**COUNTY OF MERCED**
**DRUG AND ALCOHOL TESTING POLICY**

**Adopted June 20, 2006**

## A. STATEMENT OF POLICY

This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, and the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation published 49 CFR Part 382 that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

The County of Merced recognizes that the use and/or misuse of alcohol or illegal use of controlled substances by safety sensitive employees, as identified by the Federal Transit Administration and Federal Highway Motor Carrier Safety Administration regulations, presents a serious threat to the safety and health of the employees and the general public. Safety sensitive County employees and contractors have a responsibility to the public to deliver service in a safe and conscientious manner. In order to achieve as safe a job performance as possible, safety sensitive employees must be free from the effects of alcohol and other job-impairing substances. Accordingly, the use by any safety sensitive employee of an intoxicating liquor, controlled substance, drug not medically authorized, or misuse of a medically authorized drug, or any other substance which impairs job performance or poses a hazard to the safety and welfare of the employee, the public or other employees, is strictly prohibited and could result in termination.

It is the County' s policy to (1) assure that safety sensitive employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) comply with the requirements established by both the Federal Transit and Federal Highway Administrations; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances by safety sensitive employees; and (4) to encourage employees to seek professional assistance any time personal problems, including alcohol/legal drug misuse or illegal drug use adversely affect their ability to perform their assigned duties.

## B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all County of Merced safety-sensitive employees (permanent or extra-help) when performing safety sensitive duties A safety-sensitive function is the operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service (maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service), security personnel who carry firearms, dispatchers or person controlling the movement of revenue service vehicles and any other County of Merced employee who is required to hold a Commercial Drivers License to operate a County vehicle with a gross combination weight, or gross vehicle weight of at least 26,001 pounds, operate a vehicle designed to transport 16 or more passengers, including the driver, or to operate a vehicle used to transport hazardous materials found in the Hazardous Materials Transportation Act.

A list of safety-sensitive positions that perform one or more of the above mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

## C. DEFINITIONS

*Accident* means an occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

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

*Adulterated specimen*. A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

*Alcohol Concentration* is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

*Canceled Test* is a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither positive nor negative.

*Covered Employee* means an employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

*Designated Employer Representative (DER)* An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655 and 49 CFR Part 382.

*Department of Transportation (DOT)* Department of the federal government which includes the, **Federal Transit Administration**, Federal Railroad Administration, Federal Highway Administration, **Federal Motor Carriers' Safety Administration**, Research and Special Programs, and the Office of the Secretary of Transportation.

*Dilute specimen*. A specimen with creatinine and specific gravity values that is lower than expected for human urine.

*Disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Evidentiary Breath Testing Device (EBT)* A Device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the NHTSA conforming products list.

*Medical Review Officer (MRO)* means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

*Negative Dilute.* A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative test result* for a drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended. An alcohol concentration of less than 0.02 BAC is a negative test result.

*Non-negative test result* is a test result found to be adulterated, substitute, invalid, or positive for drug/drug metabolites.

*Performing (a safety-sensitive function)* means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

*Positive test result* for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

*Prohibited drug* means marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

*Revenue Service Vehicles* include all transit vehicles that are used for passenger transportation service or that require a CDL to operate. Include all ancillary vehicles used in support of the transit system.

*Safety-sensitive functions* include (a) the operation of a transit revenue service vehicle even when the vehicle is not in revenue service; (b) the operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL); (c) maintaining a revenue service vehicle or equipment used in revenue service; (d) controlling the movement of a revenue service vehicle and (e) carrying a firearm for security purposes, (e) transporting hazardous materials found in the Hazardous Materials Transportation Act.

*Substance Abuse Professional (SAP)* means a licensed physician (medical doctor or doctor of osteopathy) or 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 or by

the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

*Substituted specimen.* A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

*Test Refusal.* The following are considered a refusal to test if the employee:

- Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
- Fails to remain at the testing site until the testing process is complete
- Fails to provide a urine or breath specimen for any drug or alcohol test required by 49 CFR Part 40, as amended, or DOT agency regulations
- In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
- Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- Fails or declines to take a second test the employer or collector has directed you to take
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the ``shy bladder'' or “shy lung” procedures
- Fails 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)
- If the MRO reports that there is verified adulterated or substituted test result
- Failure or refusal to sign Step 2 of the alcohol testing form

*Verified negative test* means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

*Verified positive test* means a drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

V*alidity testing* is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

## D. EDUCATION AND TRAINING

Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Part 40, as amended, 49 CFR Part 382, and 49 CFR Part 655. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment B of this policy.

