.07.a. Verify procedures are in place for direct observation when required under §§40.67(a), (b) and (d).

29 B.01.a. Urine Specimen Collector (§40.33) meet the applicable qualification requirements of Part 40 and Part 199.

30 O.01.a. Does the operator ensure that, unless no other collector is available, an immediate supervisor of an employee does not serve as a collection site person [§40.31(c)]?

31 O.01.b. Do collectors meet the training requirements of §40.33 and is documentation available showing that currently all requirements are met [§40.33(g)]?

32 O.01.c. Does the operator provide error correction training as required by §40.33(f) and does the training occur within 30 days of the date of notification of the error that led to the need for training?

33 O.02.a. Has the employer designated a collection site that meets the requirements of §40.41.

34 O.02.b. If the collection site uses a facility normally used for other purposes, are procedures in place to ensure before the collection that: (1) access to collection materials and specimens is effectively restricted; and (2) the facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector? Also, are limited-access signs posted [§40.43(c)]?

35 O.02.c. Are procedures in place to assure the collector maintains personal control over each specimen and CCF throughout the collection process and to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored [§40.43(d)(5) and §40.43(e)]?

36 O.02.d. Is the current Federal Drug Testing Custody and Control Form (CCF) or equivalent being used [§40.45]?

37 O.02.e. Is a collection kit used that meets the requirements of Appendix A to Part 40 [§40.49]?

38 O.03.a. Do collection site personnel explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF [§40.61(e)]?

39 O.03.b. Do collection site personnel provide the donor with an individually wrapped or sealed collection container from the collection kit materials [§40.63(c)]?

40 O.03.c. Are precautions taken to ensure that unadulterated specimens are obtained and correctly identified that meet the following requirements: 1) Bluing agents in toilet tank and all water sources secure [§40.43(b)(1) and (2)]; 2) Individual positively identified (photo ID, etc.) [§40.61(c)]; 3) Proper authority contacted if individual fails to arrive at the assigned time [§40.61(a)]; 4) The donor shall remove any unnecessary outer garments. Purses or briefcases shall remain with outer garments [§40.61(f)]; 5) Donor shall wash and dry his/her hands [§40.63(b)]; 6) To the greatest extent possible, the collector must keep an employee's collection container within view of both himself/herself and the employee between the time the employee has urinated and the specimen is sealed [§40.43(d)(2)]; and, 7) Any unusual behavior noted on the CCF [§40.63(e)]

41 O.03.d. Are procedures being followed at the collection site after the specimen has been provided in compliance with the requirements of §40.65

42 O.03.e. Have provisions been made if the donor is unable to provide at least 45 milliliters of urine [§40.65(a)]?

43 O.03.f. Are procedures in place for immediately collecting urine specimens under direct observation for the situations identified in §40.67(c). As of August 31, 2009, verify that all collections for return-to-duty and follow-up testing were performed under DER directed direct observation [§40.67(b)]

44 O.03.g. Are same gender collection personnel used if a collection is monitored under direct observation by non-medical personnel [§40.69(g)]

45 O.03.h. Is the CCF properly executed by authorized collection site personnel upon receipt and transfer of a urine specimen [§40.73(a)]

46 D.01.a. Verify drug testing laboratory used for all testing required by Part 40 and Part 199 is certified by the Department of Health and Human Services (HHS) [§40.81(a) and §199.107(a)].

47 D.01.c. Verify laboratory results are reported directly, and only, to the MRO at his or her place of business. Results must not be reported to or through the DER or a service agent (e.g., C/TPA) [§40.97(b)].

48 D.01.b. Verify drug testing laboratory only tests for the following five drugs or classes of drugs in a DOT drug test. (The laboratories must not test "DOT specimens" for any other drugs): (a) Marijuana metabolites; (b) Cocaine metabolites; (c) Amphetamines; (d) Opioid metabolites; and (e) Phencyclidine (PCP) [§40.3, §40.85 and §199.3].

49 D.01.d. Verify laboratory testing the primary specimen will retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year. The specimen must be kept in secure, long-term, frozen storage in accordance with HHS requirements [§40.99 and §199.111(a)].

50 D.03.a. Verify laboratory retains all records pertaining to each employee urine specimen for a minimum of two years and also keeps for two years employer-specific data required in §40.111 [§40.109].

51 D.03.b. Verify laboratory transmits an aggregate statistical summary to the Company per Part 40, Appendix B, on a semi-annual basis.

52 D.02.a. If the Company or C/TPA, used by the Company, has an aggregate of 2000 or more DOT-covered employees, blind specimens are submitted to the laboratories used. If the Company or C/TPA has an aggregate of fewer than 2000 DOT-covered employees, DOT does not require them to provide blind specimens [§40.103(a)]. Effective January 1, 2018, Quality Control/Blind Specimens are no longer required per Part 40 update.

53 E.01.a. Verify that an MRO is designated or appointed by the Anti-Drug Plan [§199.109(a)].

54 E.01.b. Verify that the MRO provides quality assurance reviews of the drug testing process, including ensuring the review of the Custody and Control Form (CCF) on all specimen collections [§40.123(b)].

55 E.01.c. Verify that the MRO performs the review functions required by §40.127 for negative drug test results received from a laboratory, prior to verifying the result and releasing it to the Designated Employer Representative (DER).

56 E.01.d. Verify that the MRO performs the review functions required by §40.129 for confirmed positive, adulterated, substituted, or invalid drug test results received from a laboratory, prior to verifying the result and releasing it to the DER. In addition, the MRO must determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid drug test results from the laboratory [§40.123(c)].

57 F.02.a. Verify that the MRO reports all drug test results to the operator [§40.163(a) and §199.109(d)] in accordance with the requirements in §40.163, §40.165 and §40.167. These requirements include: Reporting all drug test results to the DER, except in the circumstances provided for in §40.345, when a C/TPA may act as an intermediary [§40.165(a)]; reporting the results in a confidential manner [§40.167(a)]; and reporting the results within the required time constraints [§40.167(b) and (c)].

58 E.01.e. Verify that when the MRO has verified a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, and the MRO must notify the employee of his or her right to have the split specimen tested. The MRO must also notify the employee of the procedures for requesting a test of the split specimen, and inform the employee that he or she has 72 hours from the time of this notification to him or her to request a test of the split specimen [§40.153].

59 E.01.f. If additional testing is requested by the employee, verify that the split specimen is tested. The split testing laboratory must be certified by HHS. (Note: Correction made to inspection language.) [§199.111(b) and (c)].

60 J.01.b. If the operator chooses to conduct pre-employment alcohol testing, verify that the operator: 1) Conducts a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions) [§199.209(b)(1)]; 2) Treats all covered employees the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others) [§199.209(b)(2)]; and, 3) Conducts the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test [§199.209(b)(3)].

61 J.02.a. Verify that post-accident alcohol testing is performed: 1) As soon as practicable following an accident (§195.50) or incident (§191.3) for each surviving covered employee if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident [§199.225(a)(1)]; and, 2) Within two hours following the accident (§195.50) or incident (§191.3), otherwise, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a post-accident test is not administered within eight hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test [§199.225(a)(2)].

62 J.03.a. Verify that decisions to test are based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse [§199.225(b)(2)].

63 J.03.b. Verify that a covered employee is directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions. [§199.225(b)(3)].

64 J.03.c. Verify that if a reasonable suspicion test is required and is not administered within 2 hours following the determination under §199.225(b)(2), the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within 8 hours, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test [§199.225(b)(4)(i)].

65 J.04.a. Verify that a covered employee that engages in conduct prohibited by §§199.215 through 199.223 does not return to duty for a covered function until the employee: 1) Completes a SAP evaluation, referral, and education/treatment process [§40.285(a), §40.289(b), §199.235, and §199.243(b)]; and, 2) After completion of the SAP process above, undergoes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 [§40.305(a), §199.225(c), and §199.243(c)].

66 J.05.a. Verify that the SAP establishes a written follow-up testing plan for a covered employee that engages in conduct prohibited by §§199.215 through 199.223 and seeks to return to the performance of a covered function [§40.307(a)].

67 J.05.b. Verify that follow-up testing is performed on an unannounced basis, at a frequency established by the SAP, for a period of not more than 60 months. At least six tests must be conducted within the first 12 months following the covered employee's return to duty [§40.307, §40.309, §199.225(d) and §199.243(c)(2)(ii)].

68 K.01.a. Verify that any Evidential Breath Testing Device (EBT) or Alcohol Screening Device (ASD) used for DOT required alcohol testing is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a Conforming Products List (CPL) [§40.229 and §40.231]

69 K.01.b. Verify that external calibration checks are performed at the intervals specified in the manufacturer's instructions for any EBT used for DOT required alcohol confirmation testing [§40.231 and §40.233].

