

TESTING FOR ALCOHOL MISUSE
AND CONTROLLED SUBSTANCES
USE

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<i>DATE ADOPTED: October 22, 1996</i>
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I. **PURPOSE:** Colusa County must comply with the United States Department of Transportation regulations implementing the Federal Omnibus Transportation regulations implementing the Federal Omnibus Transportation Employee Testing Act of 1991. Specifically, the County must comply with the regulations of the Federal Highway Administration (FHWA). Adoption of a policy to implement a program of testing for alcohol misuses and controlled substance use by employees with commercial driver's licenses is one of the County's obligations under these regulations. Such program is intended to help prevent accidents and injuries resulting from such misuse and use, as well as to reduce the County's liability for such accidents and injuries.

II. **DEFINITIONS:** As contained in the Code of Federal Regulations (CFR) Parts 49 CFR 382, 49 CFR 40, and 49 CFR 2390.5, definitions applicable to this policy include:

A. Designated County Representative. The county Risk Manager (or designee) is designated as the County's Drug and Alcohol testing Coordinator, and shall ensure that the administration of this policy complies with appreciable laws and regulations.

B. Accident means an occurrence involving a commercial motor vehicle operating on a public road which results in (1) a fatality; (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. (390.5)

C. Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol. (382.107)

D. Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol (382.107)

E. Controlled substances (herein also referred to as drugs) for which testing is required under the Omnibus Transportation Employee Testing Act are: marijuana, cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP). (40.21)

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F. Commercial Motor Vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle: (1) has a gross combination rating of 26,001 or more pounds; (2) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials which require the motor vehicle to be placarded under Hazardous Materials Regulations. (382.107)

G. Driver means any person who operated a commercial motor vehicle, including but not limited to employees in budgeted positions, extra help employees, leased drivers. For purposes of pre-employment/pre-duty testing only, the term driver includes a person applying for employment to drive a commercial motor vehicle. (382.107)

H. Performing a safety-sensitive function means any of the following on-duty functions: (1) all time at a carrier or shipper plant, terminal, facility, public property or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer; (2) all time inspecting, servicing, or conditioning any commercial motor vehicle (CMV) at any time; (3) all time spent at the driving controls of a commercial motor vehicle; (4) all time, other than driving time, spent on or in a commercial motor vehicle; (5) all time loading or unloading a CMV, supervising or assisting in the loading or unloading, attending a CMV being loaded or unloaded, remaining in readiness to operate a CMV, or in giving or receiving receipts for shipments loaded or unloaded; (6) all time spent performing the driver requirements associated with an accident; (7) all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle; (8) all time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random testing, reasonable suspicion testing, post-accident testing, or follow-up testing required by parts 382 of 49 Code of Federal Regulations. (382.107 and 395.2)

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An employee covered by this policy is considered to be performing safety-sensitive functions unless said employee: (1) Is on approved leave from work; (2) Is specifically assigned other functions away from the work site(s)-facility(ies) (e.g., a training being conducted in another city); or (3) A new employee orientation being conducted at his/her assigned maintenance crew facility.

I. Employee means an individual defined by Department of Transportation Regulations as subject to controlled substances and/or alcohol testing ... i.e., a driver as defined herein (other than an applicant for employment) performing a "safety-sensitive function." (40.3)

J. Refuse to submit to an alcohol or controlled substance test means a driver: (1) fails to provide adequate breath for testing without a valid medical explanation after she/he has received notice of the requirement for breath testing (i.e., a copy of this policy); (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after she/he has received notice of the requirement for urine testing (i.e., a copy of this policy); or (3) engages in conduct that clearly obstructs the testing process. (382.107)

K. Refusal to test means refusal by an employee to complete and sign Part 2 of the breath alcohol testing form, refusal to provide breath, refusal to provide an adequate amount of breath, or otherwise refusal to cooperate in the testing process in a way that prevents the completion of the test. (40.67)

L. Screening test means, in alcohol testing the analytical procedure to determine whether a driver may have prohibited concentration of alcohol in his/her system. [In controlled substance testing, "screening test" means an immunoassay screen to eliminate negative urine specimens from further consideration. (382.107)

M. Confirmation test for alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. "Confirmation test" for controlled substance testing means a second specific drug or metabolite which is independent of the screening test and which uses the GC/MS (gas chromatography/mass spectrometry) test to ensure reliability and accuracy. (382.107)

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N. Medical Review Officer (MRO) means a licensed physician (medical doctor or doctor of osteopathy) approved by the County who is responsible for receiving laboratory results generated by a testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with his/her medical history and any other relevant biomedical information. (See Attachment A to this Policy) (40.3)

O. Substance Abuse Professional (SAP) means an individual approved by the County who is licensed in accordance with Section 382.107 of the Code of federal Regulation and who has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders. (See Attachment A to this Policy) (382.107)

III. CLASSIFICATIONS COVERED: Extra help employees and employees in budgeted positions in designated classifications requiring a Class I or II drivers license are subject to drug and alcohol testing as outlined in this policy and federal regulations.

