



City of  
Corpus  
Christi

## “Partners in the Workplace Excellence in Public Service”



# City Policies

SUBJECT: Drug and Alcohol Use and Testing for Licensed Marina Personnel  
Subject to U.S. Coast Guard Regulations, CFR Titles 33 and 46

POLICY NO. HR 15.5

EFFECTIVE: March 22, 2004

APPROVED: \_\_\_\_\_

  
George K. Noe  
City Manager

### I. Purpose and Scope:

The City of Corpus Christi has a responsibility to provide and maintain a drug-free work place for its employees and to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of drugs.

This Policy covers, but is not limited to: full time, part time, and temporary employees who are required to have a valid U.S. Coast Guard License to perform, and assist in performing, the essential function of towing vessels from slip to slip in the Marina. Those vessels are operated on waters subject to the jurisdiction of the United States, and are subject to Coast Guard inspection, under Chapter 33 of Title 46, United States Code.

Drug testing conducted under this Policy shall comply with the procedures set forth in 49 CFR, 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, and alcohol testing procedures set forth in 33 CFR, 95 and 46 CFR, 4.

Employees covered under this Policy must also comply with the Citywide Alcohol and Drug Policy, H.R. 15.0, and any other federally mandated testing program which applies to their assigned positions.

Questions regarding this Policy may be directed to the Director of Human Resources, or designee, or Director of Park & recreation, or designee.

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- I. Drug Testing Collection Procedures, 49 CFR, 40
- II. MRO Procedures, 40 CFR, 40
- III. Alcohol Testing and MRO Procedures
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- V. List of Eligible crewmembers Covered by this Policy by Title
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### III. DEFINITIONS OF TERMS USED IN THIS POLICY

**Alcohol:** any form or derivative of ethyl alcohol (ethanol).

**Certified Drug Testing Laboratory:** MEDTOX Laboratories, Inc., 402 W. County Rd D, St. Paul, MN 55112.

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

**Chemical Test:** a scientifically recognized test which analyzes an individual's breath, urine, saliva, bodily fluids, or tissues for evidence of dangerous drugs or alcohol use.

**Crewmember:** an individual who is:

- (1) on board a vessel acting under the authority of a license, certificate of registry, or merchant mariner's document issued by the Coast Guard, whether or not the individual is a member of the vessel's crew; or
- (2) engaged or employees on board a vessel owned in the United State that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued by the Coast Guard, except for the following:
  - (a) individuals on fish processing vessels who are primarily employees in the preparation of fish or fish products, or in a support position, and who have no duties which directly affect the safe operation of the vessel;
  - (b) scientific personnel on an oceanographic research vessel;
  - (c) individuals on industrial vessels who are industrial personnel as defined by the Coast Guard;
  - (d) individuals who have no duties which directly affect the safe operation of the vessel.

**Dangerous Drug:** a narcotic drug, a controlled substance, or a controlled substance analog as defined in Section 102 of the Comprehensive Drug Abuse and Control Act of 1970 and 21 U.S.C. opiates, amphetamines, and phencyclidine (PCP), as provided in 49 CFR 40 which are substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

**Drug Confirmatory Test;** a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial 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 under 49 CFR 40.

**Drug Initial (Screening) Test:** an immunoassay screen to eliminate “negative” urine specimens from further consideration under 49 CFR 40.

**Drug Test:** a chemical test of an individual’s urine for evidence of dangerous drug use.

**Fails a Chemical Test for Dangerous Drugs:** “Failing a drug test” means a confirmation of a test result that shows positive evidence of the presence of a prohibited drug or drug metabolites in an individual’s system as a level equal to or exceeding the levels established in 49 CFR, 40 and which is reported as “positive” by a Medical Review Officer.

**Intoxicant:** any form or combination thereof, of alcohol and/or dangerous drug as defined in this Policy.

**Marine Casualty or Accident Which Includes Any Vehicle For Commercial Service:** includes any accidental grounding, or any occurrence involving a vessel which results in damage by or to the vessel, its apparel, gear, or cargo; or injury or loss of life of any person; and includes among other things, collision, stranding, grounding, foundering, heavy weather damage, fire, explosion, failure of gear and equipment, and any other damage which might affect or impair the seaworthiness of the vessel; and/or, loss of life or injury to any person while driving from a vessel and using underwater breathing apparatus.

**Medical Review Officers:** the following individual is designated by the City of Corpus Christi to carry out the duties specified in 49 CFR, 40 for drug testing and 33 CFR, 95 and 46 CFR, 4, for alcohol testing requirements under Coast Guard regulations: Keith Rose, M.D., - THE DOCTORS’ CENTER – Calallen Minor Emergency Center (241-1116), 11559 Leopard Street, CCTX 78410,

**Operating a Vessel as Defined in 33 CFR 95,** an individual is considered to be operating a vessel when (a) the individual has an essential role in the operation of a recreational vessel underway (not at anchor, or made fast to the shore or ground), including but not limited to, navigation of the vessel or control of the vessel’s propulsion system; (b) the individual is a crewmember (including a licensed individual), or watchstander not a regular member of the crew, of a vessel other than a recreational vessel.

**Operation as Defined in 46 CFR 16:** to navigate, steer, direct, manage, or sail a vessel, or to control, monitor, or maintain the vessel’s main or auxiliary equipment or systems. Operation includes:



- (a) determining the vessel's position, piloting, directing the vessel along a desired track line, keeping account of the vessel's progress through the water, ordering or executing changes in course, ruder position, speed, and maintaining a lookout;
- (b) controlling, operating, monitoring, maintaining, or testing; the vessel's propulsion and steering systems; electric power generators; bilge, ballast, fire, and cargo pumps; deck machinery including winches, windlasses, and lifting equipment; lifesaving equipment and appliances; firefighting systems and equipment; and navigation and communication equipment; and,
- (c) mooring, anchoring, and line handling; loading or discharging of cargo or fuel; assembling or disassembling of tows; and maintaining the vessel's stability and watertight integrity.

**Passing a Chemical Test for Dangerous Drugs as Defined in this Policy:**

means initial testing or confirmation testing under 49 CFR, 40, which does not show evidence of the presence of a prohibited drug and is reported as "negative" by the Medical Review Officer.

**Positive Rate:** the number of positive results for random drug tests conducted under 46 CFR, 16, plus the number of refusals to take random drug tests required by this Part; divided by the total number of random drug tests conducted under this Part, plus the number of refusals to take random drug tests required by this Part.

**Refusal to Submit to Drug Testing:** a crewmember whom fails to provide a urine specimen as required by 49 CFR, 40, without a valid medical explanation as determined by a medical evaluation, after he/she has received notice of the requirement to be tested in accordance with these provisions, or engages in conduct which clearly obstructs the testing process, has refused to submit.

**Rehabilitation Committee;** the "Rehabilitation Committee" is composed of individuals who develop and determine an employee's rehabilitation plan and a schedule for an employee's return to duty upon the employee having sought help through the applicable Department Head for a prohibited drug or alcohol related problem or addiction **before** it was discovered through poor performance or drug testing authorized under this policy. The Rehabilitation Committee consists of the applicable Department Head, or designee; the Medical Review Officer (MRO) for drug related problem, (who is the City's designated physician for positive drug tests); or the Substance Abuse Professional (SAP) supervising the employee's rehabilitation for alcohol misuse under this Policy, or both the MRO and the SAP if both drugs and alcohol are involved.

**Serious Marine Incident:** includes the following events involving a vessel in commercial service as stated in 49 CFR 40,

- a. One or more deaths;
- b. An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;
- c. Damage to property in excess of \$100,000;
- d. Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301;
- e. Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 49 U.S.C. 3301, of 100 gross tons or more;
- f. A discharge of oil of 100,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty;
- g. A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

On-Call After Hours testing (after 5 p.m. on Monday through Friday, on Holidays, and Weekends). On call Pager Number for Human resources staff person is 361-224-2721. Alternate Pager # 813-0837.

The Doctors' Center  
4637 S. Padre Island Drive  
Corpus Christi, TX 78411  
(361) 852-6824

Calallen Minor Emergency Center  
11559 Leopard Street  
Corpus Christi, TX 78410  
(361) 241-1116

**Specimen Collection and Alcohol testing Service Provider:**

8 a.m. – 9 p.m., Monday through Friday:  
After 9:00 p.m. Monday through Friday, and after 6:00 p.m. on Holidays and Weekends, On-Call Number: Analytical Testing 438-2846 or 438-8722. If no answer, call Dr. Keith Rose at 537-6150.

**Split Sample Urine Specimen Collection:** The driver shall urinate into a collection container or specimen bottle capable of holding at least 60 ml. per 49 CFR, 40, Section 40.25, of which 30 ml. of urine is in one bottle, to be used as the

"primary specimen", and at least 15 ml. is in a second bottle, to be used as the "split specimen" portion.

**Standard of Intoxication:** Intoxication means any form of alcohol, drug, or combination thereof in an individual's system. An individual is intoxicated (a) when the individual is operating a recreational vessel and has an alcohol concentration of .10 per cent by weight or more; (b) when the individual is operating a vessel other than a recreational vessel and has an alcohol concentration of .04 per cent by weight or more; (c) when the individual is operating any vessel and the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech muscular movement, general appearance, or behavior is apparent by observation.

**Substance Abuse Professional (SAP):** A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with a knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders.

**Vessel:** includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, documented or numbered under the laws of the United States, and any vessel owned by a citizen of the United States which is not documented or numbered by any nation.