70 P.01.a. Does the operator's plan specify training for BATs and STTs that is in compliance with §40.213 and does the documentation certify that all requirements are met [§40.213(g)]

71 P.01.b. Does the plan specify that a supervisor shall not serve as the BAT or STT if that supervisor makes the reasonable cause determination [§40.211(c) and §199.225(b)(2)].

72 P.02.a. Does the alcohol testing site comply with the applicable physical and security requirements of §40.221 and §40.223?

73 P.02.b. Does the plan specify that only EBTs and ASDs listed on the NHTSA CPL will be used for DOT alcohol testing [§40.229]? Also, does the plan specify that an EBT must be used for conducting the confirmation tests [§40.231(a)]?

74 P.02.c. Does the operator follow the Quality Assurance Plan (QAP) for the EBT that is used [§40.233(c)(1)]? If this service is contracted out does the operator ensure that the QAP is being followed [§40.233(c)]?

75 P.02.d. Does the plan specify that the operator or its agents shall comply with the QAP and manufacturer's instructions and does the operator follow the QAP for the ASD that is used [§40.235 and §40.235(c)]?

76 P.03.a. Does the plan prescribe that only the DOT-approved Alcohol Testing Form (ATF) shall be utilized [§40.225(a)]?

77 P.03.b. Does the plan specify that the employee shall provide a positive identification through use of photo ID or by employer representative [§40.241(c)]?

78 P.03.c. Does the plan indicate that the BAT or STT shall explain the testing process to the employee [§40.241(e)]?

79 P.03.d. Does the plan contain specific instructions for conducting alcohol screening tests in compliance with §40.241 and §40.243 requirements?

80 P.03.e. Does the plan contain specific instructions for conducting alcohol screening tests using a saliva ASD in compliance with §40.245 requirements?

81 P.03.f. Does the plan specify actions that are taken after receipt of alcohol screening test results that are in compliance with §40.247?

82 P.04.a. Does the plan provide guidance for the actions a new BAT must complete to conduct a confirmation test in compliance with §40.251(b)?

83 P.04.b. Does the plan specify procedures to be followed in conducting a confirmation test that are in compliance with §40.253 and §40.255?

84 P.05.a. Does the plan address the situations for which the employee is considered to have refused to take an alcohol test [§40.261(a)(1) to (7)]?

85 P.05.b. Does the plan specify procedures concerning an employee's inability to provide an adequate amount of saliva for testing and instructions for requiring the employee to attempt again to provide adequate amount of saliva for testing [§40.263]?

86 P.05.c. Does the plan specify procedures concerning an employee's inability to provide an adequate amount of breath for testing in compliance with §40.265?

87 P.05.d. Does the plan specify under what conditions that an alcohol test shall be cancelled [§40.267 and §40.269]?

88 P.05.e. Does the plan specify procedures concerning the potential inability to complete an alcohol test and trying to successfully complete the test [§40.271]?

89 B.01.a. Substance Abuse Professionals (SAP) meet the applicable qualification requirements of Part 40 (§40.81) and Part 199.

90 H.02.b. Verify that the Alcohol Misuse Prevention Program assures that each covered employee who has engaged in conduct prohibited by §§199.215 through 199.223 shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol. This includes the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs [§40.285(b) and §199.243(a)]

91 G.01.b. Verify that education under the EAP includes at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs [§199.113(b)].

92 H.02.d. Verify that the Alcohol Misuse Prevention Program assures for providing educational materials that explain alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements [§199.239(a)]. The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position [§199.239(a)(1)]. Each operator shall provide written notice to representatives of employee organizations of the availability of this information [§199.239(a)(2)].

93 G.01.a. Verify that an EAP is provided for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. Each EAP must include education and training on drug use (see Protocols G.01.b. and G.01.c.) [§199.113(a)].

94 G.01.c. Verify that training under the EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use [§199.113(c)].

95 I.01.b. Verify that supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. [§199.241].

96 A.01.c. If an employer contracts drug testing, education and training [§199.115], there is a process in place and implemented to ensure compliance with Part 199 and Part 40. The contractor must allow access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance [§199.115(b)].

97 H.01.c. If an employer contracts alcohol testing, education and training [§199.245], there is a process in place and implemented to ensure compliance with Part 199 and Part 40. The contractor must allow access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of Part 199 and Part 40 [§199.245(c)].

98 L.01.a. Verify that the following records are retained as required by Part 40 and Part 199 and that the records are maintained in a secure location with controlled access [§40.333(c) and §199.227(a)]. 5 years: Records of alcohol test results indicating an alcohol concentration of 0.02 or greater [§40.333(a)(1) and §199.227(b)(1)]; Documentation of refusals to take required alcohol tests [§40.333(a)(1) and §199.227(b)(1)]; SAP reports [§40.333(a)(1) and §199.227(b)(1)]; All follow-up tests and schedules for follow-up tests [§40.333(a)(1)]; MIS annual report data [§199.227(b)(1)]; and, Calibration Documentation [§199.227(b)(1)]. 3 years: Information obtained from previous employers under §40.25 concerning alcohol test results of employees [§40.333(a)(2)]. 2 years: Records of the inspection, maintenance, and calibration of EBTs [§40.333(a)(3)].

99 M.02.a. Verify that upon written request from an employee, records of drug and alcohol use, testing results, and rehabilitation are provided to the employee [§199.117(b) and §199.231(b)].

100 F.01.a. Verify that records are retained as required by Part 40 and Part 199 and that the records are maintained in a location with controlled access [§40.333(c)]

101 M.01.a. Verify if this operator has more than 50 covered employees and submits an annual MIS report in accordance with the form and instruction requirements of §40.26 and Appendix H to Part 40, not later than March 15 of each year for the prior calendar

year (January 1 through December 31) [§40.26, §199.119(a) and §199.229(a)]. Beginning with the March 15, 2010 MIS submission date, also verify if this operator identifies all contractors who performed covered functions, as defined under § 199.3, for this operator in a given calendar year; and, if required by either mandated annual or PHMSA written request, is or has submitted an MIS report for each of these contractors?

102 M.01.b. Verify if this operator has 50 or less covered employees and has either a compilation of data or statistical information regarding drug and alcohol testing which, upon written request, could have been used to submit a MIS report in accordance with the form and instruction requirements of §40.26 and Appendix H to Part 40, not later than March 15 of each year for the prior calendar year (January 1 through December 31) [§40.26, §199.119(a) and §199.229(a)]. Beginning with the March 15, 2010 MIS submission date, verify that this operator identifies all contractors who performed covered functions, as defined under § 199.3, for this operator and received a compilation of data or statistical information from these contractors which, upon written request, could be used for submitting an MIS report for each of these contractors.

103 M.01.c. If a service agent (e.g., Consortium/Third Party Administrator) prepares the MIS report on behalf of an operator, verify that each report is certified by the operator's anti-drug manager/alcohol misuse prevention manager or designated representative for accuracy and completeness [§199.119(f) and §199.229(d)].

Changes/Updates to the Model Plan – Revision Date: January 1, 2018

Section	Title	Change	Reason
Section II.	General – 8. Definitions	Updated Accident/Incident 191.3 (1) & (2)	Part 191 Update
Section II	General – 8. Definitions	Updated Alcohol Screening Device Definition	Part 40 Update
Section II.	General – 8. Definitions	Removed Blind Sample Definition	Part 40 Update
Section II.	General – 8. Definitions	Updated DOT, The Department, DOT agency Definition	Part 40 Update
Section II.	General – 8. Definitions	Updated the Drugs Definition – Opiates to Opioids, Prohibited drug Opiates to Opioids	Part 40 Update
Section II.	General – 8. Definitions	Updated Evidential Breath Testing Device Definition	Part 40 Update
Section II.	General – 8. Definitions	Service Agent Definition	Part 40 Update
Section IV.	DOT Program Requirements. – 7. Violation Consequences and Company Actions, After DOT Rule Violation	Added 2 nd Paragraph	Clarification
Section V.	Anti-Drug Program, 1. DOT-Required Drug Tests, Compliance	Added two sentences to end of 1 st Paragraph.	Part 40 Update
Section V.	Anti-Drug Program, 1. DOT-Required Drug Tests - Post-Accident Testing	Updated 1 st and 2 nd Paragraph	Part 199 update
Section V.	Anti-Drug Program, 1. DOT-Required Drug Tests – Random	Added Last Sentence to 1 st Paragraph	Part 199 update, 50% annual random drug testing rate.
Section V.	Anti-Drug Program, 1. DOT-Required Drug Tests - Return-To-Duty Testing	Added 4 th Paragraph	Clarification
Section V.	Anti-Drug Program, 1. DOT-Required Drug Tests - Follow-Up Testing	Added 4 th Paragraph	Clarification
Section V.	Anti-Drug Program, 2. Drug Tests That Require Direct Observation Procedures, Compliance	3 rd Sentence, Added Company will Explain to the Employee Reason(s) for Direct Observation, Added 2 nd Paragraph	Clarification, Part 40 Update
Section V.	Anti-Drug Program, 3. Specimen Collection Procedures, Collection Site Personnel	Updated 2 nd Sentence, Added Last Sentence	Part 40 Update
Section V.	Anti-Drug Program, 3. Specimen Collection Procedures, Collection Site, Forms and Specimen	Added 2 nd Sentence	Clarification
Section V.	Anti-Drug Program, 3. Specimen Collection Procedures, Possible collection issues	Added 4 th Sentence to 1 st Paragraph, Added 2 nd Paragraph	Part 40 Update
Section V.	Anti-Drug Program, 5. Drug Testing Laboratory, Drug Testing, Required DOT Drug Tests and Cutoffs	Updated Opiates to Opioids, Updated Table 1 and Footnotes	Part 40 Update
Section V.	Anti-Drug Program, 5. Drug Testing Laboratory, Laboratory specimen handling and reporting.	Updated 1 st Paragraph, Last Sentence and Items a-g	Part 40 Update
Section V.	Anti-Drug Program, 6. Laboratory Retention Periods and Reports, Specimen retention and Record retention	Added 2 nd Sentence to Specimen retention, Added last two Sentences to Record retention	Update and Clarification

