

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

269



FROM: Human Resources Department

SUBMITTAL DATE:
September 15, 2010

SUBJECT: Approval of Revision to Board of Supervisors Policy C-34, Department of Transportation Drug and Alcohol Testing Policy

RECOMMENDED MOTION: That the Board of Supervisors approve the revision of Policy C-34 (Attachment A), Department of Transportation Drug and Alcohol Testing Policy, which describes the County's processes related to required drug and alcohol testing for employees working in safety-sensitive job classifications.

BACKGROUND: In order to promote public safety, the U.S. Department of Transportation's (DOT) Federal Motor Carrier Safety Administration (FMCSA) requires that employers have in place a drug and alcohol testing program for employees working in safety-sensitive positions that drive, or are available to drive, or provide support for commercial motor vehicles for business purposes. Board Policy C-34 requires that employees be tested in a variety of circumstances for the presence of controlled substances and alcohol.

Barbara A. Olivier

Barbara A. Olivier
Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

SOURCE OF FUNDS: No Net County Cost	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Stephanie Persi*

Stephanie Persi

County Executive Office Signature

- Policy
- Policy
- Consent
- Consent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: September 28, 2010
xc: HR, All Depts., COB

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 3.21 of 10/28/08 | **District:** ALL | **Agenda Number:**

3.50

BACKGROUND continued:

While the County has had a drug and alcohol program in place since the federal government adopted the drug and alcohol testing requirements, Board Policy C-34 provides up-to-date information concerning the complex procedural safeguards as regulated by the federal DOT. These policies and guidelines are formulated to protect the safety and security of the public, employees, facilities, and assets and to be in compliance with the mandates of the federal DOT, FMCSA, and/or state governments and is supported by the force of federal and state laws and regulations.

This revision provides an update to Board Policy C-34 that incorporates the recent changes adopted by the federal DOT {49 CFR Part 40 ("Procedures for Transportation Workplace Drug and Alcohol Testing Programs")}, as a way of aligning its policies and procedures to comport with the latest standards outlined in the Health and Human Services' (HHS) Mandatory Guidelines for Federal Workplace Drug testing, set to take effect on October 01, 2010. In summary, the changes include:

- 13 new or revised definitions
- Lower thresholds (cut-off limits) for confirmatory test for cocaine and amphetamines
- The addition of initial and confirmatory test standards for Ecstasy (MDMA)

There is no direct cost for the recommended action.

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POLICY STATEMENT

The County supports a policy of a drug-free workforce (Policy No. C-10.) To implement that policy, the County has instituted a program of drug abuse education for employees, drug and alcohol testing for all employees and applicants for employment in safety sensitive positions, a statement of prohibited behavior(s), consequences for positive tests or a refusal to test, and resources for employee assistance and rehabilitation. The County recognizes that its employees' use of illegal drugs and misuse of alcohol pose a significant risk to public safety, as well as the employee's health and well being. Drug use includes, but is not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP), cocaine, and ecstasy (MDMA) as well as any substance which causes the presence of these drugs or drug metabolites such as hemp-related products, coca leaves or any substance not approved for medical use by 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. The "use" of drugs means presence in an employee's body system while on duty. A positive test is sufficient to support a finding of "use." In view of this, the County has adopted this policy that is designed to:

1. Create a work environment free from the adverse effects of drug abuse and alcohol misuse;
2. Deter and detect employees' use of illegal drugs and misuse of alcohol;
3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and
4. Encourage employees to seek professional assistance anytime personal problems, including drug or alcohol dependency, adversely affect their ability to safely perform their assigned duties.

PURPOSE

The purpose of this policy is to assure worker fitness for duty and to protect County employees, customers, and the public from the safety and health risks posed by the misuse of alcohol and use of prohibited drugs. This policy is intended to comply with all applicable federal, state and local legislation and regulations governing workplace antidrug use and alcohol misuse including the regulations of federal Department of Transportation (49 CFR Part 40 ("Procedures for Transportation Workplace Drug and Alcohol Testing Programs"); 49 CFR Part 655 ("Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"); 49 CFR Part 29 ("Drug-Free Workplace Act of 1988"); 49 CFR part 382 and 14 CFR part 121, appendix I & J.) This policy incorporates the requirements of above regulations for safety-sensitive employees and others when so noted.

