



## **COUNTY OF IMPERIAL DRUG & ALCOHOL POLICY**

### **Title 1: PURPOSE OF THIS POLICY/INTRODUCTION**

The purpose of this policy is to establish the County of Imperial's ("County") rules and procedures regarding the use and possession of illegal drugs and/or alcohol and the procedures to be used to test for illegal drug and/or alcohol. The intent of this policy is to minimize the health and safety risks to our employees and the general public. Furthermore, this policy is intended to prevent illegal drug and alcohol misuse in the workplace and to follow the requirements and guidelines set forth under state and federal law, including, Title 49 CFR Part 40 and 382, The Federal Drug Free Workplace Act of 1988 & 1999, the California Drug Free Workplace Act of 1990, California Government Code Section 8350, California Vehicle Code Section 34520, California Penal Code Section 308 and Labor Code Section 6300.

Nothing in this Policy shall be construed to unlawfully impair the rights of an employee under the laws of the State of California and of the United States, or the California or the United States Constitutions. The County provides reasonable accommodations as required by law to those employees whose past drug or alcohol addictions classifies them as disabled. While the County will be supportive of those who seek self-help voluntarily, the County will be equally firm in identifying and disciplining those whose substance abuse, results in performance deficiencies, danger to the health and safety of others and themselves, and/or violates federal, state or county laws and/or policies. Questions regarding this Policy shall be directed to the Human Resources and Risk Management Department at (442) 265-1148.

The County of Imperial has established the following policy prohibiting, in part, the use, possession, sale and trade of alcohol, illegal drugs, or "legal" substances marketed or designed to change mood (ie: "spice", "bath salts", "salvia"), or having any detectable amount of illegal drugs or alcohol at or above .01%BAC within an employee's bodily system during compensable work time or while in any County workplace as defined in Title 3 of this policy.

### **Title 2: GENERAL POLICY OVERVIEW**

#### **DIRECTIVES**

- A. No employee shall consume alcohol, illegal drugs, or mood altering substances or have any detectable amount of illegal drugs, mood altering substances or alcohol at or above .01%BAC within an employee's bodily system during the employee's compensable work time or while at any workplace. The term workplace includes all County property, including parking areas, or any place or any

time in which an employee is within the scope of employment for the County. This does not include participating in a County Board of Supervisor's sponsored event, only to the extent that limited alcohol consumption is permitted and within the limits of this policy. The phrase "detectable amount of illegal drugs or mood altering substances" does not include the presence of nonpsychoactive cannabis metabolites in the hair, blood, urine, or other bodily fluids.

- B. No employee shall manufacture, sell, distribute, dispense, possess, consume, trade or be under the influence of alcohol, illegal drugs, or mood altering substances while on compensable work time or while at any workplace. Being "under the influence" of illegal drugs or mood altering substances does not include the presence of nonpsychoactive cannabis in the hair, blood, urine, or other bodily fluids.
- C. Any employee who is convicted of driving under the influence of alcohol (as defined by state law) or illegal drugs/controlled substances while acting within the scope of employment, is subject to discipline, up to and including termination of employment, even for a first violation.
- D. Any employee who violates the above directives is subject to discipline, up to and including termination of employment, even for a first violation.

### **APPLICATION**

This policy applies to all County elected officials, County officers, and County employees (hereinafter collectively referred to as "employee(s)"). Public Safety departments within the County may, in some cases, apply higher standards and stricter testing procedures to safety personnel and applicants than the standards and procedures set forth in this policy so long as such procedures are consistent with State and Federal laws.

This policy does not apply when specific job duties require special handling of illegal drugs and/or alcohol in the performance of an employee's assigned duties. Examples of such assigned duties include, but are not limited to: A physician or nurse administering a controlled substance or rubbing alcohol; a peace officer who collects, transports, or stores illegal drugs or open containers of alcohol; and a supervisor who handles evidence (illegal drugs or open containers of alcohol) in the course of their assigned duties.

### **EMPLOYEE RESPONSIBILITIES**

All employees shall:

- A. Comply with the provisions of this policy.

- B. Notify his/her immediate supervisor if the employee has reason to believe that another employee may be in violation of this Policy.
- C. Notify his/her immediate supervisor before reporting to duty for the County, or before performing any duty within the scope of employment if the employee is taking any medication or drug, either prescription or non-prescription, which might impair the employee's effectiveness or safe job performance. The name of the medication or reason for its use need NOT be reported. The County may require a medical evaluation to assure the employee's safety performance of job duties, while taking such medication.
- D. Consider volunteering to participate in the County's EAP program or other self-help programs if the employee feels that his/her alcohol or drug use might impair his/her ability to perform his/her job in a safe and effective manner.
- E. Complete a drug or alcohol testing process, which is consistent with applicable law and County policies and procedures, when directed by the Department Head or designee. An employee who refuses a drug or alcohol test will be in violation of this policy and will be subject to discipline, up to and including termination of employment, for insubordination or other appropriate cause.