IV. PROHIBITIONS: As used in this section, "on duty" includes all time spent providing samples or specimens, including travel time to and from the collection site, in order to comply with the required random, reasonable suspicion, post-accident, or follow-up testing. "On duty" shall not include any time spent in pre-employment testing or return to duty testing. (392.5(8))

A. No employee shall perform safety-sensitive functions within four (4) hours after using alcohol. No supervisor or manager having actual knowledge that an employee has used alcohol within four hours shall permit an employee to perform or continue to perform safety-sensitive functions. (382.207)

B. No employee shall report to duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No supervisor or manager having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions. (382.201)

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C. No employee shall be on duty in possession of alcohol, nor operate a commercial motor vehicle while in possession of alcohol. No manager or supervisor having actual knowledge that an employee possesses alcohol shall permit the employee to drive or continue to drive a commercial motor vehicle or perform other safety-sensitive functions. (382.204)

D. No employee shall use alcohol while performing safety-sensitive functions. No manager or supervisor having actual knowledge that an employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions. (382.205)

E. When circumstances are such that an employee is required to take a post-accident alcohol test, that employee shall not use alcohol for eight hours following the accident, or until he/she has undergone a post-accident test, whichever occurs first. (382.209)

F. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee in writing that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle. No manager or supervisor having actual knowledge that an employee has used a controlled substance shall permit the employee to perform or continue to perform a safety-sensitive function. (382.213)

G. No employee shall refuse to submit to the following required alcohol or controlled substance tests: random, reasonable suspicion, post-accident, follow-up testing. No supervisor or manager shall permit an employee who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. (382.11)

H. No employee shall report for duty, remain on duty or perform a safety-sensitive function if the employee tests positive for controlled substances. No manager or supervisor having actual knowledge that an employee has tested positive for controlled substances shall permit the employee to perform or continue to perform safety-sensitive functions. (382.215)

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V. CIRCUMSTANCES FOR TESTING:

A. An employee may be directed to undergo random, follow-up and reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

B. Under no circumstances will an employee who is tested as positive under the Policy be permitted to drive any vehicle. The employee shall be transported to his/her residence or other appropriate destination after the test as follows:

1. The employee may call the person of his/her choice for transportation.
2. The employee may call a taxi-cab service.

The supervisor will further inform the employee that, in the event either of the above options are refused, law enforcement authorities will be notified in order to protect the employee and the safety of the public.

C. Employees subject to this policy are required to be tested under the following circumstances:

1. Pre-employment Testing.

a. Only those applicants who have been selected for appointment shall be tested. Whenever possible, the testing shall be in conjunction with or part of the pre-employment physical examination process.

b. Pre-employment (post-job offer) drug and alcohol tests will be conducted when an applicant for extra-help or for employment in a budgeted position is considered for hire in a class listed in this policy. Applicants who refuse to submit or refuse to test or who do not have a verified negative test will not be hired and are not entitled to a second test or re-test of the specimen.

c. The designated County Representative shall notify an applicant of the results of a pre-employment controlled substance test, if the applicant requests such results within sixty (60) calendar days of notification of the disposition of the employment application. (382.411)

d. Applicants who refuse to submit or refuse to test or who do not have a verified negative test may not be considered for appointment until ninety (90) days have elapsed since the original test was scheduled or conducted.

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e. Drug and alcohol tests will be conducted when a current employee transfers from a position not covered by this policy to a position in a job class listed in the policy. Non-covered employees transferring into a position requiring drug testing who test positive may, upon request, have their specimen retested per Section XII of this policy. However, such request shall not delay the selection process.

f. The Designated County Representative shall make reasonable efforts to contact and request each applicant and employee who submitted a specimen to contact and discuss the results of the controlled substance test with the Medical Review Officer who has been unable to contact the applicant. The Designated County Representative shall immediately notify the Medical Review Officer that the applicant or employee has been notified to contact the Medical Review Officer within twenty-four (24) hours. (382.4ll)

g. Any employee who transfers from one budgeted position covered by this policy to another budgeted position covered by this policy does not require additional testing.