#### **IV. PROHIBITED ACTIVITIES AND VIOLATIONS**

**A. While on board a vessel inspected, or subject to inspection, under Chapter 33 or Title 46 of the United States Code, a crewmember (including a licensed individual), pilot, or watchstander, who is not regular member of the crew, violates this Policy by:**

- 1. Failing any drug or alcohol test required under this Policy.**
- 2. Refusing to take any drug or alcohol test required by this Policy.** Consent for testing is indicated by the Federal Drug Testing Custody and Control Form (CCF) signature form required by 49 CFR, 40. The Director of Park & Recreation, Marina Superintendent, or other designees, shall not permit an individual who refuses to submit to drug or alcohol testing as required under U.S. Coast Guard Regulations and this Policy, to perform or continue to perform safety-sensitive functions, stand watch, or perform other duties. A crewmember's refusal to submit to a drug and/or alcohol tests in a timely manner, shall be presumed to meet the Standard of Intoxication as defined in this Policy and shall be presumed intoxicated.

3. Consuming alcohol within four hours prior to performing, or attempting to perform, any scheduled duties.
  4. Being intoxicated at any time. Evidence of intoxication includes, but is not limited to, personal observation of an individual's manner, disposition, speech muscular movement, general appearance, or behavior is apparent by observation.
  5. Consuming any intoxicant while on watch or duty.
- B. It is not a violation of this Policy for an individual to consume a legal non-prescription or prescription drug provided the drug does not cause the individual to reach the standard of intoxication as defined in this Policy.

## V. CONSEQUENCES FOR VIOLATION OF THIS POLICY

1. **Any violation of Section IV of this Policy, Prohibited Activities and Violations, shall result in automatic and mandatory termination, without rehabilitation, upon the first offense.**
2. **The City of Corpus Christi is not required by Coast Guard Regulations to provide rehabilitation and will do so only when an employee refers him/herself for treatment prior to being notified under this Policy.**
3. **Violations of other parts of this Policy shall result in disciplinary action up to and including termination.**
4. **The Marina Superintendent, or designee, shall report the failed chemical test to the nearest Coast Guard Officer in Charge, Marina Inspection. The individual who holds a license, certificate of registry, or merchant mariner's document shall be denied employment as a crewmember and be removed from duties which directly affect the safe operation of the vessel as soon as practicable and shall be subject to suspension and revocation proceedings against his/her license, certificate of registry, or merchant mariner's document under 46 CFR, 5. If the individual does not hold a license, certificate of registry or merchant mariner's document and fails a chemical test, he/she shall be denied employment as a crewmember or removed from duties which directly affect the safe operation of the vessel as soon as possible.**

## VI. DRUG AND ALCOHOL TESTING REQUIREMENTS

As required by 33 CFR, 95, and 46 CFR, 4 and 16 of the Coast Guard Regulations, the following drug and alcohol tests will be conducted in accordance with drug testing

procedures in 49 CFR 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs and procedures in Coast Guard Regulations, 33 CFR, 95, and 46 CFR, 4 and 16.

**A. Pre-Employment Drug Testing**

As a condition of employment, any applicant who is offered a position the Marina which requires a license, or who serves as a crewmember on a vessel in the commercial activity of moving vessels from slip to slip in the Marina, must take a drug test and receive a negative test result as reported by the Medical Review Officer.

**B. Periodic Testing Requirement**

An applicant for an original issuance or a renewal of a license or a certificate of registry, a raise in grade of a license, a higher grade of certificate of registry, an original issuance of a merchant mariner's document, the first endorsement as an able sea person, life boat person, qualified member of the engine department, or tanker person, or a reissuance of a merchant mariner's document with an expiration date shall be required to pass a drug test administered under 49 CFR, 40. The applicant shall provide the results of the time of submitting an application. The test results at the time of submitting an application. The test results must be completed and dated not more than 185 days prior to submission of the application.

**C. Post Accident: Marine Casualty Testing After Serious Marine Incident**

1. An individual directly involved in a serious marine incident is one who is responsible for an order, action, or failure to act, which can not be ruled out as contributing to the events leading to or causing a serious marine incident as defined in this Policy.
2. Following any marine casualty as defined in this Policy, the Marina Superintendent, or designee, shall determine if any evidence of alcohol or drug use by individuals directly involved in the casualty exists.
3. (a) The Marina Superintendent, or designee, shall make a timely good-faith determination if the occurrence of a marine casualty, as defined in this Policy; a discharge of oil into the navigable waters of the United States; a discharge of a hazardous substance into navigable waters; or a release of a hazardous substance into the environment, currently is, or is likely to become, a serious marine incident. Upon making such a determination, the Marina Superintendent, or designee, shall have each individual, engaged or employed on board the vessel who is directly involved in the incident, alcohol and drug tested for evidence of drug and alcohol use. A Commissioned Coast Guard Warrant or Petty Officer, or any other law enforcement officer authorized to obtain a chemical test under Federal,

State, or local law, may determine that additional individuals engaged or employed are directly involved in the serious marine incident, and the Marina Superintendent, or designee, shall direct these individuals to report for drug and alcohol testing.

- (b) The Marina Superintendent shall ensure that drug and alcohol testing occurs as soon as practicable following the occurrence of a serious marine incident, and in no case later than 24 hours from the time of the occurrence of the serious marine incident.
- (c) Specimen collection in Incidents Involving Fatalities: With the assistance of the coroner or medical examiner, and if practicable to do so, urine specimens for alcohol and drug testing shall be obtained from the remains of an individual who dies as a result of a serious marine incident. If the local authority or custodian of the remains declines authority or custodian of the remains declines to cooperate in obtaining the necessary specimens, the Marina Superintendent, or designee, shall provide an explanation of the circumstances on Form CG 2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident).
- (d) Individuals determined to be directly involved and subject to alcohol and drug testing shall not be prevented from performing duties in the aftermath of a serious marine incident when their performance is necessary for the preservation of life or property or the protection of the environment **unless** there is reasonable cause that the person meets the Standard of Intoxication as defined in this Policy based on specific, contemporaneous, articulable observations concerning the movement, general appearance or behavior of the individual operating a vessel.

#### **4. Notice of Potential Vessel Casualty**

- A. The Marina Superintendent, or designee, shall immediately notify either of the following Coast Guard offices if there is a reason to believe a vessel is lost or imperiled.
  - 1. The Coast Guard district rescue coordination center over the area the vessel was last operating in; or
  - 2. The Coast Guard search and rescue authority nearest to where the vessel was last operating.
- B. Reasons for belief that a vessel is in distress include, but are not limited to, lack of communication with a vessel for more than 48 hours, or a nonappearance of the vessel.
- C. Written notification shall be provided to the applicable Coast Guard



Office within 24 hours and shall include the name and identification number of the vessel, the names of the individuals on board, and other information as requested by the Coast Guard.

**5. Notice of Marine Casualty:**

- A. The Marina Superintendent, or designee, shall address safety concerns related to a marine casualty as defined in this Policy and immediately thereafter notify the nearest Marine Safety Office, or Coast Guard Group Office whenever a vessel is involved in a marine casualty resulting in:
1. unintended grounding or strike of a bridge;
  2. intended grounding or strike of a bridge which creates a hazard to navigation, the environment, or the safety of a vessel;
  3. loss of main propulsion, primary steering, or any associated component or control system which reduces the maneuverability of the vessel;
  4. vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure of, or damage to, fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment or bilge-pumping systems;
  5. loss of life;
  6. injury which requires professional medical treatment beyond first aid and the individual is unfit to perform his/her routine duties; or
  7. property damage in excess of \$25,000 including the cost of labor and material to restore the property to the condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.
- B. A vessel which collides with a buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, the Marina Superintendent, or designee, shall report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG 2692 is required unless one or more of the results listed in this Subsection occur.
- C. In addition to the immediate notice required in this Section, written notice shall be filed within five days on Coast Guard Form 2692 (Report of Marine Accident, Injury or Death). Form 2692 requests the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.
- D. Supplemental forms shall be submitted as required on Coast Guard Form 2692A (Barge Addendum) and Coast Guard Form 2692B (Report of



Required Chemical Drug and Alcohol Testing following a Serious Marine Incident). Information on Form 2692B includes identification of individuals for whom there is evidence of drug or alcohol use, or for whom evidence of intoxication has been obtained and specifies the method used to obtain such evidence, such as personal observation of the individual, or by the results of alcohol and/or drug tests.

- E. An entry shall be made in the official log book, if required and carried, pertaining to those individuals for whom evidence of intoxication is obtained. The individual must be informed of this entry, and the entry witnessed by a second person. Refusal to test by an individual when directed to do so by the Marina Superintendent, or designee, shall be noted in the official log book, if required and carried, and in written report (Form CG 2692B) and shall be admissible as evidence in any administrative hearing.
- F. The Marina Superintendent, or designee, shall retain voyage records as are maintained by the vessel and shall make these records available upon request to a duly authorized investigating officer, administrative law judge, officer, or employee of the Coast Guard who shall obtain photostatic copies of the records and return the originals to the Marina Superintendent, or designee.

#### **D. Random Drug Testing**

**An individual may not be engaged or employed on a vessel in a position as master, operator, or person in charge for which a license or merchant mariner's document is required by law or regulation unless all crewmembers covered by this section are subject to the random testing requirements of this Section.**

- 1. Crewmembers covered by this Policy will be subject to random drug testing. A minimum of 50% of crewmembers covered by this Policy will be subject to drug testing each 12 months. The required random testing rate may be revised by the Coast Guard Commandment and will be published annually in the Federal Registrar to become effective beginning January 1 of the calendar year following publication.
- 2. Crewmembers on **inspected** vessels shall be randomly tested who:
  - a. Occupy a position or perform the duties and functions of a position required by the vessel's Certificate of Inspection;
  - b. Perform the duties and functions of patrol person or watch person required by 49 CFR, 16; or

- c. Are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies.
3. Crewmembers on **uninspected** vessels who:
  - a. are required by law or regulation to hold a license issued by the Coast Guard in order to perform duties on the vessel;
  - b. perform duties and functions directly related to the safe operation of the vessel;
  - c. perform the duties and functions of patrolmen or watchmen required by 49 CFR 16; or
  - d. specifically assigned the duties of warning, mustering, assembling assisting, or controlling the movement of passengers during emergencies.

