SUBSTANCE ABUSE TESTING OF SAFETY SENSITIVE EMPLOYEES

I. GENERAL
The Fairbanks North Star Borough is a drug free workplace. All employees classified as safety sensitive are required to comply with the provisions of this policy.

A. NOTICE OF TESTING

1. This policy/procedure will act as notice of Drug and Alcohol Testing for all safety-sensitive employees of the Fairbanks North Star Borough (Borough) as prescribed by the Omnibus Transportation Employee Testing Act of 1991 and DOT regulations; 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs". Employees of the Transportation Department are subject to the Federal Transit Administration regulations 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Employees of the Public Works Department are subject to the Federal Motor Carrier Safety Administration regulations 49 CFR Part 382 "Controlled Substances and Alcohol Use and Testing". Copies of these regulations are available for review in Transportation Department Dispatch and Maintenance Offices, the Public Works - Solid Waste Landfill Office, or the Human Resources Office.

2. Every employee of the Transportation Department, Public Works Department and/or contractor of the department who holds a position which would be defined as safety-sensitive (Covered Employee) is also subject to regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991. (See Attachment 1 for list of safety-sensitive positions).

3. The Borough may also test covered safety-sensitive employees in departments other than Transportation under the Borough’s own authority as described herein. Such testing will be consistent with requirements set for by the US DOT in 49 CFR, Part 40

4. Each safety-sensitive employee will receive and sign a copy of this substance abuse testing policy and procedure.

II. PURPOSE

A. PURPOSE OF EMPLOYEE DRUG AND ALCOHOL TESTING

1. The Borough is committed to providing a safe work place for all its employees that is free of the effects of substance abuse and is committed to employee health. Since the Borough is involved in public service, the community depends on careful attention by all employees. Such attention cannot be affected by the use of drugs and/or alcohol.
2. The Borough expects all employees to report for work in condition to perform their duties. On-the-job involvement with drugs and/or alcohol is a violation of Borough Policy, State and Federal law. The Borough also recognizes employee off-the-job involvement with drugs and alcohol can have an impact on the work place and our ability to accomplish the goal of a safe, effective, drug and alcohol-free work environment.

3. This document provides a uniform procedure concerning the testing of employees or applicants for employment in safety-sensitive positions to detect individuals having drugs and/or alcohol in their systems. The purpose of such testing is to provide, in the interest of the safety of employees, passengers, and the general public, work and service environments that are free from the effects of drug and alcohol abuse.

4. The use of any drug, or alcohol, can interfere with the safe and efficient functioning of the Borough's personnel. Since the Borough's goal is to provide a safe work place and have employees function in the most effective manner, drug or alcohol abuse is a matter of Borough concern and will be dealt with in an appropriate manner.

III. RESPONSIBILITY

A. Department directors shall ensure that their department staff follows the procedure set forth in this policy.

B. Compliance with this policy is the responsibility of all Borough employees in safety-sensitive positions.

C. Human Resources shall maintain this policy.

IV. POLICY

A. CONDITION OF EMPLOYMENT

Participation in the Borough's Substance Abuse Policy and Procedures and subsequent testing program is a requirement of each safety-sensitive employee and therefore, is a condition of employment. All covered Transportation employees must submit to drug and alcohol testing in accordance with 49 CFR Parts 40, and 655 and all covered Public Works employees must submit to drug and alcohol testing in accordance with 49 CFR Part 382.

B. PROHIBITED BEHAVIOR

The Borough, as a recipient of Federal funds, is required to provide a drug-free workplace for its employees. In complying with the Drug-Free Workplace Act of 1988, the Borough believes its employees must adhere to strict standards of conduct both on and off the job to meet our goal of providing a safe work
environment and to continue to fulfill our responsibility to provide efficient and reliable service to our customers.

Borough Policy and Procedure 65.07 has a zero tolerance on drugs and alcohol. Therefore:

1. The use, sale, manufacturing, or possession of narcotics, drugs or controlled substances, or the use or possession of alcohol while on the job or at a Borough work site is proper cause for disciplinary action up to and including termination of employment. Any Covered Employee reasonably suspected of using a prohibited drug and/or engaging in alcohol misuse while on a Borough work site or while on duty will be required to submit to substance abuse testing, which will include both urinalysis and breath testing, to determine fitness for duty. Refusal to submit to substance abuse testing is an act contrary to the Borough's Substance Abuse Policy and Federal requirements. Illegal substances confiscated will be turned over to the appropriate law enforcement agency.

2. Off-the-job drug and/or alcohol use may adversely affect an employee's job performance and could jeopardize the safety of other employees, the public or municipal equipment. Therefore, any Covered Employee reporting to work while using a prohibited drug and/or engaged in alcohol misuse will be subject to substance abuse testing and disciplinary action up to and including termination.

3. Employees who are arrested for off-the-job drug and/or alcohol activity may be suspended (without pay) in appropriate cases pending disposition of the criminal prosecution. Employees who are convicted for off-the-job drug and/or alcohol activity may be considered in violation of Borough policy against substance abuse and may be disciplined up to and including termination.

4. Employees who are taking prescription or non-prescription lawful drugs that may affect the performance of their job duties must report such usage to their immediate supervisor before beginning their workday. Such drugs used on the job may be determined to be allowable drugs if the medical review officer has determined that the use of the drug is consistent with safe performance of the employee's duties and the drug is being used at the prescribed dosage.

