



TOWN OF JACKSON TOWN COUNCIL AGENDA DOCUMENTATION

PREPARATION DATE: September 13, 2018
MEETING DATE: September 17, 2018

SUBMITTING DEPARTMENT: Personnel
DEPARTMENT DIRECTOR: Roxanne Robinson
PRESENTER: Roxanne Robinson, Assistant Town Manager

SUBJECT: Updated Drug and Alcohol Testing Policies for FTA, FMCSA, and Drug Free Workplace

STATEMENT/PURPOSE

The Town Council approves amendments to the Policy Manual for the Town of Jackson and also approves the policies for Town employees subject to the Federal Transit Administration (FTA) and the Federal Motor Carrier Safety Administration (FMCSA).

BACKGROUND/ALTERNATIVES

The federal government mandates that the Town of Jackson conduct pre-employment, reasonable suspicion, post-accident and random drug and alcohol testing on all employees required to maintain a Commercial Driver's License (CDL) for their position as well as all positions deemed safety sensitive. This includes all START Bus Drivers and safety sensitive positions subject to the FTA regulations and all Public Works employees and safety sensitive positions subject to the FMCSA regulations. Additionally, since 2009, the Town of Jackson has also conducted pre-employment, reasonable suspicion and post-accident testing on all Town employees covered by Wyoming Worker's Compensation and in exchange for that testing we receive a 10% base rate discount on our Worker's Comp expenses. The provisions in each of these policies have been in need of update for several years.

The updated policies simplify and streamline the policy and requirements. The notable changes include:

- No longer required to conduct a post-accident drug test for the sole reason being that the employee filed a workers compensation claim. Example: We are not required to drug test Animal Shelter worker's for filing a workers compensation claim for a cat bite.
- An appropriate supervisor can completely discount an employee for being at fault for a non-fatal accident and should this occur, a drug test would not be required. Example: The supervisor can waive the need for a drug and alcohol test when a non-Town vehicle collides with a legally parked START Bus.
- Removal of the list of drugs and drug metabolites tested so that the policy does not require an update for each instance when the US DOT updates the testing requirements. For example in January, the US DOT updated the list to include four semi-synthetic opioids (i.e. hydrocodone, oxycodone, hydromorphone, oxymorphone).
- Worker's Comp requires 20% of our staff to also be randomly tested and this is easily accomplished and met by randomly testing all of our full time CDL holders in the organization (they are federally required to be randomly tested anyway).
- Provides the ability for the Town to enter into a second chance agreement with an employee who has tested positive, is evaluated and determined to not pose a serious risk, who also completes all of the required follow up testing, and whose job performance and behavior warrant a second chance agreement.

Staff recommends the Town Council adopt the FTA, FMCSA, and Drug Free Workplace policies as proposed and direct staff to inform and educate staff, and implement these policies.

The Town Council has many options, several are listed below:

1. Adopt the FTA, FMCSA, and Drug Free Workplace policies as proposed and direct staff to inform and educate staff, and implement these policies.
2. Discuss and review the proposed policies and continue discussion to a future workshop prior to adoption.
3. Take no action at this time, thereby leaving the current policies in place.
4. Other.

STAKEHOLDER ANALYSIS

The stakeholders involved in issue include the citizens and guests of the Jackson Hole Community that rely on the Town to ensure and protect the health, safety, and welfare of the citizens that are served through appropriate drug and alcohol testing policies, the federal government that relies on businesses to accurately follow and implement required drug and alcohol testing policies, and the employees of the Town of Jackson wanting to feel secure that their fellow employees are not performing duties while impaired that may jeopardize their own health, safety, and welfare while working alongside fellow employees. Stakeholders also include Town of Jackson employees that are subject to the testing regulations.

ATTACHMENTS

FTA, FMCSA, and Drug Free Workplace Policies.

FISCAL IMPACT

The fiscal impact of adoption of these policies may result in a slight decrease in the costs associated with drug and alcohol testing in the organization in that, through clarification of when tests are needed, it may result in fewer tests being conducted in unnecessary and non-required situations.

We pay our outside consultant approximately \$7500 annually to calculate and conduct our random testing and conduct all of our pre employment, post accident, and reasonable suspicion testing. Because our Drug Free Workplace Policy was out of date, the Town's discount with Workers Compensation had lapsed. This updated policy will bring the Town back into compliance for this discount. Last year, we paid \$170,103.34 for workers compensation and this year we have paid \$92,787.33 to date. Adoption of the Drug Free Workplace policy would result in a 10% base rate discount which in 2017 would have resulted in a savings of \$8,032.95. Additionally, with this policy in place, the Town is also eligible for further safety discounts through Worker's Comp and staff will be working in the future on any policy and practice updates to come into compliance for those additional discounts.

STAFF IMPACT

The staff impact of adoption of these updated policies may result in slightly less time spent administering the policies as they have been clarified and simplified. Additionally, we will be utilizing the services of the certified trainer in the Police Department to assist with conducting our annual training requirements in this area. As noted, the Town of Jackson is federally mandated to test all CDL holders in START and Public Works and we have been conducting drug free workplace testing on the entire organization since 2009.

LEGAL REVIEW

Complete.

RECOMMENDATION

Staff recommends the Town Council adopt the FTA, FMCSA, and Drug Free Workplace policies as proposed and direct staff to inform and educate staff, and implement these policies.

SUGGESTED MOTION

Should the Council be ready to make a motion, one possible motion would be

I move to adopt the FTA, FMCSA, and Drug Free Workplace policies as proposed and direct staff to inform and educate staff, and implement these policies.

Synopsis for PowerPoint (120 words max):

Background:

The federal government mandates that the Town of Jackson conduct pre-employment, reasonable suspicion, post-accident and random drug and alcohol testing on all employees required to maintain a Commercial Driver's License (CDL) for their position. This includes all START Bus Drivers subject to the FTA regulations and all Public Works employees subject to the FMCSA regulations. Additionally, since 2009, the Town of Jackson has also conducted pre-employment, reasonable suspicion and post-accident testing on all Town employees covered by Wyoming Worker's Compensation and in exchange for that testing we receive a 10% base rate discount on our Worker's Comp expenses. The provisions in each of these policies have been in need of update for several years.