Section V.	Anti-Drug Program, 7. Laboratory Quality Control, Quality Control, Reporting Discrepancies	Removed Quality Control/Blind Specimen requirements.	Part 40 Update
Section V.	Anti-Drug Program, 8. MRO Review of Drug Test Results, Compliance	Added last two sentences to First Paragraph, Added 2 nd Paragraph.	Part 40 Update
Section V.	Anti-Drug Program, 8. MRO Review of Drug Test Results, Duties	Added 4 th Sentence to 1 st Paragraph, Changed Opiate to Opioid, Added Last Sentence to 1 st Paragraph, Revised 1 st Sentence of 2 nd Paragraph,	Part 40 Update
Section V.	Anti-Drug Program, 8. MRO Review of Drug Test Results, Reports	Added 5 th Sentence	Clarification
Section V.	Anti-Drug Program, 9. Split Specimen Testing	1 st Paragraph, updated 5 th , 6 th & 7 th Sentence	MRO notification and documentation.
Section V.	Anti-Drug Program - 9. Split Specimen Testing – Laboratory	Updated 2 nd Sentence	MRO will select the second laboratory
Section V.	Anti-Drug Program - 10. Medical or Recreational Marijuana	Added Recreational	Changes in State Laws
Section VI.	Alcohol Misuse Prevention Program, 1. DOT-Required Alcohol Tests - Post-Accident Testing	Updated 1 st and 2 nd Paragraph	Part 199 update
Section VI.	Alcohol Misuse Prevention Program, 1. DOT-Required Alcohol Tests - Return-to-Duty Testing	Added 3 rd Paragraph	Clarification
Section VI.	Alcohol Misuse Prevention Program, 2. Alcohol Test, Personnel and Testing Devices	Added 2 nd and 3 rd Sentence	Part 40 Update
Section VI.	Alcohol Misuse Prevention Program, 3. PHMSA Inspection Protocol for Alcohol Testing Sites, Alcohol Screening Results	Added 6 th & 7 th Sentence	Clarification
Section VI.	Alcohol Misuse Prevention Program, 3. PHMSA Inspection Protocol for Alcohol Testing Sites, Problems in Alcohol Testing	Added "within five days" to 4 th Sentence	Clarification
Section VII.	Program Elements Common to Drug and Alcohol, 1. Substance Abuse Professional, Qualifications	Added 2 nd Sentence	Part 40 Update
Section VII.	Program Elements Common to Drug and Alcohol, 5. Recordkeeping, Compliance	1 st Paragraph, 1 st Sentence, added "in a location with controlled access".	Clarification
Section VII.	Program Elements Common to Drug and Alcohol, 5. Recordkeeping - Records and Retention Periods, b)	Added (4) and (5)	Part 199 update and clarification.
Section VII.	Program Elements Common to Drug and Alcohol, 5. Recordkeeping – Records and Retention Periods, d)	Added "cancelled drug test results" to (1)	Clarification
Section VII.	Program Elements Common to Drug and Alcohol, 6. Management Information System - Compliance	Added last sentence	Part 199 update
Section VII.	Program Elements Common to Drug and Alcohol, 6. Management Information System - Contractor Reporting of MIS	Added last sentence	Part 199 update
Section X.	Appendix C – Covered Positions	Added, to Job Classifications/Titles, "Subject to 49 CFR Part 192, 193 or 195	Clarification
Section XII.	Appendix E – PHMSA Inspection Plan Cross-Reference Endnotes and Changes to Model Plan	Added to endnote 5, A.01.e and H.01.e	Clarification
Section XII.	Appendix E – PHMSA Inspection Plan Cross-Reference Endnotes and Changes to Model Plan	Added table to track changes and updates to Model Plan	Clarification
Section XIII.	Appendix F – Post-Accident or Reasonable Cause/Suspicion Supervisor Written Records	Previously an attachment. Incorporated into written Plan	Clarification
Section XIV.	Appendix G – Reasonable Cause/Suspicion Observation Checklist	Previously an attachment. Incorporate into written Plan.	Clarification

XIII. Appendix F

Post-Accident or Reasonable Cause/Suspicion Supervisor Written Record

(Check one): ☐ Pipeline (PHMSA) ☐ Driver (FMCSA)

Employee's Name _____ Dept. _____ Date _____

Employee Id# _____ Job Title _____ Time _____

Describe Accident/Incident:

1. Was EBT Breath Alcohol testing completed within two (2) hours of the accident, or the reasonable cause/suspicion situation? ____Yes ____No If not, why? (Examples – received notification too late, employee removed from the scene for medical treatment, EBT device not available, injuries precluded testing, breath alcohol technician not available)

2. Was EBT Breath Alcohol testing completed within eight (8) hours? ____Yes ____No If not, why? (Examples – received notification too late, employee removed from the scene for medical treatment, EBT device not available, injuries precluded testing, breath alcohol technician not available)

3. Was urine drug testing completed within thirty-two (32) hours of the accident or reasonable cause/suspicion situation? ____Yes ____No If not, why?

Supervisor's Name: _____ Date: _____

Supervisor's Signature: _____

Second Supervisor's Signature (if applicable): _____

*** IMPORTANT ***

The above report is required in Post-Accident or Reasonable Cause/Suspicion testing when the **test(s) times were not met.**

The written report of Post-Accident or Reasonable Cause/Suspicion testing must be completed and signed by the supervisor within 48 hours of the incident and subsequently faxed or e-mailed to the Company Designated Employer Representative (DER).

XIV. Appendix G

Reasonable Cause/Suspicion Observation Checklist (STRICTLY CONFIDENTIAL)

EMPLOYEE: _____ PERIOD OF EVALUATION: _____

SUPERVISOR #1, NAME AND TELEPHONE: _____

SUPERVISOR #2, NAME AND TELEPHONE: _____

This checklist is intended to assist a supervisor in referring a person for drug and/or alcohol testing. Has the employee manifested any of the following behaviors? Indicate (X) if observation and/or documentation exists.

A. QUALITY AND QUANTITY OF WORK

YES	NO	
___	___	1. Clear refusal to do assigned tasks
___	___	2. Significant increase in errors
___	___	3. Repeated errors in spite of increased guidance
___	___	4. Reduced quantity of work
___	___	5. Inconsistent, "up and down" quantity/quality of work
___	___	6. Behavior that disrupts workflow
___	___	7. Procrastination on significant decisions or tasks
___	___	8. More than usual supervision necessary
___	___	9. Frequent, unsupported explanations for poor work performance
___	___	10. Noticeable change in written or verbal communication

B. INTERPERSONAL WORK RELATIONSHIPS

YES	NO	
___	___	1. Significant change in relations with co-workers, supervisors
___	___	2. Frequent or intense arguments
___	___	3. Verbal/Physical abusiveness
___	___	4. Persistently withdrawn or less involved with people
___	___	5. Intentional avoidance of supervisor
___	___	6. Expressions of frustration or discontent
___	___	7. Change in frequency or nature of complaints
___	___	8. Complaints by co-workers or subordinates
___	___	9. Cynical, "distrustful of human nature" comments
___	___	10. Unusual sensitivity to advice or critique of work
___	___	11. Unpredictable response to supervision
___	___	12. Passive-aggressive attitude or behavior, doing things "behind your back"