5. Each Covered Employee, pursuant to the Drug Free Workplace Act is required to notify his/her supervisor, within five (5) calendar days of any conviction, that he/she has been convicted of a drug crime occurring in the workplace.

The Borough is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors and managers are directed to use and apply all aspects of this procedure in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this procedure, or who is found to deliberately misuse the procedure in regard to
subordinates, shall be subject to disciplinary action, up to and including termination.

C. HOURS OF COMPLIANCE

In accordance with 49 CFR Part 655 and 49 C FR Part 382, this policy sets forth the time periods when all safety-sensitive employees must be in compliance with the alcohol rule. A safety-sensitive employee must not consume alcohol while performing safety-sensitive functions, four hours prior to performing safety-sensitive functions (for Transportation Department employees) or eight hours prior to performing safety-sensitive functions (Public Works Department employees) and up to eight hours following an Accident or until the employee undergoes a post-accident test, whichever occurs first. Alcohol testing may only be performed just before an employee performs safety-sensitive functions, during the time the employee is performing safety-sensitive functions, or just after an employee has ceased performing such functions.

In accordance with 49 CFR Part 655 and 49 CFR Part 382, the use and ingestion of prohibited drugs is prohibited at all times. Testing for prohibited drug use may occur any time the employee is on duty.

D. CIRCUMSTANCES OF DOT DRUG AND ALCOHOL TESTING

Six substance abuse testing categories defined by the US DOT are applicable for Covered Employees of the Borough in accordance with 49 CFR Part 655 and 49 CFR Part 382. Breath shall be used for the alcohol testing and urine shall be used for the drug testing.

1. Pre-Employment Screen: Included in the Borough Job Announcement/Description is a notice of drug screening required of all safety-sensitive applicants. If an applicant qualifies for and is considered for a safety-sensitive position, he/she will be scheduled for collection of a urine sample for drug screening at a Borough selected laboratory (this includes new department employees and employees transferring from a non-safety-sensitive position to a safety-sensitive position). If an applicant refuses to be tested or tests positive, the application will be rejected. An applicant with a cancelled test must take another pre-employment drug test with a verified negative result prior to performing a safety sensitive function.

No applicant shall be hired or transferred to perform a safety-sensitive function until they have taken a drug test with a verified negative result administered under this policy. In addition, if an employee’s status within the Borough changes (i.e., does not perform safety sensitive functions, seasonal layoff, leave of absence or reassigned for Workers’ Compensation for a period of 90 days or longer and has not been in the employer’s random
selection pool), a pre-employment test is required prior to reassignment to perform safety-sensitive functions.

As part of the hiring process, the applicant is required to authorize the Borough to request the following information from DOT-regulated employers who have employed the applicant during any period during the two years before the date of application or transfer with the Borough: (1) Alcohol tests with a result of 0.04 or higher alcohol concentration; (2) Verified positive drug tests; (3) Refusals to be tested (including verified adulterated or substituted drug test results); (4) Other violations of DOT agency drug and alcohol regulations; and (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee’s successful completion of DOT return-to-duty requirements (including follow-up tests.) If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), the Borough is required to seek and obtain the information from the employee.

An applicant who is disqualified or an employee who is dismissed based on a positive drug and/or failed alcohol test result may reapply for employment one (1) year after the disqualification or dismissal took place. The applicant or employee must submit to the Human Resources Director a certificate on which the attending Substance Abuse Professional (SAP) certifies that the individual has successfully participated in an appropriate treatment program. The treatment program will typically be at least twelve (12) months duration, including in-patient/out-patient treatment, and after-care. The individual may not have tested positive at any point during the treatment program. The program must have included unannounced testing at the cutoff levels defined in this policy.

2. **Post-Accident Testing:** Post-accident testing is mandatory where there is loss of life and for all non-fatal accidents as described below:

   a) Fatal Accident:

      (i) All surviving employees operating the vehicle at the time of the accident.

      (ii) All other Covered Employees whose performance could have contributed to the accident.

   b) Non-Fatal Accident – Transportation Department Employees:

      (i) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident. This includes incidents where a person is injured on the bus but not as a result of an
accident (i.e., there is no collision but an individual falls on the bus and requires immediate transport to a medical treatment facility).

(ii) One or more of the vehicles involved incurs disabling damage as a result of the occurrence and is transported away from the scene by a tow truck or another vehicle. Disabling damage is defined as damage, which precludes the departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs. This includes damage to vehicles that could have been driven but would have caused further damage by such movement (i.e., limped away). Disabling damage does not include damage that can be readily fixed on the scene, tire disablement, headlight or tail light damage, or damage to turn signal, horns or windshield wipers.

(iii) All Covered Employees operating the vehicle or whose performance could have contributed to the accident must be tested UNLESS their performance can be COMPLETELY DISCOUNTED as a contributing factor, based on the best information available at the time of the decision. This shall include employees who had recently performed maintenance activities that are linked to the cause of the accident.

c) Non-Fatal Accident – Public Works Department Employees:

(i) The Covered Employee whose performance could have contributed to the accident, as determined by a citation for a moving violation if:

(a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or,

(b) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

d) In all accidents, the investigating supervisor shall complete the decision matrix (Attachment 2A for Transportation or 2B for Public Works). The decision matrix shall be used to determine the need to conduct a post-accident test under the provisions of 49 CFR Part 655 or 49 CFR Part 382. The decision matrix shall be attached to and accompany the accident report.

e) Post accident drug and alcohol tests must be conducted as soon as possible after the accident. The alcohol test must be administered first.