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APPLICABILITY

Unless otherwise noted in specific provisions, this policy applies to all employees working in safety-sensitive positions. Volunteers are exempt unless they operate vehicles that require to be operated by a Commercial Driver's License (CDL) holder or they perform a safety-sensitive function and receive remuneration in excess of their expenses. This policy applies to off-site lunch periods or breaks when an employee is scheduled to return to work or is on-call.

PRE-EMPTION OF STATE AND LOCAL LAWS

If any conflict occurs between State and local laws and any requirement of the abovementioned Federal regulations, the Federal regulations prevail. However, Federal regulations do not preempt provisions of State criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse, whether the provisions apply specifically to transportation employees, employers, or the public in general.

DEFINITIONS

Adulterated specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

Alcohol Screening Test: An analytic procedure to determine whether an employee may have a prohibited concentration providing breath or saliva for an alcohol test.

Alcohol Use: The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol. For purposes of this policy, alcohol is alcohol regardless of source.

Breath Alcohol Technician (BAT): An individual who instructs and assists employees or applicants in the alcohol testing process and operates an Evidential Breath Testing (EBT) device.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which Part 40 requires to be canceled. A canceled test is neither a positive nor a negative test and is declared canceled by a Medical Review Officer.

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Collector: A person who instructs and assists individuals at a collection site, who receives and makes an initial inspection of the specimen provided by the individual, and who initiates and completes the Custody and Control Form (CCF).

Confirmatory drug test. A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

Consortium/Third-Party Administrator: A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to the County.

Controlled Substances: Any drug classified by the U.S. Drug Enforcement Agency (DEA) into the five schedules or classes on the basis of their potential for abuse, accepted medical use, and accepted safety for use under medical supervision.

Designated Employer Representative (DER): An employee or employees authorized by the County to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions for testing following a positive test, test refusal or other policy violations. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

Disabling Damage: Damage that precludes departure of a motor 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:

1. Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
2. Tire disablement without other damage even if no spare tire is available.
3. Headlamp or taillight damage.
4. Damage to turn signals, horn, or windshield wipers that make them inoperative.

DHHS: Federal Department of Health and Human Services.

Dilute Specimen: A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT: U. S. Department of Transportation.

Drugs: The drugs for which tests are required under DOT and FTA regulations. They are marijuana, cocaine, amphetamines, phencyclidine (PCP) and opiates.

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Drug Abuse: Use of any illegal drug or controlled substance without a valid prescription, misuse of legally prescribed drugs, or use of illegally obtained prescription drugs. This includes use of prescription drugs legally prescribed to another individual.

Employees: Includes all regular full-time, regular part-time, temporary, casual and leased or contracted employees.

Evidential Breath Testing (EBT) Device: A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath under DOT Part 40 and placed on the NHTSA's Conforming Products List.

FAA: Federal Aviation Administration

FMCSA: Federal Motor Carrier Safety Administration

FTA: Federal Transit Administration.

Initial drug test (also known as a "Screening drug test"). The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial specimen validity test. The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Invalid drug test. The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory. Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD). The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation. For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Mass Transit Vehicles: Vehicles that are used for mass transportation or ancillary services.
Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy)

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responsible for receiving laboratory drug test results, who has knowledge of substance abuse disorders, and has the appropriate medical training to interpret and evaluate an individual's confirmed positive drug test result, together with the individual's medical history and any other relevant biomedical information.

Negative result. The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

NHTSA: National Highway Traffic Safety Administration

Positive Alcohol Test: The presence of alcohol in the body at a concentration of 0.02 breath alcohol concentration (BAC) or greater as measured by an EBT device.

Positive Drug Test: Any urine that is chemically tested (screened and confirmed), shows verified presence of an identified drug or its metabolite of a controlled substance, and is verified by the MRO.