## E. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following:

(1) Illegally used controlled substance or drugs under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy

Federal Transit Administration drug testing regulations (49 CFR Part 655 and 49 CFR Part 382) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

(2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to employees immediate supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

(3) Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 655 and 49 CFR Part 382 just before, during, or just after the performance of safety-sensitive job functions. Under the County of Merced authority, an alcohol test can be performed any time a covered employee is on duty.

## F. PROHIBITED CONDUCT

(1) 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 above the minimum thresholds defined in 49 CFR PART 40, as amended.

(2) Each covered employee is 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. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline.

(3) The County of Merced shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.

(4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

(5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

(6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

(7) The County of Merced under its own authority also prohibits the consumption of alcohol all times employee is on duty, or anytime the employee is in uniform.

(8) Consistent with the Drug-free Workplace Act of 1988 and in accordance with the County of Merced Drug Free Workplace Policy, all County of Merced employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place

## G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998 and in accordance with the County of Merced Drug Free Workplace Policy, all employees are required to notify the County of Merced management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q.10 of this policy.

## H. TESTING REQUIREMENTS

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR part 40, as amended. All covered employees shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.

All covered employees who have tested positive for drugs or alcohol will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

A drug test can be performed any time a covered employee is on duty. An alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function. Under the County of Merced authority, an alcohol test can be performed any time a covered employee is on duty.

All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the County of Merced. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q.3 of this policy. Any covered employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employee’s removal from duty and disciplined as defined in Section Q.3 of this policy. Refer to Section C 3 for behavior that constitutes a refusal to test.

## I. DRUG TESTING PROCEDURES

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

The drugs that will be tested for include **marijuana, cocaine, opiates, amphetamines, and phencyclidine**. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the HHS certified laboratory will be reported to a Medical Review Officer (MRO). A MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the County of Merced Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM and no further action will be taken. If the test is invalid with out a medical explanation, a retest will be conducted under direct observation.

Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will

be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. All costs for such testing are paid by the employee unless the second test invalidates the original test.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, or if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct the County of Merced DAPM to retest the employee under direct observation.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

(1) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the County of Merced DAPM that there was not an adequate medical explanation for the result; or
(2) The MRO reports to County of Merced DAPM that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; or
(3) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; or
(4) The temperature on the original specimen was out of range.

In addition, the County of Merced DAPM may direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

## J. ALCOHOL TESTING PROCEDURES

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA. 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. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at

least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q.4-5 of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q.9 of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

The County affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

The alcohol testing form (ATF) required by 49 CFR Part 40, as amended, shall be used for all FTAFMCSA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

## K. PRE-EMPLOYMENT TESTING

All applicants for covered County of Merced positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

(1) All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug. An applicant shall not be placed into a safety-sensitive position unless the applicant takes a drug test with verified negative results.
(2) A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results.
(3) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be.

(4) When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, *and/or an alcohol concentration above 0.04* the employee shall be subject to disciplinary action in accordance with Section Q.4-5 and 9 herein.

(5) If a pre-employment/pre-transfer test is canceled, the County of Merced will require the applicant to take and pass another pre-employment drug test.

(6) In instances where a covered employee is on extended leave for a period of 90 days or more regardless of reason, and is not in the random testing pool the employee will be required to take a drug *and alcohol* test under 49 CFR Part 655 and Part 382 and have negative test results prior to the conduct of safety-sensitive job functions.

(7) An applicant with a dilute negative test result will be required to retest.

(8) Applicants are required to report previous DOT covered employer drug and alcohol test results—Failure to do so will result in the employment offer being rescinded. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer. The applicant must provide the County of Merced proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G and section 382.405(f) and (h) and 382.413(a).

## L. REASONABLE SUSPICION TESTING

All County of Merced covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under the County of Merced's authority, a reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

The covered employee's supervisor shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be removed from their safety-sensitive position until the results of the drug and alcohol test are known. An employee who refuses an instruction to submit to

a drug/alcohol test will be considered as a positive test result and shall be removed from their safety-sensitive position.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the employee's department head and County of Merced DAPM and shall be attached to the forms reporting the test results.

When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred to the SAP for an assessment. The County of Merced shall remove the employee from their safety-sensitive position. Testing in this circumstance would be performed under the direct authority of the County of Merced DAPM. Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.9.

## M. POST-ACCIDENT TESTING

All covered employees will be required to undergo drug and alcohol testing if they are involved in an accident with a transit revenue service vehicle or a County owned vehicle requiring a commercial license to operate, regardless of whether or not the vehicles are in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident.