(i) Attempts to complete the Post Accident alcohol testing must be done within two (2) hours after the accident. If unable to obtain a specimen within the 2 hours, the employer will document the reason(s) why and continue attempts to obtain a specimen. If unable to obtain a
specimen within eight (8) hours, the employer will cease attempts to obtain a specimen and update the 2-hour report.

(ii) Attempts to complete the Post Accident drug testing must be done within eight (8) hours after the accident. If unable to obtain specimen within 8 hours, the employer will document the reason(s) why and continue attempts to obtain a specimen. If unable to obtain a specimen within 32 hours, the employer will cease attempts to obtain a specimen and update the 8-hour report.

(iii) The requirement for drug and alcohol testing after an accident should in no way delay necessary medical attention for injured people or prohibit a safety-sensitive employee from leaving the scene of an accident to obtain assistance in responding to the accident, assisting in resolution of the accident or to obtain necessary emergency medical care.

(iv) If the Borough is unable to perform a post-accident test within the required time period, the results of blood, urine or breath test, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this policy provided such tests conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the Borough.

(v) Any employee involved in a collision requiring post-accident testing where there is a fatality or injuries treated away from the scene (for Transportation employees) or where a citation was issued (for Public Works employees) shall be removed from duty and placed on administrative leave pending the results of the drug test, provided the accompanying alcohol test is negative.

3. **Reasonable Suspicion:** “Reasonable Suspicion” means that the Borough, while acting through trained supervisory personnel, has reasonable suspicion to believe that the Covered Employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion testing is required when a trained supervisor(s) can articulate and substantiate physical, behavioral, and performance indicators of probable drug or alcohol misuse by directly observing the appearance, behavior, speech or body odors of the Covered Employee. Any employees tested under this clause shall be removed from duty and placed on administrative leave pending the results of the drug test, provided the accompanying alcohol test is negative. The Borough’s reasonable suspicion observation checklist is included as Attachment 3.

4. **Random:** Random testing will be conducted in accordance with procedures established in 49 CFR Parts 655 and 382. All Safety Sensitive Employees will
be subject to testing on an unannounced/random basis and the employee will immediately report to the testing site when notified. The number of random tests to be conducted will be based upon the DOT minimums as established each calendar year. All Safety Sensitive Employees will remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing. The random selection process shall be a scientifically valid method, such as a random number table or a computer-based random number generator, ensuring that every Covered Employee has an equal chance of being tested each time selections are made. There is no discretion on the part of management in the selection and notification of individuals for testing.

The dates for administering unannounced testing of randomly-selected Covered Employees shall be spread reasonably throughout the calendar year, ensuring Covered Employees the reasonable expectation of being called upon for testing on any day they are at work or at any time during their workday and there is no period during which testing is halted. Testing is conducted on all days and all hours employees are performing safety-sensitive duties. If a safety-sensitive employee is unavailable to be tested on the random selection date because the employee is on Paid Leave or Leave Without Pay on the date they are to be tested, the employee will be tested upon their return.

5. Return to Duty: The Borough must ensure that an employee who has refused to take a drug or alcohol test, or failed such a test, has complied with the return-to-duty procedures established in 49 CFR Part 40 Section 0. That the employee:

i) Has been evaluated by a Substance Abuse Professional to determine whether the Covered Employee has properly followed the recommendations for action by the Substance Abuse Professional, including participation in any rehabilitation program.

ii) Has taken a return to work drug test with a verified negative result or an alcohol test with a result indicating an alcohol concentration of less than 0.02. Return to duty tests require observed collections.

6. Follow-up: Once allowed to return to duty, an employee shall be subject to unannounced follow-up testing for at least 12 but not to exceed 60 months. The frequency and duration of the follow-up testing will be recommended by the Substance Abuse Professional as long as a minimum of six tests are performed during the first 12 months after the employee returns to duty. Follow-up testing may include testing for prohibited substances, alcohol or both. Follow-up testing is separate from and in addition to the random testing program. Follow-up tests require observed collections.

E. TRAINING
1. All safety-sensitive employees will attend a minimum of 60 minutes of substance abuse educational training.

2. All supervisory and management level employees will attend a minimum of 60 minutes training on drugs plus an additional 60 minutes (minimum) of training on alcohol. Supervisors shall also be trained in the reasonable suspicion detection of substance abuse.

F. SUBSTANCES TO BE INCLUDED IN TESTING

In accordance with 49 CFR Parts 40 and 655, Alcohol (Ethanol), amphetamines, cannabinoids (marijuana), cocaine, Opioids, phencyclidine (PCP), and their metabolites will be included.

