



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Amending the City of Lodi Drug Free Workplace Policy, Drug Free Workplace Procedure, Drug and Alcohol Testing Policy, and Drug and Alcohol Testing Procedure in Accordance with the Federal Transit Administration Drug and Alcohol Program Audit

MEETING DATE: May 7, 2008

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Adopt resolution amending the City of Lodi's Drug Free Workplace Policy, Drug Free Workplace Procedure, Drug and Alcohol Testing Policy, and Drug and Alcohol Testing Procedure in accordance with the Federal Transit Administration Drug and Alcohol program audit.

BACKGROUND INFORMATION: Last year, the Lodi City Council approved an update to our current drug and alcohol policies and procedures. During a Federal Transit Administration (FTA) audit (Exhibit A) in February 2008, it was noted that some revisions to the City's policies and procedures for Drug and Alcohol Testing and for Drug Free Workplace (Exhibits B - E) were needed to meet FTA requirements.

The audit noted nine points for revision as detailed on pages 2 – 5 of the audit report (Exhibit A). In addition, all changes are tracked in the City's policy and procedure documents (Exhibits B – E).

The policies and procedures have been revised and submitted to the various bargaining groups. Once adopted, the policies will be distributed to staff and forwarded to the FTA. The FTA requires all changes to be approved and submitted by May 13, 2008.

FISCAL IMPACT: None. However, failure to amend and submit the policies by May 13, 2008 as set by FTA could impact the availability of Federal transit funding received by the City to cover the costs of transit service.

FUNDING AVAILABLE: Not applicable.

James Krueger
Deputy City Manager

APPROVED: _____
Blair King, City Manager



**U.S. DEPARTMENT OF TRANSPORTATION
Federal Transit Administration**

**FINAL AUDIT REPORT
FTA Drug and Alcohol Compliance Program**

2/10/2008 to 2/13/2008

**RECIPIENT:
City Of Lodi**

**CONTRACTOR:
MV Transportation, Inc. #67 Lodi Division**

**FEDERAL TRANSIT ADMINISTRATION
OFFICE OF SAFETY AND SECURITY**

**JERRY POWERS,
DRUG AND ALCOHOL PROGRAM MANAGER**



U.S. Department of Transportation
Federal Transit Administration

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

2/13/2008

Ms. Tiffani Fink
Transportation Manager
City Of Lodi Transit Manager
221 West Pine Street
Lodi, CA 95241

RE: FTA Drug and Alcohol Compliance Program

Dear Ms. Fink:

As you know, during the period 2/10/2008 to 2/13/2008, the Federal Transit Administration (FTA) conducted an audit of the FTA-mandated drug and alcohol testing programs of the City Of Lodi.

Several items associated with City Of Lodi's program were found that require attention. The attached Final Audit Report summarizes the findings of the audit team. This report is provided at this exit interview so that you and your staff can take immediate steps to come into compliance regarding the identified items.

The 90-day period for corrective actions commences as of the date of this letter. Therefore, the completion date for items needed to bring your transit system, your vendors, and your contractors into compliance is 5/13/2008, as noted in the Final Audit Report. Failure to fully resolve these items within 90 Days will result in a formal finding of non-compliance by the FTA.

On or before that date, please respond with a report of the corrective actions that have been taken for each audit item. I have enclosed a CD-ROM that contains the Audit Response Software Program (SAMO software) that you must use to respond to each audit item. Also, enclosed is the Audit Response Software Manual that explains the process for installing and using the software program. The software runs under all Windows operating systems, but is not Macintosh compatible.

You must reply to each item in the Final Audit Report by using the software to describe the corrective actions taken and the date the corrective actions were completed. When necessary, provide all supporting documentation that confirms the corrective actions taken.

After the City Of Lodi has completed all corrective actions for each audit item in the Audit Response software, print one copy of the Annotated Audit Report with



corrective actions for your records.

For receipt on 5/13/2008, please send one printed copy of the Annotated Audit Report (including one copy of the Audit Response disk) and any supporting documentation to Mr. Michael Redington at the Volpe National Transportation Systems Center; send two copies of the Annotated Audit Report (including one copy of the Audit Response disk) and any supporting documentation to Mr. Jim Buckley of our contracted Audit Team.

1 Copy of All Materials	2 Copies of All Materials
<p>Mr. Michael Redington Project Manager Office of Safety and Security, RTV-3D</p> <p>Volpe National Transportation Systems Center 55 Broadway Cambridge, MA 02142-1093 (617) 494-2197</p>	<p>Mr. Jim Buckley Manager Milligan & Co, LLC</p> <p>105 n. 22nd Street Philadelphia, PA 19103 410-404-7443</p>

If you require assistance to resolve any of the deficiencies, please do not hesitate to call Mr. Michael Redington or Mr. Jim Buckley. If you have more general questions about the FTA's Drug and Alcohol Compliance Program or regulatory questions, please contact me, Jerry Powers, FTA Drug and Alcohol Program Manager, at (617) 494-2395 or e-mail gerald.powers@dot.gov, or Mr. Michael Redington at (617) 494-2197 or e-mail redington@volpe.dot.gov.

We understand that our audit has placed upon all involved an additional management effort that entailed a great deal of time and planning on your part. We greatly appreciate your cooperation, patience and hospitality during this review. Your staff went to great lengths to ensure the success of the audit; they are to be commended for their hard work and expertise in implementing such a complex program. Because of your efforts, we believe that the goal of improved safety for patrons and employees of City Of Lodi will be more easily achieved.



U.S. Department of Transportation
Federal Transit Administration

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

It is important for you to understand that failure to fully implement FTA's drug and alcohol testing regulations may jeopardize the City Of Lodi's future funding from the FTA.

Once again, thank you for your assistance. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink that reads "Jerry Powers". The signature is fluid and cursive.

Jerry Powers
Drug and Alcohol Program Manager

Electronic cc:

MR. Leslie Rogers, FTA Region IX Administrator
Mr. John Hunt, FTA Region IX
Mr. Michael Redington, Volpe National Transportation Systems Center
Mr. George Y. Gilpatrick II, Cahill Swift LLC
Ms. M. Denise Bailey, Milligan and Company, LLC



U.S. Department of Transportation
Federal Transit Administration

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

The following publications may be useful to you. Each of these publications is available and can be downloaded from the Substance Abuse section of the FTA Office of Safety and Security website at <http://transit-safety.volpe.dot.gov/Publications/>.

Best Practices Manual: FTA Drug and Alcohol Testing Program, May 2002

Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, Federal Transit Administration, April 1994; revised November 2003

Prescription and Over-the-Counter Toolkit, March 2003

FTA Drug and Alcohol Regulation Updates (published quarterly since the Fall of 1995)

Table of Contents

City Of Lodi	2
Policy Manual Review Interview	2
Drug and Alcohol Program Manager Interview.....	6
Breath Alcohol Technician Interview	10
Urine Collections Interview.....	11
Medical Review Officer Interview	12
Substance Abuse Professional Interview	13
Random Testing Throughout the Year	14
Random Testing Throughout the Week.....	15
Random Testing Spread Across Service Hours	16
MV Transportation, Inc. #67 Lodi Division	17
Policy Manual Review Interview	17
Drug and Alcohol Program Manager Interview.....	18
Records Management Interview.....	19
Medical Review Officer Interview	21
Substance Abuse Professional Interview	22
Random Testing Throughout the Year	23
Random Testing Throughout the Week.....	24
Random Testing Spread Across Service Hours	25
Pre-Employment Test Results.....	26
Post-Accident Test Results	27

City Of Lodi

Policy Manual Review Interview

City Of Lodi

Interview Date: 2/7/2008

Item Action Date: 5/13/2008 Question #: 15

1

Question: ALCOHOL TESTING: Does the policy indicate that random and reasonable suspicion alcohol testing is only permissible just before an employee performs safety-sensitive duties, during that performance, and just after an employee has performed covered duties?

Answer: No.

Supplemental Answer: The City's policy does not state that a covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. In the 90-day response to this report please add that statement to the revised policy.

FTA Rule Requirement: Section 655.45(i) states: "A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions." Section 655.43(c) contains a similar statement for reasonable suspicion alcohol testing.

Section 10 D

Item Action Date: 5/13/2008 Question #: 17

2

Question: PRE-EMPLOYMENT DRUG TESTING: Does the policy state that: The candidate must produce a negative drug test result prior to first performing a safety-sensitive duty; if the test is canceled, the employee must retake and pass the test before being hired; and an employee being transferred must provide a verified negative urinalysis prior to performing a safety-sensitive function?

Answer: No.

Supplemental Answer: The City's policy does not state that if a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result. In the 90-day response to this report, please add that statement to the revised policy.

FTA Rule Requirement: Section 655.41(a)(1) states: "Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result." If the policy specifies that an applicant may not be hired until after a verified negative drug test result, that is an acceptable alternative to the first performance of a safety-sensitive duty.
Section 655.41(c) states: "If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result."
Section 655.41(b) states: "An employer may not transfer an employee from a non-safety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result."

Section 10 A

Item Action Date: 5/13/2008 Question #: 18

3 Question: PRE-EMPLOYMENT DRUG TESTING: Does the procedure for a covered employee or applicant who has previously failed or refused a DOT pre-employment drug test include requiring evidence that the employee has successfully completed a referral, evaluation and treatment plan?

Answer: No.

Supplemental Answer: The City's policy does not state that when a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan. In the 90-day response to this report, please add that statement to the revised policy.

FTA Rule Requirement: Section 655.41(a)(2) states: "When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in Section 655.62."

Section 10A

Item Action Date: 5/13/2008 Question #: 19

4 Question: PRE-EMPLOYMENT DRUG TESTING: Does the policy include the provision that a covered employee who has not performed a safety-sensitive duty for 90 consecutive days or more and has not been in the employers random selection pool shall take a pre-employment drug test with a verified negative result before returning to safety-sensitive duties?

Answer: No.

Supplemental Answer: The City's policy does not state that when a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result. In the 90-day response to this report, please add that statement to the revised policy.

FTA Rule Requirement: Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."

10A

Item Action Date: 5/13/2008 Question #: 23

5 Question: REASONABLY SPREAD: Does the policy state that random tests are to be spread reasonably throughout the year? Operationally, this means that: (1) Testing is continuous throughout the year (i.e., testing starts in January and there is no period during which testing is halted); and (2) Testing is conducted on all days and hours during which the transit service is in operation.

Answer: No.

Supplemental Answer: The City's policy does not state that the dates for administering random tests will be spread reasonably throughout the calendar year. Random testing will be conducted at all times of day when safety-sensitive functions are performed. T\All employees will have a reasonable expectation that they might be called for a test on any day and at any time they are at work. In the 90-day response to this report, please add these statement to the revised policy.

10C #5

FTA Rule Requirement: Section 655.45(g) states "Each employer shall ensure that . . . the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed." This ensures that employees will have a reasonable expectation that they might be called for a test on any day and at any time they are at work.

Item Action Date: 5/13/2008 Question #: 25

6 Question: NO DISCRETION: Does the policy state that each covered employee shall have an equal chance of being tested each time selections are made?
Answer: No.

Supplemental Answer: The City's policy does not state that each covered employee shall have an equal chance of being tested each time selections are made. In the 90 day response to this report, please add that statement to the revised policy.

100%

FTA Rule Requirement: Section 655.45(e) states "The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator . . . , each covered employee shall have an equal chance of being tested each time selections are made."

Item Action Date: 5/13/2008 Question #: 35

7 Question: CIRCUMSTANCES: RETURN-TO-DUTY AND FOLLOW-UP TESTS (DRUG AND ALCOHOL): If the company has a second-chance policy, does the policy require that these tests be conducted as specified in 49 CFR Part 40?
Answer: Cant Tell.

Supplemental Answer: The City's policy does not state that when a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40. In the 90 day response to this report, please add that statement to the revised policy.

Section 11

FTA Rule Requirement: The policy should be clear on whether an employee who refuses or fails a test may be permitted to return to safety-sensitive duties.
Section 655.15 -Policy statement contents- states: "The ... policy...shall include the following:(h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40."
If there is a second chance policy, Section 655.46 states: "Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40."

Item Action Date: 5/13/2008 Question #: 39

8 Question: DILUTE NEGATIVE POLICY; Does the policy contain the transit operators determination

concerning whether or not employees who produce dilute negative specimens will be required to take another test immediately under non-observed conditions. If the operator has determined to require retesting, has that decision been made known in advance to employees, either through inclusion in the policy or through another method?

Answer: Cant Tell.

Supplemental Answer: The City's policy does not include the City's determination of a procedure regarding the handling of dilute negative results. In the 90-day response to this report, please add that determination to the revised policy.

FTA Rule Requirement: Section 40.197 (b) through (e) states: (b) If the MRO informs you that a negative drug test was dilute, you may, but are not required to, direct the employee to take another test immediately. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see Sec. 40.67(b) and (c)).(c) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (e.g., conduct retests in pre-employment test situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters (d) If you direct the employee to take another test, you must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site. If you direct the employee to take another test, the result of the second test--not that of the original test--becomes the test of record, on which you rely for purposes of this part.

Item Action Date: 5/13/2008 Question #: 41

9

Question: REFUSAL - DRUG AND ALCOHOL TESTING: Are all of the following included: 1) Failure to appear in a reasonable time except for pre-employment tests; 2) Failure to remain until the testing process is complete; 3) Failure to provide a specimen; 4) Failure to provide a sufficient specimen with no medical explanation; 5) Failure to undergo a medical evaluation as required by a MRO or DER; and 6) Failure to cooperate with any part of the testing process?

Answer: No.

Supplemental Answer: The City's policy does not include all the refusal circumstances such as failure to undergo medical examination, failure to permit monitoring/observation, failure to take a second test and a verified adulterated or substituted sample. In the 90 day response to this report, please include all Part 40 refusal circumstances to the revised policy.

FTA Rule Requirement: Section 40.191(a) lists circumstances that constitute refusals for drug testing and Section 40.261(a) lists circumstances that constitute refusals for alcohol testing.

Search 46

Drug and Alcohol Program Manager Interview

City Of Lodi

Interview Date: 2/12/2008

Item Action Date: 5/13/2008 Question #: 4

1

Question: Were the actual job duties at this transit system reviewed to decide who performed safety-sensitive functions?

Answer: I suspect not, I think that requirement may not be completed.

Supplemental Answer: It was not clear in speaking with Human Resources, Transportation, Risk Management, and Finance at City Hall that there was clear understanding of what positions within the City of Lodi are subject to USDOT Federal Testing under the regulations of FTA and FMCSA. In addition, the policy is not clear in separating the mechanics that are covered under FTA 49 CFR part 655 and the holders of commercial drivers licenses (CDL) that operate heavy equipment for the city regulated by Federal Motor Carrier Safety Administration's (FMCSA) drug & alcohol regulation (49 CFR part 382). In the 90 day response to this report, designate the individual who will be available to each employee and function as the Drug and Alcohol Program Manager (DAPM). Also certify the City's commitment to provide relevant training to the DAPM.

FTA Rule Requirement: Section 655.15 states: ". . .The [policy] statement must be made available to each covered employee, and shall include the following: . . . (b) The categories of employees who are subject to the provisions of this part." Section 655.4 defines "covered employee" as "a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part."