2. Random Testing.

a. All employees covered by this policy are subject to unannounced testing based on random selection. (382.305)

b. To assure that the selection process is random, all employees covered by this policy will be placed in a common pool. (382.305)

c. The random selection procedure may be a computer-based number generator, or by a combination of computer based number generator and random number tables, that is matched with all employee's payroll identification number. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made. (382.305)

d. The random testing rate for controlled substances will be a 50% annualized rate, unless the FHWA Administrator publishes in the Federal Register a new minimum annual percentage rate for a calendar year. (382.305)

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e. The random testing rate for alcohol will be a 25% annualized rate, unless the FHWA Administrator publishes in the Federal register a new minimum annual percentage rate for a calendar year. (382.305)

f. To ensure that the minimum number of random tests are made during a year, when an employee selected is absent from work, another "draw" will be made. When the absent employee who was originally selected returns to work, he/she will be tested.

3. Post-Accident Testing.

a. As soon as practical following an accident involving a commercial motor vehicle, each surviving employee shall be tested for alcohol and controlled substances: (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or (2) Who receives a citation under State or local law for a moving traffic violation arising from the accident. This provision applies not only to the operator of the vehicle, but any other covered employee whose performance could have contributed to the accident. (382.303)

b. The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances which is conducted by State or Local law enforcement officials shall be substituted for required County post-accident testing, provided such tests conform to applicable laws regarding those tests. However, neither the employee or the supervisor/manager should assume that such test results will be available, and should ensure that the required tests are obtained under this Policy. (382.303)

c. An employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing. Such employee may leave the scene of an accident; (1) to obtain necessary emergency medical care; (2) to obtain necessary medical attention for persons injured in the accident; or (3) to obtain assistance in responding to the accident. However, the employee is expected to notify his/her supervisor or manager at the earliest possible time, and to make himself/herself available for testing as soon as possible.

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The employee shall be transported to the collection site whenever possible by a department supervisor or manager. Under no circumstances shall an employee requiring post-accident testing be permitted to drive any vehicle. County personnel shall transport the employee to his/her residence or other appropriate destination after the test.

At any time an employee who is subject to post-accident testing and who is remaining readily available for such testing, this employee shall be considered on duty; or in the case of off-duty hours, shall be on non-disciplinary administrative leave. If the result of the test demonstrated that the employee was either under the influence of alcohol or a controlled substance, all on-duty and non-duty administrative leave hours shall be deducted from the employee's accrued leave.

d. An alcohol test should be administered within two (2) hours following the accident. Such test will normally be the breath alcohol test. When an evidential breath testing device (EBT) is not readily available for both screening and confirmation tests, blood alcohol testing shall be used for both tests as allowed under Part 40 of the Code of Federal Regulations. When an EBT is readily available for the screening test but an EBT suitable for confirmation testing is not readily available, blood alcohol testing shall be used for confirmation test purposes as allowed under Part 40 of the Code of Federal Regulations. When an employee attempts and fails to provide an adequate amount of breath, blood alcohol testing may be used for both screening and confirmation purposes as allowed under Part 40 of the Code of Federal Regulations. (382.303; 40.71)

If the test is not administered within two (2) hours, a record stating the reasons the test was not promptly administered shall be prepared and maintained on file. If the test is not administered within eight (8) hours, attempts to administer an alcohol test shall cease and a report prepared and maintained on file. (382.303)

e. If a controlled substance test is not administered within thirty-two (32) hours following the accident, a record stating the reasons the test was not promptly administered shall be prepared and maintained on file. (382.303)

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4. Reasonable Suspicion Testing.

a. The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or manager who is trained in accordance with Section VII of this policy. The person making the determination that reasonable suspicion exists shall not conduct the alcohol or controlled substances test of the employee. (382.307)

b. The employee shall be transported to the collection site by a department supervisor or manager. Under no circumstances shall an employee requiring reasonable suspicion testing be permitted to drive any vehicle. After completing the required test, the employee shall be informed that he/she has the following options to be safely transported to his/her home or any other appropriate location:

- (1) The employee may call the person of his/her choice for transportation.
- (2) The employee may call a taxi-cab service.