Town of Jackson



DOT-FTA Drug and Alcohol Policy

Effective Date:

Adopted by Jackson Town Council:

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Purpose of Policy

The Federal Transit Administration (FTA) has specific regulations entitled: *Prevention of Prohibited Alcohol Misuse and Prohibited Drug Use in Transit Operations* (49 CFR Part 655 and referenced as Part 655 hereinafter), as amended and 49 CFR Part 40 (referenced as Part 40 hereinafter), as amended. It is the purpose of this policy to comply with these regulations. Copies of referenced regulations are available in the drug and alcohol program managers' office at START or Public Works and/or from the Town of Jackson's Personnel Director and can be found online at the FTA Drug and Alcohol Program website. This requirement is to assure fitness for duty and to protect our workplace including the employees, passengers and the public from the risk posed by the misuse of alcohol and use of prohibited and illegal drugs.

All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655.

Portions of this policy are not FTA-mandated, but reflect Town of Jackson's policy. These additional provisions are identified by **bold text**.

In addition, the Dept. of Transportation (DOT) has published 49 CFR Part 32, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

It is important to understand that ALL Town of Jackson employees are ALSO subject to the provisions of the Drug-Free Workplace Act of 1988 and the Town of Jackson Drug Free Workplace policy. This policy provides ADDITIONAL provisions applicable to those safety-sensitive positions described below in the “Annual Listing of Covered Employees”.

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace. An employee *who is convicted of any criminal drug statute* for a violation occurring in the workplace shall notify the DER **AND the Town of Jackson Personnel Director in writing** NO LATER than five (5) calendar days after such conviction.

Covered Employees

This policy applies to every person, including an applicant or transferee, who performs or will perform a “safety-sensitive function” as defined in Part 655, section 655.4. SEE the attached listing of Town of Jackson/START positions which are covered.

You are a covered employee if you perform any of the following:

- Operating a revenue service vehicle, in or out of revenue service;
- Operating a non-revenue vehicle requiring a commercial driver's license;
- Controlling movement or dispatch of a revenue service vehicle;
- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service; or
- Carrying a firearm for security purposes.

Prohibited Behavior – Drug & Alcohol Use

Use of ILLEGAL drugs is prohibited at ALL times. ALL covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in Part 40. Prohibited drugs shall include:

- marijuana
- cocaine
- phencyclidine (PCP)
- opioids
- amphetamines

Any modifications to Part 40 regulations which require additional drugs or modifications to this list for testing shall be permitted and effective immediately without further policy amendment to ensure compliance.

ALL covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having **ANY MEASURABLE alcohol concentration in their system**.

ALL covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or WHILE ON CALL to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. **NO alcohol is permitted in employee's system at the time of reporting for duty.**

ALL covered employees are prohibited from misusing other legal drugs, including prescription medications. In addition, covered employees may not consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions and are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

Consequences for Violations

Following a positive drug and/or alcohol (BAC at or **above 0.02**) test result, the employee will be immediately removed from safety-sensitive duty. Where a positive drug test is reported by the MRO, an employee has

refused to test and/or the BAC level is at or above 0.04, the employee shall be referred to a Substance Abuse Professional (aka SAP as defined under the Part 40 regulations).

In addition, it is a violation of this policy for an employee to fail to report to testing as directed by their supervisor or DER and/or to fail to timely report an accident to their supervisor. These types of violations may result in consequences that may include termination at the sole discretion of the Town of Jackson.

Treatment/Discipline

Discipline will be at the sole discretion of the Town of Jackson but may include conditions for additional follow up testing, treatment and/or immediate termination. Expenses associated with evaluation, treatment and other conditions shall be in accordance with FMLA and other applicable policies, terms of insurance or at the discretion of the Town of Jackson.

Circumstances for Testing

Pre-Employment Testing

A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. Employment in covered positions is conditional until the satisfaction of this requirement and the review and written acknowledgement of this drug and alcohol policy. If a pre-employment test is deemed cancelled by the medical review officer (MRO), or reported as dilute, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions. When employees have had an employment separation or have been in-active and/or unavailable to perform safety-sensitive duties for ninety (90) days they may also be required to complete a new pre-employment drug test at the direction of the DER.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide satisfactory proof of having successfully completed a referral, evaluation, and/or a treatment plan meeting the SAP and DOT requirements. **Additionally, no applicant shall be eligible for employment within ninety (90) days of receiving a positive pre-employment test.**

Reasonable Suspicion Testing

ALL covered employees shall be subject to a drug and/or alcohol test when the Town of Jackson has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing must be made by a trained supervisor or other trained Town of Jackson official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

Time is of the essence toward the evaluation and completion of reasonable suspicion tests. Upon notification to the employee that reasonable suspicion testing is required, transportation to the collection site shall be arranged quickly. Failure to comply or to participate as directed by the collection site personnel will be considered a refusal to test.

Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by Town of Jackson using the best information available at the time of the decision, will be tested. Such tests may be required in addition to those tests required of any investigating law enforcement officers to ensure compliance with Part 40 regulations and procedures.

Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, DOT drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident;
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident; or
- (3) The vehicle is a bus, and is removed from operation, unless the covered employee can be completely discounted as a contributing factor to the accident.

The timely determination for necessary testing shall be made by the Dispatcher, Supervisor, the Transit Operations Manager, the Transit Director, Assistant Town Manager, Town Manager, or any other supervisory position that may exist in the Transit Department. In addition, any other covered employee whose performance could have contributed to the accident, as determined by Town of Jackson using the

best information available at the time of the decision, will be tested. Timely documentation of this decision shall occur.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. NOTE: nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Random Testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are to be spread reasonably throughout the calendar year. Random testing shall be conducted at all times of the day when safety-sensitive functions are performed.

Annual testing rates shall meet or exceed the minimum annual percentage rate set each year by the FTA administrator. Selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator and may be performed at the direction of the Town by a third party administrator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site. Coordination for notification and testing shall be made with the assistance of the DER to ensure strict compliance and uninformed announcement.

Return to Duty Testing

Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a substance abuse professional (SAP), complete a SAP-required program of education and/or treatment, and provide a negative return-to-duty drug and/or alcohol test result. ALL tests will be conducted in accordance with 49 CFR Part 40, Subpart O. Such tests would be in addition to all other required tests including random, post-accident, etc. **Additional testing requirements may apply in other instances of positive tests and self-disclosure according to the Town of Jackson's Drug Free Workplace Policy and second chance agreements. These tests will be referred to as "Non-DOT" as they are not required by federal regulations although consistent standards for testing may apply.**

Follow-up Testing

Employees returning to safety-sensitive duty following leave for substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP. ALL testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

Testing Procedures

ALL FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

Test Refusals

As a covered employee, you have refused to test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the Town of Jackson's DER.
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has NOT refused to test.
- (3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has NOT refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or Town of Jackson for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or Town of Jackson's Designated Employer Representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and referred to an SAP.