A refusal of a drug or alcohol test consists of:

- 1. Conduct that delays, hinders or attempts to obstruct the testing process, including but not limited to, substituting or adulterating specimens to be used in the drug or alcohol testing process;
  - 2. Failure to provide sufficient urine or breathe samples to be used for testing if there is no valid medical reason for such inability (as determined by a medical evaluation);
  - 3. Failure to remain readily available for Post Accident Testing, following an accident. However, the requirement to remain readily available shall not delay necessary medical attention for injured people.
- F. Any employee convicted of a criminal drug or alcohol related offense occurring while acting within the course and scope of County employment, must notify the Department of Human Resources and Risk Management, in writing, within five calendar days of such conviction.
- G. Understand that employees are on notice that:

1. Involvement in illegal activity pertaining to the illegal manufacture, distribution, dispensing, consumption, use, sale, purchase, offer, trade or possession of alcohol, illegal drugs or mood altering substances while on compensable work time or at any workplace, may result in termination of employment and possible notification to local law enforcement.
2. Participation in a rehabilitation program or EAP program may, or may not, be determined to be a mitigating factor in any County determination of job performance or level of disciplinary action. For example, participation in such program is not a substitute for addressing unsatisfactory job performance or misconduct related to drugs or alcohol.
3. The County may require additional drug or alcohol testing, when it believes that a test sample has been diluted or reported as abnormal by the testing lab or collection facility. Alternative testing may include hair, fingernail, urine, blood or other approved County testing option.

H. Acknowledge in writing that he or she has received a copy of this policy.

### **SUPERVISOR RESPONSIBILITIES**

In addition to the employee responsibilities, supervisors shall have the following responsibilities:

- A. Attend County-sponsored training on drug and alcohol awareness.
- B. Ensure that each employee is made aware of and has been provided a copy of this policy and ensure that this policy is explained to each employee they supervise.
- C. Contact the Department Head, or designee, as soon as practicable after identifying a Critical Incident (see definition under Title 3). If reasonable suspicion exists that an employee is under the influence of an illegal drug or alcohol, or is in violation of any section of this Policy, the supervisor shall immediately advise the Department Head, or designee and the Human Resources and Risk Management Department of such reasonable suspicion and follow the procedures set forth in Title 7 of this policy.
- D. Comply with the procedures set forth in this policy.

### **DEPARTMENT HEAD RESPONSIBILITIES**

The Department Head or designee shall have the following responsibilities:

- A. Maintain availability to be contacted as soon as possible by a supervisor who recommends that an employee be ordered to undergo an alcohol or drug testing process.
- B. Notify Human Resources of a critical incident prior to taking any steps to comply with this policy. Direct employees to complete a drug or alcohol testing process when appropriate under this policy.
- C. Recommend employee participation in an EAP program or other self-referral program.
- D. Maintain the confidentiality (on a need-to-know basis) of any information received through the enforcement of this policy.
- E. Take all actions necessary to ensure that the County and its representatives do not unlawfully retaliate against or intimidate any employee who complies with or enforces the provisions of this policy.

### **CONFIDENTIALITY**

Any information obtained concerning an employee's use of prescription or non-prescription medication, the employee/applicants' test results, and/or an employee's past or present participation in rehabilitation or treatment shall be considered confidential personnel information. The information received in enforcing this Policy shall be disclosed only as necessary for: disciplinary actions and appeals; interactive process meetings and reasonable accommodation efforts, or resolving legal issues. Any reports or test results generated pursuant to this policy shall be stored in a confidential file, accessible only by those authorized to receive the information, and separate and distinct from the employee's personnel file. All information shall be held in the strictest confidence.

### **VIOLATION OF POLICY**

Any violation of this policy by a County employee may result in:

- A. Immediate removal from duty; and/or
- B. A recommendation to participate in, make satisfactory progress in, and/or comply with the recommendations of the EAP/Substance Abuse Professional (SAP) or other self-referral program; and/or

- C. Direction to participate in and complete a managed follow-up drug or alcohol testing process; and/or
- D. Disciplinary action, up to and including termination of employment;

The County is under no obligation to rehire a former employee who is terminated for violation of this policy, or reconsider a previous job applicant (as defined in this policy), who was disqualified due to a positive drug or alcohol pre-placement test. If the County, through the Human Resources and Risk Management Department, chooses to rehire a former employee or reconsider a job applicant, the County requires the following actions be completed:

- A. Provide a County approved SAP return to work authorization letter;
- B. Complete a County approved Last Chance Agreement and abide by all terms;
- C. Pass a Pre-placement drug test;
- D. Agree to remain drug and alcohol free at the workplace;
- E. Submit to unannounced follow-up testing for no less than twelve (12) months.

The County may require a disqualification period to pass before the individual is considered for placement under this section. Furthermore, the County has no obligation to provide information to or to provide or pay for rehabilitation for employees or job applicants who either fail or refuse to take a pre-placement drug or alcohol test.