The supervisor will further inform the employee that, in the event either of the above options are refused, law enforcement authorities will be notified in order to protect the employee and the safety of the public.

c. A covered employee shall submit to an alcohol test when a supervisor or manager has reasonable suspicion to believe that individual has violated a prohibition in Section IV of this Policy. The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. An employee may be directed to undergo reasonable suspicion alcohol testing only if the required observations are made during, just preceding, or just after the driver is performing safety-sensitive functions. (382.307)

If the reasonable suspicion alcohol test is not administered within two (2) hours, a record stating the reasons the test was not promptly administered shall be prepared and maintained on file. If the test is not administered within eight (8) hours, attempts to administer an alcohol test shall cease and a report prepared and maintained on file. (382.307)

Notwithstanding the absence of a reasonable suspicion alcohol test, no employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse, nor

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shall the employee be permitted to perform or continue to perform safety-sensitive functions until: (1) an alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or (2) 24 hours have elapsed following the determination that there is reasonable suspicion that the employee has violated a prohibition of this Policy concerning the use of alcohol. (382.307)

- d. A covered employee shall submit to a controlled substance test when a supervisor or manager has reasonable suspicion to believe that the employee has violated the prohibition specified in Section IV of this Policy. The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. and the observations may include indications of the chronic and withdrawal effects of controlled substances. (382.307)

A written record shall be made of the observations leading to an alcohol or controlled substance reasonable suspicion test, and signed by the supervisor or manager who made the observations, within 24 hours of the observed behavior or before the result of the controlled substances tests are released, whichever is earlier. (382.307)

5. Return to duty testing.

- a. Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by Section [V of this Policy concerning alcohol, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. Expenses for such test shall be borne by the employee. (383.309)

- b. Each employee who engages in conduct prohibited by Section IV of this Policy shall be evaluated by the SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. (382.605)

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c. Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by Section [V of this Policy concerning controlled substances, the employee shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substance abuse. (382.309; 382.605)

In addition, each employee identified as needing assistance in resolving problems with alcohol misuse or controlled substance use shall be evaluated by the SAP at the employee's own expense to determine that she/he has properly followed any prescribed rehabilitation program. (382.605)

d. The County may direct the employee to undergo return-to-duty testing for both alcohol and controlled substances if the SAP determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular employee. (382.605)

6. Follow-up testing.

Following a determination by the SAP that an employee who engaged in conduct prohibited by Section [V of this Policy is in need of assistance in resolving problems with alcohol misuse and/or use of controlled substances, such employee is subjected to unannounced follow-up alcohol and/or controlled substance testing as directed by the SAP after the driver returns to duty. The number and frequency of such tests shall be directed by the SAP and consists of at least 6 tests in the first 12 months following the employee's return to duty. The County may direct the employee to undergo follow-up testing for both alcohol and controlled substances if the SAP determines that follow-up testing for both alcohol and controlled substances is necessary for that particular employee. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered. (382.311; 382.605)

VI. REMOVAL FROM SAFETY-SENSITIVE FUNCTIONS:

A. No employee shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the employee has engaged in conduct prohibited by Section IV of this Policy. No supervisor or manager shall permit any employee to perform safety-sensitive functions, including operating a commercial motor vehicle, if she/he has determined that the employee has violated this section. (IV). (382.501 (a)(b))

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B. An employee who has engaged in conduct prohibited by Section IV of this Policy shall not perform safety-sensitive functions until the employee has met the evaluation and return-to-duty testing requirement of Section V of this Policy. The requirement for referral to and evaluation by the SAP does not apply to pre-employment testing (382.503; 382.605)

C. No employee who has been tested under this Policy who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions, including operating a commercial motor vehicle, until the start of the employee's next regular scheduled duty period, but not less than 24 hours following administration of the test.(382.505)

D. An employee who is removed from a safety-sensitive position may use accrued paid time off (e.g., compensatory time, personal holiday, leave, vacation) in accordance with the provisions of the applicable Memorandum of Understanding or Article IX, Leave, Colusa County Code, Section 16-16. An employee who is removed from a safety-sensitive position may request leave of absence without pay in accordance with the provisions of the applicable Memorandum of Understanding or Section 16-16-7 of the Colusa County Code. [n lieu of using accrued paid time off, and at the Department Head's sole discretion, such employee may be temporarily assigned to a non safety- sensitive position .