Voluntary Self-Referral

ANY employee who has a suspected or known drug and/or alcohol abuse problem may voluntarily self-refer/disclose to the DER, who will then refer the individual to a substance abuse counselor for evaluation and treatment. Self -referral or disclosure may not be made in an attempt to avoid completing a required and noticed test(s). Such referral is permitted when an employee has not otherwise refused a drug or alcohol test which they have been directed to complete.

Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance. The DER will post and maintain a list of substance abuse contacts and resources for consideration by employees.

Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program. Additional monitoring and/or a second chance agreement may be required by the Town of Jackson to ensure the safety of the workplace.

NO ADA protections apply to employees who use illegal drugs or misuse prescriptions and alcohol resulting in impairment in the workplace.

Fitness for Duty & Prescription Drug Use

Fitness for duty is the responsibility of the employee. The appropriate use of legally prescribed medications and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be carefully evaluated. Medical advice should be sought, as appropriate, while taking such medication and before performing safety-sensitive duties. In addition, those employees whose duties require them to hold a current medical card and CDL must comply with those applicable regulations and the prescribing physician's instructions for appropriate use of medications. Changes in an employee's health conditions may also require updated evaluation by a qualified medical examiner and/or documentation as deemed necessary for the Town of Jackson to ensure safety of operations and in the workplace.

ALL medications brought into the workplace should be adequately secured for use only by the employee. In addition, it is recommended that they be brought in their original bottles with the employee's name, description and use information should they become misplaced and/or for safety in the event of an accident and/or subsequent investigation.

Contact Person

For questions about Town of Jackson's anti-drug and alcohol misuse program, contact the DER at START, the Alternate DER at Public Works, or the Personnel Director. Please refer to the annual addendum for specific staff names holding these positions and other applicable contact and testing information. Copies of applicable regulations and the Drug Free Workplace policy may also be obtained on the Town's Intranet for employees.

Other Provisions & Construction

Additional procedures may be adopted in association with this policy and with the intent toward safety and the consistent and fair administration reflecting as practices. Examples include but are not limited to reasonable suspicion and post- accident evaluation and documentation checklists, post-accident procedures including evaluation of employee stand-down status, guidelines for evaluation of consequences on violations, random testing notifications and dilute testing, etc. Such procedures shall not be inconsistent with this policy as adopted and may be prepared or updated as needed from time to time.

Should any section of this policy make reference to vocabulary or process not clearly defined herein (example – substance abuse provider or SAP), it is the intent of this policy that employees and the Town of Jackson DER would seek those definitions and clarifications from 49 CFR Part 655 and Part 40 as amended as well as from any published written interpretations made available by the FTA or the Department of Transportation. Examples include “disabling damage.”

In the event any part of this policy shall become unenforceable by law or other legal proceedings, it is the intent that all remaining provisions shall remain in full force and effect.

Confidentiality

Confidentiality is essential in the administration of the Town of Jackson's drug and alcohol testing program. Sensitivity to the privacy of employees is important and discretion will be exercised, however, it shall also be understood that testing is required and notifications will be made and often known in instances of random and post-accident testing. While personnel records are confidential, regulations may require the disclosure by the Town of Jackson of an employee's drug and alcohol history and/or results and associated records to subsequent employers and regulators.

Exhibit A: Annual Policy Addendum

For the calendar year of 2018:

DER: Anna White, START Administrative Assistant

Phone: (307) 732-8651 or Email: awhite@jacksonwy.gov

Alternate DER: Amy Renova, Public Works Department Administrative Assistant

Phone: 307-733-3079 ext. 1403 or Email: arenova@jacksonwy.gov

Personnel Director: Roxanne Robinson, Assistant Town Manager

Phone: 307-733-3932 ext. 1107 or Email: rrobinson@jacksonwy.gov

MRO: Dr. F. Proano, MD. *See* the chain of custody testing forms for current contact and address information.

SAMHSA (Substance Abuse and Mental Health Services Administration) Testing Lab: Medtox Laboratories, Inc.

Third Party Administrator: Advantage Testing & Professional Services

Phone: (307) 690-7850 or Email: advantagetesting@msn.com

Employee Education Information Available:

- What Employees Need To Know About DOT Drug & Alcohol Testing brochure
- Employee Education Supplement on the effects of drugs and alcohol

Annual Random Testing Rates: 50% drug/10% alcohol (FMCSA & FTA combined testing pool)

DOT urine specimens are analyzed for the following drugs or drug metabolites:

- ◆ Marijuana metabolites / THC
- ◆ Cocaine metabolites
- ◆ Phencyclidine [PCP]
- ◆ Amphetamines and Methamphetamine
- ◆ Opiate metabolites [including Ecstasy, Codeine, Morphine, and Heroin]
- ◆ Semi-synthetic opioids [including Hydrocodone, Oxycodone, Hydromorphone; Oxymorphone]

Note: Any changes to the Federal Regulations regarding the required test panel will be effective immediately and may include an expansion of the above listed drugs and their metabolites as specified.

Nat. Institute For Drug Abuse:

<http://www.teens.drugabuse.gov/>

Alcoholics Anonymous Website:

<http://www.aa.org/bigbookonline/>

DEA's Drug Fact Sheets:

<http://www.dea.gov/concern/concern.htm>

Treatment Center Locator:

<http://findtreatment.samhsa.gov/>

American Council On Alcoholism Helpline:
1-800-527-5344

Alcohol Help Center:
<http://www.alcoholhelpcenter.net>

2018 Annual Listing of Covered Positions:

*ALL revenue service vehicle drivers – regular and intermittent/seasonal

*Transit Operations manager

*Trainer/Examiner

*Shift supervisors/dispatchers

*Designated Town of Jackson mechanics whose duties require them to perform at least 50% of their duties associated with driving, repairing and maintaining revenue service vehicles

At present, there are no armed officers or staff employed by the Town of Jackson for purposes of providing FTA security duties.