Item Action Date: 5/13/2008 Question #: 8

2

Question: What arrangements have been made to conduct drug and alcohol tests after normal business hours and on weekends?

Answer: Even though this transit system operates after normal business hours and/or weekends, no arrangements have been made to conduct testing during this time.

Supplemental Answer: It was acknowledged by City of Lodi personnel that random testing is only conducted during core administrative hours. FTA is concerned that 2nd shift workers have no deterrent to alcohol misuse after 5:00 PM. In the 90 day response to this audit finding, provide to FTA copies of the random selection sheets, and legible copies of the chain of custody forms for this time period. This should demonstrate that random tests are being spread throughout all hours that vehicle maintenance is performed.

FTA Rule Requirement: Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."

Item Action Date: 5/13/2008 Question #: 9

3

Question: Have all transit system officials and supervisors authorized to make FTA reasonable suspicion testing referrals received appropriate training (at least 60 minutes of training on the indicators of probable drug use; and 60 minutes of training on the indicators of probable alcohol misuse)?

Answer: Some authorized employees have not received the required training yet. We train our

new hires at various times of the year, but we usually wait until several have been hired and then train them in a group.

Supplemental Answer: City of Lodi personnel were not clear if or who had been trained to do DOT reasonable suspicion interviews and referrals as per FTA and/or FMCSA requirements. City officials acknowledged that the Maintenance Supervisor had likely not received this training. Reasonable Suspicion testing is the best tool for detecting and deterring prohibited drug use and alcohol misuse that is available within the DOT-regulated program.

In response to this audit finding please submit evidence that the required training has been performed and provide FTA with training logs and agendas. A reasonable suspicion video and training guide is available at the FTA Office of Safety & Security website at the following link:
<http://transit-safety.volpe.dot.gov/DrugAndAlcohol/TechnicalAssistance/ReasonableSuspicion.asp>

FTA Rule Requirement: Section 655.14(b)(2) states: "Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse."

Item Action Date: 5/13/2008 Question #: 10

4

Question: How do you document that all employees authorized to make FTA reasonable suspicion testing referrals have received training, and how long do you maintain those records ?

Answer: I don't know.

Supplemental Answer: As a response to this finding submit training logs for appropriate supervisors in both the maintenance pool and the public works department.

FTA Rule Requirement: Section 655.71(c) states: "The following specific records must be maintained: . . . (4) Records related to employee training: . . . (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion." Section 655.71(b) states: "In determining compliance with the retention period requirement, each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record. Each employer shall maintain the records in accordance with the following schedule: . . . (2) Two years. Records related to the collection process and employee training."

Item Action Date: 5/13/2008 Question #: 13

5

Question: Who is responsible for ensuring that safety-sensitive employees who have not been in the random testing pool for 90 consecutive days or more pass a pre-employment drug-screening test before performing safety-sensitive functions?

Answer: There is no requirement to conduct a pre-employment test on employees who have been out of the random pool for 90 or more days.

Supplemental Answer: City officials were not aware of the requirement for pre-employment testing FTA safety-sensitive employees that have been out of safety-sensitive duties and out of the random testing pool for 90 days.

In response to this audit finding, submit the policies and procedures implemented to ensure that the agency is in compliance with Section 655.41(d).

FTA Rule Requirement: Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employers random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."

Item Action Date: 5/13/2008 Question #: 22

6

1 per year

Question: Does this transit system conduct random testing during all work shifts (i.e., during all hours of operations)?

Answer: No, this transit system only conducts random testing during normal business hours.

Supplemental Answer: It was acknowledged by City of Lodi personnel that random testing is only conducted during core administrative hours. FTA is concerned that 2nd shift workers have no deterrent to alcohol misuse after 5:00 PM.

In response to this audit finding, submit the procedures implemented to ensure that testing may be (performed after core administrative hours.

FTA Rule Requirement: Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."

Item Action Date: 5/13/2008 Question #: 31

7

Question: Does the transit system use the federal (DOT) custody and control forms for post-accident testing only when an FTA testing threshold has been met, and a non-DOT form for all other post-accident testing?

Answer: Other. There is no accident decision form for either FTA or FMCSA regulated functions within the City of Lodi.

Supplemental Answer: City officials acknowledged that they were not aware of the differences in post-accident testing thresholds between FTA and FMCSA regulated functions. Model forms are available in the FTA D&A Best Practices document. The City stated that they will adopt decision making forms from the transit operations contractor for the maintenance and public works departments.

In response to this audit finding, submit the policies and form implemented to ensure that correct decisions on federally mandated post-accident tests are made.

FTA Rule Requirement: Section 40.47(a) states: ". . . as an employer, you are prohibited from using the CCF for non-DOT urine collections. You are also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations."
Section 40.227(a) states: ". . . as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations."

Item Action Date: 5/13/2008 Question #: 32

8

Question: Does this transit system have some method to document the post-accident decision-making process, especially decisions not to conduct a drug and alcohol test following an accident that reaches an FTA threshold?

Answer: No.

Supplemental Answer: As the City was not clear on the accident thresholds, they were not aware that they could excuse an employee's performance as a contributing factor and excuse from testing.

In response to this audit finding, describe the procedures implemented to ensure that federally mandated post-accident testing is performed in a compliant fashion.

FTA Rule Requirement: Section 655.44(d) states: "The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test." Section 655.71(c) states: "The following specific records must be maintained:(1) Records related to the collection process: . . .(iv) Documents generated in connection with decisions on post-accident drug and alcohol testing."

Item Action Date: 5/13/2008

Question #: 43

9

Question: Does this transit system have a second chance policy for employees who test positive on an FTA drug and/or alcohol test?

Answer: Other. The Legal Department has not made a definitive policy yet due to difficulties applying the previous "progressive discipline" policies.

Supplemental Answer: Employee consequences and disciplinary procedures for violations must be applied consistently. It was found that much confusion exists and effort had been expended in accommodating a particular employee with past violations. To avoid the arbitrary application of the process or the appearance of bias and to ensure the buy-in of all stake-holders, each employee must be treated equally.

In response to this audit finding, submit a final policy that has been implemented and communicated to the employees and their representatives with regards to the City of Lodi's 2nd chance policies.

FTA Rule Requirement:

Breath Alcohol Technician Interview

City Of Lodi

Interview Date: 2/12/2008

Item Action Date: 5/13/2008

Question #: 32

1

Question: After the EBT prints a confirmation test result of less than 0.02, is there anything left for the employee to sign?

Answer: If the confirmation test result is less than 0.02, the employee is still required to sign Step 4.

Supplemental Answer: In response to this audit finding, submit to FTA on company letterhead a statement signed by each applicable DOT BAT certifying an understanding of section 40.255(a)(2) below, wherein a donor providing a confirmation test result below .02 is not required to sign step 4 of the ATF.

FTA Rule Requirement: Section 40.255(a) states: "After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:(1) Sign and date Step 3 of the ATF.(2) If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. As the BAT, you must sign and date Step 3 of the ATF."

employee understood the procedure

Item Action Date: 5/13/2008

Question #: 41

2

Question: Is there any impact on a breath alcohol test if the EBT fails to print the confirmation test result?

Answer: Other. The BAT indicated that she would manually record the confirmation result onto the alcohol testing form.

Supplemental Answer: In response to this audit finding, submit to FTA on company letterhead a statement signed by each applicable DOT BAT certifying an understanding of the requirement to ensure that confirmation tests are invariably printed, per section 40.267(c)(4) below.

FTA Rule Requirement: Section 40.267 states: "As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are: . . .(c) In the case of a confirmation test: . . .(4) The EBT does not print the result (see Section 40.253(f))."

Urine Collections Interview

City Of Lodi

Interview Date: 2/12/2008

Item Action Date: 5/13/2008

Question #: 52

1

Question: What is done if an employee says he/she is not ready to proceed with the urine collection process because an employee representative is delayed in arriving?

Answer: Call the employees company.

Supplemental Answer: In response to this audit finding, submit to FTA on company letterhead a statement signed by each applicable DOT collector certifying an understanding of the requirement to begin the testing process immediately, as discussed in section 40.16 (b) below.

FTA Rule Requirement: Section 40.61(b) states: "[The collector must] Ensure that, when the employee enters the collection site, you begin the testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving."

Item Action Date: 5/13/2008

Question #: 64

2

Question: If the employee is unable to provide a specimen of at least 45 milliliters, what is done?

Answer: Other. The collector provided an excellent form logging the number of "10oz cups" given to the donor during the three-hour shy bladder period.

Supplemental Answer: The actual cup provided, however, was a 12oz. cup. The collector described the approximate level to which she would fill the cup each time.

OHS must have in place a method to consistently and accurately measure and provide forty ounces of fluid to each donor in a "shy bladder" process, as necessary.

In response to this audit finding, submit to FTA a description of the steps that OHS has taken to consistently and accurately meet the requirements of section 40.193(b) below.

FTA Rule Requirement: Section 40.193(b) states: "As the collector, you must do the following: (2) Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the Remarks line of the CCF (Step 2), and inform the employee of, the time at which the three-hour period begins and ends."

Provide enough water how they

Medical Review Officer Interview

City Of Lodi

Interview Date: 2/6/2008

Item Action Date: 5/13/2008

Question #: 16

1

Question: Do you have a method for identifying yourself and confirming your identity when you need to talk with the DER?

Answer: No. The DER recognizes the MROs voice.

Supplemental Answer: The MRO does not have a means to confirm his identification to the DER. In the 90 day response to this audit, provide documentation of password or other means to positively confirm the identify of the MRO to the DER.

FTA Rule Requirement: Section 40.167(b) states: "As the MRO or C/TPA who transmits drug test results to the employer, you must comply with the following requirements: (2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification."

Item Action Date: 5/13/2008

Question #: 19

2

Question: If an employer requests, do you provide the quantitative values of the drugs verified positive, or the results of validity tests?

Answer: Other.

Supplemental Answer: The auditors learned from interviewing the DER, that the MRO reported a verified positive test result involving a City safety sensitive employee and provided quantitative values to the City DER. This is contrary to 49 CFR Part 40.163(g). In the 90 day response to this report, provide a statement from the MRO confirming understanding of the regulation prohibiting the release of quantitative values to the DER.

FTA Rule Requirement: Section 40.163(g) states: "You must not provide quantitative values to the DER or C/TPA for drug or validity test results. However, you must provide the test information in your possession to a SAP who consults with you (see Section 40.293(g))."