G. MEDICAL REVIEW OFFICER (MRO)

The Medical Review Officer (MRO) will verify all drug testing results (positive, negative, adulterated, diluted and substituted) received from the testing laboratory. If a positive test (including a diluted positive test) is reported by the laboratory after running the confirming GC/MS test, the MRO will interview the employee and review all information provided by the employee to determine whether the results are indicative of illegal or illicit drug usage in accordance with 49 CFR Part 40. If the employee provides a legitimate explanation and the supporting information is confirmed by the MRO, the MRO will report the test as negative to the Substance Abuse Designated Employer Representative (DER). If the information provided by the employee does not justify the test results, the MRO will report the test as positive to the Substance Abuse Designated Employer Representative (DER) and notify the employee that they have the right to request a split specimen test.

1. If the test result of the primary specimen is positive, the employee may request the MRO to direct the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen.

2. The initial cost for transportation and testing of the Split Sample will be paid by the Borough. The cost of all split-sample testing will be charged back to the employee unless the split-sample test results are reported by the MRO as a Cancelled Test.

3. Action required by the employer as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the test of the split specimen.

4. The MRO shall honor such a split-sample test request if it is made within 72 hours of the employee having been notified by the MRO of a Verified Positive Test result. Employees do not have access to a test of their split sample specimen following an invalid result.
5. The MRO will inform the laboratory in writing that the employee has requested a test of the split specimen. The laboratory shall forward to a different DHHS-approved laboratory, the split specimen bottle with seal intact, a copy of the MRO request and the split specimen copy of the chain of custody form with appropriate chain of custody entries.

6. The results of the test of the split specimen shall be the final test results and shall be reported by the second laboratory directly to the MRO.

7. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test and report the cancellation and the reasons for it to the US DOT, the employer, and the employee.

8. If laboratory analysis detects the presence of an adulterant in the primary specimen, the MRO shall report it as such and it will be considered a refusal to test.

9. If the initial test results in a diluted positive test, the test will be treated as a Verified Positive Test. If the diluted test is negative, the MRO will notify the DER so that another test can be immediately taken. If the employee refuses to take the second test, the test shall be treated as a positive. The second test must not be collected under direct observation, unless there is another basis for the direct observation. If a second test is taken due to a Diluted Specimen, the second test becomes the test of record. If the second test results in another dilute negative, the second result stands and the employee is not required to undergo another test, unless directed to do so by the MRO.

10. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

H. MRO AND LABORATORY CONFIDENTIALITY

The laboratory and MRO shall maintain strict confidentiality of all test results in accordance with 49 CFR Part 40.

I. MRO VERIFICATION OF PRESCRIPTION

1. When a tested employee is taking a prescribed medication, after verifying the prescription and immediately notifying the employer of a verified negative result, the MRO must then (after notifying the employee) wait five (5) business days to be contacted by the employee’s prescribing physician before notifying the employer of a medical qualification issue or significant safety risk.
2. Specifically, in cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO. The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327.

J. DRUG TESTING CUTOFF LEVELS

Drug testing shall be conducted in accordance with the procedures set forth in 49 CFR Part 40.

K. DRUG TESTING PROCEDURES

The use of any of the five prohibited drugs or classes of drugs as required by 49 CFR Part 40 is always illegal; therefore, drug testing may be conducted at any time while a Covered Employee is on duty.

The Borough shall identify and select, only qualified medical facilities certified by the DHHS to perform the urinalysis testing described by this policy. The specimens will be collected at designated collection facilities that optimize confidentiality and observe DOT collection procedures as prescribed in 49 CFR Part 40.

Borough supervisory personnel will coordinate appointments for urine collection for drug screens. Supervisors will always transport employees to the test site for post-accident and reasonable suspicion testing. If there is concern about an individual's ability to function safely, that individual will be provided transportation to their home after completion of the drug testing.

1. Specimen Collection Procedures and Requirements
   a) Collection Site: The designated collection site shall be secure and shall have an enclosure within which private urination can occur, a toilet for completion of urination and a suitable clean surface for writing.
b) **Security:** The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer. If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed mailer is transferred for shipment, the procedures described in 49 CFR Part 40 shall apply.

c) **Chain of Custody:** A chain of custody form (and a laboratory internal chain of custody document, if applicable) shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen.

d) **Access to Authorized Personnel Only:** No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored.

e) **Outer Clothing, Purses, and Pocket Contents:** In accordance with 49 CFR Part 40.61, the employee will be asked to remove all outer clothing (e.g. coveralls, jacket, coat, hat) and leave them outside the toilet area along with purses, briefcases, etc. Wallets are permitted to be retained during the collection process. Employees will be asked to empty their pockets and display the items to the collector. Failure to comply with these provisions constitutes a refusal to test.

f) **Privacy:** There shall be individual privacy when providing a urine sample unless there is a valid reason to conduct a directly observed urine collection. Directly observed collection must be done with an observer of the same gender as the employee. The employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist to just above the navel; and lower clothing and underpants to mid-thigh to show the collector, by turning around that they do not have a prosthetic device.

(i) The following circumstances are the exclusive reasons for conducting a directly observed urine collection:

(a) All Return to Duty tests

(b) All Follow-up tests

(c) The employee has presented a urine specimen that falls outside the normal temperature range (32-38°C/90-100°F): or there are signs of tampering with the urine specimen; or,

(d) The collection site person observes materials brought to the collection site or the employee’s conduct clearly indicates an attempt to tamper with a specimen; or,

(e) The laboratory reported to the MRO that a specimen is invalid and the MRO reports there was not a valid medical explanation for the result; or,
(f) The MRO reported the original positive, adulterated, or substituted test had to be cancelled because the test of the split specimen could not be performed; or,

(g) The recollection was not directly observed as required.