### **Title 3: DEFINITIONS**

- A. **"Alcohol"** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol or any beverage defined in California Business and Professions Code Sections 23003 and 23004.
- B. **"Department Head"** means an individual in County service who is authorized to appoint individuals to County service and to exercise the power to discipline or discharge County employees.
- C. **"Controlled Substance (Drug)"** includes, but is not limited to, marijuana, heroin, cocaine, opiates, amphetamines and phencyclidine (PCP). A complete listing of controlled substances pertaining to this section can be found in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined in 21 C.F.R. 1300.11 through 1300.15. A copy of

these Schedules of the Controlled Substance Act shall be kept on file with the Human Resources and Risk Management Department and will be available for inspection by an employee upon request.

- D. **“Human Resources and Risk Management”** refers to the department identified by the County to answer questions regarding this policy and to provide requested guidance and training to Department Heads and supervisors regarding this policy. The Human Resources and Risk Managements Department is located in the County Administration Center, , 940 West Main Street, Suite 101, El Centro, California, 92243. (Phone (442)265-1148).
- E. **“County Property”** includes all property, including equipment, machinery and vehicles owned, leased, rented or used by the County, including property assigned to or used by employees, such as desks, lockers, furniture and storage bins.
- F. **“County Workplace”** includes owned or leased buildings and parking lots or any location in which an employee is within the scope of employment for the County, including locations not owned or controlled by the County.
- G. **“Critical Incident”** means a circumstance which occurs while the employee is acting within the scope of employment, on County Property, or operating or using County Property that includes, but is not limited to:
1. An accident involving a personal vehicle or County vehicle or other equipment or machinery causing injury to person or property.
  2. Mental or physical impairment to a degree sufficient to raise doubt that job duties can be safely or effectively performed;
  3. Manufacturing, distributing, dispensing, consuming, possessing, selling or using an illegal drug, alcohol, or drug paraphernalia, or possessing an open container of alcohol;
  4. Reasonable suspicion that an employee may be working while on compensable work time, under the influence of drugs or alcohol, or working in violation of any section of this policy.
- H. **“Employee Assistance Program” (“EAP”)** is a voluntary, confidential program to assist any County employee who desires to seek help for alcohol and drug problems or other personal problems affecting job performance. For assistance, visit the County's benefits section for current information on the County's EAP program.
- I. **“Illegal Drug” (Prohibited Substance)** means any controlled substance or other substance that is not legally obtainable under State or Federal law or is being used by an individual for whom the substance was not prescribed, or is not

being used in the manner, combination, or quantity for which it was manufactured, prescribed, or intended. This includes any substance, used, possessed or detected, which violates any Federal, State, or local law, regulation, or ordinance.

- J. **"Job Applicant"** means a non-County employee who is being considered for a safety sensitive position; a former or current County employee seeking re-entry into County employment in a safety sensitive classification; and a County employee reassigned, through transfer or promotion, from a non-safety sensitive to a safety sensitive classification.
- K. **"Legal Drug"** means any controlled substance, as defined above, to include an "over-the-counter drug" or "prescription drug" which has been legally obtained and is being used in the manner, combination, and quantity for which it was manufactured, prescribed, or intended.
- L. **"Medical Review Officer" (MRO)** shall be a licensed physician with knowledge of substance abuse disorders. The role of the MRO is to review and interpret all confirmed positive test results obtained through the County testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test may have resulted from legally prescribed medication. The MRO shall not, however, consider the result of any unauthorized samples that are not obtained or processed through the County's authorized drug testing service provider.
- M. **"On-Duty"** for the County means when an employee is on compensable work time and/or any time in which the employee is acting within the course and scope of his/her employment for the County. This includes paid stand-by or on-call time.
- N. **"Over -the-Counter-Drug"** means any legal substance or drug that can be purchased without a prescription.
- O. **"Prescription Drug"** means any legal drug or substance prescribed for the individual by a licensed medical practitioner.
- P. **"Reasonable Suspicion"** as it relates to this policy, means a reasonable belief, based on articulated facts and reasonable inferences drawn from those facts, that an employee may be impaired by the suspected use of drugs and/or alcohol or has violated the applicable directives within this policy. Reasonable suspicion may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of drugs or alcohol. The factors listed below may demonstrate physical symptoms of being under the influence of drugs or alcohol. The following list is not intended to be an exhaustive list.
  - a. Equilibrium – Does the person abnormally stagger, sway side-to-side, or backward and forward when standing? Does the person abnormally stagger when walking?
  - b. Speech – Is the person's manner of speech abnormally slurred, rapid, or slow when compared to the person's normal manner of speech.
  - c. Mental Reaction – During conversations with the person or by observing the person in conversations with others, are the person's statements responsive or consistent with the topic or the sequence of the conversation? Does the person's attention appear to abnormally wander?
  - d. Odor – (of alcohol or drugs on breath, body, or clothing) – Is there any suspicious odor, or is there a lack of such an odor? Any presence of such an odor or lack thereof should be noted.
  - e. Eyes – Are the person's eyes normal? Are the pupils abnormally constricted or dilated? Are the eyes extremely red or abnormally red rimmed? Does the person have difficulty focusing his/her attention?
  - f. Physical Actions – Is a normally calm person hyperactive or nervous? Does he or she appear to abnormally act nervous or in a nervous manner? Is a normally energetic, active, gregarious person abnormally lethargic, inattentive, or withdrawn?
  - g. Mood – Is the person abnormally hostile, angry or short with others, or abnormally sad, or prone to uncontrolled crying or depression when compared to the person's normal mood?
2. A pattern of abnormal conduct or erratic behavior.
3. Conviction for a drug-related or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or distribution, while on compensable work time.