In addition, a post-accident test will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident.

(1) As soon as practicable following an accident the County of Merced DAPM will be notified of the accident the department manager investigating the accident will notify the covered employee operating the vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The department manager will make the determination using the best information available at the time of the decision.

(2) The appropriate department manager shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol and within 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the manager will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

(7) Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test.

(8) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location or if he or she leaves the scene of the accident prior to submission to such test may be deemed to have refused to submit to testing.

(9) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an 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.

(10) In the rare event that the County of Merced is unable to perform an FTA/FMCSA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the County of Merced may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA/FMCSA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

## N. RANDOM TESTING

All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

(1) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

(2) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by FTA/FMCSA equals fifty percent of the number of covered employees in the pool and the random testing rate for alcohol established by FTA/FMCSA equals ten percent of the number of covered employees in the pool.

(3) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

(4) Covered employees that fall under FTA/FMCSA regulations will be included in one random pool maintained by the County of Merced.

(5) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. However, under the County of Merced's authority, a random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.

(6) Employees are required to proceed within 30 minutes to the collection site upon notification of their random selection.

## O. RETURN-TO-DUTY TESTING

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol free and there are no undo concerns for public safety.

## P. FOLLOW-UP TESTING

Covered employees will be required to undergo frequent, unannounced drug and/ or alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

## Q. RESULT OF DRUG/ALCOHOL TEST

Any covered employee that has a verified positive drug or alcohol test will be removed from his/her safety-sensitive position and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer. A drug test with the result of negative dilute will be retested.

A positive drug and/or alcohol test will also result in disciplinary action as specified herein.

(1) As soon as practicable after receiving notice of a verified positive drug test result, a confirmed alcohol test result, or a test refusal, the County of Merced Drug and Alcohol Program Manager will contact the employee's Department Head to have the employee cease performing any safety-sensitive function(s).

(2) The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.

(3) Refusal to submit to a drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall result in termination. A test refusal includes the following circumstances:

- (a) A covered employee who consumes alcohol within eight (8) hours following involvement in an accident without first having submitted to post-accident drug/alcohol tests;
- (b) A covered employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests;
- (c) A covered employee who provides false information in connection with a drug test;
- (d) A covered employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation. The medical evaluation shall take place within 5 days of the initial test attempt;
- (e) A verbal or written declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test within the specified time frame;
- (f) A covered employee whose urine sample has been verified by the MRO as substitute or adulterated;
- (g) A covered employee fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer;
- (h) A covered employee fails to remain at the testing site until the testing process is complete;

(i) A covered employee fails to provide a urine specimen for any drug test required by 49 CFR Part 40, as amended or DOT agency regulations;

(j) A covered employee fails to permit the observation or monitoring of a specimen collection;

(k) A covered employee fails or declines to take a second test the employer or collector has directed you to take;

(l) A covered employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the ``shy bladder'' or “shy lung” procedures;

(m) A covered employee fails 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);

(n) Failure to sign Step 2 of the Alcohol Testing form.

(4) For the first instance of a verified positive test from a sample submitted as the result of a random, drug/alcohol test (≥ 0.04 BAC), disciplinary action against the employee shall include:

(a) Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement.

(b) Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from county employment.

- Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy;

(c) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.

(d) A periodic unannounced follow-up drug/alcohol test which results in a verified positive shall result in termination from county employment.

(5) The second instance of a verified positive drug or alcohol (≥ 0.04 BAC) test result including a sample submitted under the random, reasonable suspicion, return-to-duty, or follow-up drug/alcohol test provisions herein shall result in termination from county employment.

(6) A verified positive post-accident, or reasonable suspicion drug and/or alcohol (≥ 0.04) test shall result in disciplinary action up to and including termination.

(7) An alcohol test result of ≥0.02 to ≤ 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder or the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC. If the employee has an alcohol test result of ≥ 0.02 to ≤ 0.039 two or more times within a six month period, the employee will be removed from safety-sensitive duty and referred to the SAP for assessment and treatment consistent with Section Q.9 of this policy.

(8) The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or vacation leave to participate in the SAP prescribed treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay until the SAP has determined that the employee has successfully completed the required treatment program and releases him/her to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

(9) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:

(a) Mandatory referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;

(b) Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from county employment.

- Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy;

(c) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.

(d) A self-referral or management referral to the SAP that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q.4-5 of this policy.

(e) Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q.4-5 of this policy.

