



CITY OF RAPID CITY


RAPID CITY, SOUTH DAKOTA 57701-2724

Risk Management
300 Sixth Street
605-394-6620

MEMORANDUM

DATE: October 15, 2010

TO: Legal and Finance Committee

FROM: Keith L'Esperance, Risk Manager
DOT Drug/Alcohol Program Administrator 

SUBJECT: DOT Drug and Alcohol Policy Revision

Attached is the City of Rapid City's federally mandated Department of Transportation (DOT) drug and alcohol policy with a revision date of October 1, 2010. The Risk Management Office recently received notification from the Federal Transit Administration (FTA) that the federal DOT expanded the list of drugs for which tested to include MDMA commonly referred to as Ecstasy. As a result of that addition, the City is required to update its DOT policy, is required to recertify the policy by the governing body and required to resubmit the updated policy to the FTA with a certification statement signed by the Mayor and Finance Officer. While updated the Prohibited Substances section of the policy, I also updated Appendix B – Safety Sensitive Job Classifications to incorporate new and retitled positions subject to the DOT regulations. These are the only two changes to the policy.

Please place this on the Council Consent Calendar so the minutes of the City Council reflect recertification of the revised policy. If you have any questions, please advise. Thank you.

Attachment



EQUAL OPPORTUNITY EMPLOYER

**CITY OF RAPID CITY
DOT DRUG/ALCOHOL TESTING POLICY
TABLE OF CONTENTS**

(CURRENT EDITION 10/01/2010)

- 1.0 Policy Statement
- 2.0 Applicable Federal Regulations
- 3.0 Definitions
 - 3.1 Safety-Sensitive Function
 - 3.2 Covered Employee
 - 3.3 Substance Abuse Professional
 - 3.4 Breath Alcohol Technician
 - 3.5 Evidential Breath Tester
 - 3.6 Medical Review Officer
 - 3.7 Accident
 - 3.8 Standard Schedule of Disciplinary Offenses
- 4.0 Categories Subject To Testing
- 5.0 Prohibited Substances
 - 5.1 Illegal Substances
 - 5.2 Alcohol Use
 - 5.3 Legal Drugs
- 6.0 Prohibited Conduct
 - 6.1 Alcohol Use
 - 6.2 Employee Self-Identification
 - 6.3 Drug Use
 - 6.4 Impaired Covered Employees
 - 6.5 Manufacture, Trafficking, Possession, And Use
- 7.0 Circumstances For Testing
 - 7.1 Pre-Employment/Pre-Transfer
 - 7.2 Random Testing
 - 7.3 Reasonable Suspicion
 - 7.4 Post Accident
 - 7.5 Return To Duty
 - 7.6 Follow-Up Testing
 - 7.7 Transportation To Test Site
 - 7.8 Test Scheduling

- 8.0 Refusal To Submit To Testing
- 9.0 Drug/Alcohol Testing Procedures
- 10.0 Consequences Of Drug Use/Alcohol Misuse
- 11.0 Training
- 12.0 Effects Of Alcohol Misuse
- 13.0 Americans With Disabilities Act
- 14.0 Retention Of Records
- 15.0 Proper Application Of Policy
- 16.0 Contact Department
- 17.0 Governing Body Certification

Appendix A-Standard Schedule Of Disciplinary Offenses/Penalties

Appendix B-Safety Sensitive Job Classifications

Appendix C-Certification Statement

Appendix D-Behavior/Incident Documentation Form

Appendix E-Drug Testing Process for Random, Reasonable Suspicion, Post-Accident

Appendix F-Drug Testing Process for Return to Duty, Follow-Up

Appendix G-Alcohol Testing Process for Random, Reasonable Suspicion, Post-Accident

Appendix H-Alcohol Testing Process for Return to Duty, Follow-Up

SUBSTANCE ABUSE/MISUSE POLICY SAFETY-SENSITIVE POSITIONS

POLICY

- 1.0 It is the policy of the City of Rapid City to assure worker fitness for duty and to protect City employees and the public from the risks posed by the use of alcohol and prohibited drugs by employees in safety-sensitive positions. This policy is intended to comply with all applicable Federal regulations governing workplace drug and alcohol abuse and misuse.

PROCEDURES

2.0 APPLICABLE FEDERAL REGULATIONS:

The Department of Transportation (DOT), through its Operating Administrations of the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), enacted federal regulations 49 CFR Part 655 (FTA), and Parts 382 et al (FHWA) as amended, that mandate urine drug and breath alcohol testing for safety-sensitive positions and prevent performance of safety-sensitive functions when there is a positive test result and/or reasonable suspicion of use/misuse. The DOT enacted 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens. These regulations are effective 1-1-95 for certain identified City job classifications and 1-1-96 for Rapid Transit classifications.

In addition to the above-referenced regulations, this policy includes sections of specific reference, as notated, to the Drug-Free Workplace Act of 1988 and the Americans With Disabilities Act of 1990.

3.0 DEFINITIONS:

- 3.1 Safety-Sensitive Function-refer to Section 4.0 Categories Subject To Testing.
- 3.2 Covered Employee-any person, including a volunteer, applicant, or transferee, who performs a safety-sensitive function for the City.
- 3.3 Substance Abuse Professional (SAP)-a licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.
- 3.4 Breath Alcohol Technician (BAT)-an individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

- 3.5 Evidential Breath Tester (EBT)-a device approved by the National Highway Traffic Safety Administration for the evidential testing of breath.
- 3.6 Medical Review Officer (MRO)-a licensed physician responsible for receiving laboratory results who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a confirmed positive test result.
- 3.7 Accident-any occurrence involving a vehicle in which (1) a death occurs, (2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident, or (3) one or more vehicles involved in the accident incurs disabling damage and must be towed from the accident scene.
- 3.8 Standard Schedule Of Disciplinary Offenses/Penalties-see Appendix A for the schedule of offenses and penalties, as amended. At the discretion of the City, the provisions of the Standard Schedule are a part of this policy.

4.0 CATEGORIES SUBJECT TO TESTING:

Participation in the prohibited substance testing program is a requirement of each safety-sensitive position and is a condition of employment (See Appendix B-Job Classifications). The following positions are subject to the contents of this policy and the defined provisions of the federal regulations:

- 4.1 Operation of a revenue service vehicle (e.g. transit buses), regardless of whether the vehicle is in revenue service;
- 4.2 Operation of a non-revenue vehicle when required to be operated by the holder of a Commercial Driver's License;
- 4.3 Controlling movement or dispatch of a revenue service vehicle;
- 4.4 Maintenance of a revenue service vehicle or equipment used in revenue service;
- 4.5 Security personnel that carry firearms;
- 4.6 Contractor employees that perform service on revenue service vehicles or stand in the place of covered employees;
- 4.7 Supervisors who also perform safety-sensitive functions; and
- 4.8 Volunteers who perform safety-sensitive functions.

5.0 PROHIBITED SUBSTANCES:

- 5.1 Illegal Substances-the consumption of illegal drugs is prohibited at all times. The City tests for the following illegal substances: (1) marijuana, (2) amphetamines, (3) opiates, (4) cocaine, (5) phencyclidine [PCP] and (6) Ecstasy [MDMA].