4. Information provided either by reliable and credible sources or independently corroborated by others sources, to include self-admission of drug/alcohol use.
5. Newly discovered evidence that the employee tampered with a previous drug test.

Mere hunches are not sufficient to constitute reasonable suspicion for purposes of this policy.

- Q.       **"Safety Sensitive Position"** is any position wherein an employee's regular job duties involve some special or obvious physical or mental demands which if not performed with proper attention, care or concern, could have an immediate, disastrous consequence on the employee, public safety or security.

Safety sensitive positions include, but are not limited to:

1. Classifications that directly involve or impact the safety of the public or employees.       These positions have direct responsibility for the safety of the public or employees and/or are positions where an impaired or reduced ability to perform the essential duties of the position could have a dramatic, immediate and direct impact on the health and safety of the public or employees. Persons in these positions must be able to act swiftly and effectively in emergency situations without impairment in judgment or physical ability, and must identify and avoid conflicts of interest or compromises of security or safety.
2. Classifications that involve the operation, repair or inspection of trucks, buses, heavy equipment, and driving. These positions have potential for catastrophic consequences to the health and safety of the public and/or employees if the abilities of an employee are impaired by drug and/or alcohol use.

- R.       **"Substance Abuse Professional (SAP)"** means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychiatrist, psychologist, social worker, employee assistance professional, or addiction counselor (certified by an appropriate state or federal agency such as the National Association of Alcoholism) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. An SAP, as defined herein, may be, but is not required to be, a County employee. An SAP provides information to employees regarding the effects of alcohol and/or drug use; signs and symptoms of such problems; methods to intervene when a problem is suspected; and

information regarding counseling and treatment programs available for alcohol and substance related disorders.

#### **Title 4: EMPLOYEE ASSISTANCE PROGRAM (EAP)**

The employee may not be dismissed or excused from required testing, simply by requesting assistance from the EAP. Once an employee has been selected for testing, testing must take place first, prior to any referral to the EAP.

The County has established an EAP to assist all County employees who wish to seek help for alcohol and drug problems or other personal problems affecting job performance. Visits are voluntary and records relating to evaluation and treatment are confidential. The purpose of the EAP is to create a confidential, non-punitive environment that permits early intervention in problem resolution for troubled employees.

Once a violation of this policy occurs, subsequent use of EAP will not necessarily lessen or replace disciplinary action. The employee is responsible for understanding the difference between EAP and County rules and disciplinary procedures. The EAP should be considered as a supplement to appropriate disciplinary action. Whether an employee's willingness to participate in EAP will affect the recommendation for disciplinary action will depend on the circumstances.

Any charges incurred by an employee using or accessing any EAP service are the sole responsibility of the employee. The employer will not be responsible for any payment to any professional service provider. The employee should refer to their health insurance package for possible assistance.

#### **TITLE 5: LABORATORY PROCEDURES**

All drug testing conducted under this policy shall be completed using laboratories that are certified by the Department of Health & Human Services (DHHS) and the Substance Abuse & Mental Health Services Administration (SAMHSA). All alcohol testing will be administered by certified Breath Alcohol Technicians qualified to administer such tests. All drug testing will be administered using Title 49 Code of Federal Regulations Part 40, as our guide. The lab will screen the samples for the major drugs of abuse and all suspect

positives will be confirmed via Gas Chromatography–Mass Spectrometry (“GC/MS”). The lab will not screen for nonpsychoactive cannabis metabolites. All confirmed positives will then be reviewed by the County’s certified Medical Review Officer (MRO). All “Dilute” or “Unsuitable for Testing” specimens may require re-testing via an alternative testing method, at the County’s discretion.