Town of Jackson



DOT-FMCSA Drug and Alcohol Policy

Effective Date:

Adopted by Jackson Town Council:

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Purpose of Policy

This purpose of this policy is to comply with 49 CFR Part 382 (referenced as Part 382 hereinafter), as amended and 49 CFR Part 40 (referenced as Part 40 hereinafter), as amended. Copies of these applicable regulations are available in the drug and alcohol program managers' offices at START or Public Works and/or from the Town of Jackson's Personnel Director and can be found online at the Department of Transportation's website. This requirement is to assure fitness for duty and to protect our workplace including the employees and the public from the risk posed by the misuse of alcohol and use of prohibited and illegal drugs.

All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 382.

Portions of this policy are not DOT-mandated, but reflect Town of Jackson policy. These additional provisions are identified by **bold text**.

In addition, the Dept. of Transportation (DOT) has published 49 CFR Part 32, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FMCSA.

It is important to understand that ALL Town of Jackson employees are ALSO subject to the provisions of the Drug-Free Workplace Act of 1988 and the Town of Jackson Drug Free Workplace policy. This policy provides ADDITIONAL provisions applicable to those safety-sensitive positions described below under “Covered Employees”.

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify the DER **AND the Town of Jackson Personnel Director in writing** NO LATER than five (5) calendar days after such conviction.

Covered Employees

This policy applies to every person whose position requires the possession of a commercial driver's license (CDL), every employee performing a "safety-sensitive function" as defined below, and any person applying for such positions.

Under FMCSA (Part 382), you are a covered employee if you perform any of the following safety-sensitive functions:

- Driving a commercial motor vehicle which requires the driver to have a CDL;

- Waiting to be dispatched to operate a commercial motor vehicle;
- Inspecting, servicing, or conditioning any commercial motor vehicle;
- Performing all other functions in or upon a commercial motor vehicle (except resting in a sleeper berth);
- Loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments being loaded or unloaded; and
- Repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Prohibited Behavior – Drug & Alcohol Use

Use of **ILLEGAL** drugs is prohibited at ALL times. ALL covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in Part 40. Prohibited drugs shall include:

- marijuana
- cocaine
- phencyclidine (PCP)
- opioids
- amphetamines

Any modifications to Part 40 regulations which require additional drugs or modifications to this list for testing shall be permitted and effective immediately without further policy amendment to ensure compliance.

ALL covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having **ANY MEASURABLE alcohol concentration in their system.**

ALL covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or WHILE ON CALL to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. **NO alcohol is permitted in employee's system at the time of reporting for duty.**

ALL covered employees are prohibited from misusing other legal drugs, including prescription medications. In addition, covered employees may not consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions and are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

Consequences for Violations

Following a positive drug and/or alcohol (BAC at or **above 0.02**) test result, the employee will be immediately removed from safety-sensitive duty. Where a positive drug test is reported by the MRO, an employee has refused to test and/or the BAC level is at or above 0.04, the employee shall be referred to a Substance Abuse Professional (aka SAP as defined under the Part 40 regulations).

In addition, it is a violation of this policy for an employee to fail to report to testing as directed by their supervisor or DER and/or to fail to timely report an accident to their supervisor. These types of violations may result in consequences that may include termination at the sole discretion of the Town of Jackson.

Treatment/Discipline

Discipline will be at the sole discretion of the Town of Jackson but may include conditions for additional follow up testing, treatment and/or immediate termination. Expenses associated with evaluation, treatment and other conditions shall be in accordance with FMLA and other applicable policies, terms of insurance or at the discretion of the Town of Jackson.

Circumstances for Testing

Pre-Employment Testing

A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. Employment in covered positions is conditional until the satisfaction of this requirement and the review and written acknowledgement of this drug and alcohol policy. If a pre-employment test is deemed cancelled by the medical review officer (MRO), or reported as dilute, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions. When employees have had an employment separation or have been in-active and/or unavailable to perform safety-sensitive duties for ninety (90) days they may also be required to complete a new pre-employment drug test at the direction of the DER.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide satisfactory proof of having successfully completed a referral, evaluation, and/or a treatment plan meeting the SAP and DOT requirements. **Additionally, no applicant shall be eligible for employment within ninety (90) days of receiving a positive pre-employment test.**

Reasonable Suspicion Testing

ALL covered employees shall be subject to a drug and/or alcohol test when the Town of Jackson has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing must be made by a trained supervisor or other trained Town of Jackson official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-

sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

Time is of the essence toward the evaluation and completion of reasonable suspicion tests. Upon notification to the employee that reasonable suspicion testing is required, transportation to the collection site shall be arranged quickly. Failure to comply or to participate as directed by the collection site personnel will be considered a refusal to test.

Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the commercial vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by Town of Jackson using the best information available at the time of the decision, will be tested. Such tests may be required in addition to those tests required of any investigating law enforcement officers to ensure compliance with Part 40 regulations and procedures.

Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, DOT drug and alcohol tests will be conducted on each covered employee operating the commercial vehicle at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident; or
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.

The timely determination for necessary testing shall be made by a Public Works Manager, the Director of Public Works, the Assistant Director of Public Works, the Assistant Town Manager, the Town Manager, or any other supervisory position that may exist in the Public Works Department. Timely documentation of this decision shall occur.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. NOTE: nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Random Testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are to be spread reasonably throughout the calendar year. Random testing shall be conducted at all times of the day when safety-sensitive functions are performed.

Annual testing rates shall meet or exceed the minimum annual percentage rate set each year by the FMCSA administrator. Selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator and may be performed at the direction of the Town by a third party administrator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site. Coordination for notification and testing shall be made with the assistance of the DER to ensure strict compliance and uninformed announcement.

Return to Duty Testing

Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a substance abuse professional (SAP), complete a SAP-required program of education and/or treatment, and provide a negative return-to-duty drug and/or alcohol test result. ALL tests will be conducted in accordance with 49 CFR Part 40, Subpart O. Such tests would be in addition to all other required tests including random, post-accident, etc. **Additional testing requirements may apply in other instances of positive tests and self-disclosure according to the Town of Jackson's Drug Free Workplace Policy and second chance agreements. These tests will be referred to as "Non-DOT" as they are not required by federal regulations although consistent standards for testing may apply.**

Follow-up Testing

Employees returning to safety-sensitive duty following leave for substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP. ALL testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

Testing Procedures

ALL FMCSA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

Test Refusals

As a covered employee, you have refused to test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the Town of Jackson's DER.
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has NOT refused to test.
- (3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has NOT refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or Town of Jackson for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or Town of Jackson's Designated Employer Representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and referred to an SAP.