Positive result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

Reconfirmed. The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Refusal to Test: Includes circumstances or behaviors such as:

1. Failure to appear for any test (except a pre-employment test) at the collection site in the time allotted.
2. Failure to remain at the testing site/building until the testing process is completed, except in pre-employment situations where leaving the site before the testing process begins (before receiving the specimen collection cup) is not deemed to be a test refusal.
3. Failure to provide a urine, breath, or saliva specimen as required by DOT 49 CFR Part 40.
4. Failure to permit the direct observation or monitoring of specimen collection when it is required.
5. Failure to provide a sufficient amount of urine or breath specimen without a valid medical explanation.
6. Failure or refusal to take a second test when required.
7. Failure to undergo a medical examination or evaluation as directed by the MRO as part of the verification process, or as directed by the DER under 49 CFR 40.193 or 40.261(a)(5). In the case of a pre-employment test, the individual is deemed to have refused to test only if the pre-employment test is conducted following a contingent offer of employment.

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8. Failure to cooperate with any part of the testing process. (Example: behave in a confrontational way that disrupts the collection process.)
9. Leaving the scene of the accident without just cause prior to submitting to a test.

10. If the MRO reports a verified adulterated or substituted test result.
11. Refusal to sign step 2 of the Alcohol Testing Form (ATF).

Note: A refusal to test is equivalent to a positive test result and the individual will be terminated.

Rejected for testing. The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

Shy Bladder: When an employee does not provide a sufficient amount of urine to permit a drug test (i.e., 45 mL of urine) through a period of up to three hours or until the individual has provided a sufficient urine specimen, whichever occurs first.

Split specimen: In drug testing, a part of the urine specimen that is sent to a first DHHS certified laboratory and retained unopened, and which is transported to a second DHHS-certified laboratory for testing upon employee request following a verified positive or a verified adulterated or substituted test result on the primary specimen.

Split specimen collection. A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

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

Vehicles: Includes buses, electric buses, vans, automobiles, rail cars, trolley cars, trolley buses or vessels, non-revenue commercial motor vehicles, and vehicles used by armed security personnel.

Volunteer: A non-employee who performs a service as a charitable act. A volunteer is deemed a covered employee and subject to FTA drug and alcohol testing if they perform a safety-sensitive function and receives remuneration in excess of actual personal expenses incurred while performing the volunteer service, or they are required to hold a commercial driver's license to operate a vehicle.

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EDUCATION AND TRAINING

The education and ongoing awareness component of this policy will include display of posters, distribution to all covered employees and representatives of employee organizations of the drug and alcohol policy and other informational materials, and periodic information seminars. Each employee will be required to sign an acknowledgment form.

The County will provide all safety-sensitive employees a copy of the County's Policy C-34, and information on the effects and consequences of substance abuse on personal health, safety and the work site, as well as indicators of substance abuse.

All supervisory personnel or County officials who are in a position to determine a safety-sensitive employee's 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.

CONTACT PERSON(S)

Any questions about this policy or any aspect of the County's drug and alcohol-free program should be referred to:

Name: Darrell Richardson
Title: Safety Coordinator, DOT/DMV Compliance Officer/DER
Address: 1115 Spruce Street, Suite #17
Riverside, CA 92507
Phone: (951) 955-3520
Fax: (951) 555-9200
E-Mail: drichardson@rc-hr.com

Alternate contacts:

Name: Rebecca Perkins
Title: Occupational Health Nurse
Consultant
Phone: (951) 955-9527
Fax: (951) 955-9200
E-Mail: rperkins@rc-hr.com

Name: Lisa M. Piña
Title: HR Services Manager
Employee Relations Div.
Phone: (951) 955-5838
Fax: (951) 955-9816
E-Mail: lpina@rc-hr.com

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COVERED EMPLOYEES

As a condition of employment, all employees working in safety-sensitive whose duties include safety sensitive functions are required to submit to drug and alcohol tests administered in accordance with 49 CFR Parts 40 AND 655. A refusal to submit to a test as directed will be considered to be a positive test result and the employee will be terminated. (Please refer to DEFINITIONS for specific circumstances and behaviors that are considered a refusal to test.)

As defined by the FTA Regulations, safety-sensitive employees include those who perform, or may be called upon to perform, the following safety-sensitive functions:

1. Operating a commercial vehicle, even when the vehicle is not in revenue service;
2. Operating a non-commercial vehicle when required to be operated by a Commercial Driver's License (CDL) holder;
3. Controlling dispatch or movement of a commercial vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a commercial vehicle or equipment used in a commercial vehicle; and
5. Carrying a firearm for security purposes.