#### **Title 6:           PRE-PLACEMENT TESTING**

After a conditional job offer has been extended, the County may need to require certain job applicants to take a drug and alcohol test in accordance with the procedures established by this policy. A special need exists for, including but not limited to, those applying for jobs classified by the County as safety sensitive positions, or those applicants seeking jobs which can directly influence children (including, but not limited to, child care workers). Special need classified job applicants must report for testing without any delays, then take and pass a drug and alcohol test following their acceptance of an offer of employment that is conditioned upon passing a pre-placement drug/alcohol test. Special need classifications shall include those defined under Title 3 Section “O”-Safety Sensitive Position, those listed in Exhibit A, and additional positions, which may from time to time be created that fit into the general description defined herein. Those job applicants, described above, who:

- A.     Refuse to submit to testing, attempt to tamper with or adulterate a test sample, or fail to report for testing as scheduled will be considered to have refused to participate in the testing process, and shall not be hired, transferred, or promoted into the position that was conditionally offered. Non-County employees will not be considered for employment for one (1) year from the job applicant’s refusal to participate in the testing process.
- B.     Test positive for drugs and/or alcohol or unauthorized prescription drug use, shall not be hired, transferred, or promoted into the position that was conditionally offered. Pre-placement testing shall not include screening for nonpsychoactive cannabis metabolites.

The County has no obligation to reconsider a job applicant who either refused to take or failed a pre-placement drug or alcohol test. Please refer to the “Violation of Policy” for required actions prior to the County reconsidering a job applicant.

#### **Title 7:           RANDOM TESTING**

Only those DOT employees as defined within this policy will be subject to random drug or alcohol testing, unless such testing is expressly required by state or federal law. Participation by DOT employees is required. The random selection process will be conducted by the drug testing agency contracted by the County of Imperial.

## **Title 8: REASONABLE SUSPICION TESTING OF EMPLOYEES**

All employees are required to submit to an alcohol and drug test when a supervisor has reasonable cause or suspicion to believe that an employee may be working under the influence of alcohol and/or drugs. The reasonable suspicion should be based on the supervisor's observation of the employee that demonstrates symptoms as described in the definition of Reasonable Suspicion in Title 3 of this policy.

If reasonably possible under the circumstances, the supervisor should have another supervisor observe and note the suspicious behavioral factors. If both parties agree that reasonable suspicion is supported, the employee's supervisor shall proceed with the following procedures:

### **PROCEDURES:**

- A. Immediately have a conference with the employee to allow the employee an opportunity to explain the facts concerning the employee's behavior or conduct. If the employee requests the presence of a representative, the supervisor shall have the conference if a representative is immediately available. If no representative is immediately available, the supervisor shall not have the conference, and the supervisor shall proceed to paragraph three (3) below. The supervisor has the right to have future discussions with the employee regarding this matter.
- B. If, after the employee has had the opportunity to explain the facts, the supervisor still feels that there is reasonable suspicion that the employee is under the influence of alcohol and/or drugs, the supervisor shall immediately contact the Department Head or designee to recommend that the employee be directed to complete a drug and breath alcohol test. If the Department Head or designee agrees with the supervisor's recommendation, and after consulting with the Human Resources and Risk Management Department, the supervisor shall direct the employee to complete a drug and/or alcohol test.
- C. Employees should be tested for alcohol and drugs based upon a reasonable suspicion within two (2) hours of the observation. If an alcohol and drug test is not conducted within two (2) hours of determination that reasonable suspicion exists, the County shall prepare and maintain a record explaining why no test was administered within the two (2) hour period and the County will continue to attempt to obtain the required testing. No attempts to conduct alcohol test shall be made after eight (8) hours following

the determination of reasonable suspicion of alcohol use, or after thirty-two (32) hours in the case of suspected drug use.

- D. The employee must be escorted to have the test conducted. Upon arrival at the drug testing provider, the employee shall complete a Consent Form to release information. Once the test has been completed, the employee should be transported back to the workplace, then placed on paid "administrative leave" until the results of the test have been reported to the Human Resources and Risk Management Department. The employee should be asked not to drive and should be offered the opportunity to arrange for his/her safe transportation home; otherwise, the employee shall be driven home by the accompanying supervisor. In no event shall a supervisor permit an employee to continue working when there is "reasonable suspicion" that the employee may be working under the influence of drugs or alcohol.
- E. The employee may refuse to be tested. However, the supervisor shall inform the employee that if he or she refuses to be tested, such action may constitute insubordination, and the employee may be subject to discipline up to and including termination of employment. The supervisor shall make arrangements to transport the employee home. If the employee is unconscious, or does not demonstrate the physical or mental capacity to consent or refuse, the supervisor shall contact the appropriate medical and/or law enforcement officials.
- F. A written report concerning the above activities shall be forwarded to the Department Head or designee and the Human Resources and Risk Management Department no later than twenty-four (24) hours after the incident. The report shall contain the names of the persons involved, time/date, location, and what the supervisor observed and shall be signed by the supervisor and any other supervisor or employee who observed the incident.
- G. Notwithstanding any other provision of this policy, for the protection of public health and safety, disclosure of a drug or alcohol test result without employee consent may occur, consistent with applicable law, when: (1) The information is required by law or by judicial or administrative process; (2) The information has been placed at issue in a formal dispute between the County and the employee, and; (3) The information is needed by medical personnel for the diagnosis or treatment of an employee who is unable to authorize disclosure.