(ii) A higher-level supervisor of the collection site representative, or a Designated Employer Representative, shall review and concur in advance with any decision by a collection site representative to obtain a specimen under direct observation of a same gender collection site representative based solely upon the circumstances described above.

g) Transportation to Laboratory:
Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory in accordance with 49 CFR Part 40.

h) Failure to Cooperate:
If the employee refuses to cooperate with the collection process in a way that prevents the completion of the test, the collection site representative shall document the non-cooperation on the drug testing custody and control form in the remarks section of the form. The testing process shall be terminated and the collection site representative shall immediately notify the DER. The test is a refused test.

i) Shy Bladder:

(i) This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he/she is unable to provide an amount of urine sufficient to permit a valid drug test.

(ii) The employee will be urged to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three (3) hours or until the employee has provided a sufficient urine sample, whichever occurs first.

(iii) If the employee fails to provide a sufficient urine sample within three hours of the first attempt, the collector will discontinue the collection process, shall so note in the “Remarks” section of the collection form and immediately inform the DER of an insufficient sample.

(iv) The DER must, after notification of the inability to provide a sufficient sample and after consultation with the MRO, direct the employee to obtain within five (5) working days, an evaluation from a licensed physician, acceptable to the MRO. The physician must report the finding of the evaluation to the MRO (either there is or is not a valid medical reason for the insufficient sample) and the MRO will then
determine whether the shy bladder was a refusal to test or not (see 49 CFR Part 40.194). The MRO shall notify the DER of the final decision.

j) Employee Requiring Medical Attention:

If the sample is to be collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen. See Section IV. D. (2) e (iv) of this policy for other acceptable testing methods under this circumstance.

L. ALCOHOL TESTING PROCEDURES

Alcohol testing may only be performed just before an employee performs safety-sensitive functions, during the time the employee is performing safety-sensitive functions, or just after an employee has ceased performing such functions. Alcohol testing will only be conducted using Evidential Breath Testing Devices in accordance with 49 CFR Part 40.

Supervisors will always transport employees to the test site for post-accident and reasonable suspicion testing. If there is concern about an individual's ability to function safely, the individual will be provided transportation to their home after completion of the testing.

The Borough shall identify and select only qualified medical facilities to be qualified breath alcohol technicians (BATs). Only trained and certified BATs will administer alcohol breath testing. The breath specimen will be collected at a site that optimizes confidentiality. A strict chain of custody will be maintained on the specimen and all record keeping will be in strict accordance with Federal regulations.

If the initial test results are less than .02 alcohol concentration, the test results are negative and will be reported by the BAT as such. If the initial test results are .02 or greater, a confirmatory test must be conducted.

Procedures for Breath Alcohol Testing:
When the employee enters the alcohol testing location, the BAT will require him/her to provide positive photo identification. On request by the employee, the BAT shall provide positive identification to the employee. Breath alcohol testing procedures shall be as followed as described in 49 CFR Part 40.

An employee with a confirmed breath alcohol test between .02 and .03999 will be immediately removed from duty and the employee will not be allowed to perform safety sensitive duties until a minimum or eight (8) hours have passed since the test for Transportation Department Employees (CFR655.34), or twenty four (24) hours after the administration of the test for Public Works Department Employees (Part 382.505). The employee will be subject to the provisions of the Transportation Department Attendance Policy.
A confirmed breath alcohol of .04 or above the employee must be immediately removed from his/her safety sensitive position, be informed about educational and rehabilitative programs, and be evaluated by a Substance Abuse Professional (SAP). The determination of the SAP will guide further decisions regarding continued rehabilitation and employment of the employee.

**Alcohol Test Reporting:**

1. All communications by BATs concerning the alcohol testing results of employees shall be to the DER.

2. The BAT shall ensure immediate transmission to the DER of results that require the employer to remove the employee from performing a safety-sensitive function.

3. The DER shall store alcohol-testing information to ensure that confidentiality is maintained.

**Refusals to Test and Uncompleted Tests:**

1. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the DER. The test is a refused test.

2. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

**Inability to Provide an Adequate Amount of Breath:**

1. This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he/she is unable to provide an amount of breath sufficient to permit a valid breath test.

2. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the DER.

3. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the “Remarks” section of the breath alcohol testing form and immediately inform the DER.

4. If the employee attempts and fails to provide an adequate amount of breath, the employer shall proceed as follows:
a) The employer shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability to provide an adequate amount of breath.

b) If the physician determines, in his or her reasonable medical judgment, that a medical condition has or with a high degree of probability, could have precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the DER (and MRO if the DER requests) a written statement of the basis for his or her conclusion.

c) If the licensed physician, in their reasonable medical judgment, is unable to make the determination of this section the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The licensed physician shall provide a written statement of the basis for his or her conclusion to the DER (and MRO if the DER requests).

M. BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST

Behavior that constitutes a refusal to submit to a drug or alcohol test includes the following:

1. Verbal or written refusal to provide a required urine or breath specimen.

2. Failure to appear for any test (except for pre-employment) within a reasonable time, as determined by the employer.

3. Refusal to sign a DOT-required testing form, specifically including refusal to sign Step 2 of the Breath Alcohol Testing form.