- 5.2 Alcohol-the use and misuse of beverages containing alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl or isopropyl alcohol, is prohibited within specified time limits. Alcohol concentration is expressed in terms of grams of alcohol per 210 liters of breath as indicated by an EBT. This prohibition includes the use of any alcohol-based over-the-counter or prescribed medications.
- 5.3 Legal Drugs-the appropriate use of legally prescribed drugs and non-prescription medications is not prohibited so long as the use of same conforms to the requirements of this policy. Under the City's own authority, the use of any non-prescription medication which carries a warning label indicating that mental functioning, motor skills, or judgment may be adversely affected should be reported to supervisory personnel and medical advice should be sought, as appropriate, before performing safety-sensitive functions. The supervisor should use his/her best judgment regarding whether or not to allow the employee to perform any safety-sensitive functions. Any employee who is currently taking medication prescribed by a physician that may affect the employee's mental functioning, motor skills, or judgment should obtain a release from the prescribing physician that the employee can safely perform his/her safety-sensitive functions. A covered employee who fails to report the use of prescription or non-prescription drugs that can affect performance of job duties may be subject to disciplinary action as defined in Rule 14 of the disciplinary schedule (Appendix A).

6.0 PROHIBITED CONDUCT:

- 6.1 Alcohol Use-no covered employee: (1) will report for duty or remain on duty when his/her ability to perform assigned safety-sensitive functions is adversely affected by alcohol or when his/her alcohol concentration is 0.02 or greater, (2) will use alcohol while on duty or while performing safety-sensitive functions, (3) will have used alcohol within four hours of reporting for duty, and/or (4) will use alcohol during the hours he/she is on call.
- 6.2 Employee Self-Identification While On-Call-if a covered employee has consumed alcohol while on-call and within 4 hours of performing a safety-sensitive function, the employee may state he/she has consumed alcohol and indicate whether or not he/she is able to perform a safety-sensitive function.

If the employee believes he/she is not capable of performing the function, the supervisor will excuse the employee from doing so. If, however, the employee believes he/she is capable of performing the function, the employee will be tested and allowed to perform the function if the concentration level measures less than 0.02. If the concentration level measures 0.02 or greater but less than 0.04, the employee will be allowed to perform the function only if a retest is conducted and the concentration level measures less than 0.02. If the employee is not retested, he/she must wait until 8 hours have elapsed before resuming the performance of a safety-sensitive function. To encourage employees to admit that alcohol has been consumed, they will not be subject to the consequences specified in Section 10.0.

If an on-call employee does not indicate that he/she has consumed alcohol and exhibits signs of alcohol misuse, the employee may be subject to reasonable suspicion testing. If the test indicates a concentration level at 0.04 or greater, the employee will be subject to the consequences of violating this policy.

- 6.3 Drug Use-the consumption of illegal drugs is prohibited at all times.
- 6.4 Impaired Covered Employees-any covered employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty will not be allowed to commence job duties and/or will be suspended from job duties pending an investigation and verification of condition. Covered employees found to be under the influence of prohibited substances will be removed from duty and will be required to submit to the appropriate drug or alcohol test. A drug or alcohol test will be considered positive if the covered employee is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.
- 6.5 Manufacture, Trafficking, Possession, and Use-in accordance with the Drug-Free Workplace Act of 1988, any employee engaging in the manufacture, distribution, dispensing, possession, or use of prohibited substances while in the performance of job duties will be subject to disciplinary action up to and including termination (see Appendix A Sections 14-15). Law enforcement will be notified, as appropriate, where criminal activity is suspected.

7.0 CIRCUMSTANCES FOR TESTING:

All covered employees will be subject to testing at the times prescribed as follows:

- 7.1 Pre-Employment And Pre-Transfer Into Safety-Sensitive Positions:
 - 7.10 Drugs-an applicant will be required to take a drug test for the screening of illegal drugs and the drug test must produce a verified negative result. No current employee may transfer from a non-safety sensitive function to a safety-sensitive function until the employee takes a drug test with a verified negative result. If an applicant or employee drug test is canceled, the applicant or employee will be required to take another pre-employment drug test before he/she will be offered employment or transfer.
 - 7.11 Any employee who has not performed a safety-sensitive function and has been out of the random drug pool for a period of 90 or more days must submit to a pre-employment/pre-duty drug screen with verified negative results prior to performance of safety sensitive duties.
- 7.2 Random Testing-random testing will be unannounced, conducted on all days and hours safety-sensitive functions are performed and spread throughout the calendar year as follows:
 - 7.20 Random Test Selection-random test selection will be made by a scientifically valid method that is matched with covered employees' Social

Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process, each covered employee will have an equal chance of being tested each time selections are made.

- 7.21 Alcohol-the City will randomly test identified covered employees at a minimum rate, the higher of which as set annually by the applicable DOT agency (FTA or FMCSA), of the number of covered employees in the selection pool. A covered employee will be randomly tested (1) just before the employee is to perform a safety-sensitive function, (2) while the employee is performing a safety-sensitive function, (3) just after the employee has ceased performing such functions or (4) when the selected employee is not scheduled to perform a safety-sensitive function but may be called upon to do so at any time during the work shift. Upon notification of selection for random testing, the covered employee must immediately proceed to the test site.
- 7.22 Drugs-the City will randomly test identified covered employees at a minimum rate, the higher of which as set annually by the applicable DOT agency (FTA or FMCSA), of the number of covered employees in the selection pool. Upon notification of selection for random testing, the covered employee must immediately proceed to the test site.
- 7.3 Reasonable Suspicion-the City will conduct an alcohol and/or drug test when there is reasonable suspicion to believe that a covered employee has violated the prohibitions of this policy. The determination of reasonable suspicion must be made by a supervisor who is trained in detecting the signs and symptoms of alcohol misuse and drug abuse and must be based upon specific, immediate, and clearly obvious observations concerning the appearance, behavior, speech, or body odors of the covered employee. At no time will the supervisor who makes a reasonable suspicion determination be allowed to conduct a drug and/or alcohol test.
- 7.30 Alcohol-testing is authorized if the observations of suspected misuse are made just preceding, during, or just after the performance of a safety-sensitive function and the directive to submit to the test will only be at these defined times. If the test is not performed within 2 hours of determination of reasonable suspicion, a report must be prepared by the supervisor and filed with the Risk Management Office stating the reason the test was not administered promptly. Attempts to test must continue up until 8 hours have elapsed. If a test is not administered within 8 hours following determination, the attempts to administer the test will cease and the reasons for not obtaining the test recorded. Regardless of the absence of the test, the supervisor must not permit a covered employee to report for duty, remain on duty, nor perform or continue to perform safety-sensitive functions while the covered employee is under the influence of or impaired by alcohol until (1) an alcohol test is administered and the alcohol concentration is less than 0.02 or (2) the start of the covered employee's

next regularly scheduled duty period, but not less than 8 hours following the determination of reasonable suspicion.