#### **E. Reasonable Cause Testing**

1. A City employee covered by this Policy may be directed to take a drug and or alcohol test when reasonable cause exists as determined by the Marina Superintendent, or designee, or by a Coast Guard commissioned Warrant or Petty Officer; or any other law enforcement officer authorized to obtain a chemical test under Federal, State, or Local law.
2. When practicable, the determination of the existence of reasonable cause shall be based on the observations of two persons.
3. The decision to test for reasonable cause shall be based on:
  - a. specific, contemporaneous, articulatable observations concerning the manner, disposition, speech, muscular movement, general appearance or behavior of the individual operating a vessel; or
  - b. the individual is directly involved in the occurrence of a marine casualty as defined in Chapter 61 of Title 46, United States Code.
4. The individual shall be informed of the requirement to test under Coast Guard requirement to test under Coast Guard Regulations and this Policy and directed to undergo a drug and/or alcohol test as soon as is practicable.

#### **F. Follow-up Drug and Alcohol Testing: Self Referral for Rehabilitation**

In addition to other drug and alcohol testing required by this Policy, upon returning to duty from drug or alcohol rehabilitation treatment which was entered into as a result of an individual's' self-disclosure of a prohibited drug or alcohol related problem or addiction prior to failing a drug or

alcohol test, or as part of a disciplinary agreement between the City and the employee, an employee will be subject to follow-up drug testing without prior notice for up to sixty (60) months from the date of return as determined by the Rehabilitation Committee as defined in this Policy, and follow-up for alcohol rehabilitation as provided in the Employee Assistance Program Section of this Policy, Section VIII.

## **I. TESTING PROCEDURES**

### **A. Drug Testing**

#### **1. Drug Specimen Collection and Drug Testing Laboratory**

The City's designated specimen collection services provider, occupational Health Services, Corpus Christi, will follow split-specimen collection and CCF procedures for drug testing mandated by 49 CFR, 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as described in Attachment I.

The City of Corpus Christi will use drug testing laboratories certified by the Federal Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, under 49 CFR, 40. The selected certified laboratory must submit to inspections by the City of Corpus Christi and to unannounced inspections including examinations of records at any time by the City of Corpus Christi and the Coast Guard's designee. Laboratories used will follow the requirements of 49 CFR, 40.

#### **2. Review of Drug Testing Results**

The Medical Review Officer (MRO) for the City of Corpus Christi will be the City's designated Physician for that purpose who is a licensed physician with knowledge of drug abuse disorders.

The MRO will (1) review the results of drug testing before they are reported to the Director of Human Resources, or designee; (2) review and interpret confirmed positive test results to determine if there is an alternative medical explanation of the confirmed positive result which will be accomplished through (a) a medical interview with the employee; (b) a review of the employee's medical history and any relevant biomedical factors; (c) a review of all medical records provided by the employee to determine if a confirmed positive test resulted from legally prescribed medication; (d) if necessary, have the original specimen reanalyzed to verify accuracy of the reported test

result; and (e) verify that the laboratory report and assessment are correct.

### **3. Medical Review Officer's Determination**

Procedures to be followed by the City's Medical Review Officer are provided in Attachment II to this Policy.

If the MRO's review indicates a legitimate medical explanation for the confirmed positive test result, no further action will be taken against the employee, the test result will be reported as a negative to the Director of Human Resources.

If the MRO's review determines there is no legitimate medical explanation for the confirmed positive test result, the test result will be reported to the Director of Human Resources, or designee, as a positive, and the employee will be subject to automatic and mandatory termination, without rehabilitation, upon the first offense, as Provided in Section V, Consequences for Violation of This Policy.

If the MRO's review of laboratory inspection reports, quality assurance and control data and other test results show that a test is scientifically insufficient for further action, the test will be determined negative for the presence of a prohibited drug or metabolite in the employee's or applicant's system and no further action will be taken.

### **4. Medical review Officer's Notification to the City of Corpus Christi**

Within three business days of completion of the medical review by the MRO, the MRO may initially report the test results to the Director of Human Resources, or designee, using any communication device, but in all instances a signed, written notification must be forwarded within three business days of completion of the MRO's review, and shall include the following:

- a. State that the drug test being reported was in accordance with 40 of 382;
- b. State the name of the individual for whom the test results are being reported;
- c. State the type of test indicated on the CCF form, i.e., random, post-accident, etc.;
- d. State the date and location of the test collection;
- e. State the identities of the persons or entities performing the collection, analysis of the specimens and serving as the MRO for the specific test;
- f. State the verified results of a drug test, either positive or negative,

and if positive, the identity of the drug(s) for which the test was verified positive; and

- g. State that the MRO has made all reasonable efforts to contact the driver as provided in 49 CFR, 40. The Director of Human Resources, or designee, as soon as practicable, shall request that the driver contact the MRO prior to dispatching the driver or within, 24 hours, whichever is earlier.

## 5. Retention of Samples and Retesting

- a. As provided in 49 CFR, 40, if the test result of the primary specimen is positive, the applicant or employee may request that the MRO direct that the split sample be tested in a different HHS-certified laboratory for presence of the drug(s) 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.** Upon receipt of the result of the test of the split specimen which reaffirms the results of the test of the primary specimen, the employee and the Director shall be notified within one work day.

**Upon receipt of the result of the test of a split specimen which fails to reconfirm the presence of the drugs(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.**

- b. The fee for transferring and retesting a split specimen by another HHS certified laboratory, upon timely request to MRO by a City applicant or employee, is to be prepaid by cash, cashier's check, or money order by the requesting applicant or employee directly to the HHS certified laboratory performing the testing. Under this Policy, employees shall use MEDTOX Laboratories, Inc. 402 W. County Rd. D, St. Paul, MN 55112, (651) 636-7466 at \$110 per retest, which fee may change without prior notice.
- c. Upon the crewmember requesting a test of the "split specimen" portion of the original specimen following the confirmed positive drug test result being received by the MRO, the Director of Human Resources, or designee, shall be notified by the MRO of the request for split specimen testing and the crewmember shall be removed from his/her safety-sensitive functions by the Director of Park & recreation, or designee, and sent home pending the results the retest. The crewmember may use accrued personal leave, or vacation leave, if any, in that order, pending receipt of the split specimen drug test results by the Department Head, or designee.

- d. Specimens which yield confirmed positive results will be retained by the laboratory in secured, frozen storage for a minimum of 365 days and may be extended for an additional time period upon notification of the laboratory.
- e. On retested samples from storage, deterioration may occur resulting in a detected level of drug less than noted in 49 CFR, 40 procedures or the prior tests. Results equal to or greater than the established sensitivity of the assay will be considered corroborative of the original positive results.

### **B. Alcohol Testing Procedures**

The City's designated specimen collection services provider, occupational Health Services, Corpus Christi, will follow alcohol testing guidelines mandated by Coast Guard Regulations, CFR Titles 33 and 46 and as outlined in Attachment III.

## **II. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

- A. It is recognized that drug and alcohol addiction is a medical disorder which can be treated. The City of Corpus Christi believes it has a responsibility to offer assistance to employees through the Employee Assistance Program, (EAP) but that the initiative in seeking such help is the responsibility of the employee. Employees who seek help through the applicable Department Head, or designee, for a prohibited drug and/or alcohol related problem or addiction **before** it is discovered through poor performance or testing authorized under this policy, shall be allowed to participate in a rehabilitation program as recommended by the Employee Assistance Program counselors who is a Substance Abuse Professional, the Rehabilitation Committee, and as otherwise agreed to in writing by the Department Head and the employee.
- B. The Rehabilitation Committee, as defined in Section II of this Policy, will determine if an employee involved in self-referral to a drug rehabilitation program may be returned to duty. In addition, the Rehabilitation Committee ensures an employee, upon completing rehabilitation, is drug tested in accordance with 49 CFR, 40, before returning to duty and determines a schedule of unannounced testing for an employee who has returned to duty after rehabilitation to confirm his/her drug free status. This provision applies only to employees who seek help for a prohibited drug-related problem or addiction prior to being identified through a positive drug test administered under this Policy.
- C. While medical costs of rehabilitation are the sole responsibility of the employee, medical plan insurance may be used to the extent provided under the individuals health insurance coverage. Existing leave policies [Family Medical Leave (FMLA), sick leave, personal leave, vacation, or special leave requests without pay] may be



requested for use during rehabilitation periods. The City's Employee Assistance Program services are provided by Deer Oaks EAP Services, (361) 814-8806 or toll free (877) 865-9323, Corpus Christi, Texas .

- D. The City's EAP will provide a total of 60 minutes of training programs for supervisors who are responsible for determining the existence of reasonable suspicion, how to assess contemporaneous physical, behavioral, speech, and performance indicators of probable drug and/or alcohol misuse, and which includes training on drug and alcohol use in the workplace. In addition, an EAP training program must be conducted upon approval of this Policy and repeated upon request of the Marina Superintendent, or designee, which includes the following elements: effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug and alcohol use and abuse; and documentation of training given to crewmembers and the employer's supervisory personnel. The training curriculum for City employees includes the following areas: (1) display and distribution of informational materials, (2) hot-line telephone number for assistance, and (3) distribution and explanation of the City's alcohol and drug policy.