As defined by the FMCSA Regulations, employees who are subject to drug and alcohol testing are those employees who are required to hold a Commercial Driver's License (CDL) and who operate a commercial motor vehicle (CMV), when that vehicle:

Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit and a gross vehicle weight rating of more than 10,000 pounds; or

Has a gross vehicle weight rating of 26,001 or more pounds; or

Is designed to transport sixteen (16) or more persons including a driver; or

Is a vehicle of any size that transports materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 USC 5103b) and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (40 CFR Part 172, Subpart F)

As provided by the FMCSA Regulations, Safety-Sensitive Functions:

- All time waiting to be dispatched;
- Loading or unloading, or supervising loading or unloading;
- All time at the driving controls;

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All time in or on the Commercial Motor Vehicle, with the exception of time spent resting in a sleeper berth;
All time servicing or conditioning a Commercial Motor Vehicle;
All time repairing or getting assistance with a disabled vehicle.

As provided by the FAA Regulations, Safety Sensitive Functions include:

- Flight Crew Member
- Flight Instructor
- Aircraft Dispatcher
- Aircraft Mechanic
- Ground Security Coordinator
- Aviation Screeners

Supervisors are considered holding safety-sensitive positions only if they perform, or may be called upon to perform any of the above safety-sensitive functions.

The County has analyzed the actual job duties performed, or may be called upon to perform, by all of its employees. The Human Resources Department shall maintain the list of job classifications that are governed by this policy.

DRUGS TESTED FOR AND CONFIRMATORY CUT-OFF LEVELS

	Confirmatory Cut-Off (gn/ml)
• Marijuana metabolites/THC (delta-9-tetrahydrocannabinol)	15
• Cocaine	100
• Opiates	2000
• Amphetamines/includes Methamphetamines	250
• Phencyclidine (PCP)	25
• Ecstasy (MDMA)	250

PROHIBITED BEHAVIORS

FMCSA Prohibited Conduct:

An employee shall not:

- Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- Use alcohol, including medications containing alcohol, while performing safety-sensitive functions.

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- Perform safety-sensitive functions within four (4) hours after using alcohol, including the use of medications that contain alcohol.
- Use alcohol for eight (8) hours following an accident, or until the employee has undergone a post-accident test, whichever occurs first.
- Refuse to submit to a pre-employment, post-accident, random, reasonable suspicion, or follow-up alcohol or drug test.
Report for duty or remain on duty requiring the performance of safety-sensitive functions when he/she uses any controlled substances, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the employee that the substance does not adversely affect the employee's ability to operate a commercial motor vehicle safely.
- Report for duty, remain on duty, or perform safety-sensitive functions if he/she tests positive for controlled substances.

The use or possession of alcohol by any County employee working in a safety-sensitive position while on County property is a violation of this policy, except when it is in conjunction with a County-sponsored event.

Alcohol tests shall be conducted just before, during, and just after the employee's performance of a safety-sensitive function. An alcohol test is considered positive if the employee's BAC is at 0.04 or greater. Any employee testing positive for an alcohol test (0.04 or greater) will be terminated.

If an employee's alcohol test result is between 0.02 and 0.039, the employee will be removed from safety-sensitive functions for twenty-four (24) hours. After twenty-four (24) hours have passed, this employee may be allowed to return to work.

TYPES OF TESTING

1. PRE-EMPLOYMENT TESTING

All candidates for employment for safety-sensitive positions, including any employee transferring from a non-safety-sensitive to a safety-sensitive position will be required to undergo a pre-employment drug test at a time and place designated by the County. A verified negative drug test result must be received from the MRO before an employee or applicant can be allowed to perform any safety-sensitive function for the first time. If a pre-employment test is canceled, the individual will be required to undergo another test and

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successfully pass the test with a verified negative result before performing safety-sensitive duties.

Effective August 1, 2001, and in accordance with the revised 49 CFR Part 40, the County must make good faith efforts to obtain the previous two (2) years DOT drug and alcohol testing results information for those applicants who worked for DOT regulated employers. The County will obtain a written consent that allows their previous DOT regulated employers to release drug and alcohol testing information. If the individual refuses to provide the written consent, he or she will not be hired into the safety-sensitive position. When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan.