C. GENERAL JOB PERFORMANCE

YES	NO	
___	___	1. Excessive unauthorized absences-number in last 12 months
___	___	2. Excessive authorized absences-number in last 12 months
___	___	3. Excessive use of sick leave in last 12 months
___	___	4. Frequent Monday/Friday absence or other pattern
___	___	5. Frequent unexplained disappearances
___	___	6. Excessive "extension" of breaks or lunch
___	___	7. Frequently leaves work early-number of days per week or month
___	___	8. Increased concern about (actual incidents) safety offenses involving the employee
___	___	9. Experiences or causes job accidents
___	___	10. Major change in duties or responsibilities
___	___	11. Interferes with or ignores established procedures
___	___	12. Inability to follow through on job performance recommendation

D. PERSONAL MATTERS

YES

NO

- | | | |
|-----|-----|------------------------------------------------------------------------------------|
| ___ | ___ | 1. Changes in or unusual personal appearance (dress, hygiene) |
| ___ | ___ | 2. Changes in or unusual speech (incoherent, stuttering, loud) |
| ___ | ___ | 3. Changes in or unusual physical mannerisms (gesture, posture) |
| ___ | ___ | 4. Changes in or unusual facial expressions |
| ___ | ___ | 5. Changes in or unusual level of activity-much reduced/increased |
| ___ | ___ | 6. Changes in or unusual topics of conversation |
| ___ | ___ | 7. Engages in detailed discussions about death, suicide, harming others |
| ___ | ___ | 8. Increasingly irritable or tearful |
| ___ | ___ | 9. Persistently boisterous or rambunctious |
| ___ | ___ | 10. Unpredictable or out-of-context displays of emotion |
| ___ | ___ | 11. Unusual fears or lacks appropriate caution. |
| ___ | ___ | 12. Engages in detailed discussion about obtaining/using drugs/alcohol |
| ___ | ___ | 13. Has personal relationship problems (spouse, girl/boyfriend, children, in-laws) |
| ___ | ___ | 14. Has received professional assistance for emotional or physical problems |
| ___ | ___ | 15. Makes unfounded accusations toward others, i.e., has feelings of persecution |
| ___ | ___ | 16. Secretive or furtive |
| ___ | ___ | 17. Memory problems (difficulty recalling instructions, data, past behaviors) |
| ___ | ___ | 18. Frequent colds, flu, excessive fatigue, or other illnesses |
| ___ | ___ | 19. Makes unreliable or false statements |
| ___ | ___ | 20. Unrealistic self-appraisal or grandiose statements |
| ___ | ___ | 21. Temper tantrums or angry outbursts |
| ___ | ___ | 22. Demanding, rigid, inflexible |
| ___ | ___ | 23. Major change in physical health |
| ___ | ___ | 24. Concerns about sexual behavior or sexual harassment |

E. PHYSICAL INDICATORS

YES

NO

- | | | | |
|-----|-----|----------------------------------------------------------------------------------------------------------------------------|-----|
| ___ | ___ | 1. Smell of alcohol on breath or person? | |
| ___ | ___ | 2. Speech: | |
| | | Slurred? | ___ |
| | | Confused? | ___ |
| | | Fragmented? | ___ |
| | | Slow? | ___ |
| | | Unusually soft? | ___ |
| | | Unusually loud? | ___ |
| ___ | ___ | 3. Disorientation: Is employee confused about; | |
| | | Where he or she is? | ___ |
| | | What day it is? | ___ |
| | | What time it is? | ___ |
| ___ | ___ | 4. Apparent inability to focus on work? | |
| ___ | ___ | 5. Unusual or unexplained resistance to authority or refusal to follow reasonable directions? | |
| ___ | ___ | 6. Lack of motor coordination | |
| ___ | ___ | 7. Mood: Belligerent? | |
| | | Moody? | ___ |
| | | Ecstatic? | ___ |
| | | More nervous than usual? | ___ |
| | | Giddy? | ___ |
| | | Talkative? | ___ |
| | | Drowsy? | ___ |
| ___ | ___ | 8. Skin color: | |
| | | Pale? | ___ |
| | | Flushed? | ___ |
| ___ | ___ | 9. Excessive perspiration? | |
| ___ | ___ | 10. Excessive trips to the restroom? | |
| ___ | ___ | 11. Bloodshot eyes? | |
| ___ | ___ | 12. Dilated pupils? | |
| ___ | ___ | 13. Pinpoint pupils? | |
| ___ | ___ | 14. Traces of alcohol in containers? | |
| ___ | ___ | 15. Confession by employee that he/she was drinking alcohol or ingesting drugs? | |
| ___ | ___ | 16. Confirmation by other employees? | |
| ___ | ___ | 17. Presence of substances with the appearance of drugs? | |
| ___ | ___ | 18. Presence of drug paraphernalia? | |
| ___ | ___ | 19. Smell of marijuana? | |
| ___ | ___ | 20. Congregation of employees in remote areas of the company's facilities or in areas not usually frequented by employees? | |
| ___ | ___ | 21. Weariness, fatigue, or exhaustion? | |
| ___ | ___ | 22. Deteriorating physical appearance? | |

E. PHYSICAL INDICATORS (Con't)

YES	NO	
___	___	23. Yawning excessively?
___	___	24. Blank stare or expression?
___	___	25. Sudden and/or unpredictable change in energy level?
___	___	26. Unusually energetic?
___	___	27. Shaking or trembling of hands?
___	___	28. Sunglasses worn at inappropriate times?
___	___	29. Changes in appearance after lunch break?
___	___	30. Breathing or swallowing difficulties?
___	___	31. Unusual sneezing/nasal congestion?
___	___	32. Needle marks on arms?
___	___	33. Prolonged lunch hours?
___	___	34. Tardiness?

Other information/observations - (Please be specific & attach additional sheet as needed).

SUPERVISOR #1 (print name)

SUPERVISOR #2 (print name)

SUPERVISOR #1 (signature/date)

SUPERVISOR #2 (signature/date)



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Public Interest Exclusion (PIE)

Addendum: CITY OF ROCKPORT

Date: March 28, 2018

Subpart R - Public Interest Exclusions

§ 40.391 What is the scope of a PIE?

(a) The scope of a PIE is the Department's determination about the divisions, organizational elements, types of services, affiliates, and/or individuals (including direct employees of a service agent and its contractors) to which a PIE applies.

(b) If, as a service agent, the Department issues a PIE concerning you, the PIE applies to all your divisions, organizational elements, and types of services that are involved with or affected by the noncompliance that forms the factual basis for issuing the PIE.

(c) In the NOPE (see §40.375(b)(4)), the initiating official sets forth his or her recommendation for the scope of the PIE. The proposed scope of the PIE is one of the elements of the proceeding that the service agent may contest (see §40.381(b)) and about which the Director makes a decision (see §40.387(b)(3)).

(d) In recommending and deciding the scope of the PIE, the initiating official and Director, respectively, must take into account the provisions of paragraphs (e) through (j) of this section.

(e) The pervasiveness of the noncompliance within a service agent's organization (see §40.389(d)) is an important consideration in determining the scope of a PIE. The appropriate scope of a PIE grows broader as the pervasiveness of the noncompliance increases.

(f) The application of a PIE is not limited to the specific location or employer at which the conduct that forms the factual basis for issuing the PIE was discovered.

(g) A PIE applies to your affiliates, if the affiliate is involved with or affected by the conduct that forms the factual basis for issuing the PIE.

(h) A PIE applies to individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with your organization in the following circumstances:

(1) Conduct forming any part of the factual basis of the PIE occurred in connection with the individual's performance of duties by or on behalf of your organization; or

(2) The individual knew of, had reason to know of, approved, or acquiesced in such conduct. The individual's acceptance of benefits derived from such conduct is evidence of such knowledge, acquiescence, or approval.

(i) If a contractor to your organization is solely responsible for the conduct that forms the factual basis for a PIE, the PIE does not apply to the service agent itself unless the service agent knew or should have known about the conduct and did not take action to correct it.

(j) PIEs do not apply to drug and alcohol testing that DOT does not regulate.

(k) The following examples illustrate how the Department intends the provisions of this section to work:

Example 1 to §40.391. Service Agent P provides a variety of drug testing services. P's SAP services are involved in a serious violation of this Part 40. However, P's other services fully comply with this part, and P's overall management did not plan or concur in the noncompliance, which in fact was contrary to P's articulated standards. Because the noncompliance was isolated in one area of the organization's activities, and did not pervade the entire organization, the scope of the PIE could be limited to SAP services.

Example 2 to §40.391. Service Agent Q provides a similar variety of services. The conduct forming the factual basis for a PIE concerns collections for a transit authority. As in Example 1, the noncompliance is not pervasive throughout Q's organization. The PIE would apply to collections at all locations served by Q, not just the particular transit authority or not just in the state in which the transit authority is located.