4. Failure to remain at the testing site until the testing process is complete.

5. Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation.

6. Refusal to undergo a medical examination or evaluation as directed by the MRO as part of the verification process or as directed by the DER as a result of not providing sufficient urine or breath to complete the test(s).

7. Refusal to allow direct observation urine collection or follow direct observation urine collection procedures whenever direct observation urine collection is required.

8. Tampering with or attempting to adulterate the specimen or collection procedure.

9. Admission to the collector or MRO that you adulterated or substituted the specimen.

10. Conduct that prevents the completion of a required test.

11. Not reporting to the collection site in the allotted time.
12. Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, failure to wash hands after being directed to do so by the collector).

13. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist to the navel, lower clothing and underpants to mid-thigh, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.

14. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.

15. Leaving the scene of an accident without a valid reason before the tests have been conducted.

N. POSITIVE TEST/REFUSAL TO TEST

A positive substance abuse test is a violation of Borough Policy, and FTA regulations. Employees who refuse to submit to a drug and/or alcohol test, or employees whose conduct is considered a refusal to submit to a drug and/or alcohol test will be considered to have failed the tests and the test will be considered a positive test.

Covered Borough employees with positive drug/alcohol test results will be informed in a meeting with their supervisor and/or division manager and Human Resources. Human Resources will invite a Union representative to that meeting.

Positive Drug Test

If a positive test for drugs is reported by the medical review officer, it is understood that the screening test was positive and a second confirmatory test, based on a different scientific principle was also positive and the MRO has interviewed the employee and reviewed all information provided by the employee to determine whether the results are indicative of illegal or illicit drug usage. The acceptable method of confirmation is: gas chromatography/mass spectrometry (GC/MS).

1. Upon notification by the MRO to the DER, an employee failing a drug test will be immediately removed from his/her safety-sensitive job and undergo a mandatory evaluation by a Substance Abuse Professional.

2. Each Covered Employee who has a verified positive drug test result or refuses to take a drug test shall be provided referral information concerning community resources available to assist that person with their drug problem. The Borough will not provide rehabilitation to employees who refuse a drug test, unless available through the health plan.
3. Failing a drug test is just cause for termination. The Fairbanks North Star Borough shall have the exclusive right, following termination, to determine, in its sole judgment, whether or not the employee terminated for a violation of this policy shall be eligible for rehire and, subject to state and federal law, set the terms and conditions for any rehire.

Positive Alcohol Test

If a positive test for alcohol (.04 or above) is reported, it is understood that the positive test was the result of the confirmation test on an EBT.

1. Failing an alcohol test (.04 or above) will result in an immediate removal of the employee from their safety-sensitive function and undergo a mandatory evaluation by a Substance Abuse Professional.

2. Each Covered Employee who fails an alcohol test (.04 or above) shall be provided referral information concerning community resources available to assist that person in resolving problems associated with alcohol misuse. The Borough will not provide rehabilitation for employees who refuse a breath alcohol test, unless available through the health plan.

3. Failing an alcohol test (.04 or above) is just cause for termination. The Fairbanks North Star Borough shall have the exclusive right, following termination, to determine, in its sole judgment, whether or not the employee terminated for a violation of this policy shall be eligible for rehire and, subject to state and federal law, set the terms and conditions for any rehire.

O. CHANGES OR MODIFICATIONS

Changes required by Federal law in compliance with 49 CFR Parts 40 and/or 655 and/or 382 will not require any advance notification. State, and/or Local law required changes will also not require advance notification.

P. VOLUNTARY REHABILITATION

In an effort to meet the purpose of this substance abuse procedure, the Borough currently provides an Employee Assistance Program.

Employees may voluntarily request assistance by making that request prior to performing a safety sensitive function on the day the request is made (i.e. prior to reporting for duty) and if the request is not made in order to avoid testing under the requirements of this policy. The employee will not then be allowed to resume performing safety sensitive functions until the employee has been evaluated and has successfully completed the education or treatment requirements agreed at the time the employee returns to work.

Employees who voluntarily request assistance in dealing with personal substance abuse problems may utilize annual leave, or leave without pay not to exceed six (6) months to participate in a rehabilitation program without
jeopardizing their continued employment with the Borough provided they stop all involvement with any and all such substances. Voluntary participation treatment programs will not prevent disciplinary action(s) for procedure violations that have already occurred.

Supervisors can assist in contacting the Employee Assistance Program. At the conclusion of treatment, arrangements for drug screen follow-up testing and/or alcohol testing will be made. Management, supervisors, Human Resources and the rehabilitated employee will agree upon specific guidelines at the time the employee returns to work. Employees will be allowed only one voluntary rehabilitation chance during their employment with the Borough.

Q. INVOLUNTARY REHABILITATION

Employees who test positive or are identified as needing assistance in resolving problems associated with alcohol misuse may be afforded the opportunity for involuntary rehabilitation, if the employee agrees to the following terms and conditions.