Voluntary Self-Referral

ANY employee who has a suspected or known drug and/or alcohol abuse problem may voluntarily self-refer/disclose to the DER, who will then refer the individual to a substance abuse counselor for evaluation and treatment. Self -referral or disclosure may not be made in an attempt to avoid completing a required and noticed test(s). Such referral is permitted when an employee has not otherwise refused a drug or alcohol test which they have been directed to complete.

Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance. The DER will post and maintain a list of substance abuse contacts and resources for consideration by employees.

Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program. Additional monitoring and/or a second chance agreement may be required by the Town of Jackson to ensure the safety of the workplace.

NO ADA protections apply to employees who use illegal drugs or misuse prescriptions and alcohol resulting in impairment in the workplace.

Fitness for Duty & Prescription Drug Use

Fitness for duty is the responsibility of the employee. The appropriate use of legally prescribed medications and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be carefully evaluated. Medical advice should be sought, as appropriate, while taking such medication and before performing safety-sensitive duties. In addition, those employees whose duties require them to hold a current medical card and CDL must comply with those applicable regulations and the prescribing physician's instructions for appropriate use of medications. Changes in an employee's health conditions may also require updated evaluation by a qualified medical examiner and/or documentation as deemed necessary for the Town of Jackson to ensure safety of operations and in the workplace. *See Part 382.213.*

ALL medications brought into the workplace should be adequately secured for use only by the employee. In addition, it is recommended that they be brought in their original bottles with the employee's name, description and use information should they become misplaced and/or for safety in the event of an accident and/or subsequent investigation.

Contact Person

For questions about Town of Jackson's anti-drug and alcohol misuse program, contact the DER at START, the Alternate DER at Public Works, or the Personnel Director. Please refer to the annual addendum for specific staff names holding these positions and other applicable contact and testing information. Copies of applicable regulations and the Drug Free Workplace policy may also be obtained on the Town's Intranet for employees.

Other Provisions & Construction

Additional procedures may be adopted in association with this policy and with the intent toward safety and the consistent and fair administration reflecting as practices. Examples include but are not limited to reasonable suspicion and post- accident evaluation and documentation checklists, post-accident procedures including evaluation of employee stand-down status, guidelines for evaluation of consequences on violations, random testing notifications and dilute testing, etc. Such procedures shall not be inconsistent with this policy as adopted and may be prepared or updated as needed from time to time.

Should any section of this policy make reference to vocabulary or process not clearly defined herein (example – substance abuse provider or SAP), it is the intent of this policy that employees and the Town of Jackson DER would seek those definitions and clarifications from 49 CFR Part 382 and Part 40 as amended as well as from any published written interpretations made available by the FMCSA or the Department of Transportation. Examples include “disabling damage.”

In the event any part of this policy shall become unenforceable by law or other legal proceedings, it is the intent that all remaining provisions shall remain in full force and effect.

Confidentiality

Confidentiality is essential in the administration of the Town of Jackson’s drug and alcohol testing program. Sensitivity to the privacy of employees is important and discretion will be exercised, however, it shall also be understood that testing is required and notifications will be made and often known in instances of random and post-accident testing. While personnel records are confidential, regulations may require the disclosure by the Town of Jackson of an employee’s drug and alcohol history and/or results and associated records to subsequent employers and regulators.

Exhibit A: Annual Policy Addendum

For the calendar year of 2018:

DER: Anna White, START Administrative Assistant

Phone: (307) 732-8651 or Email: awhite@jacksonwy.gov

Alternate DER: Amy Renova, Public Works Department Administrative Assistant

Phone: 307-733-3079 ext. 1403 or Email: arenova@jacksonwy.gov

Personnel Director: Roxanne Robinson, Assistant Town Manager

Phone: 307-733-3932 ext. 1107 or Email: rrobinson@jacksonwy.gov

MRO: Dr. F. Proano, MD. *See* the chain of custody testing forms for current contact and address information.

SAMHSA (Substance Abuse and Mental Health Services Administration) Testing Lab: Medtox Laboratories, Inc.

Third Party Administrator: Advantage Testing & Professional Services

Phone: (307) 690-7850 or Email: advantagetesting@msn.com

Employee Education Information Available:

- What Employees Need To Know About DOT Drug & Alcohol Testing brochure
- Employee Education Supplement on the effects of drugs and alcohol

Annual Random Testing Rates: 50% drug/10% alcohol (FMCSA & FTA combined testing pool)

DOT urine specimens are analyzed for the following drugs or drug metabolites:

- ◆ Marijuana metabolites / THC
- ◆ Cocaine metabolites
- ◆ Phencyclidine [PCP]
- ◆ Amphetamines and Methamphetamine
- ◆ Opiate metabolites [including Ecstasy, Codeine, Morphine, and Heroin]
- ◆ Semi-synthetic opioids [including Hydrocodone, Oxycodone, Hydromorphone; Oxymorphone]

Note: Any changes to the Federal Regulations regarding the required test panel will be effective immediately and may include an expansion of the above listed drugs and their metabolites as specified.

Nat. Institute For Drug Abuse:

<http://www.teens.drugabuse.gov/>

Alcoholics Anonymous Website:

<http://www.aa.org/bigbookonline/>

DEA's Drug Fact Sheets:

<http://www.dea.gov/concern/concern.htm>

Treatment Center Locator:

<http://findtreatment.samhsa.gov/>

American Council On Alcoholism Helpline:
1-800-527-5344

Alcohol Help Center:
<http://www.alcoholhelpcenter.net>

2018 Annual Listing of Covered Positions:

*ALL commercial vehicle drivers – regular and intermittent/seasonal who are required to hold a CDL

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SECTION 7 - DRUG FREE WORKPLACE AND EMPLOYEE ASSISTANCE

701. Purpose

The Town of Jackson is dedicated to providing a safe, secure, and productive workplace and to protect employees and the public from the risks posed by the misuse of alcohol and use of prohibited drugs. The use of controlled substances is inconsistent with the behavior expected of all employees, poses unacceptable safety risks, and undermines the Town of Jackson's ability to operate effectively and efficiently. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and a healthy manner; (2) create a workplace environment free from the adverse effects of drug abuse and alcohol misuse; and (3) to encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties. All employees covered by Wyoming Worker's Compensation shall comply with these provisions.

Employees are hereby informed of the federal Drug-Free Workplace Act and a notice and link to information on this act is available on the Town of Jackson Intranet. The Town of Jackson shall indicate that employees are subject to drug free workplace testing on all vacancy announcements.