In addition, if the employee has not performed any safety-sensitive function for at least thirty (30) consecutive calendar days regardless of the reason, and has been out of the random pool during that time, the employee must pass a pre-employment drug test before he or she is allowed to return to performing safety-sensitive duties.

2. REASONABLE SUSPICION TESTING

For all employees performing safety-sensitive functions as outlined in this policy, a reasonable suspicion drug and alcohol test will be conducted only if the reasonable suspicion observation is made just before, during, or just after the employee's performance of a safety-sensitive function. The employee will be escorted to the collection site and told not to put anything in his/her mouth until the drug and alcohol test has been completed. If the drug and alcohol test is not conducted within two (2) hours, the reason(s) for the delay must be documented and kept in the employee's reasonable suspicion test file. All attempts to complete the drug and alcohol test must cease after eight (8) hours. Under this policy, an employee is not allowed to perform any safety-sensitive function until the County has received a negative test result for both drug and alcohol tests. An employee whose drug test and alcohol test produces a negative result shall be promptly returned to his or her regular work and be made whole for any lost wages, unless the employee is suspended for any additional purposes concurrent with the waiting of the test results.

3. POST-ACCIDENT TESTING

Any employee who is involved in any accident while performing a safety-sensitive function or driving a commercial motor vehicle shall be tested for alcohol and drugs as soon as possible. The employee must remain available for testing or be deemed to have refused testing. Tests by the police meet this requirement if the County can obtain the results. For post-accident testing, a urine specimen for drug testing must be collected as soon as

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possible but no later than thirty-two (32) hours after the accident. The alcohol test should be administered within two (2) hours of the accident. If testing cannot be completed within two (2) hours a report must be filed documenting why attempts were unsuccessful and attempts to collect must continue. If The County is unable to obtain an alcohol test within eight (8) hours, attempts to collect must cease and the two (2) hours written report must be updated with an explanation of the reason(s) the test could not be performed. An employee is prohibited from alcohol use for eight (8) hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

If it is determined that a post-accident test is required, the employee's supervisor must notify the County Compliance Safety Officer/Safety Coordinator and the HR Services Manager within twenty-four (24) hours of the accident.

For purposes of this policy, "accident" is defined as an accident involving a motor vehicle where the result is:

- a. A fatality; or
- b. Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- c. 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.

- **Fatal Accidents**

Whenever there is a loss of human life, any surviving employee operating the County vehicle at the time of the accident shall be tested for drugs and alcohol. The County shall also test for drugs and alcohol, any other covered employee who could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

- **Non-fatal Accidents**

Following non-fatal accidents, the employee operating the vehicle at the time of the accident shall be tested unless his or her performance can be completely discounted by the County as a contributing factor to the accident. Any other safety-sensitive employee whose performance could have contributed to the accident also may be tested.

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- **Other Post-Accident Testing Requirements**

Employees involved in an accident that requires testing must remain readily available for testing, including notifying the County of their location if they leave the scene of the accident before testing to obtain emergency medical care, or to obtain assistance in responding to the accident. They will be considered to have refused to submit to testing if they fail to do so.

If the County is unable to perform post-accident tests within the required period noted above, the County may use the post-accident test results administered by State or local law enforcement personnel under their own authority, provided the test conforms to applicable federal, state, and local requirements and the results are obtained by the County.

Following a post-accident test, the employee is not allowed to perform any safety-sensitive function until the County has received negative test results. An employee whose drug test and/or alcohol test produces a negative result shall be promptly returned to his or her regular work and be made whole for any lost wages, unless the employee is suspended for any additional purposes concurrent with the waiting of the test results.

4. **RANDOM DRUG AND ALCOHOL TESTING**

As required by DOT regulations, employees in safety-sensitive positions are required to undergo random drug and alcohol tests to deter the use of prohibited drugs and misuse of alcohol. The random selection will be conducted using a scientifically valid method, such as a random number table or a computer-based random number generator that gives each covered employee an equal chance of being selected every time a selection is made. As is the nature of the random method, it is possible that some employees will be selected several times in one year, and other employees not be selected for several years. US Investigation Services (USIS) will compile the random list and send the location Designated Employee Representatives (DER) a confidential list of employees who have been randomly selected to participate in the current random test group. Management does not have any discretion regarding who will be selected.