If involuntary rehabilitation is offered, the employee must make and keep an appointment with a Substance Abuse Professional within 10 days of notification of a positive alcohol test and notify the Fairbanks North Star Borough of the date of such appointment. During this ten (10) day period, the employee will be suspended and placed on leave without pay. After the employee meets with the Substance Abuse Professional and confirms that he/she has signed a Release of Information and has made a commitment to work cooperatively with the Substance Abuse Professional, the Fairbanks North Star Borough will hold any termination action in abeyance pending successful completion of any and all treatment/recovery programs prescribed by the Substance Abuse Professional and/or their referrals.

All terms and conditions of the treatment/recovery program must be incorporated in a Recovery Contract agreed upon by the employee and the Substance Abuse Professional. The employee will be required to enter into a Treatment/Recovery Contract with the Substance Abuse Professional for a period of time as specified by the Substance Abuse Professional.

The employee must sign the standard Release of Information allowing the Substance Abuse Professional to talk to the employee’s supervisor about the employee’s recovery program, his/her progress with the program, and whether successful completion of the program was accomplished. The employer may, at the employer’s sole option accommodate the Covered Employee by placing them in a non-safety sensitive position during the recovery period.

Otherwise the employee will be on LWOP status. The employee will be eligible for return to work to his/her position only after the successful completion of the Substance Abuse Professional Treatment/Recovery Contract. To be eligible for
reinstatement, the individual must provide the employer documented proof, from the Substance Abuse Professional, and the Substance Abuse Professional must confirm that the individual has met all the conditions of the Treatment/Recovery Contract.

All costs of the treatment/recovery program will be borne by the employee or any insurance he/she may have. Fairbanks North Star Borough insurance is available through a self-pay program for employees in a LWOP status (except for those whose health insurance coverage will continue under their FMLA entitlement as provided for under the Act).

Before returning to work after successful completion of the Substance Abuse Professional programs, the employee will be required to enter into a Return to Work Contract with the Fairbanks North Star Borough and shall be subject to unannounced follow-up testing. The Return to Work Contract may run concurrently with the Substance Abuse Professional Treatment/Recovery Contract. Failure to successfully complete the Substance Abuse Professional Treatment/Recovery Contract or failure to successfully meet all the terms and conditions of the Fairbanks North Star Borough’s Return to Work Contract will be grounds for immediate termination.

R. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

The Americans With Disabilities Act of 1990 (ADA) does not, in any way, preclude or interfere with the employer’s compliance with the Borough’s drug and alcohol testing regulations. It should also be pointed out that the ADA does not preclude an employer from disciplining or dismissing an employee who commits a violation of the employer’s conduct and performance standards, even if the individual is an alcoholic or has another disability.

S. CONTACT PERSONS

The contact persons (Designated Employer Representative - DER) available to answer questions about the Borough’s Drug and Alcohol Program are noted by position below:

- Human Resources Director (DER) 459-1207
- Risk Manager (alternate DER) 459-1396
  or
- Transportation Director 459-1007
- Public Works - Solid Waste Manager 459-1482

T. RIGHT TO EXAMINE RECORDS

Except as required by law, or expressly authorized in 49 CFR Part 40, Part 655 and/or Part 382, the Borough may not release information pertaining to a
Covered Employee that is contained in records required to be maintained by those regulations.

A Covered Employee is entitled, upon written request, to obtain copies of any records pertaining to the Covered Employee’s use of prohibited drugs, including any record pertaining to his/her drug tests.

U. RECORDS

An employer shall maintain records of its anti-drug and alcohol misuse prevention program. The records shall be maintained in a secure location with controlled access. Records shall be retained in accordance with the provisions of 49 CFR Part 355 or Part 382 as applicable.

V. EMPLOYEE ASSISTANCE PROGRAM (EAP), SUBSTANCE ABUSE PROFESSIONAL (SAP), MEDICAL REVIEW OFFICE (MRO) AND DEPARTMENT OF HEALTH & HUMAN SERVICES (DHHS) CERTIFIED TESTING

The Borough has secured the services of an MRO, SAP, EAP and DHHS certified testing laboratory. The names of the MRO, SAP, EAP and DHHS certified testing laboratory who are on contract to the Borough are included as Attachment 4.

W. EFFECTS OF ALCOHOL

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and mood relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

1. Signs and Symptoms of Use
   - Dulled mental processes
   - Lack of coordination
   - Odor of alcohol on breath
   - Possible constricted pupils
   - Sleepy or stuporous condition
   - Slowed reaction time
   - Slurred speech
   - (Note: Except for the odor, these are the general signs for any depressant substance.)

2. Health Effects
   The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass]) over time may
result in the following health hazards:
- Decreased sexual functioning
- Dependency
- Fatal liver diseases
- Kidney disease
- Pancreatitis
- Ulcers
- Spontaneous abortion and neonatal mortality.
- Birth defects (up to 54% of all birth defects are alcohol related).
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma

3. **Social Issues**
- Two-thirds of all homicides are committed by people who drink prior to a crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- Forty percent of family court cases are alcohol problem related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

4. **Workplace Issues**
- It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

5. **The Annual Toll**
- 24,000 people will die on the highway due to the legally impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accidents.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

6. **Intervention**
Employees are advised that the Borough provides an Employee Assistance Program as part of its employee benefit program. Employees who may have a problem with alcohol consumption or illegal use are highly encouraged to take advantage of this program. Non-job jeopardy referrals or voluntary participation in this program is desired. The EAP provider is listed in Attachment 4.