### III. RETENTION SCHEDULE

- A. The Director of Human Resources, or designee, applicable Department Head, or designee, the City's designated Medical Review Officer, the Breath Analyzer Service Provider, and the Employee Assistance Program Administrator and applicable Department Head shall be jointly responsible for coordinating record keeping requirements under 49 CFR, 40, for drug testing and 33 CFR, 95, and 46 CFR, 4 and 16, for alcohol testing with records maintained in secure locations with controlled access. All records shall be made available for inspection at City Hall, Human Resources Department, 1201 Leopard Street, within two business days after a written request has been made by an authorized representative of FHWA
- B. The following record retention schedule will be followed:

#### **Drug Records to be Maintained by the MRO:**

	<u>Minimum</u>
(1) Collection process drug records	3 years
(2) Employees' <u>verified positive drug</u> tests; and types of tests, e.g. post-accident and rehabilitation records	5 years

Specific information retained on employees who have failed tests (No. 2 above) will include: (1) functions performed by each employee; (2) the prohibited drug used; (3) disposition of employees (e.g. termination, rehabilitation, leave without pay); (4) and the age of each employee.



	<u>Minimum</u>
(3) Employees' negative drug tests	1 year
(4) Record of number of employees tested by type of test	5 years
(5) Records of training sessions attended by supervisors and employees; copies of training materials provided; and rosters of attendance.	<u>Indefinitely</u>
(6) Documentation of refusals to test	5 years

**B. Alcohol Records:**

**Maintain for 5 years:**

1. Alcohol test results with alcohol concentration of .04% or more ;
2. Documentation of refusals to test;
3. Total number of individuals chemically tested annually for dangerous drugs in each of the testing categories required by 49 CFR 16 including the annual number of individuals failing chemical tests and the number and type of tests for which individuals tested positive.

Maintain Records for 1 year: Alcohol test results with alcohol concentration of less than.04%.

**IV. Reporting of Drug and Alcohol Testing Results**

An annual management information system (MIS) report on alcohol testing results will be submitted by March 15 of each year for the previous calendar year by the Director of Human Resources, or designee, to the Coast Guard Commandment (G-MMI), 2100 Second Street S.W. Washington, D.C. 20593-001. The form is OMB No. 2115-0003. U.S. Coast Guard Drug and Alcohol Testing MIS Data Collection Form (Attachment V to this Policy). Forms are available from any Officer in Charge, Marine Inspection.

Drug and alcohol data shall be collected by the Director of Human Resources and Marina Superintendent, or designee, as follows:

1. number of covered employees:
2. number of covered employees subject to testing under the anti-drug rules of more than one DOT agency because of the nature of their assigned duties, identified by each DOT agency.

3. Number of drug and alcohol test by test type. The drug test types are pre-employment, random, post accident, and reasonable cause.
4. Number of positive drug test results verified by a Medical Review Officer (MRO) by type of test and type of drug(s). Number of alcohol tests resulting in an alcohol concentration of .04% by weight or more by type of test and alcohol concentration percentage.
5. Number of negatives reported by a MRO by type of test.
6. Number of applicants denied employment based on a positive drug test result verified by an MRO.
7. Number of crewmembers with a positive drug test result verified by an MRO, who were returned to duty in a covered position, having meet the requirements of the Medical Review Officer. (Response is "zero" due to mandatory termination for a confirmed positive on a required drug test.)
8. Number of crewmember's drug test results that the MRO verified positive for more than one drug or combination of drugs.
9. Number of crewmembers who refused to submit to a drug test required under this part.
10. Information on training provided crewmembers.

#### V. RELEASE OF INFORMATION

- A. Requests for employment verification or references for an individual terminated under this Policy shall be forwarded to the Human Resources Department for response. **For Texas Employment Commission hearings on granting unemployment insurance, the City will cite a rules violation as the reason for termination and will supply a copy of the letter of termination which states specific reasons. Where there is doubt about the release of information, the Legal Department shall be consulted for guidance.**
- B. The City may disclose information required to be maintained by U.S. Coast Guard regulations CFR Titles 33 and 46, pertaining to a crewmember to the employee or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the crewmember and arising from the results of an alcohol and/or test administered under Coast Guard Regulations including, but not limited to, worker's compensation, unemployment compensation, or other proceeding related to a benefit sought by the crewmember.
- C. Information regarding a crewmember's drug and/or alcohol testing or rehabilitation may be released only upon the written consent and release of that individual except when used in administrative or disciplinary proceedings.
- D. No drug or alcohol testing reports are to be placed in the employee's personnel file. Such reports shall be maintained in a locked area with restricted access. Such information must be released to the Coast Guard Commandment, or designee, regardless of the individual's consent, when

requested as part of an accident investigation. Statistical data related to drug testing and rehabilitation (not name specific) and training records must be made available to the Coast Guard Commandment, or designee, upon request.

- E. A crewmember is entitled, upon written request, to obtain copies of any records pertaining to his/her use of drugs and/or alcohol, including any records pertaining to his/her tests. The City shall promptly provide records requested by him/her. Access of a crewmember to his/her own records shall not be contingent upon payment for records other than those specifically requested.

**VI. Compliance with the City of Corpus Christi's Policy on Drugs and Alcohol Use and Testing for Licensed Marina Personnel.**

- A. Compliance with the City of Corpus Christi's Policy on Drugs and Alcohol Use and Testing for Licensed Marina Personnel Subject to U.S. Coast Guard Regulations, CFR Titles 33 and 46, is a condition of employment for all crewmembers hired prior to and after the effective date of this Policy.
- B. Current and new employees will be required to sign an Acknowledgment for (copy attached) which will become part of each employee's personnel file.

## Attachment I

### COAST GUARD SPECIMEN COLLECTION PROCEDURES FOR DRUG TESTING, 49 CFR, 40

A Specimen Collector (Collector) and Collection Facility (Facility) which complies with accessibility requirements of Title III of The Americans With Disabilities Act (ADA) must be available, upon pager notification, 24-hours a day, 7 days a week including weekends and holidays for alcohol and drug testing of City employees and applicants (collectively "Donors") with specimen collection to be performed by qualified Seller's staff at a designated City Facility, or Spohn Hospital emergency room, or as otherwise specified to the Seller in writing by the Director of Human Resources.

The Collector will follow this procedure for each individual specimen collected for DOT drug testing. It is the intent of the City that the collection procedures for all drug testing of Donors be consistent with and of the same level of precision required for the federally approved procedures for workplace drug testing programs, (49 CFR 40, Procedures For Transportation Workplace Drug and Alcohol Testing Programs). **If problems arise during a specific collection, the Donor shall be asked to wait while the City's Director of Human Resources, or designee, (Director) is contacted for a decision on the situation. IF Donor refuses to wait, City's Director must be notified at the beginning of the next work day if after hours and within thirty (30) minutes if during the normal work day.**

The Collector is responsible for maintaining the integrity of the specimen collection and transfer process and for carefully ensuring the modesty and privacy of each Donor. The Collector is expected to avoid any conduct or remarks that could be construed as accusatorial or otherwise offensive or inappropriate. Strict CCF procedures for drug tests are to be followed from pre-collection through shipment to the laboratory.

Each Collector shall have successfully completed training to carry out specimen collections for drug testing following DOT regulations as cited, or shall be a licensed medical professional, or technician, who is provided instructions for collection which comply with DOT regulations under Section 49 CFR 40.

Attachment I may be revised as required to meet revisions to 49 CFR 40 and/or other revisions to DOT and Coast Guard regulations which apply to City applicants and employees.

1. DRUG TESTING PROCEDURES:

A. REQUIREMENTS OF COLLECTION SITE FOR DRUG TESTING:

1. The Facility must contain an enclosure within which private urination can occur, a toilet for completion of urination, a suitable clean surface for writing, and a source of water for washing hands. The Facility must allow for the Collector to wait outside the restroom door to monitor, not observe the collection.

2. The Collector actually monitoring the collection of a urine specimen shall, in all cases, be of the same gender as the Donor providing the specimen. If using a public restroom, the Collector is to remain in the restroom, but outside the stall, until the specimen is collected and must be of the same sex as the Donor providing the specimen.
3. If the Facility cannot be dedicated solely to drug testing, the portion used for testing must be secured during drug testing by ensuring other persons are not present, ensuring that there is no undetected access through any rear doors, and posting signs restricting access solely to authorized personnel during the entire collection process.
4. The Facility must be clean, well lit and secured as defined herein.
5. The Facility must have all required materials, personnel, and supervision required to provide valid CCF procedures and to have available one male and one female Collector necessary for monitoring collections. Forms used for the collection process must comply with requirements of the Department of Transportation 49 CFR 40 for Donors tested under DOT regulations, as they may be amended.

B. FAILURE OF DONOR TO REPORT FOR DRUG TESTING AS SCHEDULED

If the Donor does not report at the assigned time for drug testing, the Collector will contact the Director to obtain guidance on the action to be taken within 30 minutes if during workday or at beginning of next workday if after hours.

C. COLLECTION PROCEDURES

PREPARATION OF THE COLLECTION SITE PRIOR TO THE PRESENCE OF THE DONOR MUST INCLUDE: ADDING BLUING AGENTS IN TOILET TANKS AND BOWLS SO THAT THE WATER REMAINS BLUE; TAPING OFF OTHER SOURCES OF WATER, OR IF THE COLLECTION IS TAKING PLACE IN A RESTROOM WITH ONE OR MORE STALLS, THE COLLECTOR (OF SAME SEX OF DONOR) WILL MONITOR TO ENSURE SUCH WATER SOURCE IS NOT USED FOR DILUTING THE SPECIMEN.