City Of Lodi

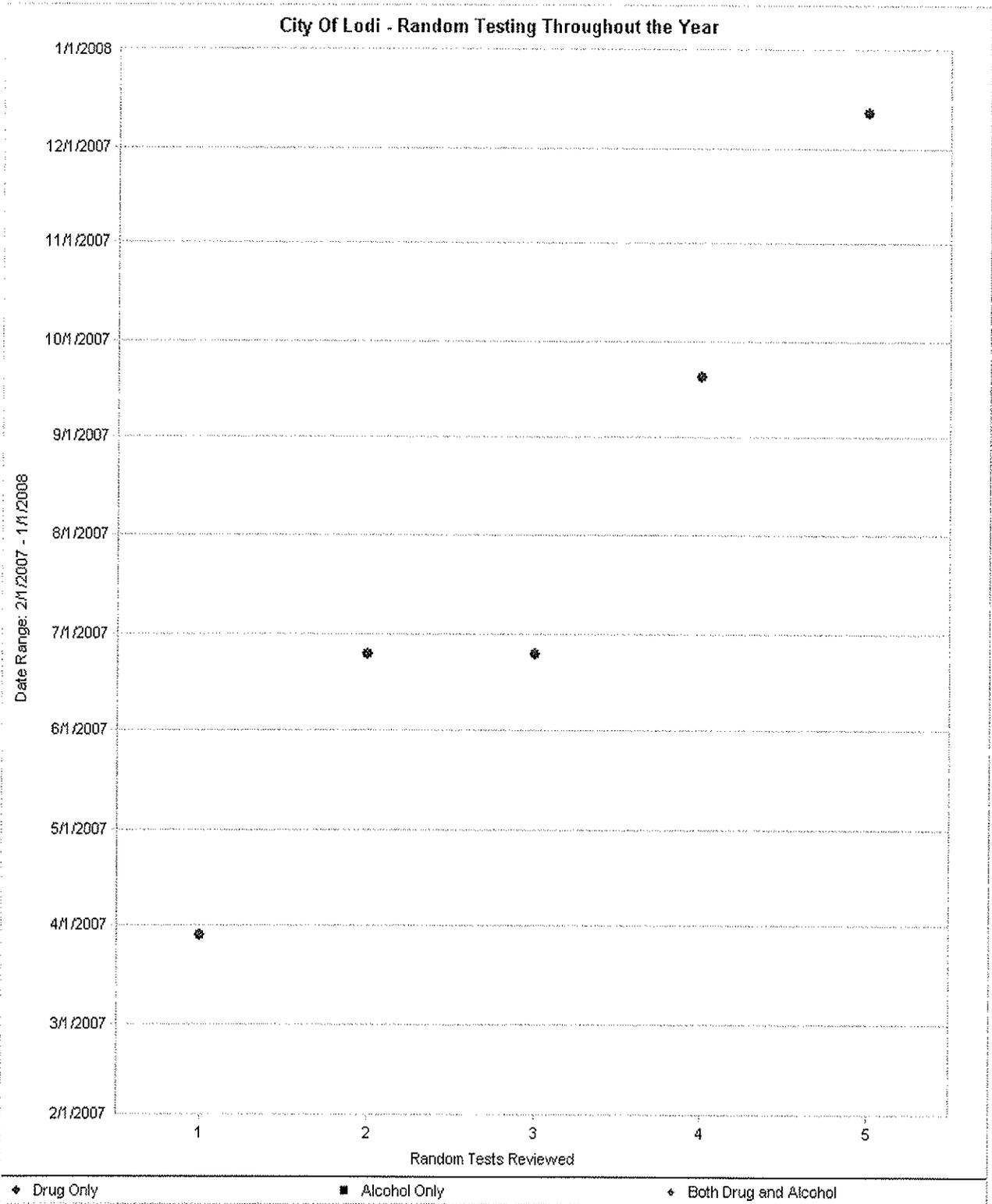
Substance Abuse Professional Interview

City Of Lodi

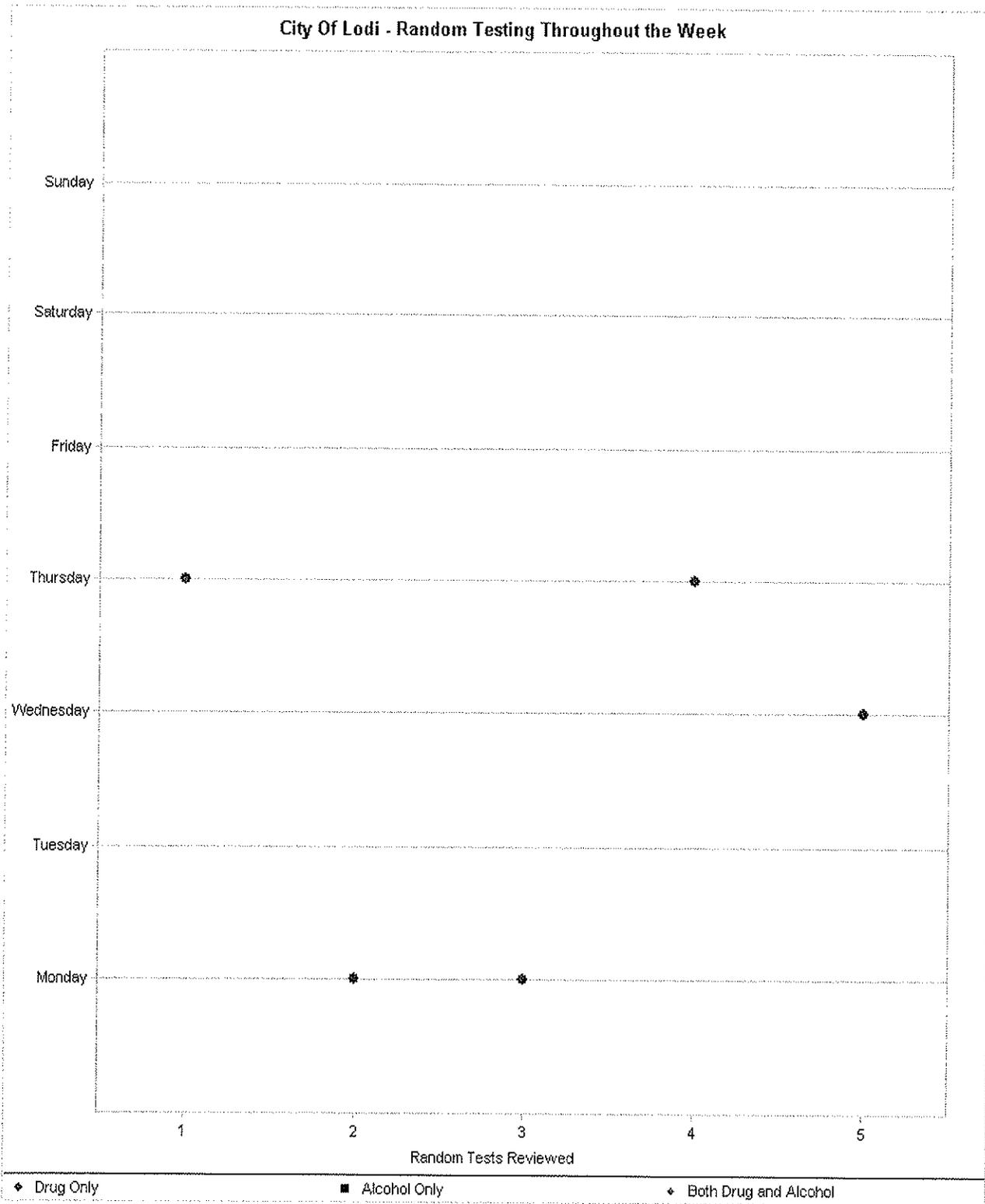
Interview Date: 02/05/2008

Finding: Not deficient with FTA requirements.

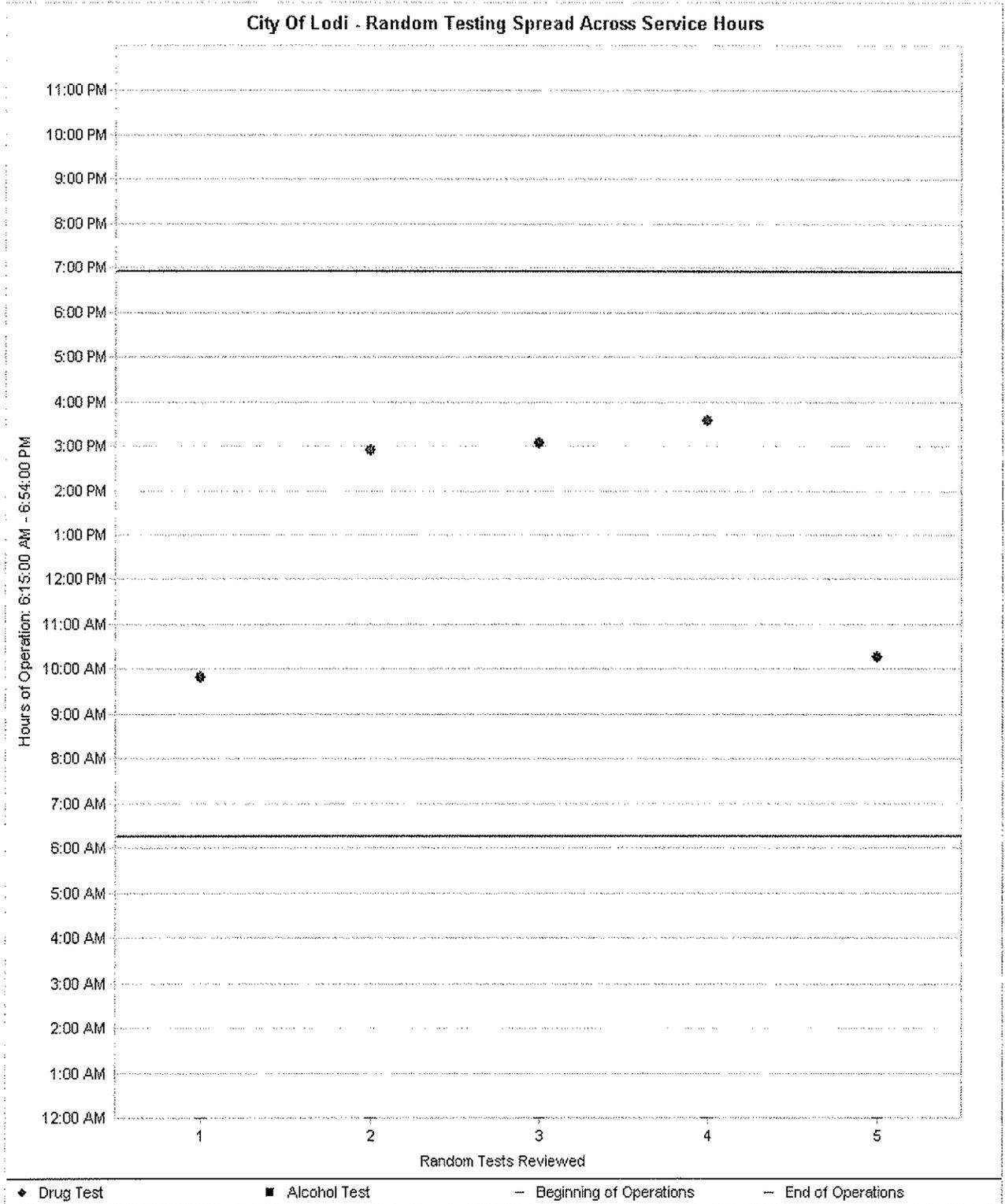
Random Testing Throughout the Year



Random Testing Throughout the Week



Random Testing Spread Across Service Hours



MV Transportation, Inc. #67 Lodi Division

Policy Manual Review Interview

MV Transportation, Inc. #67 Lodi Division

Interview Date: 02/07/2008

Finding: Not deficient with FTA requirements.

City Of Lodi

Drug and Alcohol Program Manager Interview

MV Transportation, Inc. #67 Lodi Division

Interview Date: 02/11/2008

Finding: Not deficient with FTA requirements.

Medical Review Officer Interview

Interview Date: 02/05/2008

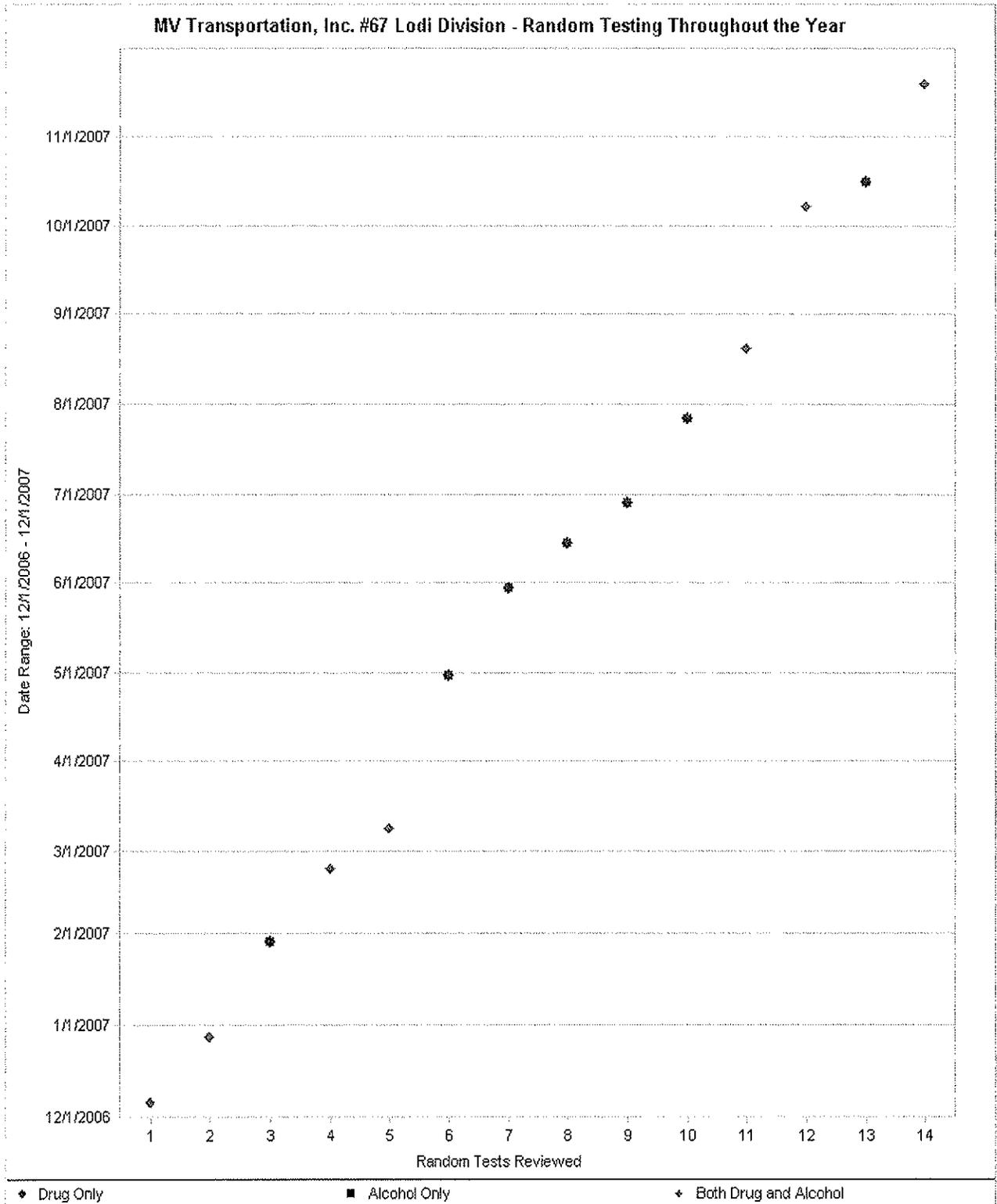
Finding: Not deficient with FTA requirements.

Substance Abuse Professional Interview

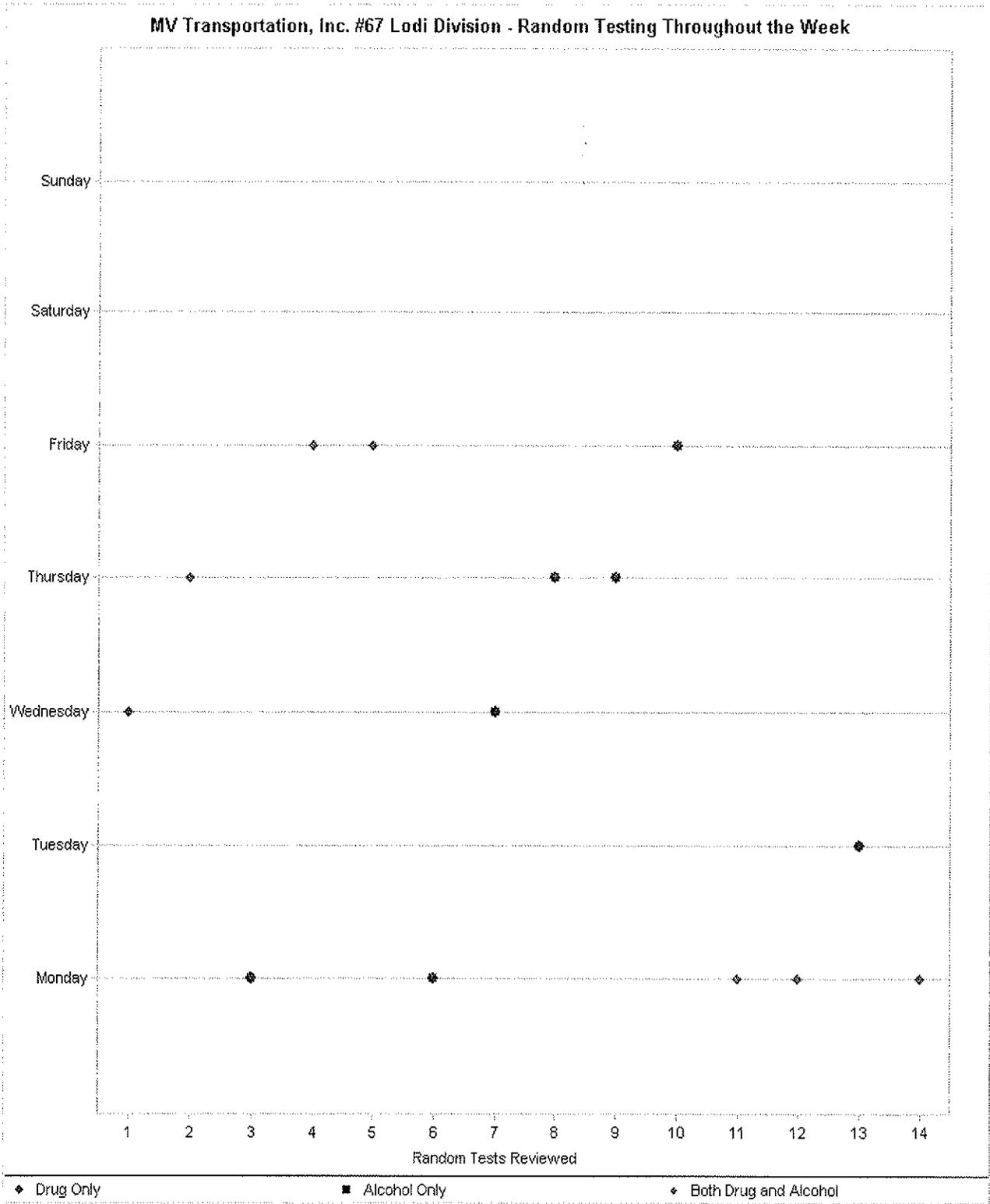
Interview Date: 02/05/2008

Finding: Not deficient with FTA requirements.