Every effort will be made by the County to spread random testing reasonably throughout the calendar year, all days of the week, and all hours when safety-sensitive functions are performed. The testing dates and times are unannounced and employees are required to immediately proceed to the designated collection site following notification. The employee will be notified of the type of test(s) for which they have been selected. If the individual was selected for an alcohol test, they will be instructed, not to put anything in his/her mouth until the alcohol test is completed.

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The County will conduct random drug and alcohol tests at a minimum annual percentage of covered employees as required by the DOT (currently 50% for drugs and 10% for alcohol). The rates are subject to change on an annual basis, depending on the industry-wide positive rate determined by the DOT from the annual MIS reports submitted by covered employers.

5. RETURN-TO-DUTY TESTING

Employees who have been on an approved or unapproved leave from the workplace for more than thirty (30) days are required to submit to a drug and alcohol test prior to performing a safety-sensitive position. The test must produce a negative result before the employee is returned-to-duty. The County has a zero tolerance policy regarding drug and alcohol abuse. Therefore, it is the policy of the County to terminate the employment of any employee who tests positive for drugs and/or alcohol for the first offense under this policy.

6. FOLLOW-UP TESTING

The County has a zero-tolerance policy regarding drug and alcohol abuse. Therefore, it is the policy of the County to terminate the employment of any employee who tests positive for drugs and/or alcohol for the first offense under this policy.

DRUG & ALCOHOL TESTING PROCEDURES

All DOT drug and alcohol tests required under this policy will be administered in accordance with the "Procedures for Transportation Workplace Drug and Alcohol testing Programs" (49 CFR Part 40).

Throughout the testing process, the privacy of the employee will be protected and the integrity and validity of the process will be maintained. The drug testing procedure will include a split specimen collection method, and a DOT Federal Drug Testing Custody and Control Form with a unique identification number will be used to ensure that the correct test result is attributed to the correct employee. An initial screening test using an immunoassay technique will be performed at a DHHS certified laboratory. If the specimen is positive for one or more of the drugs tested, a confirmation test will be performed using the state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. If the test is confirmed positive, the MRO will conduct a verification process, which includes giving the employee an opportunity to provide a valid medical explanation for the positive test result.

Additionally, the laboratory may conduct analysis to determine if a urine specimen has been adulterated, tampered with, or diluted. As allowed per 49 CFR Part 40, the County requires its employees to take a second test with no advance notice (not directly observed) if the MRO

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reports a “negative-dilute” test result. The result of the second test not that of the original test, becomes the test of record. If the employee declines to take another test, this will be considered a refusal to test and is equivalent to a positive test. However, if the second test is also negative and dilute, the County must accept the second test result and is not permitted to make the employee take a third test.

When the MRO gets a report from the laboratory that the creatinine level in a specimen is 2 mg/dL or above but less than or equal to 5 mg/dL, the MRO – in addition to reporting the specimen to the employer as dilute – must take an additional step. This step requires the MRO to direct the employer to require the employee to undergo an immediate recollection under direct observation. The employer must then ensure that this recollection takes place.

If the laboratory reports to the MRO an “Invalid Result” or “Rejected for Testing” (because of a fatal or uncorrectable flaw), a re-collection may be required by the MRO, and depending on the circumstances, the recollection may be directly observed.

If the employee does not provide a sufficient amount of urine (shy bladder) to permit a drug test, the collector must discard the insufficient specimen, and urge the employee to drink up to forty (40) ounces of fluid, distributed reasonably through a period of up to three (3) hours or until the employee provides a sufficient urine specimen, whichever occurs first. If the employee fails to provide the minimum specimen volume, the employee will be referred for a medical evaluation. If the medical evaluation determines that there is no legitimate medical explanation for the inability to provide an adequate specimen the employee will be deemed to have refused to test which is equivalent to a positive test.

If the employee has not provided a sufficient specimen within three (3) hours of the first unsuccessful attempt to provide the specimen, the collection will be discontinued, the reason for discontinuing the collection will be noted on the CCF and the DER will be notified immediately. The employee will not be returned to duty. The employee must obtain, within five (5) business days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the relevant medical issues due to the employee's failure to provide a sufficient specimen. If there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, it will be deemed a refusal to test which is considered a positive test result. If, within five (5) business days, the employee can produce an accepted and legitimate medical explanation as to why he/she was unable to produce a sufficient specimen, the employee shall be reimbursed and returned to duty with full pay.