D. SPECIMAN COLLECTION PROCEDURE

THE City OF CORPUS HAS ELECTED TO USE A "SPLIT SAMPLE" METHOD OF COLLECTION FOR ALL DRUG TESTS CONDUCTED FOR COVERED DOT CITY EMPLOYEES. The use of the word "specimen" in this procedure is defined as split specimen unless otherwise designated.

The following procedure is to be followed in each split specimen collection:

1. Positively identify the Donor as the person selected for testing. Ask Donor for a photo I.D. which can be an identification badge with photo, Driver's License with photo, or if no photo identification is available, positive identification by a City official. If identification cannot be established, the Collector shall not proceed with the collection.
2. Explain the collection to the Donor. The collection is to be done as a 5-panel DOT collection (covering marijuana, cocaine, opiates, amphetamines and phencyclidine) as authorized by DOT regulations and City Policy.
3. The Donor is NOT to be required to provide a list of any prescription or over-the-counter drugs, but may do so for his/her own information as a "memory jogger" for his/her own use only.
4. The Donor will remove any unnecessary outer garments, such as a coat, jacket, hat, etc. which could be used to tamper with or adulterate the Donor's Specimen. The Collector shall ensure that all personal belongings, such as a purse or briefcase, remain with the outer garments. The Donor may retain his/her wallet. If the Donor requests it, the Collector shall provide the Donor with a receipt for any personal belongings.
5. Donor is to wash hands prior to urination in view of Collector prior to the collection, and is to remain in the presence of the Collector without access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the Specimen.
6. The Donor may provide his/her Specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collector shall provide the specimen container for this purpose which is suitable for the gender of the Donor.
7. The collection kit is to be opened in front of the Donor by the Collector. The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 milliliters. If a collection container is used, the Collector, in the presence of the Donor, shall pour 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 milliliters shall be poured into the other bottle, to be used as the **Split Specimen**. Both bottles shall be shipped in a single shipping container, together with copies 1, 2 and the split specimen copy of the CCF form, to the laboratory.
8. The Collector shall note any unusual behavior by the Donor or unusual appearance of the urine on the CCF Form, e.g. color, odor, temperature.



9. Upon collecting the Specimen, the Collector will determine if the container contains at least 45 milliliters of urine. If the Donor is unable to provide 45 milliliters of urine, the Collector shall direct the Donor to drink not more than 24-ounces of fluids and, after a period of up to two hours, again attempt to provide a complete Specimen using a fresh specimen bottle and collection kit. The original insufficient specimen is to be discarded.

If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the Director of Human Resources notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual'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 individual, 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 Director of Human Resources in writing.

10. After the Specimen has been provided and submitted to the Collector, the Donor shall be allowed to wash his/her hands. At this point, sink faucets may be untaped and the commode flushed. With the Specimen in the presence of both the Donor and Collector, they may then proceed to another appropriate area to continue this procedure.
11. Immediately after the Specimen has been provided and submitted to the Collector, and in the presence of the Donor, the Collector shall measure the temperature of the Specimen within a maximum time of 4 minutes from the time of urination, and inspect the Specimen to determine if its color and look indicates any signs of contaminants. Any unusual findings shall be noted on the CCF Form.

A specimen temperature outside the range of 32.5-37.7 degrees Centigrade 90.5-99.8 degrees Fahrenheit constitutes a suspicion that the Donor has altered or substituted the Specimen. In such cases, the Donor supplying the Specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the suspicion that the Donor may have altered or substituted the Specimen.

**All specimens suspected of being adulterated shall be forwarded to the Laboratory for testing.**

12. Whenever there is suspicion that a particular Donor has altered or substituted the Specimen, proceed as required under Section E, "Direct Observation". With the Director's approval, a second split Specimen shall be obtained as soon as possible under the direct observation of a same gender Collector.



13. Both the Donor and the Collector shall keep the Specimen in view at all times prior to the Specimen being sealed with a tamper proof seal and labeled. Both parties are to remain in the presence of the Specimen while the Collector places an identification label which contains the date, the Donor's Specimen number, and any other identifying information provided.
14. In the presence of both parties, the Donor shall initial the identification label on the Specimen bottle for the purpose of certifying that it is the Specimen collected from him/her.
15. The Collector shall enter on the CCF Form all information identifying the Specimen. The Collector shall sign the CCF Form certifying that the collection was accomplished according to the applicable Federal requirements.
16. The Donor shall be asked to read and sign a statement on the drug CCF Form certifying that the Specimen identified as having been collected from him/her is in fact the Specimen he/she provided.
17. The Donor is to sign the CCF Form, which authorizes the collection of the Specimen, analysis of the Specimen for designated controlled substances, and release of the results to Director.
18. The Collector shall complete the chain of custody portion of the CCF Form to indicate receipt of the Specimen from the Donor and shall certify proper completion of the collection. **The Donor may now leave.**
19. The urine Specimen and CCF Form are now ready for shipment. If the Specimen is not immediately prepared for shipment, the Collector shall ensure that it is appropriately safeguarded during temporary storage.
20. While any part of the CCF procedures are being performed, it is essential that the urine Specimen and custody documents be under the control of the involved Collector. If the involved Collector leaves his/her work station momentarily, he/she shall take the Specimen and Chain-of -Custody Form with him/her, or shall secure them. After the Collector returns to the work station, the custody process will continue. If the Collector is leaving for an extended period of time, he/she will package the specimen for mailing before leaving the Facility.
21. The Collector shall not leave the Facility in the interval between presentation of the Specimen by the Donor and securing the Specimen. The Specimen is secured by placing an identifying label on it which contains the Donor's Specimen identification number (as shown on the CCF-Form), attaching the tamper-proof seal, and obtaining the Donor's initials on the seal. **If it becomes necessary for the Collector to leave the Facility during this**

interval, the collection shall be nullified and, upon direction of the Director, a new collection begun.

#### **E. DIRECT OBSERVATION:**

**All specimens collected which are suspected of adulteration shall be forwarded to the laboratory for testing with the Collector documenting on the CCF Form his/her observations.**

Direct observation of a second specimen collection by a Collector of the same gender may be authorized by the Director for covered DOT Donors when the following conditions exist:

1. When the temperature (which must be taken within a maximum of 4 minutes) falls outside a temperature range of 90.5 to 99.8 degrees Fahrenheit, or 32.5-37.7 degrees Centigrade.
2. If the specimen has a specific gravity of less than 1.003 and a creatinine concentration below .2g/L.
3. If the Collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the specimen, a second specimen is to be obtained and the Director notified in writing of the circumstances.
4. If the Donor is providing a specimen based on a previous positive drug screen result under City Policy and is now submitting a specimen for follow-up or return-to-work testing.

If the Collector suspects that the specimen has been tampered with in any way, that collection is to be declared canceled by the MRO and, upon direction of the Director, or designee, a new collection shall be obtained before the Donor is allowed to leave. The Director must be informed if the Donor refuses to give another specimen within thirty (30) minutes of the refusal if during the normal workday, or at the beginning of the next work day if after hours, during weekends or holidays.

#### **F. TRANSPORTATION TO LABORATORY**

The Collector shall arrange to ship the Split Specimen to the drug testing laboratory. The Split Specimen shall be placed in a single shipping container designed to minimize the possibility of damage during shipment together with copies 1, 2, and the Split Specimen copy of the CCF Form. The shipping container shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the shipping container, the Collector shall ensure that the CCF documentation is attached or enclosed in each container sealed for shipment to the drug testing laboratory.

#### **G. FAILURE OF DONOR TO COOPERATE**

If the Donor refuses to cooperate with the collection process, the Collector shall inform the Director within 30 minutes if it is a workday or at the beginning of the next workday if after hours, and shall document the non-cooperative behaviors on the CCF Form.

#### **H. DONOR REQUIRING MEDICAL ATTENTION**

If the Specimen is being collected from a Donor in need of medical attention (e.g. as part of a post-accident test given in a clinic or emergency medical facility), necessary medical attention shall NOT be delayed in order to collect a Specimen.

#### **I. USE OF CCF FORMS**

A CCF 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 CCF Form each time a Specimen is handled or transferred and every individual in the chain shall be identified in writing on the CCF Form. Every effort shall be made to minimize the number of persons handling Specimens.

#### **J. RECORDS MAINTENANCE AND DISCLOSURE OF RECORDS**

The following information is to be collected and provided to the City monthly in three separate written reports for Donors tested under authority of Part 199 (Gas Department), those tested under Part 382 (Commercial Driver's License Regulations), and those tested under 33CFR, 95, and 46 CFR, (Coast Guard Regulations). These reports shall contain the following information: the number of Donors who refused to submit to a controlled substances test; the number of DOT urine specimens collected by type of test (e.g. pre-employment, random, reasonable suspicion, post-accident/marine casualty); and the number of Donors with positive test results, with the positive test results further broken out to indicate positives by type of test and type of drug.

One copy of each collection form completed for DOT drug testing is to be forwarded to the Director of Human Resources, or designee, within one workday.

#### **K. RECORD MAINTENANCE**

Records related to services provided under this Agreement must be maintained for five (5) years after termination or expiration of this Agreement.

## **II. DOT MANDATED ALCOHOL TESTING**

### **A. DEVICES TO BE USED FOR BREATH ALCOHOL TESTS:**

For breath alcohol screening and confirmation tests, Collector shall use Evidentiary Breath Testing Devices (EBTS) which meet the requirements of 49 CFR 40, as follows:

EBT's shall (1) have the capability of providing, independently, or by direct link to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test; (2) EBT's shall be capable of assigning a unique and sequential number to each completed test, with Breath Alcohol Technician (BAT) and the employee or applicant having capabilities of reading the number before each test and of being printed out on each copy of the result (3) EBT's shall be capable of printing out, on each copy of the result, the manufacturer's name for the device, the device's serial number and the date and time of the test; (4) the EBT's shall be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level; (5) EBT's shall be capable of testing an air blank prior to the collection of breath and performing an external calibration check.