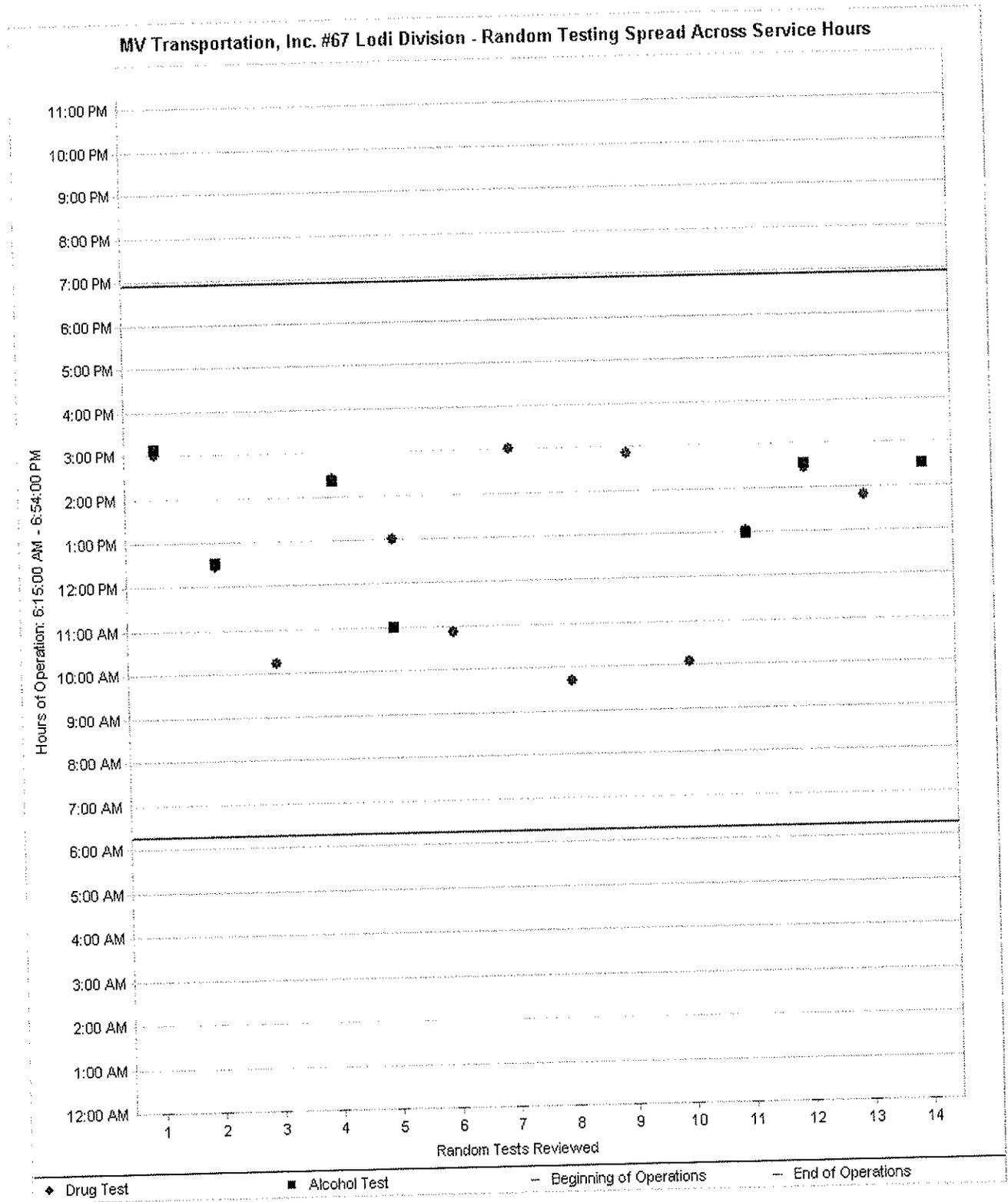
Random Testing Throughout the Year



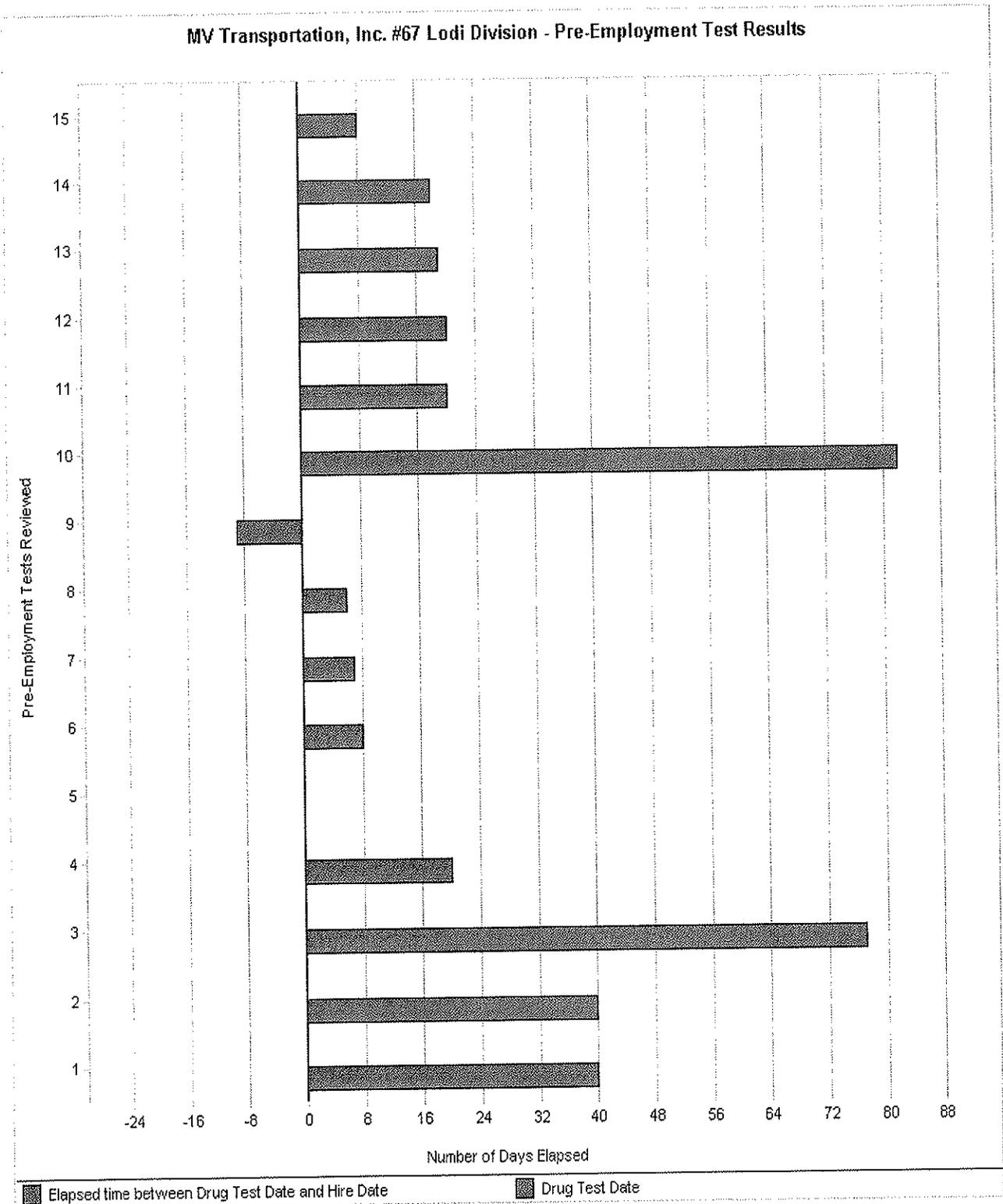
Random Testing Throughout the Week



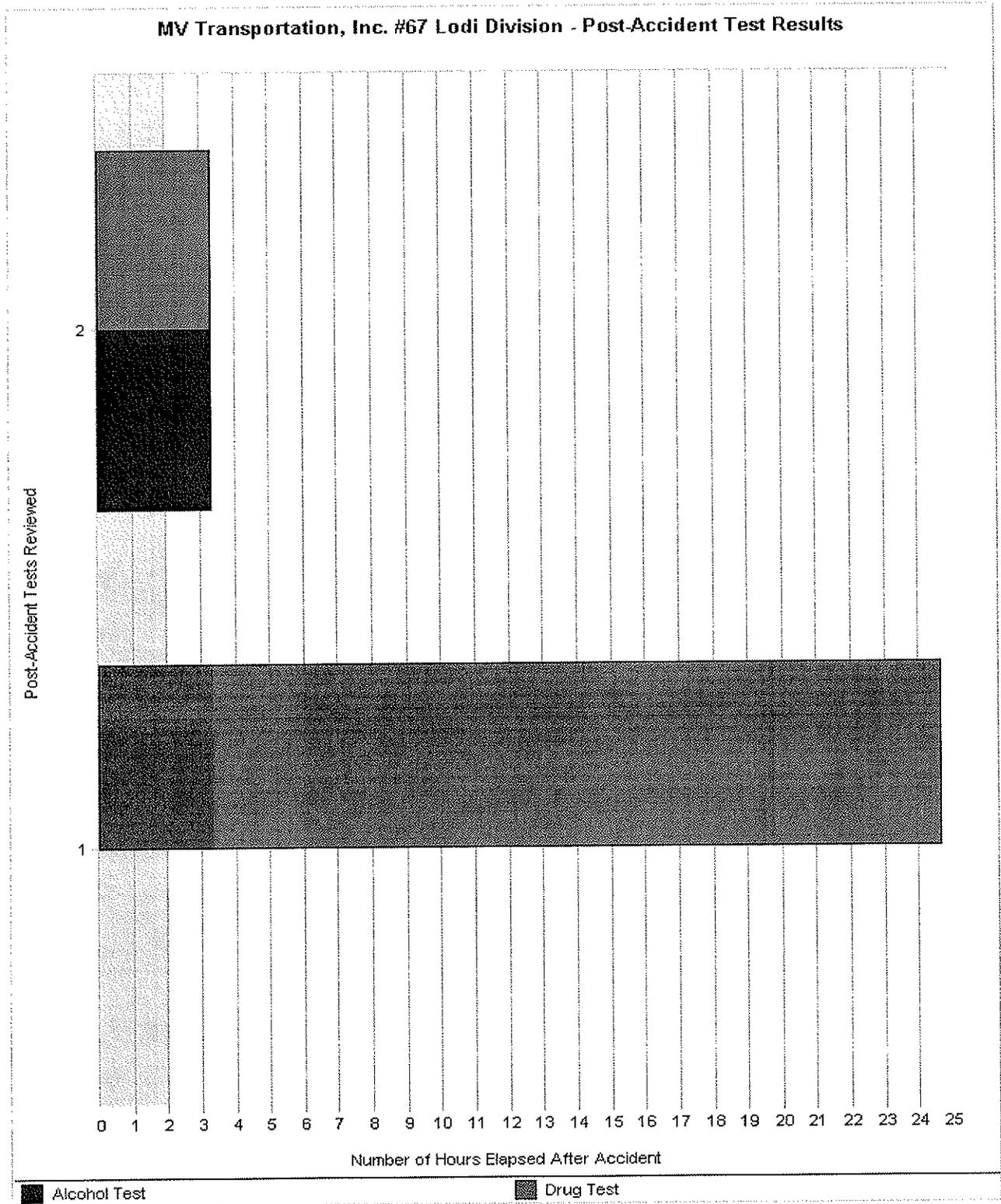
Random Testing Spread Across Service Hours



Pre-Employment Test Results



Post-Accident Test Results



RESOLUTION NO. 2008-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AMENDING THE CITY OF LODI DRUG FREE
WORKPLACE POLICY AND THE DRUG FREE
WORKPLACE PROCEDURE TO MEET DEPARTMENT
OF TRANSPORTATION REQUIREMENTS

=====

WHEREAS, the City of Lodi previously adopted a Drug Free Workplace Policy and Procedure on May 1, 1995 and amended on July 18, 2007; and

WHEREAS, due to Federal Transportation Administration requirements applying to employees who operate or maintain Department of Transportation funded equipment and machinery, an amendment to that policy is required.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby amends the City of Lodi Drug Free Workplace Policy and the Drug Free Workplace Procedure to meet Department of Transportation requirements, as shown on Exhibit B and C attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED that the effective date of this policy shall be May 8, 2008.

Dated: May 7, 2008

=====

I hereby certify that Resolution No. 2008- was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 7, 2008, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

CITY OF LODI
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: : DRUG-FREE WORKPLACE - *Policy*
DATE ISSUED: :
SECTION: : D
REFERENCE: : Drug Free Workplace Act of 1988;
Americans With Disabilities Act of 1990; The
Rehabilitation Act of 1973.

SECTION 1: PURPOSE

City of Lodi is committed to protecting the safety, health and well being of all employees and other associated individuals in our workplace. We recognize that alcohol abuse and drug use pose a significant threat to our goals. We have established a drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment.

- This policy recognizes that employee involvement with alcohol and other drugs can be very disruptive, adversely affect the quality of work and performance of employees, pose serious health risks to users and others, and have a negative impact on productivity and morale.
- As a condition of employment, this organization requires that all employees adhere to a strict policy regarding the use and possession of drugs and alcohol.
- This organization encourages employees to voluntarily seek help with drug and alcohol problems.

SECTION 2: POLICY STATEMENT

It is a violation of our drug-free workplace policy to manufacture, use, possess, distribute, trade, and/or offer for sale alcohol, illegal drugs or intoxicants. Our drug-free workplace policy is intended to apply whenever anyone is representing or conducting business for the organization. Therefore, this policy applies during all working hours, lunch hours and whenever conducting business or representing the organization, while on paid standby, on or off City property including vehicles. Any individual who conducts business for the organization, is applying for a position, or is conducting business on the organization's property is covered by our drug-free workplace

policy. Our policy includes, but is not limited to executive management, managers, supervisors, full-time employees, part-time employees, off-site employees, contractors, volunteers, interns and applicants.

Drug and alcohol consumption on and/or off the job can adversely affect job performance and employee/public safety. The City respects the privacy of its employees and contractors unless involvement with drugs and/or alcohol off the job adversely affects job performance and employee/public safety.

SECTION 3: COMPLIANCE

The U.S. Department of Transportation DOT has published 49 CFR Part 29, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. The (DOT) adopted 49 CFR Part 40 (Revised), which outlines procedures for transportation workplace drug and alcohol testing programs. This Policy incorporates these federal requirements for employees when performing safety-sensitive functions, as well as other provisions as noted.

The Federal Transit Administration (FTA) of the U.S. Department of Transportation 49 CFR (Code of Federal Regulations) Part 655 and 382 mandates urine drug testing and breathalyzer alcohol testing, for employees performing safety-sensitive functions. The regulation prevents the performance of safety-sensitive functions when there is a positive test result or test refusal. **A safety-sensitive function is:**

- 1) Maintenance personnel, who perform various repairs to revenue vehicles (including repairs, overhaul and rebuilding)
- 2) Employees with a commercial driver's license that will operate a revenue service, or non-revenue service DOT funded transit vehicle (includes the operation of the Lifts or anyone who assists passengers to assure they are secured in the vehicles).
- 3) Drivers operating a revenue service vehicle, including when not in revenue service.
- 4) Dispatch personnel and supervisors who control the movement of any revenue service vehicle.