When an employee who is removed from a safety-sensitive position as the result of a positive screening test, and the confirmation test or an employee requested "re-test" yield a negative test result: (1) The paid leave used by the employee for the period the employee was removed from the safety-sensitive position shall be restored; and (2) The employee shall receive pay for his/her regularly scheduled hours of work during the period of leave of absence without pay while removed from the safety-sensitive position .

VII. SUPERVISORY TRAINING:

Every supervisor or manager covered by this Policy who will be responsible for reasonable suspicion determinations will receive the following training: (a) At least 60 minutes of training of alcohol misuse; and (b) At least 60 minutes of training on controlled substance abuse. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. (382.603)

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VIII. INFORMATION AND REFERRAL:

A. Each covered employee shall receive a copy of this Policy prior to the start of alcohol and controlled substances testing and each applicant hired, subsequently hired or employee transferred into a position which requires commercial driver's license shall receive a copy of this Policy. Each such employee shall sign a statement certifying that she/he has received a copy. (382.601)

B. Each affected employee organization shall be notified of the availability of this Policy. (382.601)

C. Employees who have questions regarding this Policy should contact: Colusa County Assistant Risk Manager, 546 Jay Street, Colusa, CA. 95932, (916) 458-0400.

D. Employees covered by this Policy shall periodically be provided information concerning the effects of alcohol and controlled substance use on an individual's health, work and personal life; signs and symptoms of an alcohol or a controlled substances problem; and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to the Employee Assistance Program, or a referral to management. (382.601)

E. For those departments with covered employees, a copy of this Policy and instructions with respect to post-accident testing shall be placed in each County owned commercial motor vehicle and in any other County vehicle as appropriate.

F. Resources available to employees include:

1. Employee Assistance Program (EAP). Each employee covered by this Policy will receive a copy of the Employee Assistance Program listing of mental health professionals available for up to four hours of paid counseling per calendar year.

2. The health plans available to employees through the County have alcohol and/or substance abuse treatment coverage. A description of covered services is included in the PERS "Basic Health Plans" booklet. Each of the PERS plans also have an "800" number where employees can obtain information on coverage and costs.

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3. The County has established a Substance Abuse Counseling Center, which has available confidential professional level counseling in both drug and alcohol abuse area, to assist those employees who voluntarily seek help for their drug and alcohol related problems. Employees should contact their supervisor or the Counseling Center for additional information.

4. Other providers of services which provide alcohol and substance abuse treatment programs which are relatively inexpensive, are listed in the yellow pages of the phone book. Employees should contact such providers for costs and possible insurance coverage information.

IX. OTHER EMPLOYEE RESPONSIBILITIES:

A. The use of any substance which carries a warning label that indicates the mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and medical advice should be sought, as appropriate, before performing safety-sensitive functions.

B. When a covered employee has been prescribed a controlled substance by a physician, the employee must advise his/her supervisor in writing of such use prior to the performance of safety-sensitive functions, together with a statement from the physician that such use does not adversely affect the employee's ability to safely operate a commercial motor vehicle. The written notice must identify the patient's name, prescribed drug, the quantity/amount to be taken, and the period of authorization. (382.213)

C. When an employee has received alcohol or controlled substance testing by any law enforcement agency following an on-duty accident which requires post accident testing the employee shall provide his supervisor with a copy of the results of that testing as soon as possible after receipt. (382.303)

D. A covered employee may not identify himself/herself as unfit for duty after having been notified of a random, reasonable suspicion, post-accident, or follow-up test to avoid the consequences for a positive test or a refusal to test.

E. It is the responsibility of the employee to complete any treatment program prescribed by the SAP, and to comply with return-to-work and follow-up testing.

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F. When an employee is at a collection site or giving a specimen or sample for testing, the employee shall follow all instructions given by collection site and/or testing personnel and by County supervisory/management personnel.

G. In the interest of safety to employees, co-workers and the public, if an employee knows a covered employee is engaging in prohibited conduct under Section IV of this Policy (which requires the employee to be removed from his/her safety-sensitive function), the employee must report such conduct to their supervisor or manager.

X. DENIAL OF EMPLOYMENT AND EMPLOYEE DISCIPLINE:

A. Any applicant for County employment who tampers, alters, substitutes, adulterates, destroys, attempts to falsify or falsifies any alcohol or controlled substance sample, specimen, document, report or memorandum pertaining to a drug or alcohol test shall be denied employment.