**RETURN TO WORK:** The County will also require that an employee submit to a drug and alcohol test when the employee seeks to return to work after being

absent due to S.A.P. recommended treatment or rehabilitation for alcohol and/or drug dependency.

**INSPECTIONS:** An employee shall not be physically searched nor shall an employee's private property (purse, briefcase, car, etc.) be searched by a supervisor. However, if the supervisor has a reasonable suspicion that an employee possesses an illegal drug, the supervisor may ask the employee for consent to search the employee's private property, and if the employee refuses, the supervisor shall notify the appropriate law enforcement agency if there is reasonable suspicion to believe there has been a violation of this policy. To prevent the presence of illegal drugs and alcohol in the work place, all County lockers, desks, cabinets, computers and vehicles are deemed to be the property of the County and are subject to search without the employee's consent by County management at any time with or without notice. If possible, the County will attempt to allow the employee to be present when the search is conducted. Refusal to cooperate with a search may result in disciplinary action, up to and including termination.

A Peace Officer who is covered by Public Safety Officers Procedural Bill of Rights ("POBR") or a Firefighter who is covered by the Firefighters Bill of Rights ("FBOR") shall not have his or her locker or other space for storage that may be assigned to him or her searched except in his or her presence, or with his or her consent, or unless a valid search warrant has been obtained or unless he or she has been notified that a search will be conducted.

## **TITLE 9: COMMERCIAL VEHICLE DRIVERS**

### **I. INTRODUCTION**

In addition to the rules in Title I through 8 of this policy, all DOT employees (hereinafter referred to as "Drivers") who are performing a safety sensitive function as defined below, are subject to the rules found in this Title. Drivers who operate a commercial motor vehicle and who are required to maintain a commercial driver's license (CDL) issued by the State of California, and whose duties require the performance of any safety sensitive functions as defined below, are required by the Federal Omnibus Transportation Employee Testing Act of 1991 to be subject to this drug and alcohol testing program. The County may amend the rules in this Title to maintain conformity with and fulfill the requirements of applicable state and federal laws, and regulations, as such are amended from time to time.

These Drivers, include but may not be limited to, the following

positions: [See Exhibit B attached hereto for list of covered positions]

### **II. DEFINITIONS**

In addition to those definitions found in Title 3 of this Policy, the following definitions apply for the purpose of this Title. Where the definitions conflict, the definitions in this Title will apply to DOT employees:

- A. Accident: an occurrence involving a commercial motor vehicle operating on a public road which results in:
  - 1. Fatality
  - 2. Bodily injury to a person who immediately receives medical treatment away from the scene of the accident as a result of the injury;
  - 3. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.
- B. Commercial Driver's License (CDL): A license issued to an individual by a State or other jurisdiction, which authorizes the individual to operate a class of commercial vehicle.
- C. Commercial Motor Vehicle: A motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:
  - 1. Has a gross combination weight rating 26,001 or more pounds, or the vehicle together with the towed unit with a gross vehicle weight of more than 10,000 pounds equals or exceeds 26,001 pounds; or
  - 2. Is designed to transport 16 or more passengers, including the driver, or
  - 3. Is of any size and is used in the transportation of materials Found to be hazardous pursuant to the Hazardous Materials Transportation Act.
- D. Disabling damage: Damage which precludes departure of a motor vehicle from the scene of an accident in daylight after simple repairs, including damage to motor vehicles that could have been driven but would have been further damaged if so driven; and excluding damage which can be remedied temporarily at the scene of the accident without special tools or parts; tire damage without other damage, even if no spare tire is available; headlight or taillight damage; damage to turn signals, horn or windshield wipers which make them inoperative.

- E. Driver: Any person whose position requires that the individual operate or stand in readiness to operate a commercial motor vehicle, including but not limited to: full time, regularly employed drivers, extra-help, limited-term or occasional drivers.
- F. Highway: Any road, street or way, open to public travel whether on private or public property.
- G. Safety Sensitive Function: Drivers are deemed to be performing safety sensitive functions when a Driver begins work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include, but are not limited to:
  - 1. All time on County or other public property, or highways waiting to be dispatched, unless relieved from duty by the County;
  - 2. All time inspecting equipment or servicing or conditioning any commercial motor vehicle;
  - 3. All time spent at the driving controls of a commercial motor vehicle in operation;
  - 4. All time other than driving time, in or upon any commercial motor vehicle.
  - 5. All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
  - 6. All time repairing, obtaining assistance, or attending a disabled commercial motor vehicle;
  - 7. All time spent providing a breath or urine sample, including travel time to and from the collection site in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by the employer.