Federal Contractors and grantees must certify that they will provide drug-free workplaces as a pre-condition to receiving a contract or grant from any Federal agency. Failure to comply with the requirements of the Drug-Free Workplace Act may result in the following sanctions:

- A. suspension of payments under the grant;
- B. termination of the grant; or

C. debarment from any grant award from any Federal agency for a period up to five (5) years.

Such penalties may be applied to contractors/grantees who have made false certifications of compliance with the Act.

SECTION 4: COMPLIANCE OF EMPLOYEES

All employees shall agree to abide by this condition of employment and shall notify the City of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

In those instances where City employees, who are employed under Federal contract or grant, are convicted of criminal drug statutes violations occurring in the workplace, the City shall notify the grantor agency within ten (10) days after receiving notice from such employees or otherwise receiving actual notice of such convictions.

The City of Lodi shall require every covered employee who performs a safety-sensitive function as described in the FTA regulations Part 655 to submit to a pre-employment, post-accident, random, reasonable suspicion, return-to-duty or a follow-up drug and alcohol test as described in this policy. The City shall not permit any employee who refuses to submit to such tests to perform or continue to perform any safety-sensitive functions and is subject to disciplinary actions up to and including termination.

Any employee (safety sensitive or non-safety sensitive) who refuses to comply with a request for testing, who fails to remain readily available for post-accident testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration or substitution, shall be removed from duty immediately. Refusal can include an inability to provide a specimen or breath alcohol sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

SECTION 5: ENFORCEMENT

In conjunction with Human Resources, department directors, managers, and supervisors are responsible for reasonable enforcement of this policy and the Drug-Free Workplace Procedure.

SECTION 6: SPECIFIC APPLICATIONS

Driver's License: Employees operating vehicles and equipment requiring the possession of a specified class, certificated or endorsed driver/operator license by the California Department of Motor Vehicles, or any other federal or state agency, may be subject to drug/alcohol screening in order to obtain and maintain such licensing

Accidents: Employees directly involved in an accident, including vehicular accidents, or who may have been involved in the sequence of events leading up to an accident, is subjected to testing as part of the accident investigation process. Notwithstanding laws to the contrary, the supervisor will determine whether employees should be directed for drug/alcohol testing based upon reasonable suspicion.

SECTION 7: Opportunities of Rehabilitation

The City of Lodi is committed to providing reasonable opportunities of rehabilitation to those employees with a drug or alcohol problem in accordance with the provisions of federal and/or state law.

An employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable cause, random or post-accident testing or has not refused a drug or alcohol test or is not involved in disciplinary proceedings, may voluntarily refer her or himself to the Human Resources Manager or Internal Services Director, who will refer the individual to the City's Substance Abuse Professional at the expense of the employee. The SAP will evaluate the employee and make specific recommendation regarding the appropriate treatment. When an employee voluntarily refers her or himself for treatment, the employee may be eligible for sick leave and disability benefits. Employees will be allowed to take accumulated vacation time or may be eligible for unpaid time off to participate in any rehabilitation program at the employee's expense. In addition, the City of Lodi's voluntary Employee Assistance Program (EAP) is available to assist employees who seek help for alcohol or drug problems. Employees are encouraged to contact the EAP directly.

Supervisors/managers may refer an employee to the EAP for reasonable suspicion of drug abuse. Supervisors are encouraged to refer employees to the EAP for intervention. EAP services are confidential and supervisory referred employees are requested to sign a release of information for attendance purposes if sessions are scheduled during working hours.

SECTION 8: PRESCRIPTION MEDICATION /LEGAL DRUGS

A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. The misuse of legal drugs while performing transit business is prohibited at all times. Any employee taking any medication with a warning label will be required to provide the following:

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills or judgment may be adversely affected must be reported to supervisory personnel. Medical advice should be sought, as appropriate, while taking such medication and before performing work-related duties.

An employee taking prescribed drugs which may interfere with safe work performance is required to provide written documentation from the prescribing physician indicating the level of interference with job performance. The prescription or approval must include the patient's name, the name of the substance, quantity/amount to be taken, the period of authorization and physician's signature that the employee may continue to perform safety-sensitive functions while taking such medication

The employee's immediate supervisor or department head shall determine on a case-by-case basis the employee's ability to perform employment responsibilities in conjunction with Human Resources. Failure to notify a supervisor may result in disciplinary action in accordance with City policy and procedure. An employee may be required to provide a statement from a licensed physician, indicating when the employee is able to work safely, or any limitations she/he may have while taking the prescribed medication.

SECTION 9:

PRE-EMPLOYMENT DRUG TESTING

As an employer the City is required to verify previous violations of DOT drug and alcohol regulations within the last two years of employment with a DOT regulated agency or employer.

An employer must obtain and review the information listed below from any DOT-regulated employer the employee performed safety-sensitive functions for in the previous two years. The information must be obtained and reviewed prior to the first time an employee performs safety-sensitive functions. If not feasible, the information should be obtained no later than thirty (30) days after the first time an employee performs safety-sensitive functions. The information obtained must include:

1. Information of the employee's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
2. Information of the employee's controlled substance test in which a positive result was indicated.
3. Any refusal to submit to a required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
4. Other violations of DOT agency drug and alcohol testing regulations.

Applicants will be asked whether her or he has tested positive, or refused to test on a pre-employment drug or alcohol test while trying to obtain safety sensitive transportation work from an employer covered by a DOT agency during the past two years. If applicant admits that he or she had a positive test or refusal to test, the applicant will not be eligible for the position. Job offers made by the City of Lodi are contingent upon the successful completion of a drug and/or alcohol screening. Testing for temporary hires will be evaluated on an individual basis by classification.

Deleted: City

Deleted: allow the applicant to perform safety-sensitive duties unless and until the applicant provides documents showing the successful completion and release from a SAP

CITY OF LODI
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: : DRUG-FREE WORKPLACE - *Procedure*
DATE ISSUED: :
SECTION: : D
REFERENCE: : US DOT (FTA) 49 CFR Part 40;
49 CFR Part 655;
49 CFR Part 382;
49 CFR Part 29;
Drug Free Workplace Act of 1988;
Americans With Disabilities Act of 1990;
The Rehabilitation Act of 1973;
Rules for Personnel Administration;

SECTION 1: PURPOSE

The purpose of this procedure is to provide guidance to employees, supervisors, and managers in the recognition of drug/alcohol abuse by employees, and of the process by which to address the issues raised by such use.

SECTION 2: SUPPORT SERVICES/EDUCATION /TRAINING

All employees may receive educational information and training regarding the detection and deterrence associated with the use of illegal drugs and alcohol use. Safety Sensitive employees may receive training annually. For immediate support and guidance employees may contact:

Deleted: shall

Deleted: will

SAMHSA'S
Center for Substance Abuse Treatment

1-800-662-HELP
(4357)

All

Employee Assistance Program

(209) 333-6704

Please contact Human Resources for
additional information

Substance Abuse Professional

SECTION 3:

REASONABLE SUSPICION

Reasonable Suspicion is cause based on subjective evidence and objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol to the degree the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

It is the responsibility of the supervisor to gather specific facts and rational inferences from these facts which warrant reasonable suspicion that the particular employee is under the influence of drugs or alcohol. Co-workers have the responsibility to notify supervisors or Human Resources immediately to report suspicious behavior. In all cases of suspicion of drug/alcohol abuse, all procedures shall be conducted under the auspices of the Human Resources Division.

Reasonable suspicion may be established by, but not limited to any of the following:

- A. Slurred speech;
- B. Alcohol odor on breath;
- C. Unsteady walking and movement;
- D. An accident involving City property;
- E. Physical or verbal altercation;
- F. Declining work performance;
- G. Possession of alcohol or unauthorized drugs;
- H. Information from a co-worker, City employee, or member of the public regarding an employee's performance level.

These are not the sole indicators for determining reasonable suspicion. The number of reasonable suspicion indicators and amount of evidence supporting each indicator will determine whether there is reasonable suspicion to search or compel a test. Consequently, any one indicator above or in combination with other indicators will not necessarily always indicate reasonable suspicion. Each situation will have to be individually examined, obtaining as much evidence of impairment as possible.

SECTION 4:

SUPERVISORY RESPONSIBILITIES

Supervisors must distinguish between deficient employee behaviors that are ongoing or repeated in nature, and those that present immediate indication of drug/alcohol influence.

- A. Ongoing Behavior:

A supervisor observing an employee demonstrating the above indicators and/or exhibiting ongoing behavior which could cause reasonable suspicion of drug/alcohol abuse shall contact the Human Resources Division immediately and may:

1. Counsel the employee regarding areas of declining work performance and recommend the employee utilize the Employee Assistance Program for intervention and rehabilitation.
2. Document the behavior which has given rise to the suspicion of substance abuse;
3. Inform the appropriate higher level supervisor/manager of the supervisor's observations, interventions, and if applicable, intent to recommend substance abuse testing.

Drug/alcohol testing is used as a last resort after an employee refuses an EAP referral or EAP recommendations are rejected.

After a supervisor has received training on drug/alcohol abuse testing and referral, and taken all measures outlined above, he/she may direct an employee to take a test in accordance with the procedures outlined in Attachment A.

B. Immediate Presentation of Indicators:

Supervisors may request an employee to submit to a drug /alcohol testing when there is a reasonable suspicion that an employee is under the influence of drugs or alcohol. When there is reasonable suspicion that an employee is under the influence of drugs or alcohol, the supervisor is required to prevent the employee from engaging in further work and advise the employee to remain at the work site until transportation arrangements can be made. Such employee shall be transported to the appropriate physician/laboratory for drug/alcohol testing by his/her most available supervisor. Upon completion of the sample collection, transportation to the employee's residence shall be provided by the supervisor or a member of the employee's family. Employees who insist on driving and who may be under the influence of drugs or alcohol are subject to arrest by a peace officer.

Employees will not be permitted to work until the results of the test have been determined. Upon receipt of the laboratory analysis results, employees will be notified. If a test result is positive, the time the employee was absent from work between the specimen collection and notification of results shall be unpaid. If the test result is negative, then the interim time period shall be considered administrative leave with pay.

Supervisors requesting an employee to submit to a drug/alcohol test shall document, in writing within 24 hours, the facts constituting reasonable suspicion that the employee is intoxicated or under the influence of drugs.

The City may search, without employee consent, all areas and property in which the City maintains control or joint control with the employee including, but not limited to, City vehicles, desks, containers, files, lockers and storage facilities. Whenever possible, prior to a search for drugs or alcohol, an attempt shall be made to contact the employee at work or at home to allow the employee to be present during the search. When it is not possible reach the employee or the employee is not present within a reasonable period of time (i.e. not later than 45 minutes), the search shall be conducted by a minimum of two people - the supervisor conducting the search and an observer such as a second supervisor, a law

enforcement officer or a neutral observer. For Police Officers, searches of lockers or an assigned storage space shall be conducted as provided by Government Code Section 3309. Otherwise the City may notify the appropriate law enforcement agency that an employee may have illegal drugs in his/her possession or in an area not jointly or fully controlled by the City.

Supervisors shall not physically search the person of employees, nor shall they search the personal possessions of employees. Supervisors shall notify the appropriate Department Head or designee when they have reasonable suspicion that an employee may have illegal drugs or alcohol in his or her possession, including areas such as parking areas, break rooms, etc. If the Department Head or designee concurs that there is reasonable suspicion of possession, then he/she may notify the appropriate law enforcement agency.

SECTION 5: CONTROLLED SUBSTANCE (DRUGS) AND/OR ALCOHOL TESTING OF EMPLOYEES

| There shall be no random or general testing except as required by federal and/or state law. The City of Lodi shall require every covered employee who performs a safety-sensitive function as described in the FTA regulations Part 655 to submit to a pre-employment, post-accident, random, reasonable suspicion, or a follow-up drug and alcohol test as described in this policy.

Deleted: , or as part of a last chance agreement in conjunction with rehabilitation

Deleted: return-to-duty

An employee may be asked to submit to a urine test to determine the use and/or presence of controlled substances. Alcohol testing shall be conducted by using an evidential breath testing device.

Should an employee be directed to undergo drug/alcohol testing the following provisions shall apply:

| A. All testing shall be performed by a National Institute of Drug Abuse (NIDA) certified facility, determined by the City.

B. The initial testing shall use the radioimmunoassay (RIA) screening process. If the results are positive, the results will confirmed by the gas chromatography/mass spectrometer (GC/MS) method.

| C. Alcohol testing is only permitted just before, during, and just after the performance of safety-sensitive duties.

D. If the initial test result is positive and the confirmation test result is negative, the overall screening is considered negative.

| E. In the event of a positive result, the specimen shall be retained and preserved by the laboratory for a minimum of one year. If during this period the employee requests, the

specimen will be forwarded to another laboratory for independent testing. The cost of this additional handling and testing shall be borne by the employee.

F. If the employee tests positive for a substance(s) with a medically recognized usage as a prescription drug without having disclosed such usage before the test, the employee shall be given the opportunity to produce a prescription for the drug or a physician's (or dentist's) statement relative to the need for such a drug. The said prescription must be dated before the date of the drug screen.

G. In the case of marijuana, the level of the positive test is set high enough to exclude people who have had a casual encounter with the drug, such as being in a room where it is smoked by someone else. A test threshold (NG/ML) for THC - the active substance in marijuana - is used as cutoff, which ensures that someone who registers positive has indeed ingested such a substantial amount of that drug that it precludes inadvertent exposure.

H. The results of the drug screening shall be reviewed by a Medical Review Officer (MRO) for interpretation and validation. The medical provider shall inform the employee and Human Resources of the results of the screening.

* Testing is based on DOT minimum thresholds in 49 CFR Part 40.

SECTION 6: CONFIDENTIALITY

Specific treatment services provided by the SAP and/or EAP provider are confidential and are not released without the employee's authorization. Specific information shared with SAP or EAP staff is confidential unless required by law for child abuse or threats of bodily harm.

Laboratory reports or test results shall be maintained by the medical provider. Any written records of the test results shall not be placed in an employee's personnel file, but shall be maintained in a separate confidential file unless used to support a disciplinary action. The confidential file shall be maintained by the Human Resources Division. The reports or test results may be disclosed to City management and/or supervisory staff on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without the employee's consent, may also occur when the information:

- A. requires immediate contact to the employee
- B. is compelled by law or by judicial or administrative process;
- B. has been placed at issue in a formal dispute between the City of Lodi and the employee;
- C. is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

As an employer the City is required to verify previous violations of DOT drug and alcohol regulations within the last two years of employment with DOT regulated agency or employer. Former employees seeking employment with another DOT regulated

agency shall authorize the City in writing to provide the required drug and alcohol testing information to that agency.

An employer must obtain and review the information listed below from any DOT-regulated employer the employee performed safety-sensitive functions for in the previous two years. The information must be obtained and reviewed prior to the first time an employee performs safety-sensitive functions. The information obtained must include:

Deleted: If not feasible, the information should be obtained no later than thirty (30) days after the first time an employee performs safety-sensitive functions.

1. Information of the employee's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
2. Information of the employee's controlled substance test in which a positive result was indicated.
3. Any refusal to submit to a required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
4. Other violations of DOT agency drug and alcohol testing regulations.