- 7.31 Drugs-testing is authorized at any time the covered employee is on duty if the observations are made within the defined parameters by a trained supervisor. When directed to submit to a drug test, the covered employee must proceed to the drug testing facility. As soon as practicable after receiving notice from the MRO that the covered employee has a verified positive drug test result, or, if the covered employee refuses to submit to a drug test, the supervisor must require that the covered employee cease performance and/or not allow the performance of any safety-sensitive function. Before the employee is allowed to resume performance of safety-sensitive functions, the employee must meet the requirements of return-to-duty drug testing with a verified negative result.

7.4 Post Accident:

- 7.41 Fatal Accidents-as soon as practicable following an accident in which a death occurs, each surviving covered employee on duty in the vehicle and any other covered employee whose performance could have contributed to the accident, as determined using the best information available at the time of the decision, will be tested for drugs and alcohol.

- 7.42 Nonfatal Accidents-Alcohol-Any covered employee on duty in the vehicle and any other covered employee whose performance could have contributed to the accident, as determined using the best information available at the time of the decision, will be tested for alcohol under the following circumstances:

- (1) when one or more vehicles is disabled and requires a tow from the scene or;
- (2) an individual suffers a bodily injury and receives medical treatment away from the scene of the accident.

The supervisor may, at his/her discretion, exempt the employee from testing if facts and circumstances can clearly establish that the employee's performance did not contribute to the accident.

Testing will be accomplished within 2 hours following the accident. If testing is delayed beyond 2 hours, reasons for the delay must be documented and forwarded to the Risk Management Office. Attempts to administer the test will continue up to, but not beyond, 8 hours following the accident.

- 7.43 Nonfatal Accidents-Drugs-the same parameters as 7.42 above apply to testing for drugs in a nonfatal accident with the exception of the time

constraints. A covered employee subject to drug testing will be tested as soon as practicable but within 32 hours of the accident.

- 7.44 Availability For Testing-any covered employee subject to testing under this section and who fails to remain readily available for testing, including notification of his/her location if departing the scene of the accident prior to submission to a test, may be deemed to have refused to submit to testing. This will not be construed to require the delay of necessary medical attention for injured people or to prohibit a covered employee from leaving the scene for a period necessary to obtain assistance in responding to the accident or to obtain emergency medical care.
- 7.5 Return-To-Duty-before assuming duties in a safety-sensitive position, any covered employee who has violated the prohibitions concerning the use/misuse of alcohol or substance abuse and has previously tested positive on a drug or alcohol test will undergo a return-to-duty test with a verified negative result. All return-to-duty test collections will be completed employing direct observation of the specimen collection by a member of the same gender as the employee. Direct observation will require the donor to reveal to the observer that no prosthetic devices or other cheating devices are being utilized.
- 7.6 Follow-up Testing-any covered employee who has tested positive for drugs or alcohol and has been evaluated by an SAP must undergo follow-up unannounced testing for a minimum period of 12 months up to a maximum period of 60 months and will be required to have verified negative test results. The frequency and duration of follow-up testing will be recommended by the SAP as long as a minimum of 6 tests are conducted during the first 12 months after the employee has returned to duty. If a covered employee has tested positive for either drugs or alcohol, the City may require the covered employee to test negative for both drugs and alcohol. Any covered employee who is subject to follow-up testing will also continue to be subject to random testing. All follow-up test collections will be completed employing direct observation of the specimen collection by a member of the same gender as the employee. Direct observation will require the donor to reveal to the observer that no prosthetic devices or other cheating devices are being utilized.
- 7.7 Transportation To Test Site-under the City's own authority, at no time will any covered employee who is suspected of being under the influence of drugs or alcohol be allowed to transport him/herself to the test site. The supervisor or designee will make appropriate arrangements for the employee to be transported to the test site.
- 7.8 Test Scheduling-for pre-employment and pre-transfer drug/alcohol tests, all scheduling will be completed through the Human Resources Department. All other reasons for testing (random, post accident, return to duty, follow up and reasonable suspicion) will be coordinated through the Risk Management Office. In the event a supervisor determines reasonable suspicion exists or an accident occurs after normal office hours of the Risk Management Office, the supervisor

will call either the Risk Manager or the testing facility to arrange for completion of testing. The supervisor will report the incident in writing to the Risk Management Office the next business day.

8.0 REFUSAL TO SUBMIT TO TESTING:

Conduct that constitutes a refusal to submit to a drug and/or alcohol test includes the following circumstances:

- 1) refuse to take a test;
- 2) fail to provide sufficient quantities of breath or urine to be tested without a valid medical explanation;
- 3) provide false information in connection with a test, attempting to falsify test results through tampering, contaminating, adulterating, or substituting the specimen collection procedure;
- 4) fail to report to the collection site within the time frame allotted;
- 5) leave the scene of an accident without a valid reason before required testing has been conducted;
- 6) fail to remain at the testing site until the testing process is complete;
- 7) fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the Designated Employer Representative. In the case of pre-employment drug testing, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a conditional offer of employment;
- 8) fail to cooperate with any part of the testing process (e.g. refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process);
- 9) in a case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen;
- 10) fail or decline to take a second test the employer or collector has directed you to take;
- 11) fail to sign the certification at Step 2 of the alcohol testing form.

Any covered employee who exhibits the behaviors described will be immediately removed from duty. Refusals, as defined herein, will be construed as a positive test result and will result in the same consequences applicable to an actual positive test. As well, refusals will be considered as insubordination and will be subject to Rule 27 of the disciplinary schedule (see AppendixA).

9.0 DRUG/ALCOHOL TESTING PROCEDURES:

9.1 Testing Facilities-testing will be conducted in a manner that assures adherence to all standards of confidentiality of test specimen collection, test results, and release of records, assures the privacy of a tested employee is protected, assures a high degree of accuracy and reliability, and utilizes techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHSS) and the DOT. Testing may be conducted at any site, including laboratory facilities or field specimen collection sites, deemed necessary to achieve the testing requirements.

- 9.2 Drug Testing-an initial drug screen will be conducted on each specimen as per the procedures in 49 CFR Part 40 of the federal regulations (Part 40 is available for review upon request). The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40. In the event of a positive result, the applicant or covered employee will have 72 hours in which to request a confirmatory gas chromatography/mass spectrometry (GC/MS) test.
- 9.3 Dilute Specimens-a valid specimen is one that meets the requirements of normally concentrated urine. If a specimen falls outside of those ranges it is classified as a dilute specimen. If the MRO informs that a positive drug test was dilute, the test will be treated as a verified positive. If the MRO informs that a negative drug test was dilute, the employee will be immediately sent back to the laboratory for retesting. This second test will become the test of record and no retesting will occur.
- 9.4 Alcohol Testing-testing for the presence of alcohol will be conducted by a certified BAT using an approved EBT. In limited circumstances, generally involving an accident, alcohol testing may be performed at the accident site by law enforcement personnel trained in the use of and utilizing an approved EBT.
- 9.5 Test Results-the laboratory and/or BAT will use procedures to ensure that all drug and/or alcohol test results are attributed to the correct safety-sensitive employee.
- 9.6 Confidentiality/Access To Records-the City will take appropriate measures to ensure that the confidentiality of test results and access to records are strictly maintained. Test results and records may be released only under the following circumstances:
- 9.61 release of information or copies of records to third parties as directed by specific, written instruction from the employee;
 - 9.62 as pertaining to the proceeds of a lawsuit, grievance, or other proceeding initiated by or on behalf of the tested employee;
 - 9.63 upon written request from any employee relating to his/her test;
 - 9.64 to the National Transportation Safety Board investigating any accident involving transit system vehicles/employees;
 - 9.65 as requested by DOT or any DOT agency with regulatory authority over the City or any of its employees.