The Town of Jackson shall provide 60 days notice to all current employees for any newly implemented substance abuse testing program prior to implementation. This substance abuse testing policy will be posted in appropriate and conspicuous locations on Town of Jackson premises as well as on the Town of Jackson Intranet site. Copies of this substance abuse testing policy are available in the Personnel Director's office.

702. Types of Tests

Pre-Employment, Reasonable Suspicion, and Post Accident testing shall be conducted on all employees covered by Wyoming Worker's Compensation. Random testing shall also be conducted on those employees required to hold and maintain a Commercial Drivers License (CDL) and covered by the Federal Transit Authority or the Federal Motor Carrier Safety Administration. To the extent permitted by law, random testing shall be conducted, at a minimum, on twenty percent (20%) of the average staff on an annual basis.

703. Employee Training

The Town of Jackson shall provide training to employees related to a drug free workplace. Non-supervisors shall attend one (1) hour of employee substance abuse training per year. Supervisors shall attend at least two (2) hours of supervisor substance abuse training per year. Supervisors shall receive training to encompass at least sixty (60) minutes on alcohol misuse and at least sixty (60) minutes on drug use. Training shall include physical, behavioral, speech and performance indicators of probable alcohol and drug use. The Town shall retain training records that document attendee signatures, dates and training topics.

All covered employees are required to submit to drug and alcohol tests as a condition of employment.

704. Manufacture, Distribution, Dispensation, Possession and Convictions

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify the Designated Employer Representative (DER) and the Town of Jackson Personnel Director in writing no later than five (5) calendar days after such conviction.

The Town strictly prohibits the manufacture, distribution, dispensation, possession or use of alcohol on any Town premises, or during working hours. This prohibition includes Town-owned vehicles or personal vehicles being used for Town business or parked on Town property. In addition, the Town strictly prohibits any employee from reporting for or being at work while under the influence of alcohol or any controlled substance. This includes breaks or meals, paid or unpaid that cross over the workday.

The only exceptions to this policy are:

1. Alcohol use on Town property, such as public parks, either at a Town sanctioned or private event outside of working hours.
2. Alcohol use on Town property, such as Town owned employee housing units.
3. Legally prescribed medications as set forth in Section 713 of this policy.

705. Covered Employees

This policy applies to every person covered by Wyoming Worker's Compensation.

706. Prohibited Behavior – Drug & Alcohol Use

Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 CFR Part 40 (referenced as Part 40 hereinafter). Prohibited drugs shall include:

- marijuana
- cocaine
- phencyclidine (PCP)
- opioids
- amphetamines

Any modifications to Part 40 regulations which require additional drugs or modifications to this list for testing shall be permitted and effective immediately without further policy amendment to ensure compliance.

All covered employees are prohibited from working while having any measurable alcohol concentration in their system. The only exception is a specifically assigned employee that is required to perform work by organizing, overseeing, and attending an after hours ‘state’ dinner/event, legislative dinner/event, or similar type of after hours gathering as approved by the Assistant Town Manager or Town Manager for each specific event. Other employees attending these events would not be considered working.

All covered employees are prohibited from consuming alcohol while working. The only exception is a specifically assigned employee that is required to perform work by organizing, overseeing, and attending an after hours ‘state’ dinner/event, legislative dinner/event, or similar type of after hours gathering as approved by the Assistant Town Manager or Town Manager for each specific event. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. No alcohol is permitted in employee’s system at the time of reporting for duty.

All covered employees are prohibited from misusing other legal drugs, including prescription medications. In addition, covered employees may not consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions and are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

707. Consequences for Violations

Following a positive drug and/or alcohol (BAC at or above 0.02) test result, the employee will be immediately removed from safety-sensitive duty. Where a positive drug test is reported by the MRO, an employee has refused to test and/or the BAC level is at or above 0.04, the employee shall be referred to a Substance Abuse Professional (aka SAP as defined under the Part 40 regulations).

In addition, it is a violation of this policy for an employee to fail to report to testing as directed by their supervisor or DER and/or to fail to timely report an accident to their supervisor.

These types of violations may result in consequences that may include termination at the sole discretion of the Town of Jackson.

Employees with a positive confirmed test result shall provide a written notification/statement to the Town of Jackson within five (5) business days of that positive confirmed test result. The statement must explain the results or provide reasons for contesting the results.

708. Treatment/Discipline

Discipline will be at the sole discretion of the Town of Jackson but may include conditions for additional follow up testing, treatment and/or immediate termination. Expenses associated with evaluation, treatment and other conditions shall be in accordance with FMLA and other applicable policies, terms of insurance or at the discretion of the Town of Jackson.

709. Circumstances for Testing

1. Pre-Employment Testing

A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. Employment in covered positions is conditional until the satisfaction of this requirement and the review and written acknowledgement of this drug and alcohol policy. If a pre-employment test is deemed cancelled by the medical review officer (MRO), or reported as dilute, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions. When employees have had an employment separation or have been in-active and/or unavailable to perform work for ninety (90) days they may also be required to complete a new pre-employment drug test at the direction of the Personnel Director.

A covered employee or applicant who has previously failed or refused a pre-employment drug and/or alcohol test must provide satisfactory proof of having successfully completed a referral, evaluation, and/or a treatment plan meeting the SAP and DOT requirements. Additionally, no applicant shall be eligible for employment within ninety (90) days of receiving a positive pre-employment test.

2. Reasonable Suspicion Testing

All covered employees shall be subject to a drug and/or alcohol test when the Town of Jackson has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing must be made by a trained supervisor or other trained Town of Jackson official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug or alcohol testing any time while on duty.

Time is of the essence toward the evaluation and completion of reasonable suspicion tests. Upon notification to the employee that reasonable suspicion testing is required, transportation to the collection site shall be arranged quickly. Failure to comply or to participate as directed by the collection site personnel will be considered a refusal to test.

3. Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

a. Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee involved in the accident. In addition, any other covered employee whose performance could have contributed to the

accident, as determined by Town of Jackson using the best information available at the time of the decision, will be tested. Such tests may be required in addition to those tests required of any investigating law enforcement officers to ensure compliance with Part 40 regulations and procedures.

b. Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee involved in the accident if at least one of the following conditions is met:

- i. The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident;
- ii. One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident;

The timely determination for necessary testing shall be made by the appropriate supervisor. The Annual Policy Addendum that is updated each year shall list each position and shall indicate which supervisor can make the timely determination for necessary testing. In addition, any other covered employee whose performance could have contributed to the accident, as determined by Town of Jackson using the best information available at the time of the decision, will be tested. Timely documentation of this decision shall occur.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. NOTE: nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

4. Random Testing

As noted above, random testing shall be conducted on those employees required to hold and maintain a CDL and covered by the Federal Transit Authority or the Federal Motor Carrier Safety Administration. To the extent permitted by law, random testing shall be conducted, at a minimum, on twenty percent (20%) of the average CDL staff on an annual basis. Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are to be spread reasonably throughout the calendar year. Random testing shall be conducted at all times of the day when safety-sensitive functions are performed.