### **B. QUALITY ASSURANCE PLANS FOR, EBTS**

EBT's used in either screening or confirmation alcohol testing shall have a Quality Assurance Plan (QAP) developed by the manufacturer and maintained by the Collector which meets the requirements of 49 CFR 40 and which provides for the following:

(1) The QAP shall designate the method or methods to be used in performing external calibration checks of the device, using only calibration devices on the NHTSA "Conforming Products List of Calibrating Units for Breath Alcohol Tests." (2) The QAP shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental condition, such as temperature, altitude, humidity, and contexts of operation. In addition, the City requires that official calibration be performed immediately following each confirmed positive alcohol test by a City applicant: or employee. (3) The QAP shall specify the tolerances on an external calibration check within which the EBT is regarded to be in proper calibration. (4) The QAP shall specify inspection, maintenance, and calibration requirements and intervals for the device. (5) The QAP must have been submitted to NHTSA for review and have received NHTSA approval of the Plan.

The Seller shall comply with the NHTSA approved quality assurance plan for each EBT it uses for Alcohol screening or confirmation testing subject to this Agreement. The Seller shall ensure that external calibration checks of each EBT are performed as provided in the QAP and additional external calibration checks are performed upon obtaining a confirmed positive test result on a City employee or applicant. The Seller shall take an EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT set forth in the QAP and shall not use the EBT for alcohol testing under this Agreement until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT. The Seller

shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the device's manufacturer or a state health agency or other appropriate state agency. The Seller shall ensure that each BAT, or other individual who performs an external calibration check of an EBT used for alcohol testing subject to this Agreement, has demonstrated proficiency in conducting such a check of the model EBT checked. The Seller shall maintain records of the external calibration checks of EBT's as provided in 49 CFR 40. The Seller, when not using the EBT at an alcohol testing Facility, shall store the EBT in a secure location.

**C. THE BREATH ALCOHOL TESTING FORM**

The Collector shall use the Breath Alcohol Testing Form provided in the DOT Regulations, 49 CFR 40, (sample copy is attached at the end of Attachment 1) or may use a form directly generated by an EBT which includes all aspects of the form except that the EBT form may omit the space for affixing a separate printed result to the form.

**D. QUALIFICATION OF THE BREATH ALCOHOL TECHNICIAN**

The Breath Alcohol Technician (BAT) shall be trained to proficiency in the operation of the EBT to be used and in the alcohol testing procedures of 49 CFR, 40. Proficiency shall be demonstrated by successful completion of a course of instruction which, at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in Part 40 for obtaining a breath sample and interpreting and recording EBT results. Any BAT who performs external calibration checks of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT the Collector uses, which includes practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of that EBT. The Collector will document the qualifications of each BAT it uses to test employees and applicants and maintain the documentation as provided in 49 CFR 40.

Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATS. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT that was used for the test.

**E. LOCATION FOR BREATH ALCOHOL TESTING**

Alcohol testing shall be conducted in a location which affords visual and aural privacy to the individual being tested so that unauthorized persons cannot see or hear test results. ALL necessary equipment, personnel, and materials for breath testing shall be provided at the location where testing is conducted.



The BAT shall supervise only one Donor's use of the EBT at a time and shall not leave the testing location while the testing procedure for a given Donor is in progress.

**F. PREPARATION FOR BREATH ALCOHOL TESTING**

The Donor to be tested will be required to provide positive identification through use of a photo I.D. card or by identification by a City representative. The BAT shall provide positive identification to the Donor and shall explain the testing procedure to the Donor.

**G. PROCEDURE FOR SCREENING TESTS**

The BAT will complete Step 1 on the Breath Alcohol-Testing Form and the employee shall complete Step 2 on the form and sign the certification. Refusal of the employee to sign the certification shall be regarded as a refusal to take the test.

An individually sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained. The EBT will show the employee the result of the screening test. In a case in which the result of the screening test is a breath alcohol concentration of less than 0.02, the BAT shall date the form and sign the certification in Step 3 of the form and the employee shall sign date the certification and sign it in Step 4 of the form. If the employee does not sign the certification in Step 4 of the form, 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.

If a test result printed by the EBT does not match the displayed result, the BAT shall note the discrepancy in the remarks section and both the Donor and the BAT shall initial or sign the notation. In accordance with 49 CFR 40, the test is invalid and the Donor and the City shall be so advised. No further testing is authorized. The BAT shall transmit the result of less than 0.02 to the City in a confidential manner which is approved by the Director of Human Resources.

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed as provided in 49 CFR 40, Procedures for Confirmation Tests. The BAT who conducted the screening test shall complete and sign the form and will provide the employee with Copy 2 of the form.

**H. CONFIRMATION TESTS**

If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall follow 49 CFR 40 entitled "Preparation for Breath Alcohol Testing" and Procedures for Confirmation Tests, and will initiate a new Breath Alcohol Testing Form for the confirmation test. Refusal by the Donor to sign this

certification in Step 2 shall be regarded as a refusal to take the test. An individually-sealed mouthpiece shall be opened in view of the Donor and the BAT and attached to the EBT in accordance with the manufacturer's instructions.

The BAT shall instruct the Donor to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained. Before the confirmation test is administered, 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 that reading is greater than 0.00 testing shall not proceed using that EBT, but the test may proceed using another EBT. 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.

The BAT shall instruct the Donor not to eat, drink, put any object or substance in his/her mouth and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes or more than 20 minutes after the completion of the screening. The BAT shall explain to the Donor the reason for this requirement which is that it is to prevent any accumulation of mouth alcohol leading to an artificially high reading. If the BAT becomes aware that the Donor disregarded this instruction, the BAT shall so note in the Remarks section of the form.

In the event the confirmation test results and the screening test results are not the same, the confirmation test results is deemed by DOT rules to be the final result upon which any personnel action is taken.

The BAT shall show the Donor the result displayed on the EBT and the test result printed on the Form. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the Form and the Donor shall sign the certification and fill in Step 4 of the Form. If the Donor does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the Donor's failure to sign or initial in the "Remarks" section of the form.

If the test result printed does not match the display on the EBT, the BAT shall note the discrepancy in the Remarks section, the BAT and Donor shall initial or sign the notation. In accordance with 49 CFR 40, the test is invalid and the City and Donor shall be advised within 30 minutes of the completion of the test if during a workday or at the beginning of the next workday if after hours.

The BAT shall transmit all results to the Director of Human Resources, or designee, in a confidential manner in writing, in person or by telephone or electronic means, but the BAT shall ensure immediate transmission to the Director of Human Resources, or designee, all test results that require the City to prevent the Donor from performing a safety-sensitive function. Regardless of how the results are transmitted, the Director of Human Resources, or designee, shall receive a copy of Forms documenting the results of the tests.



## **I. REFUSALS TO TEST AND UNCOMPLETED TESTS**

Any refusal by a Donor to complete and sign the Breath Alcohol Testing Form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to fail to cooperate with the testing process which prevents the completion of the test, shall be documented by the BAT in the remarks section of the form and the Director of Human Resources, or designee, shall be notified within 30 minutes of the completion of the test if during a workday or at the beginning of the next workday if after hours. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, cancel the test, and upon direction of the Director or designee, shall begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number when using a EBT with that capability in the case of a confirmation test.

## **J. EMPLOYEES INABILITY TO PROVIDE AN ADEQUATE AMOUNT OF BREATH**

Whenever a Donor is unable, or alleges that he/she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the following procedure is to be used: (1) The BAT shall instruct the Donor to attempt to provide an adequate amount of breath. If the Donor refuses to try, the BAT shall immediately inform the Director of Human Resources, or designee; (2) If the Donor attempts and fails to provide an adequate amount of breath, the BAT shall note it in the remarks section of the breath alcohol testing form and immediately inform the Director of Human Resources, or designee; (3) Upon being informed, the Director of Human Resources, or designee, shall direct the Donor to obtain, as soon as practical after the attempted provision of breath, an evaluation from the City designated physician concerning the Donor's medical ability to provide an adequate amount of breath. If the City's designated physician finds, with a high degree of probability, that the Donor has a medical condition which could have precluded the Donor from providing an adequate amount of breath, the Donor's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The City's designated physician shall provide the Director of Human Resources, or designee, with a written statement of the basis for his/her medical judgment. If the City's designated physician cannot make such a determination, the Donor's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test and the City's designated Physician will provide the Director of Human Resources, or designee, with a written statement of the basis for his/her conclusion.

## **K. 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 Quality Assurance Plan (QAP) from the known standard. In this event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid. For this reason, the City of Corpus Christi requires calibration checks immediately after and on the same date as a result of 0.02 or above is obtained on the EBT to ensure that any disciplinary action taken based on these test results can be validated prior to any personnel action being taken.
- (2) The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test, as required by DOT regulations.
- (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, as provided in the DOT regulations.
- (4) The BAT does not sign the form as required by DOT regulations.
- (5) The BAT has failed to note in the Remarks section of the form that the Donor 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.
- (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 of alcohol concentration on the printed result.

#### **L AVAILABILITY AND INFORMATION DISCLOSURE OF ALCOHOL TESTING INDIVIDUAL EMPLOYEES**

A Donor subject to alcohol testing is entitled, upon written request, to obtain copies of any records pertaining to the Donor's use of alcohol, including any records pertaining to his/her alcohol tests. The Director of Human Resources, or designee, shall promptly provide the requested records and shall not make such records subject to payment for records other than those specifically requested.