### **III. NOTIFICATION TO DRIVER**

In addition to any requirements regarding training contained in Title 1 of this policy, prior to performing a drug test or alcohol test under this policy:

- A. The County will notify existing and new Drivers that the alcohol or drug test is required.
- B. The County will post this policy in a prominent location that is readily accessible to all covered Drivers.
- C. All covered Drivers will be provided with a complete copy of this policy. Each Driver may obtain, upon request, an additional copy of this policy for review by contacting the Human Resources and Risk Management Department.
- D. Each Driver is required to sign a certificate of receipt certifying that he/she has received a copy of this policy. The County will keep the original receipt on file.
- E. The County will provide Drivers with information on how to comply with post-accident procedures prior to operating a commercial motor vehicle.
- F. This policy is not intended to interfere with an employee's attempt to seek assistance in addressing alcohol or substance abuse programs that may be available under the County's health insurance plan. However, such assistance does not exempt any employee from the requirements or consequences of this policy.

#### **IV. DIRECTIVES AND PROHIBITED CONDUCT UNDER TITLE 9**

Any Driver who violates the directives provided in this Section shall be subject to disciplinary action, up to and including termination of employment, in addition to any other requirements provided for in this Title 9. The County will not subject drivers to discipline for the detection of nonpsychoactive cannabis metabolites in their body. Any reference to disciplinary action, including termination in this Section, does not apply to the detection of nonpsychoactive cannabis metabolites in the hair, blood, urine, or other bodily fluids. No supervisor with actual knowledge of a violation of any of these directives shall permit any Driver to report for or remain on duty when required to perform any safety sensitive functions.

- A. No Driver shall report for duty requiring the performance of safety sensitive functions within four (4) hours after consuming alcohol.
- B. No Driver shall report for duty, remain on duty, or drive a commercial motor vehicle on duty requiring the performance of safety sensitive functions while having a blood alcohol concentration of .01% BAC or greater.
- C. No Driver shall consume alcohol while on duty, when required to perform any safety sensitive functions.

- D. No Driver required to take a post-accident alcohol test shall consume alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident drug and breath alcohol test, whichever occurs first.
- E. No Driver shall refuse to submit to a pre-placement, a post-accident, a random, a follow-up or a reasonable suspicion alcohol or drug test.
- F. No Driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the Driver has used any medication or drug, except when the use is pursuant to the instructions of a licensed United States medical practitioner who has advised the County, in writing, that the Driver's ability to safely operate a commercial motor vehicle will not be impaired while using such medications.
- G. All Drivers must inform their immediate supervisor of any therapeutic drug use which may impair the Driver's ability to safely operate a commercial motor vehicle. This includes prescription medications, over-the-counter medication and illicit drug use or alcohol mis-use.
- H. No Driver shall report for duty, remain on duty or perform a safety-sensitive function if the driver has used or tested positive for alcohol or drug use.
- I. Any Driver who has violated the foregoing directives and is permitted by the County and the SAP to be returned to duty must comply with the requirements of the rehabilitation program prescribed by the SAP; submit to a same-sex direct observation return to duty testing, and any and all required directly observed follow up testing. The County assumes no liability for the costs of any rehabilitation program or required testing.

#### **V. WHEN DRIVERS WILL BE TESTED**

Drivers will be subject to drug and alcohol testing as set forth below in accordance with federal law. All alcohol testing shall be done immediately before, during, or immediately after the workday. Drug testing may be conducted at any time during the employee's workday.

- A. **Random Testing:** Tests shall be performed on a random basis at unannounced times and dates spread reasonably throughout the year as required by state and federal law.
  - 1. The minimum annual percentage rate for random alcohol testing shall be 10% of the average number of Drivers tasked to stand in readiness to drive a CMV. The minimum annual percentage rate for random drug testing shall be 50 percent

of the average number of drivers tasked to stand in readiness to drive a CMB, or as adjusted from year to year by the Motor Carrier Safety Administration (MCSA). The minimum annual testing rate for random alcohol testing will be adjusted annually starting January 1 of the calendar year following publication in the Federal Register of the current percentage rate by the MCSA.

2. The selection of Drivers for random alcohol and drug testing shall be made by any scientifically valid method so that each Driver shall have an equal chance of being selected each time selections are being made.

- B. Post-Accident Testing:** As soon as practical following an accident, as defined in this policy, each surviving Driver shall be tested for alcohol and drugs. A Driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the County to have refused to submit to testing. However, the Driver should not delay necessary medical attention for injuries sustained following an accident.
- C. Return to Duty Testing:** If any Driver violates the directives found in this Title concerning alcohol or drugs and the County does not initiate proceedings to terminate the Driver's employment, the Driver shall undergo a return-to-duty alcohol and drug test, and shall not be returned to duty unless the test result indicates an alcohol concentration of less than .01% BAC, and a drug test returns a verified negative result.

Any Driver returning from a leave of absence for more than thirty (30) days due to illness, layoff, injury etc., who has not participated in the random drug and alcohol-testing program during the thirty (3) day period, shall be tested (pre-placement) before returning to duty.

## **VI. DRUG AND ALCOHOL TESTING PROCEDURES**

All Department of Transportation drug and alcohol tests required under this Title will be administered in accordance with 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs Review."