10.0 CONSEQUENCES OF THE USE OF DRUGS/MISUSE OF ALCOHOL:

Any covered employee who has a confirmed positive drug or alcohol test will be removed immediately from his/her position and will be subject to the consequences as detailed in this section.

- 10.1 Drugs-any covered employee who has a confirmed positive drug test will be removed from his/her position, informed of available educational and rehabilitation programs, and evaluated by an SAP who will determine whether the covered employee is in need of assistance in resolving problems associated with prohibited drug use. The employee will not be allowed to return to his/her position until he/she has been evaluated and released to return to duty by the SAP.
- 10.2 Alcohol-any employee who has engaged in prohibited conduct will not be permitted to perform safety-sensitive functions. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. An employee who has a confirmed alcohol concentration of 0.02 or greater but less than 0.04 will be removed from his/her position for 8 hours unless a retest results in a concentration measure of less than 0.02. An alcohol concentration of 0.04 or greater will be considered a positive test and will result in referral to an SAP. The employee will not be allowed to return to his/her position until he/she has been evaluated and released to return to duty by the SAP.
- 10.3 Treatment Requirements-under certain circumstances, safety-sensitive employees may be required to undergo treatment for substance abuse/misuse. Any safety-sensitive employee who refuses to undergo or fails to comply with requirements for treatment, after care, or return to duty will be subject to disciplinary action, up to and including termination.
- 10.4 Continuation Of Employment-any covered employee who tests positive for drugs and/or alcohol will be subject to disciplinary actions prescribed in this policy and/or the established actions described in the disciplinary schedule (see Appendix A). In accordance with City standards, violations of this policy may result in termination of employment.

11.0 **TRAINING:**

Training related to the effects of drugs and alcohol will be conducted by the Risk Management Office, the Employee Assistance Program (EAP), and/or others selected by the City who are qualified to provide instruction. All covered employees will be required to participate in drug/alcohol training as follows:

- 11.1 Supervisors who make reasonable suspicion determinations will participate in a minimum of one hour of training each on the physical, behavioral, and performance indicators of probable drug use and alcohol misuse;
- 11.2 Covered employees, including new hires and transferees to safety-sensitive positions, will participate in a minimum of one hour of training on the effects and indicators of drug use and will receive, at a minimum, printed information concerning the effects of alcohol misuse on the employee's health, work, and personal life and signs and symptoms of an alcohol problem;

11.3 All covered employees will be provided copies of the City's alcohol misuse and drug abuse policy and procedure and written information regarding the effects of drug and alcohol misuse/abuse. Additionally, information regarding the prohibited drug use and alcohol misuse policy and program will be prominently displayed in all work areas in which covered employees perform safety-sensitive functions.

12.0 EFFECTS OF ALCOHOL MISUSE:

Alcohol abuse and misuse has a devastating impact on the workplace, the individual and his/her personal health, and the family unit. The signs and symptoms of alcohol use include dulled mental processes, lack of coordination, odor of alcohol on breath, possible constricted pupils, sleepy or stuporous condition, slowed reaction rate, or slurred speech. The employee personally can suffer chronic and deteriorating health consequences such as dependency, fatal liver disease, increased cancers of various body parts, kidney disease, pancreatitis, spontaneous abortion and neonatal mortality, ulcers, birth defects in unborn infants, malnutrition, tremors, and despair or depression. Social issues that are affected by alcohol use include homicides, motor vehicle accidents, suicides, family stability, increasing the chances of domestic violence, and impacting financial well-being. In the workplace, alcohol affects an employee's ability to perform his/her job by impairing the person's reasoning and motor skills, increases the incidents of absenteeism, and jeopardizes the safety of the employee, coworkers, and the public. A person who is legally intoxicated is 6 times more likely to have an accident than a sober person. When an employee is suspected of or self-identifies an alcohol problem, help is available through the EAP. Any employee who believes he/she has an alcohol-related problem is encouraged to contact his/her supervisor, the Risk Management Office, the Human Resources Department, or the EAP for guidance and referral to assistance. All contacts are held in the strictest of confidence.

13.0 IMPACT OF AMERICANS WITH DISABILITIES ACT (ADA):

In accordance with the provisions of the Americans With Disabilities Act of 1990, any applicant or covered employee who tests positive for the use of illegal drugs is not "a qualified individual with a disability". Under Title I of the ADA, the City may deny employment to or discharge any individual who has a positive result on a DOT-mandated drug test. However, a qualified applicant or covered employee who has completed a rehabilitation program for drugs or alcohol and who is currently drug or alcohol free may be considered to have a disability and may be entitled to reasonable accommodation. Determinations will be made by or in cooperation with the SAP on a case by case basis. All questions regarding the provisions of the ADA should be directed to the Risk Management Office or the Human Resources Department.

14.0 RETENTION OF RECORDS:

The City will maintain records of its anti-drug and alcohol misuse programs. Records are maintained, with controlled access, in the Risk Management Office. Each record will be maintained for the specified period of time, measured from the date of the document's or data's creation, in accordance with the following schedule:

- 14.1 **Five Years**-records of verified positive drug test results, alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required drug or alcohol tests, employee evaluations and referrals to the SAP, and a copy of the annual management information system reports submitted to the appropriate federal agencies.
- 14.2 **Two Years**-records related to the collection process (except calibration of EBT's) and employee training.
- 14.3 **One Year**-records of negative drug tests and alcohol test results of less than 0.02.
- 14.4 Types Of Records:
- 14.41 Records related to the collection process that must be maintained:
- (1) collection logbooks;
 - (2) documents relating to the random selection process;
 - (3) calibration documentation for EBT devices;
 - (4) documentation of BAT training;
 - (5) documents generated in connection with decisions to administer reasonable suspicion testing;
 - (6) documents generated in connection with post accident testing;
 - (7) documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing and/or an adequate urine sample.
- 14.42 Records related to test results that must be maintained:
- (1) the employer's copy of the drug sample custody and control form and the alcohol test form, including the results of the test;
 - (2) documents related to the refusal of any covered employee to submit to a drug or alcohol test;
 - (3) documents presented by a covered employee to dispute the results of a drug or alcohol test.
- 14.43 Records related to other violations of the alcohol abuse regulations.
- 14.44 Records related to evaluations, referrals, and return to duty and follow-up testing:
- (1) records pertaining to a determination by an SAP concerning a covered employee's need for assistance;
 - (2) records concerning a covered employee's compliance with the recommendations of the SAP and entry into and completion of a recommended treatment program.
- 14.45 Copies of management information system reports.