V. PROCEDURE

A. See above

VI. SUPPLEMENTAL INFORMATION

A. References –
   1. FNSB Code
   2. Policy 65.07 Drug Free Workplace Policy
   3. 49 CFR, Part 40
   4. 49 CFR, Part 655
   5. 49 CFR, Part 382
   6. Negotiated Agreements - Laborers’ Local 942 and Fairbanks North Star Borough Employees Association (FNSBEA)

B. Definitions –
   1. “Accident” – for this policy, means an occurrence associated with the operation of a motor vehicle if, as a result;
      a) An individual dies;
      b) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; This includes incidents where a person is injured on the bus but not as a result of an accident (i.e., there is no collision but an individual falls on the bus and requires immediate transport to a medical treatment facility); or
      c) One or more of the vehicles involved incurs disabling damage as a result of the occurrence and is transported away from the scene by a tow truck or another vehicle. Disabling damage is defined as damage, which precludes the departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs. This includes damage to vehicles that could have been driven but would have caused further damage by such movement (i.e., limped away). Disabling damage does not include damage that can be readily fixed on the scene, tire disablement, headlight or tail light damage, or damage to turn signal, horns or windshield wipers.
2. "Adulterated Specimen" – means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

3. "Alcohol" - means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol. Reference to alcohol use means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

4. "Breath Alcohol Technician (BAT)" - means an individual who instructs and assists employees in the alcohol testing process and operates an Evidential Breath Testing Device.

5. "Canceled Test" - means a drug or alcohol test that has a problem identified that cannot or has not been corrected, or which 49 CFR Part 40.201 requires to be cancelled. A cancelled test is neither negative or positive.


7. "Covered Employee" – means a Borough employee or an employee of a Borough Transportation Department, Public Works Department or contractor who holds a position which is determined to be a safety-sensitive position as described under “Safety-Sensitive” in this section, is subject to regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991.

8. "Designated Employer Representative (DER)" – means the person designated by the Borough to administer the Substance Abuse program, including that of the Transportation Department and/or the Public Works Department as applicable, if different.


10. "Diluted Specimen" – means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

11. "DOT" - means the United States Department of Transportation.

12. "Drugs" - Under 49 CFR Part 40, means drugs including prescription and non-prescription medication and other substances that affect an employee's ability to safely and effectively perform the functions of the job. For FTA testing, the following drugs will be tested: Marijuana, Cocaine, Opioids, Amphetamines, and Phencyclidine (PCP).

14. "EAP" - means an Employee Assistance Program provided by the Borough to assist its employees in dealing with drug or alcohol dependency or other personal problems affecting job performance.


20. "Invalid Test" – The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

21. "Medical Facility" - means a hospital, clinic, laboratory, or physician's office that is competent to take or analyze toxicological samples, in accordance with DHHS standards.

22. "Medical Review Officer (MRO)" - means a licensed physician responsible for receiving laboratory reports generated by the Borough's drug testing program who is qualified to perform the duties of an MRO as described in 49 CFR Part 40.

23. "Negative Test" - means 1) absence of drugs in the urine of an employee/applicant based on levels defined by DHHS and confirmed by DHHS certified laboratory and/or a medical review officer; 2) absence of alcohol in breath based on levels defined in 49 CFR, Part 40 confirmed by an Evidential Breath Testing Device.

24. "Safety Sensitive Employee" - means an employee who performs any of the following duties: (a) Operation of a revenue service vehicle, even if not in revenue service; (b) Operation of a non-revenue service vehicle that requires a CDL; (c) dispatch or controlling movement of a revenue vehicle; (d) Maintenance of a revenue service vehicle or equipment used in revenue service; or (e) Any supervisor who may be called upon to perform any of the safety-sensitive duties described above. Those positions within the Borough determined to be Safety-Sensitive are listed in Attachment 1. In addition, all employees of independent contractors who perform safety-sensitive
services for the Borough will also be subject to the testing requirements outlined in this policy.

25. "Split Sample" - means that the urine sample is divided at the time of collection, with a minimum specified amount of urine (45ml.) being used for the primary sample and the remainder being poured off (minimum of 15ml.) and saved in the event the original specimen tests positive and the employee requests a second test from the Split Sample.

26. "Substance Abuse Professional (SAP)" - means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at https://www.transportation.gov/odapc/sap) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

27. "Substituted Specimen" – means a urine specimen having creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

28. "Supervisory Employee" - means supervisor, manager, or other employee of the Borough who is responsible for supervising or monitoring the conduct or performance of one or more employees.

29. "Verified Positive Test" - means both a screen and confirmation test that shows an established detectable level of alcohol or drugs, as defined by DHHS and/or the US DOT. In the case of drugs, the test results have been reviewed by an MRO and determined to have evidence of prohibited drug use.

C. Attachments –

1. Safety-Sensitive Positions
2. Substance Abuse Testing Decision Matrix
3. Supervisor’s Reasonable Suspicion Observation Form
4. Substance Abuse Testing Contact Information
5. Acknowledgment of Receipt of Policy

D. Revision History
Supersedes Policy No. Effective Dates
65.06 11/27/02
65.06 12/11/03
65.06 08/16/07
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