The laboratory is required to keep positive, adulterated, substituted or invalid specimens for five (5) years. Records for each specimen and employer-specific reports are required to be kept for

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five (5) years. The retention time may be extended upon written request by the MRO, the County, the employee or DOT agency. The County may either conduct alcohol screening tests using an approved saliva screening device listed on the NHTSA Conforming Products list or will conduct initial, and when necessary, confirmatory alcohol testing with an approved EBT on the NHTSA CPL.

Detailed drug and alcohol specimen collection procedures are available upon request from the DER.

DIRECTLY- OBSERVED URINE SPECIMEN COLLECTION

Under any of the following circumstances, the employee will be directed to undergo an immediate urine specimen collection under direct observation with no advance notice:

1. If the collector observes employee conduct that clearly indicates an attempt to tamper with a specimen;
2. If the temperature on the original specimen was out of range;
3. If the original specimen appeared to have been tampered with;
4. If the laboratory reported to the MRO that a specimen is invalid and there was no adequate medical explanation for the result;
5. If the MRO reported that the original positive, adulterated, or substituted test result had to be canceled because the split specimen testing could not be performed.

The observer shall be the same gender as the employee, but need not be the collector. The observer is responsible for ensuring that the specimen goes directly from the employee's body into the collection container. If the employee declines to allow a directly observed collection when required or permitted under this policy, it is deemed a refusal to test which is considered a positive test.

MONITORING URINE SPECIMEN COLLECTION

Under those circumstances when a multi-stall restroom has to be used for urine specimen collection and the facility cannot be adequately secured, the collector will conduct a monitored collection. The monitor shall be the same gender as the employee, unless the monitor is a medical professional. The monitor will not watch the employee void into the collection container. However, if the monitor hears sounds or observes attempts to tamper with a specimen, an additional collection under direct observation will be ordered. If the employee declines to permit a collection to be authorized or monitored, the employee is deemed to have refused to test which is considered a positive test.

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SPLIT SPECIMEN TESTING

After notification by the MRO of a verified positive drug test or refusal to test because of adulteration or substitution, the employee has seventy-two (72) hours to request a test of the split specimen. After the seventy-two (72) hours have passed, the MRO may extend time up to sixty (60) days to receive the employee's request. If the employee can present information that demonstrates to the satisfaction of the MRO that extenuating circumstances unavoidably prevented the employee from making a timely request, the specimen may be tested.

Following the employee's timely request, the MRO shall send a written request to the primary laboratory to forward the split specimen to a second DHHS-certified laboratory for testing without regard to the cut-off concentration. If the second laboratory fails to reconfirm the substance detected in the primary specimen or the adulterant identified, or if the split specimen is unavailable for testing, the test shall be canceled. The MRO shall report the cancellation and the reasons for it to the DOT, the County, and the employee. In the case of the split specimen being unavailable, the employee shall be directed, with no advance notice, to submit another specimen under direct observation.

The employee will be placed on administrative leave without pay until the results of the split sample test is received from the MRO. The employee may use sick leave benefits to receive full pay. In the event the employee has no accrued sick leave balance, the employee may utilize vacation, compensatory time, or holiday benefits to receive full pay, or receive a leave of absence without pay. Should the result of the second test be positive, the County will require the employee to reimburse the County. Applicants are directly responsible for the cost of split sample testing under this provision, if they choose to exercise it. The employee shall be returned to duty with full pay if the second test invalidates the original test or if the test was canceled.

CONSEQUENCES

Any employee in a safety-sensitive position who has a verified positive drug test result, and/or alcohol concentration of 0.04 or above, or refuses to submit to a drug or alcohol test (including adulteration or substitution) shall be:

1. Immediately taken out of safety-sensitive duty;
2. Placed on administrative leave without pay;
3. Referred to an SAP for evaluation, education or treatment and provided educational materials; and
4. Terminated.

It is the County's policy to immediately terminate any employee whose BAC is 0.04 or higher.