Selection of CDL employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator and may be performed at the direction of the Town by a third party administrator. Under the selection process used, each CDL employee will have an equal chance of being tested each time selections are made.

A covered CDL employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A CDL covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered CDL employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site. Coordination for notification and testing shall be made with the assistance of the DER to ensure strict compliance and uninformed announcement.

5. Return to Duty Testing

Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a substance abuse professional (SAP), complete a SAP-required program of education and/or treatment, and provide a negative return-to-duty drug and/or alcohol test result. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O. Such tests would be in addition to all other required tests including random, post-accident, etc. Additional testing requirements may apply in other instances of positive tests and self-disclosure according to the Town of Jackson's Drug Free Workplace Policy and second chance agreements. These tests will be referred to as "Non-DOT" as they are not required by federal regulations although consistent standards for testing may apply.

6. Follow-up Testing

Employees returning to safety-sensitive duty following leave for substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

710. Testing Procedures

All drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

711. Test Refusals

As a covered employee, you have refused to test if you:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the Town of Jackson's DER.
2. Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has NOT refused to test.

3. Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has NOT refused to test.
4. In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
5. Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
6. Fail or decline to take a second test as directed by the collector or Town of Jackson for drug testing.
7. Fail to undergo a medical evaluation as required by the MRO or Town of Jackson's Designated Employer Representative (DER).
8. Fail to cooperate with any part of the testing process.
9. Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
10. Possess or wear a prosthetic or other device used to tamper with the collection process.
11. Admit to the adulteration or substitution of a specimen to the collector or MRO.
12. Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
13. Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and referred to an SAP.

712. Voluntary Self-Referral and Employee Assistance

Any employee who has a suspected or known drug and/or alcohol abuse problem may voluntarily self-refer/disclose to the DER, who will then refer the individual to a substance abuse counselor for evaluation and treatment. Self -referral or disclosure may not be made in an attempt to avoid completing a required and noticed test(s). Such referral is permitted when an employee has not otherwise refused a drug or alcohol test which they have been directed to complete.

Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance. The DER will post and maintain a list of substance abuse contacts and resources for consideration by employees.

Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program. Additional monitoring and/or a second chance agreement may be required by the Town of Jackson to ensure the safety of the workplace.

No ADA protections apply to employees who use illegal drugs or misuse prescriptions and alcohol resulting in impairment in the workplace.

A resource list of programs, people, entities and organizations designed to assist employees with personal or behavioral problems is provided as part of the Annual Policy Addendum and is posted on the Town of Jackson's Intranet site and also available from the START administrative offices, the Public Works administrative offices, the Personnel Director, and the Town Hall administrative offices.

713. Fitness for Duty & Prescription Drug Use

Fitness for duty is the responsibility of the employee. The appropriate use of legally prescribed medications and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be carefully evaluated. Medical advice should be sought, as appropriate, while taking such medication and before performing safety-sensitive duties. In addition, those employees whose duties require them to hold a current medical card and CDL must comply with those applicable regulations and the prescribing physician's instructions for appropriate use of medications. Changes in an employee's health conditions may also require updated evaluation by a qualified medical examiner and/or documentation as deemed necessary for the Town of Jackson to ensure safety of operations and in the workplace.

All medications brought into the workplace should be adequately secured for use only by the employee. In addition, it is recommended that they be brought in their original bottles with the employee's name, description and use information should they become misplaced and/or for safety in the event of an accident and/or subsequent investigation.

714. Contact Person

For questions about the Town of Jackson's anti-drug and alcohol misuse program, contact the DER at START, the Alternate DER at Public Works, or the Personnel Director. Please refer to the annual addendum for specific staff names holding these positions and other applicable contact and testing information. Copies of applicable regulations may also be obtained on the Town's Intranet for employees.

715. Other Provisions & Construction

Additional procedures may be adopted in association with this policy and with the intent toward safety and the consistent and fair administration reflecting as practices. Examples include but are not limited to reasonable suspicion and post- accident evaluation and documentation checklists, post-accident procedures including evaluation of employee stand-down status, guidelines for evaluation of consequences on violations, random testing notifications and dilute testing, etc. Such procedures shall not be inconsistent with this policy as adopted and may be prepared or updated as needed from time to time.

Should any section of this policy make reference to vocabulary or process not clearly defined herein (example – substance abuse provider or SAP), it is the intent of this policy that employees and the Town of Jackson DER would seek those definitions and clarifications from 49 CFR Part

655 and Part 40 as amended as well as from any published written interpretations made available. Examples include “disabling damage.”

In the event any part of this policy shall become unenforceable by law or other legal proceedings, it is the intent that all remaining provisions shall remain in full force and effect.

716. Confidentiality

Confidentiality is essential in the administration of the Town of Jackson’s drug and alcohol testing program. Sensitivity to the privacy of employees is important and discretion will be exercised, however, it shall also be understood that testing is required and notifications will be made and often known in instances of random and post-accident testing. While personnel records are confidential, regulations may require the disclosure by the Town of Jackson of an employee’s drug and alcohol history and/or results and associated records to subsequent employers and regulators.

An exhibit to this policy titled Annual Policy Addendum will be posted on the Town of Jackson’s Intranet site that is updated annually that includes the name and contact information of the Designated Employer Representative (DER), the Alternate DER, the MRO, the Testing Lab, the Third Party Administrator, employee education information available, annual random testing rates and the drugs or drug metabolites that are tested, and links to websites providing resources to employees regarding drug abuse, alcoholics anonymous, drug facts, treatment centers, alcoholism help centers and helplines. This Annual Policy Addendum is also available from the START administrative offices, the Public Works administrative offices, the Personnel Director, and the Town Hall administrative offices.