14.46 Records related to employee training:

- (1) materials on drug use/alcohol misuse awareness including a copy of this policy and procedure;
- (2) names of covered employees attending training on prohibited drug use, dates and times of such training, and documentation of compliance with alcohol regulations part 654.71 concerning this policy and procedure;
- (3) documentation of training provided to supervisors for the purpose of qualifying the supervisors to make reasonable suspicion determinations;
- (4) certification that all training complies with the regulations.

15.0 **PROPER APPLICATION OF POLICY:**

Supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the provisions of the federal regulations or this policy, or who is found to deliberately misuse the policy with regard to subordinates, will be subject to disciplinary action, up to and including termination.

16.0 **CONTACT DEPARTMENT:**

Any questions regarding implementation of the federal regulations, the contents of this policy, and available assistance to the drug/alcohol impaired employee should be directed to the following person and department:

Drug & Alcohol Program Manager (DAPM)/Risk Manager
City of Rapid City
Risk Management Office
300 6th Street
Rapid City, SD 57701
(605) 394-6620

17.0 GOVERNING BODY CERTIFICATION:

The City of Rapid City, by signature of the Mayor of Rapid City, certifies that the City of Rapid City has established and implemented an anti-drug and alcohol misuse prevention program in accordance with the terms of 49 CFR parts 655 (FTA) and Parts 382 et al (FHWA) and further certifies that the employee training conducted meets the requirements of the regulations (see Appendix C-Certification Statement). The original certification document is maintained in the offices of the City Finance Officer.

Policy Effective Date 1/95
Policy Revised 06/95
Policy Revised 06/98
Policy Revised 06/01
Policy Revised 10/01
Policy Revised 08/04
Policy Revised 01/07
Policy Revised 10/07
Policy Revised 11/09
Policy Revised 10/10

**STANDARD SCHEDULE OF DISCIPLINARY OFFENSES/PENALTIES
FOR CITY OF RAPID CITY EMPLOYEES**

1. This list is not intended to cover every possible type of offense. Penalties for offenses not listed will be prescribed by the Department Director, Division Manager or Supervisor, consistent with penalties for offenses of comparable gravity, unless superseded by contract or law.
2. Many of the items listed on this schedule combine several offenses in one statement, connected by the word "OR". Usage of the word "OR" in a charge makes it nonspecific.
3. Depending on the gravity of the offenses, dismissal proceedings may be instituted against an employee for four infractions committed in any 24-month period.
4. Where appropriate, consideration may be given to change to lower grade in lieu of dismissal.
5. Suspension penalties on this schedule apply to work days.
6. Reckoning periods commence on the date of the offense.
7. Departments may establish additional rules pertaining to each department, which are not in conflict with these rules.
8. Disciplinary action to suspend or dismiss an employee must be reviewed with the Human Resources Director and/or City Attorney's Office or designees prior to final action.
9. All rules and disciplinary actions are enforced in compliance with current federal and state statutes and regulations, as example the Fair Labor Standards Act.
10. Definitions: For clarity of interpretation, the following terms are defined:

Competent Authority – defined as those authorities that are properly appointed to carry out the supervisory/management duties as assigned by the City and as defined by the supervisory/management position.

Reckoning Period – defined as the period of time applicable to an offense in which no similar offense can occur. If, for instance, a first offense occurs and the reckoning period is six months and a similar infraction occurs within the six-month period, the similar infraction is counted as the second offense. If the reckoning period expires and another similar infraction occurs, the new occurrence may count as a first offense. This does not imply that continued patterns or frequencies of occurrence might not result in more severe penalties based upon performance factors.

RANGE OF PENALTIES FOR STATED OFFENSES

Penalties for disciplinary offenses will, in general, fall within the range indicated. In unusual circumstances, depending on the gravity of the offense, the past records, and the position of the employee, a penalty outside the general range may be imposed.

(Reprimands – Suspensions – Dismissals)
NUMBER OF INFRACTIONS IN RECKONING PERIOD

NATURE OF OFFENSE		1ST OFFENSE		2ND OFFENSE		3RD OFFENSE		RECKONING PERIOD
		MIN	MAX	MIN	MAX	MIN	MAX	
1.	Unexcused failure to report or tardiness at designated reporting site and time as assigned by department. Disciplinary action is in addition to non-pay status for period of tardiness.	R	1	1	5	5	15	6 months
2.	Failure to report in proper uniform as specified in department regulations. Disciplinary action is in addition to non-pay status for lost time to comply with uniform regulations.	R	1	1	5	5	15	6 months
3.	Failure to report on-duty personal injury or accident.	R	1	1	5	5	15	1 year
4.	Unexcused or unauthorized absence on one or more scheduled workdays. (Tardy—if less than 1 hour; Unexcused Absence = over 1 hour.) The charge of EXCESSIVE UNAUTHORIZED ABSENCE & penalty of dismissal may be used when absence exceeds 3 workdays or when it appears that employee has abandoned his position. Extenuating circumstances offered by the employee should be considered.	R	5	3	10	10	D	1 year
5.	Leaving job or premises to which assigned at any time during working hours without permission.	R	5	3	10	10	D	1 year
6.	Failure to observe precautions for personal safety, posted rules/City policies, signs, safety instructions, or to use protective clothing or equipment.	R	5	3	10	10	D	1 year
7.	Failure to report receipt of traffic citations, violating traffic regulations, reckless driving or improper operation of motor vehicle while on duty or at any time while operating a City vehicle.	R	5	3	10	10	D	1 year

R = Reprimand

= Days of Suspension Without Pay

D = Dismissal R = Reprimand

(Reprimands – Suspensions – Dismissals)
NUMBER OF INFRACTIONS IN RECKONING PERIOD

<u>NATURE OF OFFENSE</u>	<u>1ST OFFENSE</u>		<u>2ND OFFENSE</u>		<u>3RD OFFENSE</u>		<u>RECKONING PERIOD</u>
	<u>MIN</u>	<u>MAX</u>	<u>MIN</u>	<u>MAX</u>	<u>MIN</u>	<u>MAX</u>	
8. Loafing, wasting time, or inattention to duty.	R	5	3	10	10	D	1 year
9. Carelessness resulting in spoiling or waste of materials or delay in productivity.	R	5	3	10	10	D	1 year
10. Failure or delay in carrying out orders, work assignments, or instructions.	R	5	3	10	10	D	1 year
11. Repeated garnishments showing failure to honor just debts without good cause.	R	5	1	5	5	D	1 year
12. Unauthorized possession of, loss of, or damage to City property or property of others, or endangering same through carelessness.	R	5	10	10	10	D	2 years
13. Disorderly conduct, fighting, threatening or attempting to inflict bodily injury to another; engaging in dangerous horseplay; or, resisting competent authority.	R	D	10	D	15	D	2 years
14. Unlawful use or possession of alcohol, drug paraphernalia or illegal drugs on City property or while conducting City business; reporting to work under the influence of alcohol, illegal drugs, or through the improper use of prescribed drugs.	R	D	10	D	D	D	2 years
15. Unlawful distribution of alcohol or drugs on City property or while conducting City business.	R	D	10	D	D	D	2 years
16. Sleeping on duty except when necessitated by operations or authorized by competent authority.	R	D	15	D	D	D	2 years
17. Intentionally revealing or releasing confidential information without proper authorization or use of such information for personal gain.	R	D	15	D	D	D	2 years
18. Endangering the safety of or causing injury to personnel or citizens through carelessness.	R	D	15	D	D	D	2 years
19. Malicious damage to City property or the property of others.	R	D	15	D	D	D	2 years
20. Actual or attempted theft of City property.	R	D	15	D	D	D	2 years
21. Conviction of a felony or misdemeanor with readily discernible harmful effects on City operation (e.g. employee morale or discipline)	R	D	15	D	D	D	2 years