Example 3 to §40.391. Service Agent R provides a similar array of services. One or more of the following problems exists: R's activities in several areas—collections, MROs, SAPs, protecting the confidentiality of information—are involved in serious noncompliance; DOT determines that R's management knew or should have known about serious noncompliance in one or more areas, but management did not take timely corrective action; or, in response to an inquiry from DOT personnel, R's management refuses to provide information about its operations. In each of these three cases, the scope of the PIE would include all aspects of R's services.

Example 4 to §40.391. Service Agent W provides only one kind of service (e.g., laboratory or MRO services). The Department issues a PIE concerning these services. Because W only provides this one kind of service, the PIE necessarily applies to all its operations.

Example 5 to §40.391. Service Agent X, by exercising reasonably prudent oversight of its collection contractor, should have known that the contractor was making numerous "fatal flaws" in tests. Alternatively, X received a correction notice pointing out these problems in its contractor's collections. In neither case did X take action to correct the problem. X, as well as the contractor, would be subject to a PIE with respect to collections.

Example 6 to §40.391. Service Agent Y could not reasonably have known that one of its MROs was regularly failing to interview employees before verifying tests positive. When it received a correction notice, Y immediately dismissed the erring MRO. In this case, the MRO would be subject to a PIE but Y would not.

Example 7 to §40.391. The Department issues a PIE with respect to Service Agent Z. Z provides services for DOT-regulated transportation employers, a Federal agency under the HHS-regulated Federal employee testing program, and various private businesses and public agencies that DOT does not regulate. The PIE applies only to the DOT-regulated transportation employers with respect to their DOT-mandated testing, not to the Federal agency or the other public agencies and private businesses. The PIE does not prevent the non-DOT regulated entities from continuing to use Z's services.



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ANTI-DRUG AND ALCOHOL MISUSE PREVENTION PLAN

Addendum: CITY OF ROCKPORT

Summary: Prohibition of "Stand-Down" Unless a Waiver is Granted by DOT

DOT Rule 49 CFR Part 40 Section 40.21

§ 40.21 May an employer stand down an employee before the MRO has completed the verification process? The practice of "[stand-down](#)" continues to be prohibited. "Stand-down" refers to the employer practice of temporarily removing an employee from the performance of safety-sensitive duties (driving and related functions) upon learning that the individual had a confirmed laboratory positive drug test, but before the MRO has completed the verification process. (During this process, the MRO attempts to ascertain from the employee whether any legitimate reason may exist to explain the confirmed, positive result).

The revised regulation sets forth a waiver mechanism, however, by which an employer may seek DOT operating authority approval for a specific, written stand-down plan that permits a "stand down," but effectively protects the interests of employees

For a full explanation of **DOT Rule 49 CFR Part 40 Section 40.21**, see link listed below.

https://www.transportation.gov/odapc/part40/40_21

Policy for Employees Required to Possess a Commercial Driver's License

Effective Date: 01/01/2019

Employee Handbook

Addendum II



CITY OF ROCKPORT

POLICY FOR EMPLOYEES REQUIRED TO POSSESS A COMMERCIAL DRIVER'S LICENSE

Introduction

The United States Department of Transportation mandates urine drug and evidential breath alcohol testing for employees in safety-sensitive positions, including those who are required to hold a commercial driver's license.

This section sets forth **City of Rockport** alcohol and drug testing program and the testing and reporting requirements as required by those regulations. It applies to all City of Rockport employees who are required to have and maintain a commercial driver's license (CDL) in order to perform the duties of his or her job and, for them, *is in addition* to the requirements set out in City of Rockport Policy on Employee Drug and Alcohol Abuse.

If You Have Questions

The person designated by City of Rockport to answer drivers' questions about this material is Human Resource Dept. Telephone number is (361) 729-2213. If this person is not available, you may contact any supervisor or manager.

Application

This policy applies to all employees and/or independent contractors of City of Rockport who are required to have and maintain a commercial driver's license in order to perform the duties of his or her job.

Definitions

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol: means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Driver: This term includes all employees whose positions may involve driving a commercial motor vehicle and that require the possession of a commercial driver's license.

Commercial Motor Vehicle: A commercial motor vehicle is one that either:

1. has a gross vehicle weight of over 26,001 pounds (including combined weight if towed unit weighs over 10,000 pound);
2. is designed to transport 16 or more passengers, including the driver; or
3. Is used to transport hazardous materials.

Drugs: For the purposes of this section, in accordance with the applicable federal regulations, "drugs" refers to the following five substances: marijuana (THC), cocaine, opiates, phencyclidine (PCP), and amphetamines/methamphetamines.

Safety Sensitive Position: For purposes of this section, these are positions associated with the driving of commercial motor vehicles and includes the period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Safety Sensitive Functions: All drivers are considered to be performing safety sensitive functions from the time a driver begins work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.

Safety-sensitive functions shall include:

1. Time at plant, terminal, facility or other property waiting to be dispatched.
2. Time inspecting, servicing, or conditioning any commercial motor vehicle or equipment at any time.
3. Time spent driving, or in or upon any commercial motor vehicle at any time.
4. Time loading or unloading, supervising or assisting or attending a vehicle being loaded or unloaded.
5. Time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Substance Abuse Professional (Q-SAP): A Substance Abuse Professional shall mean a licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The SAP is responsible for evaluating employees with positive test results.

Effective Date

City of Rockport's Employee Drug and Alcohol Abuse Policy is effective January 1, 2019.

Prohibited Conduct

The following conduct regarding alcohol and drug use or abuse is prohibited:

A. Alcohol Concentration.

An employee may not report for duty or remain on duty requiring the performance of duties covered under this policy while having an alcohol concentration of 0.04 or greater.

B. Alcohol Possession and On Duty Use of Alcohol.

An employee may not possess or use alcohol while on duty or while operating a commercial motor vehicle.

C. Pre-Duty Use of Alcohol.

An employee may not operate a commercial motor vehicle within four hours after using alcohol. An on-call employee who consumes alcohol within four hours of being called in will acknowledge the use of alcohol and will not report for duty.

D. Alcohol Use Following an Accident.

An employee required to take a post-accident alcohol test may not use alcohol for eight hours following the accident, or until a post-accident alcohol test is given, whichever comes first.

E. Use of Drugs.

An employee may not report for duty or remain on duty when the employee has used a drug or drugs, except when the use is pursuant to instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle. Employees who are taking a prescription or over-the-counter medication that may impair their ability to perform their duties safely and effectively must notify their supervisor and should provide written notice from their physician or pharmacist with respect to the effects of such substances.

F. Refusal to Submit to a Required Test.

An employee may not refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol or drug test as directed by this policy.

G. Positive Drug Test.

An employee may not report for duty or remain on duty requiring the performance of duties covered under this policy if the employee tests positive for drugs or alcohol.

H. Tampering With a Required Test.

An employee may not tamper with, adulterate, alter, substitute or otherwise obstruct the testing process.

I. Possession, Transfer or Sale.

No employee may possess, transfer or sell drugs or alcohol while in any position covered by this policy.

Circumstances Requiring Testing

A. Pre-employment drug Testing.

All individuals who are covered by this policy must pass a drug test as a post-offer condition of employment and before performing safety-sensitive functions.

B. Reasonable Suspicion Testing.

Employees subject to this policy shall submit to a drug or alcohol test when reasonably suspected that this policy (except the prohibitions against possession, transfer or sale of alcohol) may have been or is presently being violated. A referral for testing will be made on contemporaneous, articulable observations. Such referrals will be made by supervisory personnel who have received training concerning the signs and symptoms of drug and alcohol use.

If removed from duty based on reasonable suspicion of drug use, the employee will not be allowed to perform or continue to perform the job duties until the test results are returned and indicate a negative result. If removed from duty based on reasonable suspicion of alcohol use, the employee will not be allowed to perform or continue to perform covered functions until:

1. An alcohol test is administered and the driver's breath alcohol concentration measures less than 0.02; or
2. 24 hours have elapsed following the determination that there is reasonable suspicion to believe that the employee has violated this policy concerning the use of alcohol.

C. Post-Accident Testing

Following an accident involving a commercial motor vehicle, the driver is required to submit to alcohol and drug tests when a fatality occurs as a result of the accident or

when the driver receives a citation under state or local law for a moving traffic violation 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 vehicles incurred disabling damage required removal by towing.

Testing shall occur as soon as possible, but shall not exceed eight hours for alcohol testing and 32 hours for drug testing.

No alcohol test or drug specimen should be taken before the administration of necessary first-aid and/or other appropriate medical care. A driver must make every reasonable effort to notify management as soon as possible whenever an accident has occurred.