Exhibit A: Annual Policy Addendum

For the calendar year of 2018:

DER: Anna White, START Administrative Assistant
Phone: (307) 732-8651 or Email: awhite@jacksonwy.gov

Alternate DER: Amy Renova, Public Works Department Administrative Assistant
Phone: 307-733-3079 ext. 1403 or Email: arenova@jacksonwy.gov

Personnel Director: Roxanne Robinson, Assistant Town Manager
Phone: 307-733-3932 ext. 1107 or Email: rrobinson@jacksonwy.gov

MRO: Dr. F. Proano, MD. See the chain of custody testing forms for current contact and address information.

SAMHSA (Substance Abuse and Mental Health Services Administration) Testing
Lab: Medtox Laboratories, Inc.

Third Party Administrator: Advantage Testing & Professional Services
Phone: (307) 690-7850 or Email: advantagetesting@msn.com

Employee Education Information Available:

- What Employees Need To Know About DOT Drug & Alcohol Testing brochure
- Employee Education Supplement on the effects of drugs and alcohol

Annual Random Testing Rates: 50% drug/10% alcohol (FMCSA & FTA combined testing pool)

DOT urine specimens are analyzed for the following drugs or drug metabolites:

- ◆ Marijuana metabolites / THC
- ◆ Cocaine metabolites
- ◆ Phencyclidine [PCP]
- ◆ Amphetamines and Methamphetamine
- ◆ Opiate metabolites [including Ecstasy, Codeine, Morphine, and Heroin]
- ◆ Semi-synthetic opioids [including Hydrocodone, Oxycodone, Hydromorphone; Oxymorphone]

Note: Any changes to the Federal Regulations regarding the required test panel will be effective immediately and may include an expansion of the above listed drugs and their metabolites as specified.

Nat. Institute For Drug Abuse:
<http://www.teens.drugabuse.gov/>

Alcoholics Anonymous Website:
<http://www.aa.org/bigbookonline/>

DEA's Drug Fact Sheets:
<http://www.dea.gov/concern/concern.htm>

Treatment Center Locator:
<http://findtreatment.samhsa.gov/>

American Council On Alcoholism Helpline:
1-800-527-5344

Alcohol Help Center:
<http://www.alcoholhelpcenter.net>

Programs, People, Entities and Organizations Designed to Assist Employees with Personal or Behavioral Problems

Jackson Hole Community Counseling Center
(307) 733-2046
<https://www.jhccc.org/>

Curran-Seeley Foundation
Alcohol and Drug Counseling, Treatment & Prevention
(307) 733-3908
<http://www.curranseeley.com/>

Jackson Hole Mental Health
A mental health and substance abuse therapy provider
(307) 654-7003
<http://www.jacksonholementalhealth.com/>

St John's Medical Center Health and Wellness
Nutrition counseling, wellness blood screening, wellness coaching, worksite wellness
(307) 733-3636
<https://www.tetonhospital.org/services/wellness-services/>

Medicine Wheel Wellness
Decision making and conflict resolution, behavioral therapy, positive psychology, solution focused therapy, evolutionary psychology, dialectic behavior therapy
(307) 699-7480
<http://mwwjh.com/mental-health/>

Mountain Therapy
Pediatric and family counseling
(307) 690-3180
<http://www.mountain-therapy.com/>

2018 Annual Listing of Positions and Supervisors With Authority to Make Timely Determination for Post Accident Tests:

2018 Annual Listing for Timely Determinations for Post Accident Tests	
Position	Supervisors With Authority to Make Timely Determination for Post Accident Tests
	Senior Staff
Town Manager	Chief of Police, Assistant Town Manager
Assistant Town Manager	Chief of Police, Town Manager
Town Attorney, Municipal Judge	Chief of Police, Assistant Town Manager, Town Manager
Chief of Police	Assistant Town Manager, Town Manager
Planning and Building Director, Public Works Director, Finance Director, Transit Director, Information Technology Manager	Chief of Police, Assistant Town Manager, Town Manager
	Public Works
Assistant Public Works Director, Town Engineer, Fleet Manager, Streets Manager, Water Utility Manager, Wastewater Manager, Facilities Manager	Public Works Director, Assistant Town Manager, Town Manager
Administrative Assistant, Associate Engineer, Senior Journeyman Mechanic, Journeyman Mechanic, Equipment Operators, Street Operators, Cemetery Sexton, Senior Water Utility Operator, Water Operator, Utility Locator, Meter Reader, Senior Wastewater Treatment Plant Operators, Senior Collection System Operators	Town Engineer, Fleet Manager, Streets Manager, Water Utility Manager, Wastewater Manager, Facilities Manager, Public Works Director, Assistant Town Manager, Town Manager
	Legal
Assistant Town Attorney, Lead Legal Secretary	Town Attorney, Chief of Police, Assistant Town Manager, Town Manager
	Planning and Building
Building Official, Principal Planner	Planning and Building Director, Chief of Police, Assistant Town Manager, Town Manager
Senior Planner, Associate Planner, Building Inspector, Development Coordinator, Office Manager, Office Clerk	Building Official, Principal Planner, Planning and Building Director, Chief of Police, Assistant Town Manager, Town Manager
	Police
Lieutenant	Chief of Police, Assistant Town Manager, Town Manager
Sergeant	Lieutenant, Chief of Police, Assistant Town Manager, Town Manager
Police Technology Manager, Corporal, Police Officer, Community Service Officer, Victim Services Coordinator, Victim Services Advocate, Information Coordinator, Kennel Technician	Sergeant, Lieutenant, Chief of Police, Assistant Town Manager, Town Manager
	Finance
Finance Manager	Finance Director, Chief of Police, Assistant Town Manager, Town Manager
Utility Billing Manager, Senior Deputy Treasurer, Municipal Court Clerk, Enforcement/Deputy Court Clerk, Administrative Assistant	Finance Manager, Finance Director, Chief of Police, Assistant Town Manager, Town Manager
	Municipal Court
Municipal Court Clerk, Deputy Court Clerk	Municipal Judge, Finance Director, Chief of Police, Assistant Town Manager, Town Manager
	Personnel/Town Clerk
Town Clerk, Public Information Officer, Administrative Assistant	Chief of Police, Assistant Town Manager, Town Manager
	Transit
Transit Operations Manager	Transit Director, Assistant Town Manager, Town Manager
Supervisor, Dispatcher, Administrative Assistant	Transit Operations Manager, Transit Director, Assistant Town Manager, Town Manager
Bus Driver	Supervisor, Transit Operations Manager, Transit Director, Assistant Town Manager, Town Manager
	Information Technology
Systems Architect, Systems Administrator, Police Technology Manager	Information Technology Director, Chief of Police, Assistant Town Manager, Town Manager