SPECIMEN COLLECTION PROCEDURE

When an individual is directed by the City to the medical provider for drug/alcohol screening, the following procedure is observed:

1. The screening procedure is explained to the individual and any questions answered by the medical provider.
2. The individual is asked to provide all pertinent information to the medical provider and sign a waiver authorizing release of the results to the City of Lodi.
3. The medical provider conducts the screening in a manner so as to prevent tampering and ensure confidentiality. Such procedure shall include, but not be limited to identification verification, removal of all unnecessary garments and bags prior to collection, washing hands, and temperature testing.
4. The specimen shall be sealed, labeled, and initialed by the medical provider and the employee, without the container leaving the employee's presence.
5. An employee will be selected at random each quarterly draw to complete a portion of a Collection Audit Checklist form with Human Resources.

COLLECTION AUDIT CHECKLIST

BASIC INFORMATION

Step-1 Verify that collectors are trained and certified Yes ___ No ___
Step-2 Verify that collectors have proof of Proficiency demonstration Yes ___ No ___

Each collector must demonstrate proficiency in collections under this part by completing five consecutive error free mock collections. The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the

specimen bottle tamper evident seal.

Step-3 Does the clinic know who to contact at the division? Yes ___ No ___

An employer must provide to collectors the name and telephone number of appropriate DER to contact about any problems or issues that may arise during the testing process.

PREPARATION OF RESTROOM

- Step-1 Did the collector properly secure all water sources and add bluing agent to the toilet? Yes ___ No ___
- Step-2 Did the collector ensure that there are no foreign substances/items in the restroom prior to allowing the donor to go inside restroom? Yes ___ No ___
- Step-3 Did the collector explain the basic procedures to the donor or show the donor the instructions on the back of the CCF? Yes ___ No ___

COLLECTION OF URINE SAMPLE

- Step-1 Did the collector require to see a valid ID from donor? Yes ___ No ___
- Step-2 Did the collector require the donor to empty pockets? Yes ___ No ___
- Step-3 Did the collector require the donor to remove hat, jacket? Yes ___ No ___
- Step-4 Did the collector require the donor to wash and dry hands? Yes ___ No ___
- Step-5 Did the collector let the donor pick the cup to be used for collection? Yes ___ No ___
- Step-6 Did the collector open the cup in front of the donor? Yes ___ No ___
- Step-7 Did the collector instruct the donor to provide at least 45ml of urine and to come out of the restroom within 4 minutes? Yes ___ No ___
- Step-8 Did the collector ensure that the donor does not take anything other than the collection cup with them into the restroom? Yes ___ No ___
- Step-9 Did the collector instruct the donor not to flush the toilet? Yes ___ No ___
- Step-10 Did the collector read the temp strip and mark it on the CCF? Yes ___ No ___
- Step-11 Did the collector pour the urine into two vials in front of the donor? Yes ___ No ___
- Step-12 Did the collector write the date on the seal strips? Yes ___ No ___
- Step-13 Did the collector have the donor initial the seal strips directly on the vials? Yes ___ No ___
- Step-14 Did the collector sign all appropriate boxes accordingly on the CCF? Yes ___ No ___
- Step-15 Did the collector have the donor sign the CCF (step 5) and did the collector verify the name written on the CCF? Yes ___ No ___
- Step-16 Did the collector seal up the specimen in the pouch correctly? Yes ___ No ___

RESOLUTION NO. 2008-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AMENDING THE DRUG AND ALCOHOL TESTING
POLICY AND THE DRUG AND ALCOHOL
TESTING PROCEDURES TO MEET DEPARTMENT
OF TRANSPORTATION REQUIREMENTS

=====

WHEREAS, the City of Lodi previously adopted a Drug and Alcohol Testing Policy and Procedure on April 26, 1995 and amended on July 18, 2007; and

WHEREAS, due to Federal Transportation Administration requirements applying to employees who operate or maintain Department of Transportation funded equipment and machinery, an amendment to that policy is required.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby amends the Drug and Alcohol Policy and the Drug and Alcohol Procedures to meet Department of Transportation requirements, as shown on Exhibit D and E attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED that the effective date of this policy shall be May 8, 2008

Dated: May 7, 2008

=====

I hereby certify that Resolution No. 2008- was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 7, 2008, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

CITY OF LODI
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: : DRUG AND ALCOHOL TESTING - *Policy*
| DATE ISSUED: :
SECTION: : D
REFERENCE: : US DOT (FTA) 49 CFR Part 40;
49 CFR Part 655
49 CFR Part 382
49 CFR Part 29
Omnibus Transportation Employee Testing Act of
1991

SECTION 1: PURPOSE

The City of Lodi is committed to providing safe and efficient public services in fulfilling our responsibilities to the citizens of our community. To achieve this purpose, it is the policy of the City to:

- Provide a workplace free from the adverse effects of drug and alcohol abuse or misuse;
- Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner;
- Encourage employees to seek professional assistance for drug and alcohol abuse or dependency;
- Comply with all Federal and State regulations requiring a drug-free workplace.

Coverage under this policy does not exempt covered employees from compliance with the *City's Drug-Free Workplace Policy and Procedure*. The obligations and requirements set forth below are in addition to existing obligations and requirements set forth in the *Drug-Free Workplace Policy and Procedure*.

SECTION 2: EMPLOYEE ASSISTANCE PROGRAM

The City has established a voluntary Employee Assistance Program (EAP) to aid those employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisors, the EAP provider, or the Human Resources Division for additional information.

Deleted: Personnel Department

Employees who think they may have an alcohol or drug usage problem are encouraged to voluntarily seek confidential assistance from the EAP or other available resources. Employees who voluntarily come forward and seek assistance will not be disciplined solely for having or admitting a drug or alcohol problem. The City will take into consideration employees' performance problems caused by such dependency. The voluntary seeking of treatment shall not provide immunity from disciplinary action which were proposed or in process. However, action on related problems may be postponed pending successful resolution of the usage problem. Successful completion of a drug or alcohol treatment program shall be considered when determining disciplinary actions. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who continue to be substance abusers and do not voluntarily seek help or continue substance abuse even while enrolled in counseling or rehabilitation programs.

SECTION 3: CITY ADMINISTRATOR

The Human Resources Division is designated to administer this policy and procedure and to answer questions concerning its implementation. The Human Resources Division may be contacted as follows:

City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910
Phone: (209) 333-6704

SECTION 4: COVERED EMPLOYEES

Employees in classifications listed in Appendix A are "covered employees" because they perform "safety sensitive functions" as described in Section 6 below, and thus are subject to all of the provisions of this policy.¹⁽¹⁾

An employee may be given a written exemption from this Policy by Human Resources, if the employee's job duties do not include performing a "safety sensitive function."

SECTION 5: DEFINITIONS

Accident: Means an occurrence associated with the operation of a vehicle, if as a result:

- 1) An individual dies;
 - 2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
-

3) One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle. For purposes of this definition, “disabling damage” means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes the inoperative; or

4) When a State or local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident.

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

Alcohol Use: The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Breath Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

Chain of Custody: Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.

Confirmation (or confirmatory) Test: For alcohol testing means a second test, following a screening test with a result of 0.01^{2[2]} or greater, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Controlled Substance (drug): Any illegal drug or any substance identified in schedules I through V of the Controlled Substances Act as they may be amended. This includes, but is not limited to: marijuana (THC metabolite), amphetamines, opiates (including Heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Substances for testing will only be added to the panel for testing only with agreement of the affected collective bargaining units or as required by the appropriate regulatory agency.

Evidential Breath Testing Device (EBT): A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHSTA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by the City's Drug-Free Workplace and Drug and Alcohol Testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

Performing a Safety-Sensitive Function: An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

Screening Test (also known as initial test): In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen. Testing is only permitted just before, during, and just after the performance of safety-sensitive duties. In controlled substance testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis.

Substance Abuse Professional(SAP): A SAP

SECTION 6: SAFETY-SENSITIVE FUNCTIONS

A safety sensitive function is driving one of the following vehicles:

- A. a vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- B. a vehicle with a gross vehicle weight of at least 26,001 pounds;
- C. a vehicle designed to transport 16 or more passengers, including the driver; or
- D. a vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act.

SECTION 7: PROHIBITIONS

The following conduct is prohibited and may result in disciplinary action, up to and including termination:

- A. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.04 or greater;

B. The use of alcohol within the four (4) hours preceding the performance of safety-sensitive functions, and the allowance of an employee to perform safety-sensitive functions with the knowledge that the employee has used alcohol within that time frame.

Employees who are in a “stand-by” status, shall not use alcohol or controlled substances while in such status. Employees who may be subject to “call-out” for emergency situations, and who may be the only qualified employee available for such duty, and who has used alcohol, may respond to such calls under the following guidelines:

(1) That the employee immediately notify the supervisor of the use of alcohol within the last four hours and the determination for the employee to respond is approved by the supervisor; (2) That the employee perform simple tasks of minimal risk to the safety sensitive functions(s); and (3) That the employee does not use alcohol after he/she has been notified to report for emergency duty.

C. Being on duty or operating a vehicle described in Section 4 above, while possessing alcohol;

D. Using alcohol while performing a safety sensitive function;

E. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any controlled substances, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee’s ability to safely operate a vehicle; or DOT funded equipment and machinery.

F. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for controlled substances;

G. Refusing to submit to any alcohol or controlled substances test required by this policy. Such refusal (see Section 8) shall be considered an act of insubordination. The consequences for a refusal to submit to a required test are the same as if the employee had tested at 0.04 or greater or had violated any of the other prohibitions in this policy.

H. The allowance of an employee to perform or continue to perform safety-sensitive functions after having knowledge of the employee’s use of alcohol or controlled substances while on duty.

I. An employee who has actual knowledge of an accident in which his/her performance of a safety-sensitive function has not been discounted by the City as a contributing factor to the accident is prohibited from using alcohol for eight (8) hours following the accident. The prohibition ends eight (8) hours after the accident (i.e. when a test is no longer required), once the employee has taken a post-accident test, or once the City has determined that the employee’s performance could not have contributed to the accident.

|

SECTION 8: REFUSAL TO SUBMIT TO AN ALCOHOL AND/OR DRUG TEST

A refusal to submit to an alcohol or controlled substances test required by this policy includes, but is not limited to:

- A. A refusal to provide a urine sample for a drug test.
- B. An inability to provide a urine sample without a valid medical explanation;
- C. A refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in way that prevents the completion of the test;
- D. An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
- E. Tampering with or attempting to adulterate the urine specimen or collection procedure;
- F. Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
- G. Leaving the scene of an accident without a valid reason as to why authorization from a supervisor or manager who shall make a determination whether to send the employee for a post-accident drug and/or alcohol test was not obtained.
- H. A failure to undergo medical examination.
- I. A failure to permit monitoring/observation.
- J. A failure to take a second test.
- K. Providing a verified adulterated or substituted sample.
- L. A failure to remain until the testing process is complete.

SECTION 9: CONSEQUENCES FOR EMPLOYEES FOUND TO HAVE ALCOHOL CONCENTRATION LEVELS OF 0.01 OR GREATER BUT LESS THAN 0.04

An employee whose alcohol test indicates an alcohol concentration level between 0.01 and 0.04 will be removed from his or her safety sensitive position for at least twenty-four (24) hours.

SECTION 10:

CIRCUMSTANCES UNDER WHICH DRUG AND ALCOHOL TESTING WILL BE IMPOSED ON COVERED EMPLOYEES

A. Pre-Employment Testing: All applicants for classifications which are covered by the appropriate Department of Transportation regulations (See Section 4 above), as well as all employees who transfer from classifications which are not covered to classifications which are covered, will be required to submit to pre-employment/pre-duty drug and alcohol testing. Applicants/employees will not be assigned to a safety sensitive position until after a verified negative drug test result.

Deleted: if they do not pass the tests

If the applicant has previously worked for a DOT employer and has previously failed or refused a pre-employment drug test administered under this part within the past two years, the applicant is not eligible for the position.

If a pre-employment drug test is canceled, the City shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the City's random selection pool during that time, the City shall ensure that the employee takes a pre-employment drug test with a verified negative result.

B. Post-Accident Testing: Post-Accident drug and alcohol testing will be conducted on employees following an accident where the employee's performance cannot be discounted as a contributing factor.

The decision as to whether or not to test the employee will be made by a supervisory and/or management employees. The presumption is for testing. The only reason an employee will not be tested following an accident is if a determination is made that the employee's performance *could not* have been a contributing factor. 49 CFR part 655 criteria for testing is a fatality, the need for medical attention away from the scene, and/or disabling damage to the vehicle. An employee must receive emergency medical care before being required to submit to a post accident drug and alcohol test.

Deleted: If a fatality occurs, the employee will be tested irrespective of whether his/her involvement may be discounted.

Post-accident alcohol tests shall be administered within two (2) hours following an accident and no test may be administered after eight (8) hours. A post-accident drug test shall be conducted within thirty-two (32) hours following the accident. If the appropriate test is not administered within two (2) hours following the accident, the employee's supervisor shall immediately provide written documentation to the Human Resources Manager stating the reasons why the test was not promptly administered.

Deleted: Personnel Director

C. Random Testing: Covered employees will be subject to random alcohol and drug testing as follows:

(1) A random alcohol test will be administered during any period in which the employee is ready to perform, immediately available to perform, is actually performing, or just after the employee has ceased performing safety-sensitive functions. Please refer to the definition of “Performing a Safety-Sensitive Function” in Section 5 of this policy.

(2) ~~Testing rates are determined by the appropriate regulatory agency.~~

(3) ~~The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Each covered employee shall have an equal chance of being tested each time selections are made.~~

(4) On the day the employee is selected for random drug testing, his/her supervisor will ensure his/her duties are covered. The employee will receive a written notice indicating the time he/she is to report to the lab for testing.

(5) ~~The City shall ensure that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.~~

(6) ~~Random tests are unannounced and immediate. There is an equal chance of selection on each draw with no discretion on the part of management.~~

D. Reasonable Suspicion Testing: Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances. The observation must be based on short-term indicators, such as blurry eyes, slurring, or alcohol on the breath.

~~A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.~~

To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion drug and alcohol test will attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

Deleted: Alcohol testing will be administered to at least 10% of the total number of covered employees to random alcohol testing per year. A random drug test will be administered to at least 50% of the total number of covered employees per year. These t

Deleted: subject to change as

Deleted: Some employees may be tested more than once in a year, while others are not tested at all depending on the random selection.

Deleted: The reasonable suspicion alcohol test will be administered within two (2) hours of the observation. If the test is not administered, the employee’s supervisor must immediately provide written documentation to the Personnel Director as to why the test was not promptly conducted. No test may be administered after eight hours following the observation.

Deleted: ¶
E. Return-To-Duty Testing: Prior to returning to duty, any employee who has tested positive shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.01 and/or a controlled substance test with a result indicating a verified negative result for controlled substance use.¶

Deleted: F. Follow-up Testing: Any employee who has been certified by an SAP as in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances shall be subject to a minimum of six (6) unannounced follow-up alcohol and/or controlled substance tests during the first year back to the safety-sensitive position after the violation. The SAP can direct additional testing during this period or for an additional period up to a maximum of 60 months from the date the employee returns to duty. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary.¶

SECTION 11:

CONSEQUENCES OF FAILING AN ALCOHOL AND/OR DRUG TEST

A positive result from a drug or alcohol test will result in the mandatory removal of the employee from the safety-sensitive position. Consequences shall include discipline, up to and including termination. An employee that produces a dilute negative specimen will be required to take another test immediately.