A driver who is subject to post-accident testing shall remain readily available for such testing and may not take any action to interfere with testing or the results of testing. Drivers who do not comply with post-accident testing requirements will be considered to have refused to submit to testing and will be subject to sanctions for refusal to test as provided in this policy.

D. Random Testing

Employees covered by this policy will be subject to random, unannounced drug testing at an annual percentage rate of 50% for controlled substances and 10% for alcohol.

E. Return to Duty Testing

Employees who have violated this policy, including those who have tested positive on a drug or alcohol test, and who under the discipline policy are allowed to return to work, must test negative prior to being released for duty. A return to duty test following alcohol misuse may not exceed an alcohol concentration of 0.02.

F. Follow-up Testing

An employee who is referred for assistance related to alcohol misuse and/or use of controlled substances is subject to unannounced follow-up testing or up to 60 months as directed by a Substance Abuse Professional. The number and frequency of follow-up testing will be determined by the Substance Abuse Professional, but will not be less than six tests in the first 12 months following the employee's return to duty.

G. Re-tests

Employees who test positive for drugs may request a second test of the remaining portion of the split sample within 72 hours of notification of a positive test result by the Medical Review Officer.

Testing Procedures & Safeguards

City of Rockport will follow the collection and drug testing guidelines issued by the U.S. Department of Transportation. Alcohol testing will be conducted using breath-testing instruments and procedures approved by the U.S. Department of Transportation.

The following employee protections will be incorporated to ensure the accuracy and integrity of the drug testing program:

Only Substance Abuse and Mental Health Services Administration (SAMHSA) certified drug testing laboratories will be used.

A strict chain of custody will be used to ensure the integrity of each urine specimen.

The process will ensure individual privacy during the collection process and confidentiality of test results.

All “positive” drug screens will be confirmed by a second test using the gas chromatography/mass spectrometry method or an equivalent approved method.

All drug test results will receive a professional review by a medical review officer (MRO) that includes offering the employee the opportunity to explain or contest a positive test result.

Refusal to Take an Alcohol or Drug Test

No employee shall refuse to submit to an alcohol or drug test as directed under this policy. A refusal to submit shall include, but is not limited to:

1. A failure to provide adequate breath for testing without a valid medical explanation after an employee has received notice of the requirement for breath testing;
2. Failure to provide adequate urine for drug testing without a valid medical explanation after an employee has received notice of the requirement for urine testing;
3. Engaging in conduct that obstructs the testing process or submitting an adulterated or substituted specimen.

Refusal to submit to a test shall be considered the same as a positive test result.

Securing Information from Previous Employers

If a person is to be hired or transferred into a position subject to this policy and that person during the previous two years has worked as a driver of a commercial vehicle, that person must authorize a request to release information from all employers of the driver within the past two years on the following:

1. Positive alcohol or drug tests
2. Refusal to be tested
3. Other violations of DOT agency drug and alcohol testing regulations
4. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

This information must be obtained before the person is employed by City of Rockport. However, if the information has not arrived by the anticipated start date, and if the person has passed the pre-employment drug test, the person may be hired and the requested information must be obtained from the previous employers within 30 calendar days of the date of hire. If the information has not been received within the 30 calendar days, the person shall not be permitted to drive commercial vehicles until the information has arrived.

Consequences of Engaging in Prohibited Conduct or Positive Drug or Alcohol Tests

A. Discipline.

An employee will be subject to appropriate disciplinary action up to and including termination from employment if:

1. the employee tests positive for a drug or drugs;

2. results from an alcohol test indicate a blood alcohol level of 0.02 or greater; and/or,
3. The employee has engaged in prohibited conduct as outlined in Prohibited Conduct Section.

The following provisions apply to those employees who are not terminated for their policy violations:

B. Positive Test Result.

If an employee tests positive for drugs or has an alcohol test that indicates a blood alcohol level of .04 or greater from a random, reasonable suspicion or post-accident test, the employee will be immediately removed from duties requiring the driving of a commercial motor vehicle. The employee shall not be permitted to return to work unless he/she:

1. has been evaluated by a qualified Substance Abuse Professional (Q-SAP); and,
2. if recommended by a substance abuse counselor, has properly followed any rehabilitation prescribed; and,
3. Has a verified negative result on a return-to-duty alcohol (<0.02) and/or drug test (depending upon which test was failed).

Upon completion of a recommended rehabilitation program and successful return to work test, an employee will be subject to follow-up testing for up to sixty (60) months as recommended by the Substance Abuse Professional (Q-SAP) and Employee Assistance Program, with a minimum of six such unscheduled tests within the first twelve months of returning to duty.

C. Alcohol Concentration of 0.02 but less than 0.04.

If not terminated or otherwise disciplined, employees having a breath alcohol concentration of at least 0.02 but less than 0.04, shall be removed from duty requiring the driving of a commercial motor vehicle for at least 24 hours.

Rehabilitation and Employee Assistance

A. Rehabilitation assistance in lieu of discharge may be offered:

1. To any employee who has requested rehabilitation assistance provided that the request is unrelated to an identification of the employee as a violator of this policy.
2. An employee who is in rehabilitation will be suspended without pay, except that when indicated by the circumstances of the case and the written recommendation of a licensed physician or recognized rehabilitation professional--an employee may be permitted to work while undergoing rehabilitation on an outside-of-work basis. The written recommendation must include a statement to the effect that the employee's presence in the workplace will not constitute a safety hazard to the employee, co-workers or others.
3. An employee whose rehabilitative therapy involves drug maintenance, hospitalization or detoxification will not be considered for the exception from suspension described in #2.

4. An employee who is in rehabilitation or who has completed rehabilitation will be allowed to return to work upon presentation of a written release signed by a Qualified Substance Abuse Professional (Q-SAP) as in regards to 49 CFR Part 382. The release must include a statement to the effect that the employee's presence in the workplace will not constitute a safety hazard to the employee, co-worker or others.

B. Rehabilitation assistance given by City of Rockport will be:

1. Limited to those medical benefits that may be available in the employee's medical benefits plan.
2. Obtained through a rehabilitation program that has been pre-approved by **City of Rockport**.
3. Obtained by the employee during times that will not conflict with the employee's work time, except that the employee may use any available sick leave or annual leave to be absent from the job with pay
4. **City of Rockport** will provide to any employee, upon request and at no cost to the employee, information concerning local resources that are available for the treatment of drug and alcohol related problems.

Confidentiality and Record Retention

All information relating to drug or alcohol testing or the identification of persons as users of drugs and alcohol will be protected by **City of Rockport** as confidential unless otherwise required by law, overriding public health and safety concerns, or authorized in writing by the persons in question.

All records related to drug and alcohol testing shall be maintained in a secure location with controlled access. These records shall be kept separate from records pertaining to all other employees.

End of Policy

The Effects of Alcohol and other Drugs

The following information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life is furnished to drivers.

Alcohol

Alcohol, a natural substance formed by the fermentation that occurs when sugar reacts with yeast, is the major active ingredient in wine, beer, and distilled spirits. There are many kinds of alcohol; the kind found in alcoholic beverages is ethyl alcohol. Whether one drinks a 12-ounce can of beer, a shot of distilled spirits, or a 5-ounce glass of wine, the amount of pure alcohol per drink is about the same (5 ounces.) Ethyl alcohol can produce feelings of well-being, sedation, intoxication, or unconsciousness, depending on the amount and the manner in which it is consumed.

Alcohol is a psychoactive or mind-altering drug, as are heroin and tranquilizers. It can alter moods, cause changes in the body, and become habit forming. Alcohol is called a "downer" because it depresses the central nervous system. That's why drinking too much causes slowed reactions, slurred speech, and sometimes even unconsciousness (passing out). Alcohol works first on the part of the brain that controls inhibitions. As people lose their inhibitions, they may talk more, get rowdy, and do foolish things. After several drinks they may feel "high," but their nervous systems actually are slowing down.

A person does not have to be an alcoholic to have problems with alcohol. Every year, for example, many young people lose their lives in alcohol-related automobile crashes, drownings, and suicides. Serious health problems can and do occur before drinkers reach the stage of addiction or chronic use.

In some studies, more than 25 percent of hospital admissions were alcohol-related. Some of the serious diseases associated with chronic alcohol use are alcoholism and cancers of the liver, stomach, colon, larynx, esophagus, and breast. Alcohol abuse also can lead to serious physical problems such as:

- Damage to the brain, pancreas, and kidneys;
- High blood pressure, heart attacks, and strokes;
- Alcoholic hepatitis and cirrhosis of the liver;
- Stomach and duodenal ulcers, colitis, and irritable colon;
- Impotence and infertility;
- Birth defects and Fetal Alcohol Syndrome, which causes retardation, low birth weight, small head size, and limb abnormalities;
- Premature aging; and
- A host of other disorders, such as diminished immunity to disease, sleep disturbances, muscle cramps, and edema.