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It is the policy of the County to terminate employees after the first offense of drug use and/or alcohol abuse pursuant to this policy. Such disciplinary action will follow the DOT required actions outlined above.

REFERRAL, EVALUATION AND TREATMENT

If an employee (including an applicant) tests positive for drug(s) and/or alcohol or refuses to submit to a test when required, the County shall advise the individual of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse and document such referral. He or she shall be given the name, address and phone number of an SAP acceptable to the County and a list of community hotline numbers. The employee will be responsible for any costs associated with the SAP evaluation and recommendation(s), unless State law requires the employer to pay.

VOLUNTARY EMPLOYEE ASSISTANCE PROGRAM

The County encourages its employees to participate in the County-sponsored Employee Assistance Program (EAP) for counseling and treatment for drug use and alcohol abuse. The County's EAP can be contacted at the following numbers: Greater Riverside at (951) 778-3970 or Desert Region at (760) 328-6863.

CONFIDENTIALITY AND ACCESS TO FACILITIES AND RECORDS

Employees have a right to examine their own drug and alcohol testing records, provide information to dispute the results, and have access to any pertinent data such as EBT calibration or drug testing laboratory certification. They also have a right to obtain a copy of their own drug and/or alcohol testing results by submitting a written request to the DER.

The County will safeguard the confidentiality of drug and alcohol testing records and protect the privacy of the individuals tested. Individual test results or medical information will be released to third parties (e.g. previous employer, unions) only with the employee's specific written consent, or to those parties authorized by the DOT or FTA to receive such information without the employee's consent. Specific written consent applies only to a particular piece of information released to a particular person or organization at a particular time. Blanket releases are specifically prohibited by the DOT.

The employee's written consent is not required in administrative or legal proceedings such as:

1. A lawsuit, grievance, or administrative proceeding brought by, or on behalf of the employee, resulting from a positive drug or alcohol test or a refusal to test; or

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DRUG-FREE WORKPLACE ACT of 1988 (DFWA) REQUIREMENTS

2. A criminal or civil action resulting from an employee's performance of safety-sensitive duties where the alcohol or drug test information is deemed relevant.

Access to County facilities and drug and alcohol program records also will be provided, without the employee's consent, to DOT or FTA agency representatives; the National Transportation Safety Board as part of an accident investigation; or a Federal, state or local safety agency with regulatory authority over the County or the employee.

UNANNOUNCED SEARCHES ON COUNTY PROPERTY

The County reserves the right to conduct unannounced searches for drugs and/or alcohol anywhere on County property.

Unannounced searches must be:

1. Approved in advance by the Employee Relations Division Manager or designee; and
2. Conducted in the presence of the highest ranking manager at the employee's work location.

Employees who do not cooperate with unannounced searches are subject to disciplinary action, up to and including termination.

Under the DFWA, employees are prohibited from the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace. Employees are required to notify management in writing of any criminal drug statute convictions he/she receives for a violation occurring in the workplace, no later than five calendar days after such a conviction. Within 10 calendar days of receiving such notice, the County shall provide written notification of the conviction to the DOT. Within 30 calendar days of receiving notice of the conviction, the County shall take appropriate disciplinary action, or require the employee to participate and successfully complete a drug rehabilitation program. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

OTHER

County Human Resource Department shall be responsible for the administration and conformance with this policy. No other County department shall promulgate policies or rules that are inconsistent with or that interpret or administer this policy other than as permitted by the County Human Resources Department. The County reserves the right to revise this policy at any time, with the approval of the Board of Supervisors.

Reference:

Minute Order 3.21 of 10/28/08

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**ACKNOWLEDGMENT OF
COUNTY OF RIVERSIDE
DEPARTMENT OF TRANSPORTATION
DRUG AND ALCOHOL TESTING POLICY**

I, the undersigned employee hereby certify that I have been furnished with a copy of the County of Riverside's Department of Transportation Drug and Alcohol Testing Policy (Board Policy C-34) and that I have read and understand same. I am fully aware, and agree that I may be discharged or otherwise disciplined for any violation by me of said Policy.

Name: _____

Department: _____ Job Title: _____

Signature: _____ Date: _____

(Return this form to your Supervisor for inclusion in your personnel file)