- A.** Throughout the testing process, the privacy of the employee will be protected and the integrity and validity of the process will be maintained. Privacy procedures for collecting urine specimens shall allow for individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided because: (1) the specimen falls outside the normal temperature range; (2) the specific gravity of the last urine specimen provided by the employee was determined to have too low of a specific gravity and creatinine concentration; (3) the

collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample; (4) the employee is participating in follow up testing upon or after return to service following a previous determination that the employee used illegal drugs. In such cases, the specimen will be obtained under same-sex direct observation.

- B. The Medical Review Officer shall contact any Driver whose test for drugs is confirmed by the laboratory as "Confirmed Positive." The MRO will conduct a telephone interview with the employee to determine if there is an alternative explanation for the test result. The MRO will investigate all employee claims, and then report a final determination to the County. It is the employee/applicant's obligation to provide accurate and legible information on the Drug Test Custody and Control Form, so the MRO can make the necessary contact. Failing to contact the MRO within five (5) calendar days will result in a "non-contact" Positive result.
- C. Any DOT regulated employee desiring to retest their split sample may submit their written request to the MRO no later than seventy-two (72) hours from the time the employee was notified by the MRO of his/her lab result. Otherwise, the DOT regulated employee will lose his/her right for retest consideration. The retest shall be at the employee's expense, payable to the drug testing agency prior to testing of the split sample. Non-DOT regulated employees are not given the "Split Sample" option.
- D. The County may disclose driver information as required by the Motor Carrier Safety Administration (MCSA). Results may be released upon Driver consent or, without a Driver's consent, to a decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the individual, to include, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the Driver, when requested by the Department of Transportation or any state or local official with regulatory authority over the County or any of its safety-sensitive employees.

## **VII. DISCIPLINARY ACTION AND REMOVAL FROM DUTY**

- A. In addition to any other consequences described in this Title, any Driver who violates any directive contained in this policy shall be subject to disciplinary action, up to and including termination of employment. A refusal to test shall be treated as if the Driver tested positive for drugs or alcohol. Further, a Driver who refuses to submit to a drug or alcohol test loses his/her right to have his/her split specimen tested, if a split specimen was provided by the

employee. If an employee attempts to substitute or adulterate his/her specimen, the County will consider this action as a refusal to test.

- B. Any Driver, who tests positive for a blood alcohol level of .01% or above and/or who tests positive for drugs, will be immediately removed from duty. If the Driver properly requests a second test as described in Section VI of this Title and such urine test fails to confirm the presence of drugs found in the first test, the Driver shall be returned to work without loss of pay.
- C. If no disciplinary action is initiated by the County to terminate the Driver, the Driver will be subject to the following procedures set forth in Section VIII and will not be permitted to return to duty to perform safety-sensitive functions until such procedures are met.

#### **VIII. REFERRAL, EVALUATION, AND REHABILITATION PROGRAM PARTICIPATION**

- A. A Driver who has violated the provisions of Section IV of this Title, shall be subject to disciplinary action, up to and including termination. Upon notice that a Driver has tested positive, such Driver shall be relieved from duty and placed on **suspension, without pay, for a period of no less than thirty (30) days upon the County providing the required notices**. The employee shall meet with his/her supervisor or Department Head, or designee at which time the Driver shall be advised that a Last Chance Agreement is available to him/her. If the Driver desires to enter into a Last Chance Agreement, the Driver should be advised that enrollment into a substance abuse program and evaluation by the County's Substance Abuse Professional is required within seven (7) days of entering into the Last Chance Agreement. The SAP will recommend assistance and follow-up testing, if necessary.
- B. Any Driver, who voluntarily enters a drug and/or alcohol rehabilitation program and has not engaged in the prohibited conduct detailed in Section IV of this Title, may be eligible for a leave of absence, without pay, to participate in a drug and/or alcohol rehabilitation program for a reasonable period of time. The Driver may be required to present verification of attendance and/or participation in any drug and/or alcohol rehabilitation program. If a Driver is returning from a rehabilitation program, the Driver shall provide the County with documentation that he/she has satisfactorily completed the rehabilitation program. The Driver shall be subject to return to duty and follow-up testing as set forth by the SAP and within the limits of this policy.
- C. Any Driver, who voluntarily enters a drug and/or alcohol rehabilitation program and who has not engaged in prohibited

conduct, shall not be subject to disciplinary action for having acknowledged his/her problem. However, enrollment in rehabilitation program does not excuse a Driver from compliance with all other provisions of this policy.

#### **IX. SUPERVISOR TRAINING**

Supervisory personnel responsible for those Drivers covered under this Title will receive training under the drug and alcohol policy. The training shall include at least one sixty (60) minute period of training on alcohol misuse and at least an additional sixty (60) minutes of training on drug use. The training shall cover the specific, contemporaneous, physical, behavioral, and performance indicators of probable drug use and alcohol use. This training shall be for supervisors, and Department Heads or their designees who may determine whether a Driver must be tested for reasonable suspicion.