R = Reprimand

= Days of Suspension Without Pay

D = Dismissal

(Reprimands – Suspensions – Dismissals)
NUMBER OF INFRACTIONS IN RECKONING PERIOD

NATURE OF OFFENSE	1 ST OFFENSE		2 ND OFFENSE		3 RD OFFENSE		RECKONING PERIOD
	MIN	MAX	MIN	MAX	MIN	MAX	
22. Immoral, indecent, or notoriously disgraceful conduct which reflects unfavorably on the City.	R	D	15	D	D	D	2 years
23. Disrespectful conduct; use of insulting, abusive, or obscene (profane) language in connection with City duties.	R	D	15	D	D	D	2 years
24. Discrimination against an employee or applicant because of race, color, religion, sex, age, national origin, or disability; or any reprisal action against employee.	R	D	15	D	D	D	2 years
25. Falsification, misstatement, exaggeration, or concealment of material fact in connection with employment, promotion, any record, investigation, or other proper proceeding.	R	D	15	D	D	D	2 years
26. Falsifying attendance record for oneself or another employee.	R	D	15	D	D	D	2 years
27. Disobedience to competent authorities, or deliberate refusal to carry out a proper order from any supervisor having responsibility for the work of the employee; insubordination.	R	D	15	D	D	D	2 years
28. Failure to immediately notify employee's department head of the loss of a valid South Dakota driver's license through revocation, suspension, or other ineligibility, if such license is required in the performance of job duties.	R	D	30	D	D	D	Continuous

R = Reprimand
 # = Days of Suspension Without Pay
 D = Dismissal

THE CITY COUNCIL

James Shaw

 Mayor

ATTEST:

James F. Preston
 Finance Officer

Date: 2004

APPENDIX B
SAFETY-SENSITIVE JOB CLASSIFICATIONS

Airport Equipment Mechanic I, II, III
Airport Maintenance Chief
Airport Maintenance Technician I, II, III
Cemetery Supervisor
Civic Center Tradesperson (as required for shuttle bus operation and other CDL equipment)
Equipment Maintenance Chief
Equipment Maintenance Supervisor (Fire, Streets)
Equipment Mechanic I, II, III (Airport, Parks, Streets)
Material Recovery Facility Operations Chief
Parks Maintenance Chief
Parks Maintenance Supervisor
Parks Maintenance Worker I, II, III
RTS Dispatcher
RTS Division Manager
RTS Operations Coordinator
RTS Operator
RTS Route Supervisor
Solid Waste Collection Supervisor
Solid Waste Operator
Street Maintenance Chief
Street Maintenance/Operator I, II, III (Street Workgroup)
Traffic Operations Worker (designated by Traffic Engineer)
Urban Forester
Utility Repair Chief (Wastewater and Water Treatment)
Utility Repair Person I, II, III (Wastewater and Water Distribution)
Utility Service Person II, III (only required to hold CDL when electing to take call)
Water Production Chief of Operations
Water Production Operator I, II, III
Water Reclamation Operator I, II, III
Water Reclamation Truck Driver
Covered Volunteers
Temporaries & Seasonals Requiring CDL
Contractor Employees as required

Dated 11/94	
Updated 6/95	Updated 10/01
Updated 08/02	Updated 08/04
Update 08/08	Updated 11/09
Updated 10/10	

APPENDIX C
CERTIFICATION STATEMENT

I, Alan Hanks, Mayor of the City of Rapid City, South Dakota, and on behalf of the governing body of the City of Rapid City, certify that the City of Rapid City, South Dakota, and its contractors, as required, for the City of Rapid City, South Dakota, have established and implemented an anti-drug and alcohol misuse prevention program in accordance with the terms of the applicable regulations, as amended, promulgated by the Federal Transit Administration (FTA). I further certify that the employee training conducted under these parts meets the requirements of the applicable regulations.

Dated this _____ of _____, 20_____.

Mayor

ATTEST:

Finance Officer

(Seal)

Resubmitted to FTA Regional Office 06/01 (triennial audit)
Resubmitted to FTA Regional Office 09/04 (triennial audit)
Resubmitted to FTA Regional Office 01/07 (policy
revision)
Resubmitted to FTA Regional Office 10/07 (triennial audit)
Submitted to FTA Compliance Audit Team 11/09
Resubmitted to FTA Regional Office 10/10 (policy
revision)