Marijuana

Contrary to many young people's beliefs, marijuana is a harmful drug, especially since the potency of the marijuana now available has increased more than 275 percent over the last decade. For those who smoke marijuana now, the dangers are much more serious than they were in the 1960s.

Preliminary studies have shown chronic lung disease in some marijuana users. There are more known cancer-causing agents in marijuana smoke than in cigarette smoke. In fact, because marijuana smokers try to hold the smoke in their lungs as long as possible, one marijuana cigarette can be as damaging to the lungs as four tobacco cigarettes.

New studies using animals also show that marijuana interferes with the body's immune response to various infections and diseases. This finding may have special implications for those infected with the Acquired Immune Deficiency Syndrome (AIDS) Human Immunodeficiency Virus (HIV). Drugs like marijuana that weaken the immune system may exacerbate the condition of people infected with this virus.

Even small doses of marijuana can impair memory function, distort perception, hamper judgment, and diminish motor skills. Health effects also include accelerated heartbeat and, in some persons, increased blood pressure. The changes pose health risks for anyone, but particularly for people with abnormal heart and circulatory conditions such as high blood pressure and hardening of the arteries.

More importantly, there is increasing concern about how marijuana use by children and adolescents may affect both their short- and long-term development. Mood changes occur with the first use. Observers in clinical settings have noted increased apathy, loss of ambition, loss of effectiveness, diminished ability to carry out long-term plans, difficulty in concentrating, and a decline in school or work performance. Many teenagers who end up in drug treatment programs started using marijuana at an early age.

Driving under the influence of marijuana is especially dangerous. Marijuana impairs driving skills for at least 4 to 6 hours after smoking a single cigarette. When marijuana is used in combination with alcohol, driving skills become even more impaired.

Cocaine

Cocaine is one of the most powerfully addictive of the drugs of abuse-and it is a drug that can kill. No individual can predict whether he or she will become addicted or whether the next dose of cocaine will prove fatal. Cocaine can be snorted through the nose, smoked, or injected. Injecting cocaine-or injecting any drug-carries the added risk of contracting AIDS if the user shares a needle with a person already infected with HIV, the AIDS virus.

Cocaine is a very strong stimulant to the central nervous system, including the brain. The drug accelerates the heart rate and at the same time constricts the blood vessels, which are trying to handle the additional flow of blood. Pupils dilate and temperature and blood pressure rise. These physical changes may be accompanied by seizures, cardiac arrest, respiratory arrest, or stroke.

Nasal problems, including congestion and a runny nose, occur with cocaine use, and with prolonged use the mucous membrane of the nose may disintegrate. Heavy cocaine use can severely damage the nasal septum and cause it to collapse.

Research has shown that cocaine acts directly on structures that have been called the brain's "pleasure centers." Stimulating these pleasure centers produces an intense desire to experience the pleasure effects again and again. The stimulation causes changes in

brain activity; as a result, a brain chemical called dopamine is allowed to remain active longer than normal, which triggers an intense craving for more of the drug.

Users often report feelings of restlessness, irritability, and anxiety; and cocaine can trigger paranoia. Users also report being depressed when they are not using the drug and often resume use to alleviate further depression. In addition, cocaine users frequently find that they need increasingly more cocaine more often to generate the same level of stimulation. Therefore, any use can lead to addiction.

“Freebase” is a form of cocaine that is smoked. It is produced by a chemical process in which “street cocaine” (cocaine hydrochloride) is converted to a pure base by removing the hydrochloride salt and some of the “cutting” agents. The end product is not water soluble, so the only way to get it into the system is to smoke it.

“Freebasing” is extremely dangerous. The cocaine reaches the brain in seconds, creating a sudden and intense high. However, the euphoria quickly disappears, leaving the user with an enormous craving to freebase again and again. The user usually increases the dose and the frequency to satisfy this craving, resulting in addiction and physical debilitation.

“Crack” is the street name given to a type of freebase cocaine that comes in the form of small lumps or shavings. The term “crack” refers to the crackling sound made when the mixture is smoked (heated). Smoking “crack” is very dangerous, since it produces the same debilitating effects as “freebasing” cocaine. Crack has become a major problem in many American cities because it is cheap-selling for between \$5 and \$10 for one or two doses-and easily transportable-being sold in small vials, folding paper, or tinfoil.

PCP (Phencyclidine)

PCP is a hallucinogenic drug, meaning that it alters sensation, mood, and consciousness and may distort hearing, touch, smell, taste, and visual sensation. It is legitimately used as an anesthetic for animals. When used by humans, PCP induces a profound departure from reality, which leaves the user capable of bizarre behavior and severe disorientation. These PCP induced effects may lead to serious injuries or death.

PCP produces feelings of mental depression in some individuals. When PCP is used regularly, memory, perception functions, concentration, and judgment are often disturbed. Chronic PCP use may lead to permanent changes in cognitive ability (thinking), memory, and fine motor function.

Mothers using PCP during pregnancy often deliver babies who have visual, auditory, and motor disturbances. These babies also may have sudden outbursts of agitation and other rapid changes in awareness similar to the responses of adults intoxicated with PCP.

Narcotics - Opiates

Narcotics are drugs that relieve pain and often induce sleep. The opiates, which are narcotics, include opium, morphine, codeine, heroin, and their synthetic substitutes, such as methadone.

Narcotic use is associated with a variety of unwanted effects including drowsiness, inability to concentrate, apathy, lessened physical activity, constriction of the pupils, dilation of the subcutaneous blood vessels causing flushing of the face and neck, constipation, nausea and vomiting and, most significantly, respiratory depression.

Among the hazards of illicit drug use is the ever increasing risk of infection, disease and overdose. Skin, lung and brain abscesses, endocarditis, hepatitis and AIDS are commonly

found among narcotic abusers. Since there is no simple way to determine the purity of a drug that is sold on the street, the effects of illicit narcotic use are unpredictable and can be fatal.

With repeated use of narcotics, tolerance and dependence develop. The development of tolerance is characterized by a shortened duration and a decreased intensity of analgesia, euphoria and sedation which creates the need to administer progressively larger doses to attain the desired effect.

Withdrawal symptoms experienced from heroin/morphine-like addiction are usually experienced shortly before the time of the next scheduled dose. Early symptoms include watery eyes, runny nose, yawning and sweating. Restlessness, irritability, loss of appetite, tremors and severe sneezing appear as the syndrome progresses. Severe depression and vomiting are not uncommon.

Amphetamines

Amphetamine, dextroamphetamine and methamphetamine are collectively referred to as amphetamines. Unlike other frequently abused drugs, the amphetamines do not occur in nature but are synthesized in a laboratory. Their chemical properties and actions are so similar that even experienced users have difficulty knowing which drug they have taken.

Amphetamines can cause increased heart and respiratory rates, elevated blood pressure, dilated pupils, and decreased appetite. In addition, users may experience sweating, headache, blurred vision, dizziness, sleeplessness, and anxiety. Extremely high doses can cause a rapid or irregular heartbeat, tremors, loss of coordination, and even physical collapse.

Amphetamines are generally taken orally or injected. However, the addition of “ice,” the slang name for crystallized methamphetamine, has promoted smoking as another mode of administration.

The effects of amphetamines, especially methamphetamine, are similar to cocaine, but their onset is slower and their duration longer. In general, chronic abuse produces a psychosis that resembles schizophrenia and is characterized by paranoia, picking at the skin, preoccupation with one’s own thoughts, and auditory and visual hallucinations. Violent and erratic behavior is frequently seen among chronic abusers of amphetamines.

“Designer Drugs”

By modifying the chemical structure of certain drugs, underground chemists have been able to create what are called “designer drugs”—a label that incorrectly glamorizes them. They are, in fact, analogs of illegal substances. Frequently, these drugs can be much more potent than the original substances, and can therefore produce much more toxic effects. Health officials are increasingly concerned about “ecstasy,” a drug in the amphetamine family that, according to some users, produces an initial state of disorientation followed by a rush and then a mellow, sociable feeling. We now know, however, that it also kills certain kinds of brain cells. These “designer drugs” are extremely dangerous.

Blood Alcohol Concentration

Blood alcohol concentration (BAC) is the amount of alcohol in the bloodstream. It is measured in percentages. For instance, having a BAC of 0.10 percent means that a person has 1 part alcohol per 1,000 parts blood in the body.

In a review of studies of alcohol-related crashes, reaction time, tracking ability, concentrated attention ability, divided attention performance, information process capability, visual functions, perceptions, and psycho-motor performance, impairment in all these areas was significant at blood alcohol concentrations of 0.05 percent.