Deleted: (concentration of 0.04 or greater)

Deleted: may result in disciplinary action, up to and including

SECTION 12:

COSTS OF TESTING

Where there is testing for reasonable cause, the employee shall be placed on paid administrative leave pending the outcome of the test.

Time spent in conjunction with pre-duty, post-accident, random and reasonable suspicion testing shall be considered as paid time. The City shall also pay for the costs of these tests. The time an employee is removed from safety-sensitive functions is borne by the employee. Such employee may use accrued time including sick leave to cover the absence.

SECTION 13:

INFORMATION CONCERNING THE EFFECTS OF ALCOHOL AND CONTROLLED SUBSTANCES AND AVAILABLE METHODS OF INTERVENTION

Available from the Personnel Department are Fact Sheets addressing the effects of alcohol and the various controlled substances which are tested for under this Policy.

SECTION 14:

EMPLOYEE REPRESENTATION

Employees shall have the right to representation only during discussions with management prior to a reasonable suspicion test. If a shop steward is not available, an available department employee may be selected to represent the interests of said employee. Such contact shall not, in any way, delay or interfere with the implementation of this policy and its procedure.

Deleted: If a covered employee is not terminated, the employee:¶

¶ A. Must be removed from performing any safety-sensitive function;¶

¶ B. Must submit to an examination by a substance abuse professional. Upon a determination by the substance abuse professional, the employee may be required to undergo treatment to cure his/her alcohol or drug abuse.¶

¶ C. May not be returned to his/her former safety-sensitive position until the employee submits to a return-to-duty controlled substance and/or alcohol test (depending on which test the employee failed) which indicates an alcohol concentration level of less than 0.01 or a negative result on a controlled substance test;¶

¶ D. Will be required to submit to unannounced follow-up testing after he/she has been returned to his/her safety-sensitive position. See Section 10.E above.¶

¶

APPENDIX A
COVERED EMPLOYEES

Employees in the classifications listed below are covered under the applicable regulations for those employees. Covered employees are:

- A. Those who perform “safety sensitive” functions as defined in the City of Lodi *Drug and Alcohol Testing Policy*.
- B. Maintenance personnel, who perform various repairs to revenue vehicles (including repairs, overhaul and rebuilding)
- C. Employees with a commercial driver’s license that will operate a revenue service, or non-revenue service DOT funded transit vehicle (includes the operation of the Lifts or anyone who assists passengers to assure they are secured in the vehicles).
- D. Drivers operating a revenue service vehicle, including when not in revenue service.

Employees may be included in more than one listing below in accordance to the various regulatory agencies under which their work specification is assigned. All covered employees shall be managed as one pool for testing purposes and shall be tested in accordance with the highest level of testing required.

Federal Motor Carrier Safety Administration (FMCSA)
Alcohol testing administered at 10% of the total number of covered employees
Drug test administered to at least 50% of covered employees

(1) Public Works Department

Equipment Maintenance Division

Lead Equipment Mechanic
Welder Mechanic
Heavy Equipment Mechanic
Equipment Service Worker
Fleet Services Supervisor

Street Division

Street Supervisor
Street Maintenance Worker III
Laborer Maintenance Worker I/II

Water/Wastewater Division

Water/Wastewater Supervisor
Plant and Equipment Mechanic
Water/Wastewater Maintenance Worker III
Laborer/Maintenance Worker I/II

Deleted: Parts Worker

(2) Electric Utility Department

Apprentice Lineman/Linewoman

Electric Lineman/Linewoman

Electric Foreman/Forewoman

Electric Apparatus Mechanic

Utility Equipment Specialist

A covered employee includes regular and part-time/temporary employees in the above listed classifications.

Deleted: Electric Troubleshooter¶

Federal Transit Administration (FTA)

Alcohol testing administered at 10% of the total number of covered employees

Drug test administered to at least 25% of covered employees

(1) Public Works Department

Equipment Maintenance Division

Lead Equipment Mechanic

Welder Mechanic

Heavy Equipment Mechanic

Equipment Service Worker

Fleet Services Supervisor

Unites States Coast Guard (USCG)

No alcohol testing required per Coast Guard regulations

Drug test administered to at least 50% of covered employees

Small Vessel Operators

CITY OF LODI
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: : DRUG AND ALCOHOL TESTING - *Procedure*
DATE ISSUED: :
SECTION: : D
REFERENCE: : US DOT (FTA) 49 CFR Part 40
49 CFR Part 655
49 CFR Part 382
49 CFR Part 29
Omnibus Transportation Employee Testing Act of
1991

SECTION 1: PURPOSE

The purpose of this procedure is to delineate the application of the Omnibus Transportation Employee Testing Act under the regulations of the Federal Highway Administration (FHWA).

SECTION 2: EFFECTIVE DATE

This procedure shall be effective

Deleted: July 20, 2007

SECTION 3: ALCOHOL TESTING , CONTROLLED SUBSTANCE COLLECTION, AND LABORATORY SITES

The identity and locations of the alcohol testing, controlled substance collection, and laboratory sites and facilities shall be retained in the Human Resources Division and shall be made immediately available upon request.

SECTION 4: FORMS OF TESTING

The procedures for each of the forms of testing being conducted by the City are described in Sections 5 through 8 of this Procedure. Inherent to each

procedure, at the time of collection and/or testing, the employee is to have in his/her possession an appropriate form of identification.

SECTION 5: PRE-EMPLOYMENT TESTING

A. Pre-employment drug/alcohol testing shall be conducted upon the conditional offer of employment. This offer of employment is contingent upon the successful completion of all medical exams and drug/alcohol screenings.

B. Upon completion of the hiring interview the department shall notify the Human Resources Division of its conditional offer of employment to the candidate, and of the candidate's acceptance of this offer. The hiring department shall refer the candidate to the Human Resources Division. The Human Resources Division shall notify the candidate of the types of testing to be conducted, have the candidate complete the appropriate notification forms, and schedule the candidate for the appropriate testing at the appropriate collection and/or testing site.

C. Upon completion of the drug/alcohol testing, the Human Resources Division shall notify the hiring department of such results.

D. Notification of the results for controlled substance testing shall be provided to the candidate provided the candidate requests the results within 60 days of being notified of the disposition of his/her employment application.

E. The City shall obtain, upon written consent of the employee, information on the employee's alcohol tests with a concentration result of 0.01 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two (2) years from previous employers. This information shall be obtained and reviewed by the City no later than fourteen (14) calendar days after the first time an employee performs safety-sensitive functions. The employee shall not perform any safety-sensitive functions after fourteen (14) calendar days without obtaining the information.

F. As an employer the City is required to verify previous violations of DOT drug and alcohol regulations within the last two years of employment with a DOT regulated agency or employer. An employer must obtain and review the information listed below from any DOT-regulated employer for which the employee performed safety-sensitive functions in the previous two years. The information obtained must include:

1. Information of the employee's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
2. Information of the employee's controlled substance test in which a positive result was indicated.
3. Any refusal to submit to a required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
4. Other violations of DOT agency drug and alcohol testing regulations.

Deleted: The information must be obtained and reviewed prior to the first time an employee performs safety-sensitive functions. If not feasible, the information should be obtained no later than thirty (30) days after the first time an employee performs safety-sensitive functions.

SECTION 6:

RANDOM TESTING

All covered employees shall be subject to periodic random testing. In accordance with, and subject to modification by the DOT, employees shall be tested at the minimum annual percentage rate of ten percent (10%) of the average number of employees covered by this policy for random alcohol; and fifty percent (50%) of the average number of employees covered by this policy for random controlled substances.

A. Random generation. Covered employees shall be scheduled for unannounced alcohol and controlled substance tests and selected for testing by utilizing a random number generator. Each employee shall have an equal chance of being tested each time selections are made.

B. Employee notification. On the date the employee is selected for testing, the employee's supervisor shall be notified of the selection. The supervisor shall provide written notification of selection for testing to the employee. The supervisor shall arrange coverage of the employee's duties. The supervisor shall direct the employee to cease the performance of safety-sensitive functions, and to immediately proceed to the appropriate testing and/or collection site.

An employee shall only be tested for alcohol during any period in which he/she is actually performing, ready to perform, immediately available to perform, or just after the employee has ceased performing safety-sensitive functions.

SECTION 7:

REASONABLE SUSPICION TESTING

A. Reasonable suspicion is a belief based on objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform the job safely is reduced.

B. As currently provided in the City's *Drug-Free Workplace Policy and Procedure*, the City may require an employee to submit to an alcohol and/or controlled substance test whenever it has reasonable suspicion to believe that an employee has violated the prohibitions of the *Drug and Alcohol Testing Policy*.

C. Alcohol testing is authorized only if the observations leading to reasonable suspicion are made during, just preceding, or just after the period of the work day that the employee is performing the safety-sensitive functions of his/her position.

D. Any supervisor or manager who has determined reasonable suspicion shall immediately prevent or direct the employee to stop performing the duties of his/her position, and inform the employee that he/she shall be referred to alcohol/drug testing on such basis.

E. The supervisor or manager shall immediately contact his/her supervisor and the Human Resources Manager with notification of the action taking place, and shall transport the employee to the testing/collection site.

F. The employee shall be immediately transported by the supervisor to the alcohol testing and/or collection site and said test shall be administered within two (2) hours following the determination of reasonable suspicion.

G. The supervisor or manager shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.

H. Any supervisor or manager encountering an employee who refuses to submit to a drug and/or alcohol test shall remind the employee of the requirements and disciplinary consequences of this policy and procedure. The employee's refusal shall be documented in writing. Where there is reasonable suspicion that the employee is then under the influence of alcohol or drugs, the supervisor or manager should arrange for the employee to be safely transported home after the employee has undergone alcohol and controlled substance testing.

I. Upon completion of the testing, the supervisor is to contact the Human Resources Manager and report the status of such testing.

SECTION 8:

POST-ACCIDENT TESTING

A. The employee's supervisor or manager shall make a determination to conduct post-accident testing in accordance with the City's drug/alcohol policies immediately after the accident. If a determination is not made and the appropriate test is not administered within two (2) hours following the accident, the employee's supervisor shall immediately provide written documentation to the Human Resources Manager stating the reasons why the test was not promptly administered.

B. Where possible, the supervisor or manager should make every effort under the circumstances surrounding the accident to ensure that the employee, even one who has been permitted to leave or has had to leave the site, is available for a post-accident test. This, of course, does not mean that necessary medical treatment for injured people should be delayed or that an employee cannot leave the scene of an accident for the period necessary to obtain assistance in responding to the accident, materials to secure the accident site, or necessary emergency medical care. An employee who is seriously injured and cannot provide a specimen within the appropriate time frames of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

C. If a determination is made to conduct post-accident testing, the supervisor or manager shall provide documentation of the accident and as to his/her decision to the Human Resources Manager within one (1) working day of the accident.

D. The employee shall remain readily available for such testing or may be deemed to have refused to submit to testing.

E. The supervisor or manager shall transport the employee to the alcohol testing and/or controlled substance collection site, and if necessary, to the employee's home after completion of the testing and collection.

F. The employee shall be placed upon administrative leave with pay pending the outcome of the test(s).

SECTION 9:

SUBSTANCE ABUSE PROFESSIONAL (SAP) SERVICES

Each employee who engages in conduct prohibited by this Policy and Procedure shall be referred to a SAP for treatment at their own expense.

SECTION 10:

SPECIFIED PROCEDURES

Specific procedures pertaining to the subjects listed below are attached to this Procedure as indicated:

- Alcohol Testing Methodology and Procedures
- Controlled Substances Testing Procedure
- Controlled Substance Testing Methodology
- Test Results
- Confidentiality and Recordkeeping

- Appendix A
- Appendix B
- Appendix C
- Appendix D
- Appendix E

Deleted: evaluated by

Deleted: who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use

Deleted: Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this Policy and Procedure, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.01 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved a controlled substance.

In addition, each employee identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be:

A. evaluated by a SAP to determine that the employee has properly followed any rehabilitation program prescribed under, and

B. subject to unannounced follow-up alcohol and controlled substance tests administered by the City following the employee's return to duty.

APPENDIX A
ALCOHOL TESTING METHODOLOGY AND PROCEDURES

I. ALCOHOL TESTING METHODOLOGY

- A. Breath Alcohol Technician (BAT): The City or its agent shall only utilize a BAT who meets the stringent training requirements of the DOT or is a law enforcement officer certified to use the EBT that is utilized.
- B. Alcohol Testing Devices: The City or its agent shall only utilize an EBT which meets the DOT requirements.
- C. Quality Assurance Plan (QAP): The City or its agent shall ensure that the EBT shall have a quality assurance plan developed by the manufacturer and that said plan is complied with for each EBT used for alcohol testing.
- D. Alcohol Testing Site: Alcohol testing shall be conducted in a location that affords visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

II. ALCOHOL TESTING PROCEDURES

- A. Preparation for Testing: Prior to being tested, the BAT shall require the employee to provide a photo identification and shall explain the testing procedure to the employee.
- B. Procedures for Screening Test: The following procedures shall be followed:
 - 1. The BAT and the employee shall complete their respective portions of the Breath Alcohol Testing Form from the DOT. Refusal by the employee to sign this form shall be regarded as a refusal to take the test.
 - 2. An individually-sealed mouthpiece shall be opened in view of the employee and attached to the EBT in accordance with the manufacturer's instructions.
 - 3. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained.
 - 4. a. If the EBT does not meet the DOT requirements, the BAT and the employee shall take the following steps:
 - (1) Show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing device, serial number of the testing device, time and quantified result in Step 3 of the form.

(2) Record the test number, date of the test, name of the BAT, location, and quantified test result in the log book. The employee shall initial the log book entry.

b. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).

c. If the EBT prints the test results directly on the form, the BAT shall show the employee the result displayed on the EBT.

5. a. In any case in which the result of the screening test is a breath alcohol concentration of less than 0.01, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.

b. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In that event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.

c. If a test result printed by the EBT (see paragraph 4b or 4c of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test shall be invalid and the City and employee shall be so advised.

d. No further testing is authorized. The BAT shall transmit the result of less than 0.01 to the City in a confidential manner, and the City shall receive and store the information so as to ensure that confidentiality is maintained.

6. If the result of the screening test is an alcohol concentration of 0.01 or greater, a confirmation test shall be performed.

7. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form and log book entry. The BAT will provide the employee with Copy 2 of the form.

C. Procedures for Confirmation Test: The following procedures shall be followed:

1. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall follow the procedures outlined above in Preparation for Testing.

2. The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This waiting period begins with

the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e. to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.

3.
 - a. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.
 - b. In all cases, the first three steps of the "Procedures for Screening Test" shall be followed. A new mouthpiece shall be used for the confirmation test.

4. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.
5. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.
6. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
7.
 - a. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).
 - b. If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
8.
 - a. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
 - b. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
 - c. If a test result printed by the EBT (see paragraph 7a. or 7b. of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test is invalid and the City and employee shall be so advised.
 - d. The BAT shall conduct an air blank. If the reading is greater than 0.00, the test is invalid.
9.
 - a. The BAT shall transmit all results to the City in a confidential manner. The Human Resources Manager or designee shall receive and handle alcohol testing results in a confidential manner. All communications by BATs to the City concerning the alcohol testing results of employees shall be to the designated City representative.
 - b. Such communication may be in writing, in person, or by telephone or electronic means, but the BAT shall ensure immediate communication to the

City of the results that require the City to prevent the employee from performing a safety-sensitive function.

c. If the initial communication is not in writing, the City shall establish a mechanism to verify the identity of the BAT providing the information.

d. If the initial communication is not in writing, the BAT shall follow the initial communication by providing to the City the City's copy of the breath alcohol testing form. The City shall store the information so as to ensure that confidentiality is maintained.

D. Refusals to Test and Uncompleted Tests

1. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the City.
2. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

E. Inability to Provide an Adequate Amount of Breath

1. This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition.
2. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the City.
3. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the City.
4. If the employee attempts and fails to provide an adequate amount of breath, the City shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from the MRO concerning the employee's medical ability to provide an adequate amount of breath.
 - a. If the MRO determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate

amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The MRO shall provide to the City a written statement of the basis for his or her conclusion.

- b. If the MRO, in his or her reasonable medical judgment, is unable to make the determination set forth herein, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The MRO shall provide a written statement of the basis for his or her conclusion to the City.

F. Invalid Tests. A breath alcohol test shall be invalid under the following circumstances:

1. The next external calibration check of an 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 event, every test result of 0.01 or above obtained on the device since the last valid external calibration check shall be invalid;
2. The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test;
3. The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test;
4. The BAT does not sign the required form;
5. The BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result;
6. An EBT fails to print a confirmation test result; or
7. On a confirmation test and, where applicable, on a screening test, 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.

APPENDIX B
CONTROLLED SUBSTANCES TESTING PROCEDURE

- I. URINE SPECIMEN COLLECTION: The following procedures shall be followed:
- A. The actual collection site shall be a location having an enclosure with which private urination can occur, a toilet for completion of urination, and a suitable clean surface for writing. The site shall also have a source of water for washing hands, which, if practicable, shall be external to the enclosure where urination occurs.
 - B. The collection site shall be secure.
 - C. No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored.
 - D. Collection of urine specimens shall allow individual privacy, unless there is reason to believe that an employee may alter or substitute the specimen provided.
 - E. For purposes of this section, the following circumstances are the exclusive grounds constituting a reason to believe that the employee may alter or substitute the specimen.
 - 1. The employee has presented a urine specimen that falls outside the normal temperature range 32.5°C - 37.7°C (90.5°F - 99.8°F), and
 - a. The employee declines to provide a measurement of oral body temperature; or
 - b. Oral body temperature varies by more than 1°C/1.8°F from the temperature of the specimen;
 - 2. The last urine specimen provided by the employee (i.e. on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;
 - 3. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); or

4. The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to duty.
- F. A higher-level supervisor of the collection site person, or the Human Resources Manager, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described herein.
- G. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:
1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.
 2. When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the City's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection.
 3. The collection site person shall ask the employee to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the employee's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The employee may retain his or her wallet.
 4. The employee shall be instructed to wash and dry his/her hands prior to urination.
 5. After washing hands, the employee shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.
 6. The employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for employee privacy. The collection site person shall provide the employee with a specimen bottle or collection container, if applicable, for this purpose.

7. The collection site person shall note any unusual behavior or appearance on the urine custody and control form.
8. The collection site person shall instruct the employee to provide at least 45 ml of urine under the split sample method of collection.
9. The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml.
10. If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen.
11. If a single specimen bottle is used as a collection container, the collection site person shall pour 30 ml of urine from the specimen bottle into a second specimen bottle (to be used as the primary specimen) and retain the remainder (at least 15 ml) in the collection bottle (to be used as the split specimen).
12. Both bottles shall be shipped in a single shipping container, together with copies 1, 2, and the split specimen copy of the chain of custody form, to the laboratory.
13. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested at the employee's expense in a different DHHS-certified laboratory for the presence of the drugs for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.

14. When the MRO informs the laboratory in writing that the employee has requested a test of the split specimen, the laboratory shall forward to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.
15. The result of the test of the split specimen is transmitted by the second laboratory to the MRO.
16. Action required by this Policy and Procedure as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the rest of the split specimen.
17. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the cancellation and the reasons for it to the DOT, the City, and the employee.
18. Upon receiving the specimen from the employee, the collection site person shall determine if it has at least 30 ml of urine for the primary or single specimen bottle and, an additional 15 ml of urine for the split specimen bottle. If the employee is unable to provide such a quantity of urine, the collection site person shall instruct the employee to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the City so notified. The MRO shall refer the employee for a medical evaluation to develop pertinent information concerning whether the employee's inability to provide a specimen is genuine or constitutes a refusal to test. (In pre-employment testing, if the City does not wish to hire the employee, the MRO is not required to make such a referral). Upon completion of the examination, the MRO shall report his or her conclusions to the City in writing.
19. After the specimen has been provided and submitted to the collection site person, the employee shall be allowed to wash his/her hands.

20. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.
21. A specimen temperature outside the range of 32.5°C - 37.7°C (90.5°F - 99.8°F) constitutes a reason to believe that the employee has altered or substituted the specimen. In such cases, the employee supplying the specimen may volunteer to have his/her oral temperature taken to provide evidence to counter the reason to believe the employee may have altered or substituted the specimen.
22. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminates. Any unusual findings shall be noted on the urine custody and control form.
23. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
24. Whenever there is reason to believe that a particular employee has altered or substituted the specimen as described in paragraph I.E.1., a or b, of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
25. Both the employee being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamper-proof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the employee to observe the transfer of the specimen and the placement of the tamper-proof seal over the bottle cap and down the sides of the bottle.
26. The collection site person and the employee being tested shall be present at the same time during the procedures outline in paragraphs I.G.19.-22 of this section.

27. The collection site person shall place securely on the bottle an identification label which contains the date, the employee's specimen number, and any other identifying information provided or required by the City. If separate from the label, the tamper-proof seal shall also be applied.
28. The employee shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
29. The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.
30.
 - a. The employee shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him/her is in fact the specimen he/she provided.
 - b. When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the City. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.
31. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.
32. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.

33. a. While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his/her work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with him/her or shall secure them. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.

b. The collection site person shall not leave the collection site in the interval between the presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the City) a new collection begun.

H. Chain-of-Custody: A chain-of-custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

APPENDIX C
CONTROLLED SUBSTANCE TESTING METHODOLOGY

I. APPROPRIATE LABORATORY

The City of Lodi shall utilize a DHHS certified laboratory for the processing of all controlled substance tests. The identification of such laboratory may be obtained by contacting the Human Resources Manager.

II. INITIAL TEST

A. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

Marijuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites	*300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

*25 ng/ml if immunoassay specific for free morphine.

B. The City shall use the lowest cut-off levels permitted by the appropriate regulatory agency. These cut off levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

III. CONFIRMATORY TEST

A. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

Marijuana metabolite ¹	15 ng/ml
Cocaine metabolite ²	150 ng/ml
Opiates:	
Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines:	
Amphetamine	500 ng/ml

Methamphetamine 500 ng/ml

¹Delta-9-tetrahydrocannabinol-9-carboxylic acid.

²Benzoyllecgonine.

- B. The City shall use the lowest cut-off levels permitted by the appropriate regulatory agency. These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

IV. REPORTING OF TEST RESULTS

- A. The laboratory shall report test results to the MRO within an average of five (5) working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible laboratory personnel. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the City, and drug testing laboratory specimen identification number (accession number).
- B. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.
- C. The MRO may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the City.
- D. The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and City must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

E. The laboratory shall send only to the MRO the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory of the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

F. The laboratory shall provide to the Human Resources Manager a monthly statistical summary of urinalysis testing of the City's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

1. Initial Testing:

- a. Number of specimens received;
- b. Number of specimens reported out; and
- c. Number of specimens screened positive for:

- Marijuana metabolites
- Cocaine metabolites
- Opiate metabolites
- Phencyclidine
- Amphetamine

2. Confirmatory Testing:

- a. Number of specimens received for confirmation;
- b. Number of specimens confirmed positive for:

- Marijuana metabolites
- Cocaine metabolites
- Morphine, codeine
- Phencyclidine
- Amphetamine
- Methamphetamine

Monthly reports shall not include data from which it is reasonably likely that information about individuals' test can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report withheld for the reason, the laboratory will so inform the employer in writing.

- G. Unless otherwise instructed by the City in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

V. SPECIMEN RETENTION

Long-term storage (-20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of two (2) years all specimens confirmed positive, in their original labeled specimen bottles. Within this two-year period, the employer may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of two (2) years, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

APPENDIX D
TEST RESULTS

I. MEDICAL REVIEW OFFICER (MRO) DUTIES AND QUALIFICATIONS

- A. An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of this Policy and Procedure. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. The review shall be performed by the MRO prior to the transmission of the results to the City.

- B. The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face. If the MRO finds that the documentation is unsatisfactory or if the information gives reasonable doubt about the lab analysis, the MRO may:
 - 1. Request laboratory records regarding the specimen to see if correct procedures were followed; and/or
 - 2. Require a re-analysis of a specimen for accuracy or validity of the positive result. The MRO is the only one authorized to order a re-analysis of the original sample.

The MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history and any other relevant biomedical information.

II. POSITIVE TEST RESULTS

- A. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the employee an opportunity to discuss the test result with him/her.

- B. The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph II.E. of this section, the MRO shall talk directly with the employee before verifying a test as positive.

- C. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated City official who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management official, the

designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.

- D. If, after making all reasonable efforts, the designated City official is unable to contact the employee, the City may place the employee on leave without pay.
- E. The MRO may verify a test as positive without having communicated directly with employee about the test in three circumstances:
 - 1. The employee expressly declines the opportunity to discuss the test;
 - 2. The designated City representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than five (5) days have passed since the date the employee was successfully contacted by the designated City representative; or
 - 3. Other circumstances provided for in DOT agency drug testing regulations.
- F. If a test is verified positive under the circumstances specified in paragraphs II.E.1-3, of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidable prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.

G. Following verification of a positive test result, the MRO shall refer the employee to the City's employee assistance program and notify the City's Risk Manager of the test results.

Formatted: Highlight

III. VERIFICATION FOR OPIATES; REVIEW FOR PRESCRIPTION MEDICATION

- A. Before the MRO verifies a confirmed positive result for opiates, he/she shall determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if the City's GC/MS confirmation testing for opiates confirms the presence of 6-monocetylmorphine.)
- B. The MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the City, and the employee.
- C. If an employee has not contacted the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed.

IV. DISCLOSURE OF INFORMATION

- A. Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as part of the testing verification process.
- B. The MRO may disclose such information to the City, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if:
 - 1. An applicable DOT regulation permits or requires such disclosure;
 - 2. In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or

3. In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his/her safety-sensitive function could pose a significant safety risk.
- C. Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

APPENDIX E
CONFIDENTIALITY AND RECORDKEEPING

I. CONFIDENTIALITY AND ACCESS TO RECORDS

- A. Laboratory reports or test results shall not appear in an employee's general personnel file. Information of this nature will be contained in a separate confidential medical file that will be securely kept under the control of the Human Resources Manager. The reports or test results shall be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without consent, may also occur when:
1. the information is compelled by law or by judicial or administrative process;
 2. the information has been placed at issue in a formal dispute between the City and employee;
 3. the information is to be used in administering an employee benefit plan; or
 4. the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.
- B. Except as required by law or expressly authorized or required in this section, the City shall not release driver information that is contained in records required to be maintained by this Policy and Procedure.
- C. An employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances including any records pertaining to his/her alcohol or controlled substances tests. The City shall promptly provide the records requested by the employee.
- D. The City shall make available copies of all results for City alcohol and/or controlled substances testing conducted under the Policy and Procedure and any other information pertaining to the City's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City.
- E. When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose information related to the City's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

- F. Records shall be made available to a subsequent employer upon receiving a written request from a former employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the former employee's request.
- G. The City may disclose information required to be maintained under this Policy and Procedure pertaining to an employee, the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the City's determination that the employee engaged in conduct prohibited by this Policy and Procedure (including, but not limited to, a workers' compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
- H. The City shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

II. MAINTENANCE AND RETENTION OF RECORDS

- A. General Requirement: The City shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. Such records will be maintained confidentially and separate from employee personnel files.
- B. Period of Retention: The City shall maintain the records in accordance with the following schedule:
 - 1. Five (5) years. The following records shall be maintained for a minimum of five (5) years:
 - a. Records of employee alcohol test results with results indicating an alcohol concentration of 0.01 or greater,
 - b. Records of employee verified positive controlled substances test results,
 - c. Documentation of refusals to take required alcohol and/or controlled substances tests,
 - d. Calibration documentation,
 - e. Employee evaluation and referrals shall be maintained for a minimum of five (5) years, and

- f. A copy of each annual calendar year summary.
2. Two Years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) and training shall maintained for a minimum of two (2) years.
3. One year. Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.01 shall be maintained for a minimum of one (1) year.

C. Types of Records: The following specific records shall be maintained:

1. Records related the collection process:
 - a. Collection logbooks, if used;
 - b. Documents relating to the random selection process;
 - c. Calibration documentation for evidential breath testing devices;
 - d. Documentation of breath alcohol technician training;
 - e. Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
 - f. Documents generated in connection with decisions on post-accident tests;
 - g. Documents verifying existence of a medical explanation other inability of a covered employee to provide adequate breath or to provide a urine specimen for testing; and
 - h. Consolidated annual calendar year summaries.

2. Records related to an employee's results:
 - a. The City's copy of the alcohol test form, including the results of the test;
 - b. The City's copy of the controlled substances test chain of custody and control form;
 - c. Documents sent by the MRO to the City;
 - d. Documents related to the refusal of any employee to submit to an alcohol or controlled substances test required by this Policy and Procedure; and
 - e. Documents presented by an employee to dispute the result of an alcohol or controlled substances test administered under this Policy and Procedure.
3. Records related to other violations of this Policy and Procedure.
4. Records related to evaluations:
 - a. Records pertaining to a determination by a substance abuse professional concerning an employee's need for assistance; and
 - b. Records concerning an employee's compliance with recommendations of the substance abuse professional.
5. Records related to education and training:
 - a. Materials on alcohol misuse and controlled substance use awareness, including a copy of the City's Policy of alcohol misuse and controlled substance use;
 - b. Documentation of compliance with the requirement to establish this Policy and Procedure, including the employee's signed receipt of education materials;

- c. Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion; and
 - d. Certification that any training conducted under this part complies with the requirements for such training.
- 6. Records related to drug testing:
 - a. Agreements with collection site facilities, laboratories, medical review officers, and consortia;
 - b. Names and positions of officials and their role in the City's alcohol and controlled substances testing program(s);
 - c. Monthly laboratory statistical summaries of urinalysis; and
 - d. The City's drug testing policy and procedures.