The Director of Human Resources, or designee, shall make records available to a subsequent employer of the employee upon receipt of a written request from a covered terminating employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

The Director of Human Resources, or designee, may disclose information required to be maintained under DOT alcohol testing regulations pertaining to a covered applicant or employee to that applicant or employee or to the decision maker in a lawsuit, grievance, or

other proceeding initiated by, or on behalf of, the applicant or employee and arising from the results of an alcohol test administered under the requirements of DOT regulations. This includes, but is not limited to, worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the applicant or employee.

The Director of Human Resources, or designee, shall release information regarding a covered 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 is permitted only in accordance with the terms of the employee's consent.

**M. RECORDS RETENTION, MAINTENANCE AND DISCLOSURE OF RECORDS CONCERNING EBT's AND BAT's**

The City and the Collector, as its agent, shall maintain the following records for two years after termination or expiration of this Agreement:

- (1) Records of the inspection and maintenance of each EBT used in Donor testing;
- (2) Documentation of the City's compliance with the QAP for each EBT it uses for alcohol testing under DOT regulations;
- (3) Records of the training and proficiency testing of each BAT used in Donor testing;

The City and the Collector, as its agent, shall maintain records which pertain to the calibration of each EBT used in alcohol testing under DOT regulations, including records of the results of external calibration checks for five years after termination or expiration of this Agreement.

Required records to be maintained shall be disclosed as indicated elsewhere in this procedure.

Statistical data, format and reporting requirements of alcohol testing shall be separately maintained annually on a calendar year summary of the results of alcohol testing which meet the requirements of 49 CFR 382, et. al. and CFR 199, which includes the following informational elements:

- (1) Number of DOT screening alcohol tests by type of test broken out separately by Marina employees and other DOT employees;
- (2) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04 by type of test broken out separately by Marina employees and other DOT employees;

- (3) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater by type of test broken out separately by Drivers and other DOT employees;
- (4) Number of Donors who refused to submit to a DOT alcohol test broken out separately by Marina employees and other DOT employees.

One copy of each collection form completed for DOT alcohol and drug testing is to be forwarded to the Director of Human Resources, or designee, within one workday of the day tested.

## ATTACHMENT II

### PROCEDURE FOR MEDICAL REVIEW OFFICER

#### I. UPON RECEIPT FOR MEDICAL REVIEW OFFICER

Urine specimens will be collected using CCF procedures and using a HHS certified forensic drug testing laboratory to perform the urine specimen testing and test result reporting as required by 49 CFR, 40. The testing laboratory will transmit all test results directly to the Medical Review Officer (MRO). The transmittal from the laboratory will be by secured printer or fax machine or by other means agreed upon by the City, laboratory and MRO, to be provided by the MRO for that purpose in the MRO's facility. Results from the laboratory will not be transmitted by telephone.

A. Upon receipt of a **negative test result**, the MRO will perform the following steps:

1. Review the laboratory report **within one day of receipt** to ensure that applicant or employee identification information on laboratory test reports matches with the MRO's "collection" copy, and the individual is accurately identified as the person having a negative test report and that the CCF form and procedures were correctly followed.

**For applicants and employees tested under Department of Transportation (DOT) drug testing regulations a verification to be noted on the CCF form is required which indicates that the testing was performed by a HHS certified laboratory and that there was compliance with CCF procedures and forms as outlined in 49 CFR 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.**

2. Report negative test results for applicants and City employees to the Director of Human Resources, or designee.

B. **The MRO will Complete the review the same day of receipt of laboratory results for tests positive for cocaine, marijuana, and PCP and within two (2) workdays after receipt of all pertinent information for positive test results related to other substances. Upon receipt of positive test results, the MRO will perform the following steps:**

1. Review the laboratory report to ensure that applicant or employee identification information on laboratory test reports and MRO's collection copy match, the individual is accurately identified as the person having a positive test report and that the CCF form and procedures were correctly followed.
2. If the MRO has any questions about the test documentation or test analysis, the MRO may exercise the following two options:

- (1) Request the laboratory records regarding the specimen testing procedures followed.
- (2) Require the retest of a Primary Specimen should questions arise as to the accuracy or validity of a positive test result. **Only the MRO has the authority to order a reanalysis of the Primary Specimen using a certified laboratory prior to reporting result as positive.** Under DOT regulations, applicant or employee is not authorized to request a reanalysis of the **Primary Specimen**.

3. **Notification of the employee or applicant of positive test result**

- (A) The MRO or a supervised and trained staff person may make initial contact and a medically licensed or certified staff person may gather information from the applicant or employee, **but the MRO must communicate directly with the applicant or employee before verifying a test as positive.** The MRO shall tell the person that he/she is an agent of the City and advise the applicant or employee of the positive test result and the type of illegal drug or substance reported.

Since the City uses a split specimen method of collection, the **MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours (excluding weekends and designated City holidays) 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 HHS-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 non-testable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the City, and the applicant or employee.

If an applicant or employee has not contacted the MRO within 72 hours, as provided, in DOT regulations, the applicant or 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 person 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 split specimen, as applicable, be performed.

(B) The MRO may verify a test as positive without direct communication with the employee or applicant if:

1. The employee or applicant expressly declines the opportunity to discuss the test with the MRO.
2. If the MRO, cannot make contact with an applicant or employee within 24 hours from receipt of test results, the MRO, shall contact the City's Director, or designee. Failure of an applicant or employee to respond and contact the MRO within five (5) days of receipt of a documented contact by the City's Director will result in the MRO verifying the test as positive without having communicated directly with the applicant or employee. The MRO shall keep documentation on attempts to contact the applicant or employee.
3. When other legitimate circumstances occurred which unavoidably prevented the employee or applicant from contacting the MRO, such as serious injury or illness, the MRO may reopen the verification allowing the employee or applicant to present information relative to a confirmed positive test.

C. **Review of Medical History, Records and Other Biomedical Factors**

1. The MRO must review medical records to ascertain if a positive result is due from legally prescribed medication. This review is based on the person's doctor's report, copy of a prescription, or other proof of legitimate use of medication. The employee or applicant must provide such proof during the interview with the MRO to be held **within one (1) work day of contact if possible.**
2. The MRO's records must indicate one of the following valid medical explanations for a positive test which is reported by the MRO as "negative":
  - (a) legally prescribed or dispensed medication;
  - (b) ingested substances producing the same metabolites as illegal substances (e.g. poppy seeds and opiates).

In such cases, clinical evidence, in addition to the urine test, must be present of unauthorized use of any opium, opiate, or opium derivative, such as recent needle tracks and/or behavioral and psychological signs of acute opiate intoxication or withdrawal;

- (c) errors in CCF;
- (d) errors in laboratory technical analysis.

**D. Reporting Results of Medical Review of Positive Test Result**

1. If satisfied and there exist a valid medical explanation for a positive test, the MRO will inform the employee or applicant of the findings and reassure him/her of the confidentiality of all information related to the positive test. The MRO will then verify and personally sign that the test result is negative and report it accordingly to the Director.
2. Upon conclusion that no legitimate medical reason exists for a positive test, the MRO will report a "verified" positive test to the Director and may refer an employee to the City's Employee Assistance Program.

**E. Medical Review Officer's Notification to the City**

Within three business days of completion of the medical review by the MRO, the MRO may initially report the test results to the Director of Human Resources, or designee, using any communications device, but in all instances a signed, written notification must be forwarded **within three business days** of completion of the MRO's review, and shall include the following:

- a. State that the drug test being reported was in accordance with 49 CFR, 40;
- b. State the name of the individual for whom the test results are being reported;
- c. State the type of test indicated on the CCF form, i.e., random, post-accident, etc.;
- d. State the date and location of the test collection;
- e. state the identities of the persons or entities performing the collection, analysis of the specimens and serving as the MRO for the specific test;
- f. State the verified results of a drug test, either positive or negative, and if positive, the identity of the drug(s) for which the test was verified positive; and

- g. State that the MRO has made all reasonable efforts to contact the driver as provided in 40.33(c). The Director of Human Resources, or designee, as soon as practicable, shall request that the crewmember contact the MRO prior to dispatching the crewmember or within 24 hours, whichever is earlier.

#### **F. Employees or Applicant's Request for Retest**

Requested retest by employees or applicants received by the MRO **after** the MRO has verified a positive test to the Director will be communicated to the Director who shall make the decision on retesting **of the primary sample of urine** based on the retesting provisions in the applicable City policy, providing the request is received within sixty (60) days of verification of the final test result from the MRO.

As provided in 49 CFR, 40, if the test result of the primary specimen is positive, the applicant or employee may request that the MRO direct that the split sample be tested in a different HHS-certified laboratory for presence of the drug(s) 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. Upon receipt of the result of the test of the split specimen which reaffirms the results of the test of the primary specimen, the employee and the Director shall be notified within one work day. Upon receipt of the result of the test of a split specimen which fails to reconfirm the presence of the drugs(s) or drug metabolites 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.

**Fee for transferring and retesting of split specimen to another HHS certified laboratory, upon timely request to MRO by a City applicant or employee, is to be paid by cash, cashier's check, or money order by the requesting applicant or employee directly to the HHS certified laboratory performing the testing except for split: specimen testing requests for Firefighters which will be paid for by the City.**

#### **G. Invalid or Canceled Test**

Per 49 CFR 40, Section 4.03 a drug test which is declared invalid by a MRO is a "canceled" test and is neither positive or negative. The MRO shall contact the Director of Human Resources, or designee, who shall direct a retest (same type of test, e.g. canceled test a random/retest a random, etc ...) to provide either a positive or negative test result.