APPENDIX D

BEHAVIOR/INCIDENT DOCUMENTATION FORM

Department/work location: _____

Location of incident: _____

Employee name: _____

Date of observation: _____ Time: _____

Observations recorded by: _____

Additional witnesses: _____

Length of time observed: _____

Description of behavior/incident (continue on back, if necessary): _____

Did employee refuse a medical examination?: _____

Did the employee leave the workplace on his/her own?: _____

Circumstances of employee departure: _____

Time left: _____ Location: _____

Vehicle (if any): _____

Vehicle license #: _____

Was law enforcement called?: _____ Time: _____

Other person(s) observing departure?: _____

Additional comments or information (continue on back, if necessary): _____

Reporting supervisor's signature

Date

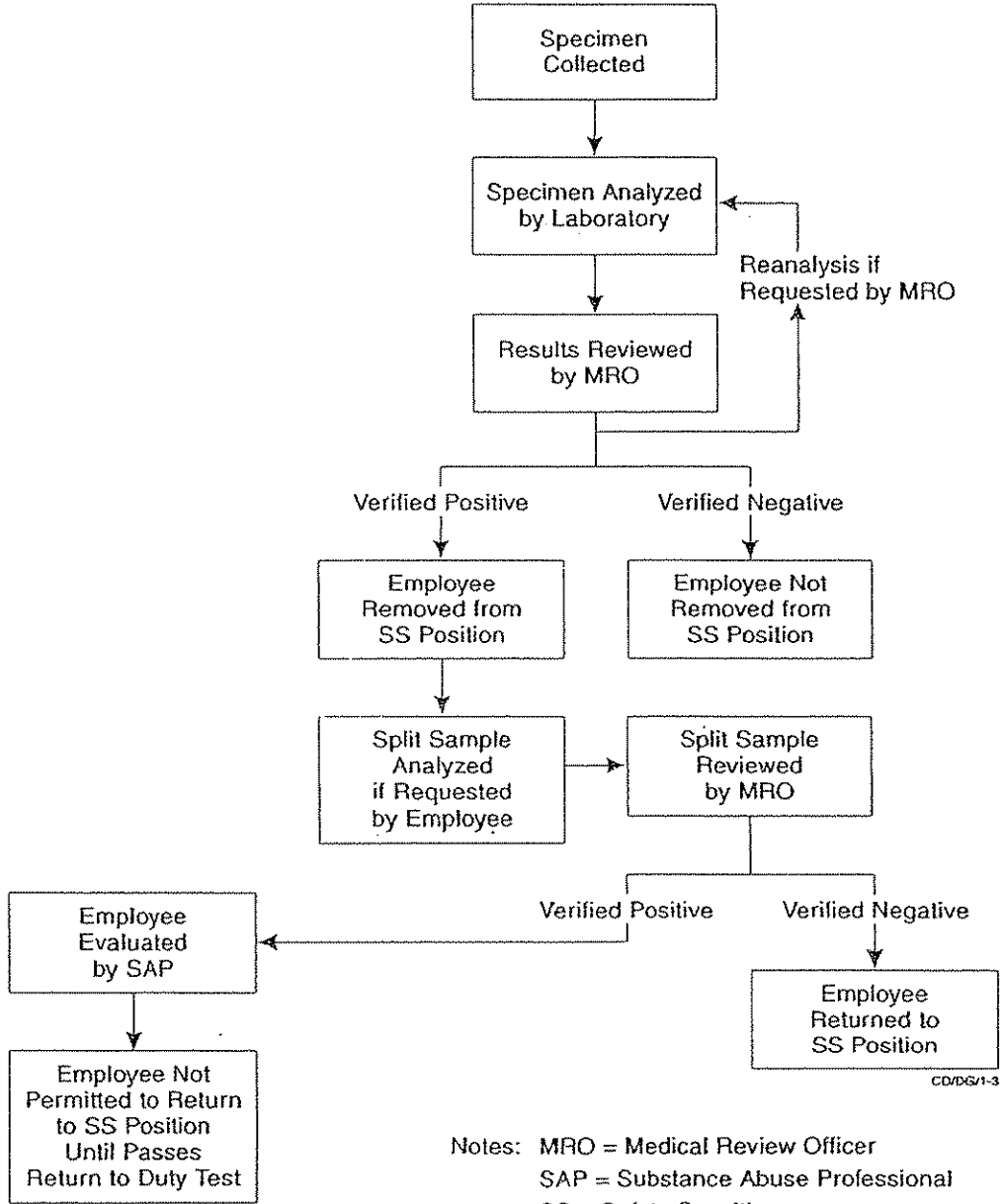
Witness signature

Date

FORWARD COMPLETED FORM TO RISK MGMT/HUMAN RESOURCES BY NEXT BUSINESS DAY

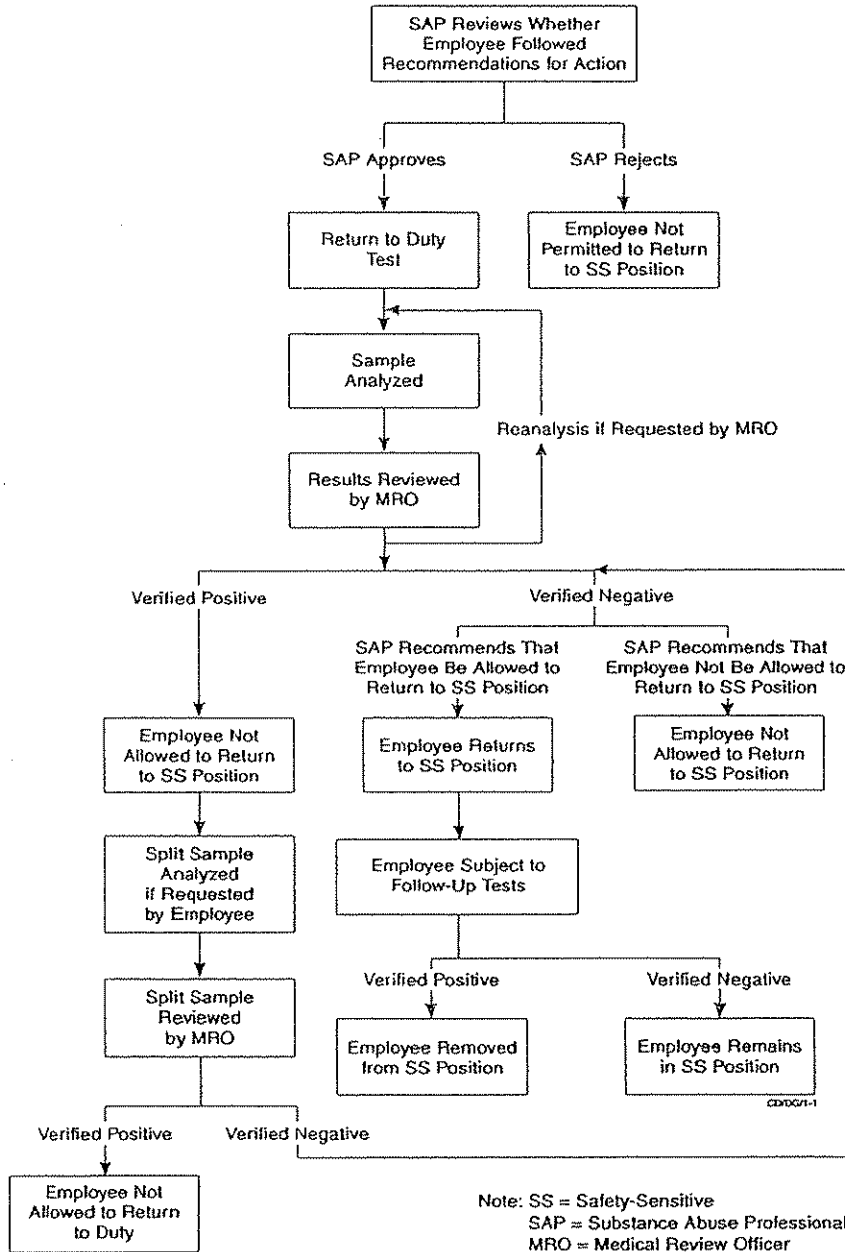
APPENDIX E

Drug Testing Process for
Random, Reasonable Suspicion, Post-Accident

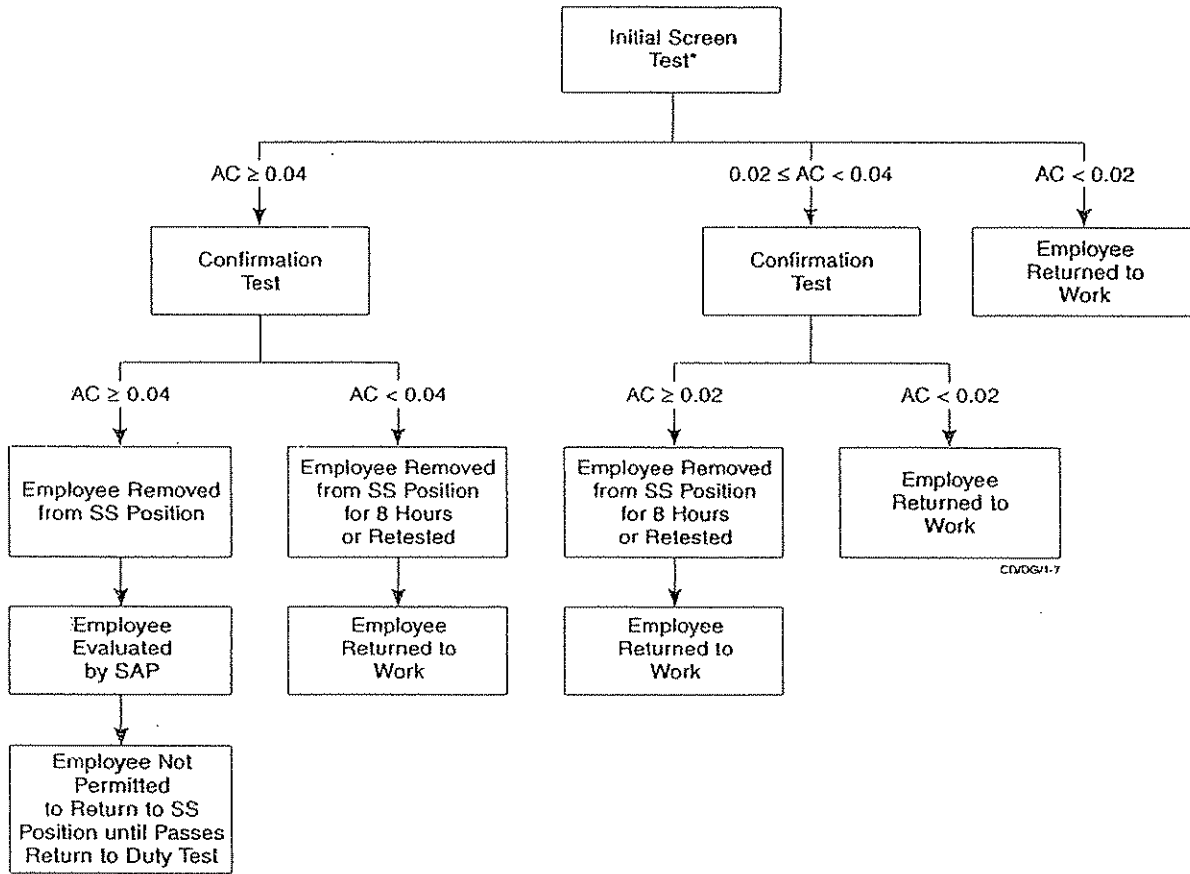


APPENDIX F

Drug Testing Process for
Return to Duty, Follow-Up



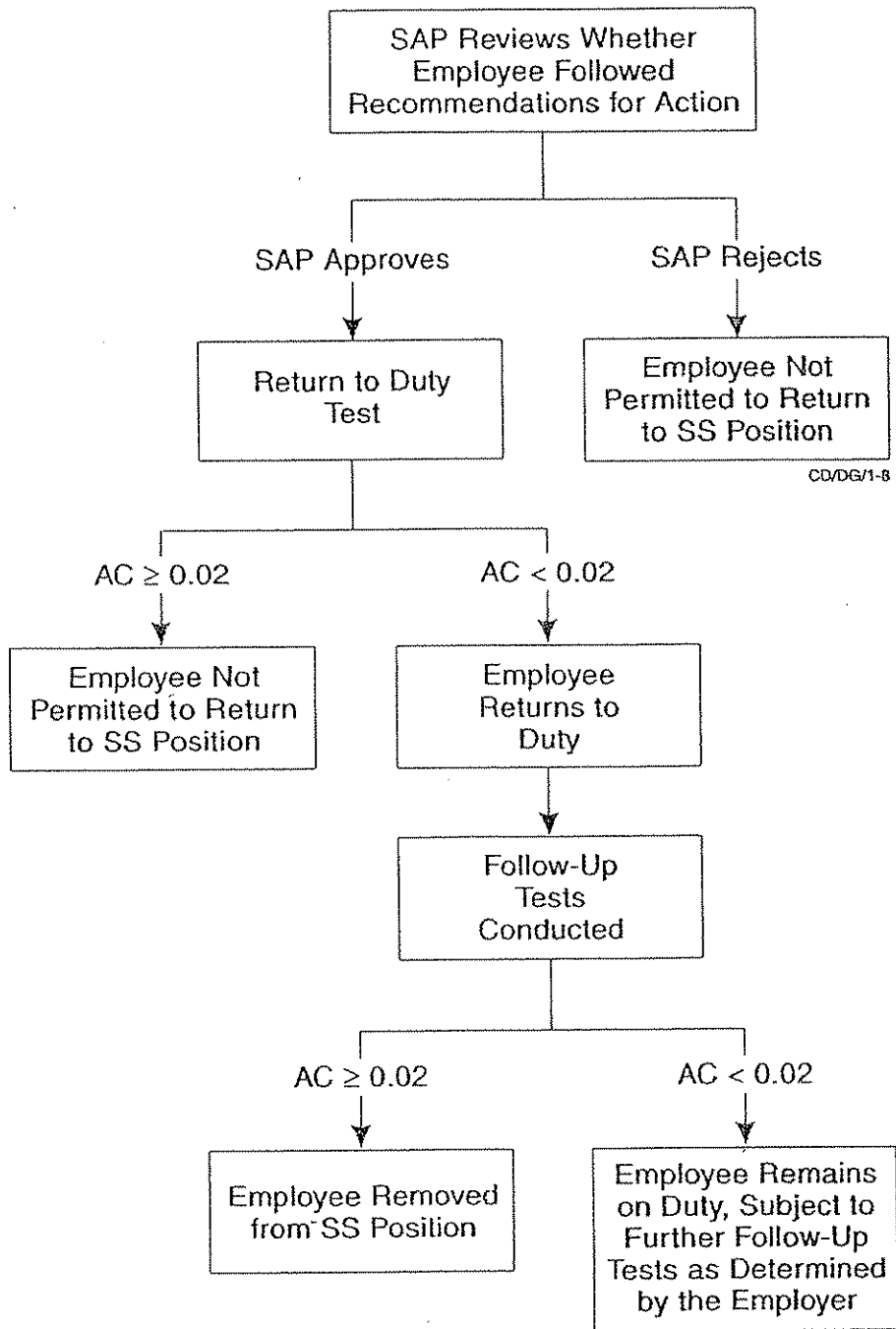
Alcohol Testing Process for Random, Reasonable Suspicion, Post-Accident



Notes: AC = Alcohol Concentration
 SS = Safety-Sensitive
 SAP = Substance Abuse Professional

* The term "Initial Screen Test" will be fully explained in Chapter 8.

Alcohol Testing Process for Return to Duty, Follow-Up



Notes: AC = Alcohol Concentration
SS = Safety-Sensitive
SAP = Substance Abuse Professional