(f) A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with _the County of Merced.

(g) A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

(10) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination in accordance with the County of Merced Drug Free Workplace Policy.

## R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal are not subject to arbitration.

## S. PROPER APPLICATION OF THE POLICY

The County of Merced is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, 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 requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

## T. INFORMATION DISCLOSURE

Drug/alcohol testing records shall be maintained by the County Merced Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

(1) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP referrals and follow-up testing plans.

(2) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, Department Head or designee, Human Resources Director and Human Resources Manager on a need to know basis.

(3) Records will be released to a subsequent employer only upon receipt of a written request from the employee.

(4) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding. The employer will release the information to the decision maker in the

proceeding with a binding stipulation that it will only be released to parties of the proceeding.

(5) Records will be released to the National Transportation Safety Board during an accident investigation.

(6) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

(7) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

(8) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the County of Merced or the employee.

(9) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of 49 CFR Part 40, as amended, necessary legal steps to contest the issuance of the order will be taken

(10) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

U. SYSTEM CONTACTS

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

**County of Merced Drug and Alcohol Program Manager:**

Name: Darlene Ingersoll
Title: Human Resources Analyst III
Telephone Number: 385.7682

**Alternate County of Merced Drug and Alcohol Program Manager:**

Name: Marci Barrera
Title: Human Resources Manager
Telephone Number: 385.7682

**Medical Review Officer**

Name: S. B. Hoffman, M.D. FACP
Title: Certified Medical Review Officer
Telephone Number: 1.800.733.6676

**HHS Certified Laboratory Primary Specimen**

Name: MedTox Laboratories, Inc.
Address: NW 8939
PO Box 1450
Minneapolis MN, 55485
Telephone Number: 1.800.832.3244

Name: ChoicePoint Medical Review Services
Address: 5900 Wilshire Blvd., Suite 2200
Los Angeles, CA 90036
Telephone Number: 1.800.939.4782

**Substance Abuse Professional**

Name: Robert Bruher
Title: CEAP
Address: National SAP Network
1615 Orange Tree Lane, Suite 101
Redlands, CA 92374
Telephone Number: 1.800.879.6428

**Attachment A**

## Safety-Sensitive Employees Subject to Testing

Federal Motor Carrier Safety Administration (FMCSA)
Federal Transit Administration (FTA)

### ROADS

District Road Supervisor (that maintain a Commercial Drivers License) (FMCSA)
Assistant Road Supervisor (FMCSA)
Road Maintenance Worker I (FMCSA)
Road Maintenance Worker II (FMCSA)
Road Maintenance Worker III (FMCSA)
Shop Supervisor (FMCSA)
Assist. Shop Supervisor (FMCSA)
Heavy Equipment Mechanic (FMCSA/FTA)
Traffic Supervisor (that maintain a Commercial Drivers License) (FMCSA)
Assist Traffic Supervisor (FMCSA)
Litter Control Worker (FMCSA)

### ENVIRONMENTAL HEALTH

Hazardous Material Specialist (FMCSA)
Environmental Health Specialist (FMCSA)
Supervising Environmental Hazardous Material Specialist (FMCSA) - Supervisor Tng Only

### SHERIFF/CORRECTIONS

Transportation Officers (Transportation Officers who operate 44 passenger bus) (FMCSA)
Farm Manager (FMCSA)
Volunteer Drivers (FMCSA)

### AGRICULTURAL COMMISSIONER

Deputy Director of Weights and Measures (FMCSA)
Weights and Measures Inspector III (FMCSA)
Support Services Analyst II (FMCSA)

## Attachment B
## Alcohol Fact Sheet

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

Signs and Symptoms of Use

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

☐ Health Effects

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass]) over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed "alcoholic")
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).

☐ Social Issues

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

☐ The Annual Toll

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

☐ Workplace Issues

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

Attachment C
Minimum Thresholds

| | INITIAL TEST CUTOFF LEVELS (ng/ml) |
|---|---|
| Marijuana metabolites | 50 |
| Cocaine metabolites | 300 |
| Opiate metabolites | 2,000 |
| Phencyclidine | 25 |
| Amphetamines | 1,000 |

| | CONFIRMATORY TEST CUT/OFF LEVELS (ng/ml) |
|---|---|
| Marijuana metabolites | 15 |
| Cocaine metabolites | 150 |
| Opiates: | |
| Morphine | 2,000 |
| Codeine | 2,000 |
| Phencyclidine | 25 |
| Amphetamines: | |
| Amphetamines | 500 |
| Methamphetamine | 500 |