## **II. DISCLOSURE OF INFORMATION**

The MRO will not disclose to any third party medical information, drug testing results, or rehabilitation records provided to the MRO as part of the testing verification process except as follows:

- A. Disclosure may be made to the Director, a Department of Transportation (DOT) Agency representative, to employees or applicants, or to a physician responsible for determining the medical qualification of the employee or applicant under DOT regulations, as part of an accident investigation, or where the information indicates that continued performance by an employee of his/her safety-sensitive function could pose a significant safety risk.
- B. As Part of the verification process, the MRO shall inform the employee or applicant of third parties who receive disclosures as noted above. The identify of such parties who receive information may be disclosed to the applicant or employee.
- C. Upon written request, any employee or applicant who is subject to a drug test conducted by the City shall have access from the MRO 'to any records relating to that drug test or to review certification or revocation of certification records.
- D. Statistical data related to drug testing and rehabilitation that is not name specific and which is formatted to comply with record keeping requirements of 49 CFR 40 must be made available to the DOT, or designee, and the Director of Human Resources, or designee, upon request.

## **III. MRO STEPS IN REHABILITATION OF EMPLOYEE AND RETURN-TO-DUTY DETERMINATION AFTER SELF-DISCLOSURE BY AN EMPLOYEE PRIOR TO BEING DIRECTED TO TAKE A DRUG AND/OR ALCOHOL TEST UNDER THIS POLICY.**

- A. The MRO makes a return-to-duty recommendation regarding when an employee covered by DOT Regulations may be returned to duty.
- B. Per Coast Guard Regulation, 46 CFR, 16, before an employee who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the MRO shall determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his/her return to work. In addition, the individual shall agree to be subject to increased, unannounced testing for a period as determined by the MRO of up to 60 months.

## **IV. BLIND SAMPLES REQUIRED BY DOT FOR PARK AND RECREATION/MARINA DEPARTMENT PERSONNEL**

- A. The MRO shall obtain and submit three (3) blind performance test specimens for each 100 specimens processed and advise the Director whenever a blind sample has been submitted and the results of the test ascertained.
- B. Approximately **80%** of the blind performance test samples shall be blank (i.e., containing no drug) and the remaining samples shall be positive or "spiked" for one or more drugs per sample. Spiked samples are limited to marijuana, cocaine, opiates, amphetamines, and PCP.
- C. Upon receipt of a false positive error on a blind sample which is determined to be a technical or methodological error, the MRO will advise the Director who will notify the Coast Guard Commandment, or designee.

## V. RECORD KEEPING

The following records must be maintained by the MRO in a separate, secured location with access restricted to the MRO and only his/her authorized staff. In addition, all records are subject to review **by the** Director and DOT representatives. **DOT drug testing records must not be filed together with other City records.** Separate statistical data must be kept on all tests for employees covered by 49 CFR 199, Research and Special Programs Administration, and for 49 CFR 382, et.al., Federal Highway Administration, for Titles 33 and 46 of the Coast Guard Regulations, and for other non-DOT City employees tested under City Policies.

- 1. Drug testing data demonstrating collection **processes** conformed to requirements of **49** CFR, 40 (5 year retention).
- 2. Records on failed drug test results for employees and applicants must be retained for five (5) years and include the following specifics:
  - a. Number of employees and applicants who failed a drug test by type of test;
  - b. Records that demonstrate rehabilitation;
  - c. Function performed by employees who failed a test;
  - d. Prohibited drug(s) used
  - e. Age of person.
- 3. Individual records on negative drug tests for employees and applicants must be kept for one (1) year.

4. Individual records on number of employees tested by type of test must be kept for five (5) years (e.g. post-accident/marine casualty).
5. Individual records maintained on blind samples sent to the certified laboratory in compliance with 49 CFR, 40, must be kept for five (5) years.

**VI. MEDICAL SERVICES PROVIDED BY THE MRO**

Medical services provided by the MRO shall include legal depositions, courtroom testimony, evaluation of test results, and advice about medical matters related to drug testing as requested by the City in connection with grievances, arbitration's claims and lawsuits or other proceedings arising from the City's reliance on such test results.



**Attachment IV**  
**Random List Generation Procedures**  
**Coast Guard Regulations, Titles 33 and 46**

The following procedure shall be followed and provided in generating lists for random drug testing:

1. The list-generation Provider ("Provider") will be given information on initial pools of "covered" employees under Coast Guard Regulations. Each listing will include social security numbers which are the employees' City identification numbers. The number of employees may vary based on the number of filled budgeted positions each fiscal year.
2. Due to turnover it is required that the Provider have a fax machine so that daily updates to the eligible pool of employees can be accomplished. Provider is to use this information to update the specific pool which MUST be done prior to the generations of the next list from that pool. Updating information may include the addition of new employees, deletion of terminated ones, and adding or deleting transferred employees. It will enable list generation without "flags" to any employee as to when a list may be forthcoming.
3. When the pool of covered employees is up to date on the day of list generation, a pre-set percentage of the pool is to be randomly selected. Coast Guard regulations require random drug testing of fifty percent (50%) of covered employees to be prorated over a twelve (12) month period. Required percentages may change as dictated annually by the Coast Guard Commandant in the Federal Register.

**Employees to be tested will be selected by a computer-based random number generator that is matched with an employee's social security number.**

4. The day of the week and week of the month the list is generated, shall be randomly selected by the list Provider. A minimum of twelve (12) lists per year will be required per pool.
5. If the Marina Division of the Park & Recreation Department uses contractors and sub-contractors, the City of Corpus Christi must have flexibility to include them in the random testing program if they do not have their own program in compliance with Coast Guard regulations.
6. A pre-set percentage of employees will be randomly selected allowing an excess over the actual number needed to meet the required percentages. Selection of greater number of employees for each list enables the City to reach the appropriate annualized rate despite employee unavailability for testing due to vacations, medical leave, or travel requirements. The Provider will be responsible for monitoring the number of tests given each month to ensure that the annualized rate is reached.
7. Testing will begin with the first name on the list and move sequentially down the list. If the employee is on pre-approved vacation, personal leave, sick leave, or is unavailable for

any other legitimate reason at the time of testing, he/she will not be tested. The random list will be annotated to indicate the reason for an employee not being available. The list format should include a "comments" area by each name.

8. Testing is completed under each list when the designated percentage of collections is achieved, or when the bottom of the list is reached, whichever comes first.
9. Regardless of the number of times a random list is generated from a specific pool, ALL covered employees are to be included in the random list pool each time a list is generated. All employees will continue to have a statistically-equal chance of designation for testing each time.
10. The Provider shall retain records related to the administration of list updating and preparation. Copies of all lists generated must be maintained for five (5) years after the service provider agreement is terminated and be available for review by the City of Corpus Christi and applicable Coast Guard personnel for the purpose of monitoring the City's compliance with Coast Guard regulations.
11. The Provider shall designate knowledgeable personnel to provide information to Coast Guard and City representatives authorized by the Director and to testify in Civil Service hearings, lawsuits, depositions, etc. as required.
12. Lists are to be maintained confidentially and secured by the Provider. Individuals involved in list compilation and generation must have no ties to individuals in the pool. After generation, lists are to be forwarded by the Provider by courier to the Director of Human Resources, or designee, in a manner which protects the integrity of the list and prohibits other persons from seeing it.
13. The list format is subject to approval by the Director of Human Resources and/or Director of Park & recreation, or their designee.
14. Where questions or problems arise related to the list generation process, the Director of Human Resources, or designee, must be consulted immediately.
15. Lists provided for the Coast Guard pool must include the employees' full names and social security numbers. The list format must include a "comments" area by each name.

**ATTACHMENT VI  
EMPLOYMENT ACKNOWLEDGEMENT FORM**

I have received a copy of the City of Corpus Christi's Policy on Drug and Alcohol Use and Testing for Drivers of Licensed Marina Personnel Subject to U.S. Coast Guard Regulations CFR Titles 33 and 46. I understand that compliance with this Policy is a condition of employment with the City of Corpus Christi for all crewmembers hired prior to and after the effective date of this Policy, \_\_\_\_\_. I understand that my Department Head, or the Director of Human Resources, or designee, are the persons I am to contact should I have questions regarding this Policy.

I have carefully heard and/or read this policy and understand its content. I have been given an opportunity to ask questions about this Policy and receive explanations in English and Spanish. I agree to comply with this policy. I understand that failure to do so will result in my being in violation of this policy and will subject me to disciplinary action up to and including termination on the first offense.

I understand that this policy will become effective \_\_\_\_\_, 200\_\_, and that random drug testing will commence within 30 days of that date.

\_\_\_\_\_  
(PRINT) Employee's Name

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee's Social Security #

\_\_\_\_\_  
Employee's Job Title

\_\_\_\_\_  
Department Name

\_\_\_\_\_  
Activity Number

**ATTACHMENT V**

**RANDOM DRUG TESTING POOL  
DRUG AND ALCOHOL USE AND TESTING POLICY FOR  
LICENSED MARINA PERSONNEL SUBJECT TO U.S. COAST  
GUARD REGULATIONS, CFR TITLES 33 AND 46**

**CITY POLICY H.R. 15.5**

Incumbents in the following positions are subject to random testing under the City of Corpus Christi's Drug and alcohol Use and Testing Policy for Licensed Marina Personnel Subject to U.S. Coast Guard Regulations, CFR Titles 33 and 46:

Marina Superintendent		
Marina Field Supervisor		
Marina Specialist I		
Marina Specialist II		
Marina Specialist III		
Senior Marina Specialist		
Marina Maintenance Foreman		