Impairment first appeared in many of these important areas of performance at blood alcohol concentrations of 0.02 percent, substantially below the legal standard in most States for drunkenness, which is 0.10 percent.

Approximately half of traffic injuries involve alcohol. About one-third of fatally injured passengers and pedestrians have elevated blood alcohol levels. For fatal intentional injuries, half of homicides involve alcohol, as do one-quarter to one-third of suicides.

The Centers for Disease Control and Prevention (CDC) estimate that about 30,000 unintentional injury deaths per year are directly attributable to alcohol. Another 15,000 to 20,000 homicides or suicides per year are associated with alcohol.

For non-fatal unintentional injuries many studies show that 25 to 50 percent involve alcohol. The same rates are found for a wide range of non-fatal intentional injuries involving alcohol, including assaults, spouse abuse, child molestation, sexual assault, rape, and attempted suicide.

BAC can be measured by breath, blood, or urine tests. BAC measurement is especially important for determining the role of alcohol in crashes, falls, fires, crime, family violence, suicide, and other forms of intentional and unintentional injury.

One problem in obtaining accurate BAC data is a lack of testing in hospital emergency rooms. Research indicates that emergency rooms do not test routinely for alcohol in crash victims. A national survey of trauma centers found that although two-thirds of the centers estimated that the majority of patients had consumed alcohol, only 55 percent routinely conducted BAC tests at patient admissions. A review of emergency room studies indicated that up to one-third of patients admitted to emergency rooms are not tested.

BAC and Impaired Driving

The public most commonly associates BAC with drunk driving. However, it is more accurate to refer to alcohol-impaired driving because one does not have to be drunk (intoxicated) to be demonstrably impaired. Driving skills, especially judgment, are impaired in most people long before they exhibit visible signs of drunkenness. While most States define legal intoxication for purposes of driving at a BAC of 0.10 percent or higher, alcohol may cause deterioration in driving skills at 0.05 percent or even lower. Deterioration progresses rapidly with rising BAC.

In recognition of impairment at lower BAC levels, the National Highway Traffic Safety Administration (NHTSA) refers to traffic crashes as “alcohol involved” or “alcohol related” when a participant (driver, pedestrian, or bicyclist) has a measured or estimated BAC of 0.01 or above. NHTSA defines a “high-level alcohol crash” as one where an active participant has a BAC of 0.10 or higher.

BLOOD ALCOHOL PERCENTAGE APPROXIMATIONS

	Body Weight in Pounds							
	100	120	140	160	180	200	220	240
Number of Drinks Per Hour	1	.04	.03	.03	.02	.02	.02	.02
	2	.08	.06	.05	.05	.04	.04	.03
	3	.11	.09	.08	.07	.06	.06	.05
	4	.15	.12	.11	.09	.08	.08	.06
	5	.19	.16	.13	.12	.11	.09	.08
	6	.23	.19	.16	.14	.13	.11	.09
	7	.26	.22	.19	.16	.15	.13	.11
	8	.30	.25	.21	.19	.17	.15	.13
	9	.34	.28	.24	.21	.19	.17	.14
	10	.38	.31	.27	.23	.21	.19	.16

On November 13, 2017, the Department of Transportation (DOT) published a [final rule](#) that was effective January 1, 2018. Here is a notice for collectors, laboratories, Medical Review Officers, and regulated employers regarding the opioids final rule

https://www.transportation.gov/odapc/DOT_5_Panel_Notice_2018.

DOT Drug Testing: After January 1, 2018 – Still a 5-Panel

The DOT testing at HHS-certified laboratories is a 5-panel drug test regimen. As of January 1, 2018, the 'Opiates' category was renamed 'Opioids':

- Marijuana (THC)
- Cocaine
- Amphetamines
- Opioids
- Phencyclidine (PCP)

Under 'Opioids', previously 'Opiates', DOT testing will continue to include confirmatory testing, when appropriate, for Codeine, Morphine, and 6-AM (heroin). We added initial and confirmatory testing for the semi-synthetic opioids Hydrocodone, Hydromorphone, Oxycodone, and Oxymorphone to this Opioids group. Some brand names for the semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.

Under Amphetamines, DOT testing includes confirmatory testing, when appropriate, for Amphetamine, Methamphetamine, MDMA, and MDA. To this Amphetamines group, we added initial testing for MDA and removed testing for MDEA.

Since January 1st, we have required confirmation testing for 14 drugs under a 5-panel test. Broken out, here is what DOT drug testing looks like:

- Marijuana (THC)
- Cocaine
- Amphetamines
 1. Amphetamine
 2. Methamphetamine
 3. MDMA
 4. MDA
- Opioids
 1. Codeine
 2. Morphine
 3. 6-AM (heroin)
 4. Hydrocodone
 5. Hydromorphone
 6. Oxycodone
 7. Oxymorphone
- Phencyclidine (PCP)

For DOT testing, what does this mean for collectors, laboratories, MROs, and employers after January 1st, 2018?

- **Collectors** will continue to check the 5-panel box in Step 1 of the CCF: That is, the box specified for "THC, COC, PCP, OPI, AMP."
- **Laboratories** will:
 - continue to report to MROs the specific drugs / drug metabolites they confirm as positive, and laboratories will add hydrocodone, hydromorphone, oxycodone, and oxymorphone confirmed positives, as appropriate.
 - on their semi-annual reports to DOT and their semi-annual reports to employers add: hydrocodone; hydromorphone; oxycodone; and oxymorphone confirmed positive totals, as appropriate, under Opioids.
-

- **MROs** will continue to report to employers the specific drugs / drug metabolite they verify as positive; and MROs will add hydrocodone, hydromorphone, oxycodone, and oxymorphone verified positives, as appropriate.
- **Employers** will continue to provide – on their annual MIS reports – the number of verified positive drug test results in each testing category (i.e., Marijuana, Cocaine, Amphetamines, Opioids, and PCP).

END OF POLICY

Certificate of Receipt City of Rockport POLICY, Employee Drug and Alcohol Abuse

Each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. City of Rockport is required to maintain the original of the signed certificate for each driver.

I have read, understand, and am in receipt of a copy of City of Rockport's Drug and Alcohol Abuse Policy and Special Attachment to Policy for Employees Required to Possess a Commercial Driver's License

Employee's Printed Name and Signature

Date

City of Rockport Representative

REASONABLE SUSPICION OR POST-ACCIDENT TESTING DOCUMENTATION FORM

Purpose of this form: To document the rationale, facts and circumstances behind a decision to request a reasonable suspicion or post-accident test.		
Employee's Name:	Social Security No. or ID#:	Date:
<p style="text-align: center;">TYPE OF TEST (Mark appropriate fields below)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p><input type="checkbox"/> Reasonable Suspicion</p> <ul style="list-style-type: none"> <input type="checkbox"/> Observed behavior <input type="checkbox"/> Observed drug/alcohol use <input type="checkbox"/> Difficulty maintaining balance <input type="checkbox"/> Slurred speech <input type="checkbox"/> Abnormal/erratic behavior <input type="checkbox"/> Apparent inability to safely perform assigned work <input type="checkbox"/> Other(s) <input type="checkbox"/> Credible report <input type="checkbox"/> Arrest or conviction </div> <div style="width: 48%;"> <p><input type="checkbox"/> Post-Accident</p> <ul style="list-style-type: none"> <input type="checkbox"/> Accident causing a fatality <input type="checkbox"/> Accident causing an injury requiring off-site medical attention <input type="checkbox"/> Accident causing significant property damage <input type="checkbox"/> Unsafe activity or near-accident that could have caused: <ul style="list-style-type: none"> <input type="checkbox"/> Possible death <input type="checkbox"/> Possible injury <input type="checkbox"/> Possible property damage </div> </div> <p>Comments (Describe in detail below, the rationale for requesting testing, including observed facts and circumstance, any sources of information, date and time of observation or accident, other witnesses, actions taken, etc.)</p> <div style="border: 1px solid black; height: 100px; margin-top: 5px;"></div>		
Requestor's Printed Name and Signature	Title	Date/Time
Reviewer's Printed Name and Signature (DER)	Title	Date/Time
I acknowledge that I have been informed of the company's reasons for requesting this drug and/or alcohol test and consent to the testing.	Employee Signature	Date/Time

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

(NOTE: **FMCSA** for **CMV Drivers**- records for past 3 years)

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

Employee Printed or Typed Name: _____

Employee SS or ID Number: _____

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

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: _____ Date: _____

I-A.

New Employer Name: _____

Address: _____

Phone #: _____ Fax #: _____

Designated Employer Representative: _____

I-B.

Previous Employer Name: _____

Address: _____

Phone #: _____

Designated Employer Representative (if known): _____

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

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

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

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

II-B.

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

Title: _____

Phone #: _____

Date: _____