B. Any applicant who interferes with or attempts to interfere with procedures, equipment or personnel in the course of collecting controlled substance specimens testing shall be denied employment.

C. Any employee who tampers, alters, substitutes, adulterates, destroys, attempts to falsify or falsifies any alcohol or controlled substance sample or specimen, document, report or memorandum pertaining to a drug or alcohol test shall be subject to termination.

D. Any employee who interferes with or attempts to interfere with the procedures, equipment or personnel in the course of collecting controlled substance specimens or alcohol testing samples shall be subject to termination.

E. Any applicant who refuses to submit to testing shall be denied employment. Any covered employee who refuses to submit to testing shall be subject to termination.

F. Any applicant who refuses to test shall be denied employment. Any covered employee who refuses to test shall be subject to disciplinary action up to and including termination.

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G. Any covered employee who engages in conduct prohibited under Section IV of this Policy shall be subject to disciplinary action up to and including termination, except as provided in paragraph H, immediately below.

H. When a covered employee undergoes random, reasonable suspicion, or post-accident alcohol or controlled substances testing and there is a verified positive result, a one-time exception may apply in lieu of dismissal provided all of the following conditions are met: (a) The employee agrees in writing to enter and complete the treatment program specified by the SAP; (b) The employee attains a verified return-to-work negative test for alcohol and/or controlled substances; and (c) The employee agrees in writing to be subject to unannounced frequent follow-up testing for up to 60 months after the employee returns to duty and does not test positive during such testing.

I. An employee who fails to or refuses to complete the treatment program prescribed by the SAP shall be subject to termination.

J. An employee who has a verified positive return-to-work or follow-up controlled substance test or a verified return-to-work or follow-up alcohol test with a result indicating an alcohol concentration of 0.04 or greater shall be subject to termination.

XI. REOCCURRED/RELEASEOF INFORMATION.

A. The County shall maintain records with respect to alcohol and controlled substances testing as required by applicable Federal regulations.

B. Except as required by law or expressly authorized or required in applicable regulations, the County shall not release driver information that is contained in alcohol and controlled substances testing records. (382.405; 40.81)

An employee is entitled, upon written request, to obtain copies of any records pertaining to that employee's use of alcohol or controlled substances, including any records related to his{her alcohol or controlled substances tests.

The County shall promptly provide such records requested by the employee, and charge the employee only for the records requested. (382.405; 40.81)

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The County may disclose alcohol or controlled substances testing information on an employee to that employee or to the decision maker in a lawsuit, a grievance, or other proceeding initiated by or on behalf of the employee, and arising from the results of an alcohol and/or controlled substance test administered under this Policy, or from the County's determination that the employee engaged in conduct prohibited by Section IV of this Policy, including but not limited to a worker's compensation, W1employment compensation, or other proceeding relating to a benefit sought by the employee. (382.405 40.81)

A laboratory with which the County contracts for alcohol or controlled substance testing shall, upon written request of an employee, provide access to any records relating to his/her alcohol or drug test and any records relating to the results of any relevant certification review, or revocation-of-certification proceedings. A laboratory with which the County contracts for alcohol or controlled substance testing shall, upon written request of an employee, provide access to any records relating to his/her alcohol or drug test and any records relating to the results of any relevant certification review, or revocation-of-certification proceedings. A laboratory with which the County contracts for alcohol or controlled substance testing shall disclose information related to a positive alcohol or drug test of an employee to the employee, the County, or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive alcohol or drug test. (40.35; 40.37)

XII. TESTING PROCEDURES:

As specified in 49 CRF 40, testing procedures include:

A. Alcohol Misuse

1. When an employee refuses to complete and sign the breath alcohol testing form, to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process to prevent the completion of the test, the Breath Alcohol Technician (BAT) shall immediately notify the employer. (40.67)

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2. In the event an employee attempts and is unable to provide an adequate breath sample in accordance with Section 40.69 of the Code of Federal Regulations, the County shall direct the employee to obtain, as soon as practical, an evaluation from a licensed physician who is acceptable to the County concerning the employee's medical inability to provide an adequate amount of breath. The physician shall provide a written statement of the basis of his/her conclusions to the employer. (40.69)

3. As an alternative to the referral and evaluation of the employee for an inadequate breath sample, the County may require the employee to provide a blood alcohol specimen for test, when permitted by Part 40 of the Code of Federal Regulations. (40.69)

a. When the result of a blood alcohol test is an alcohol concentration of 0.04 or greater, the employer must inform the employee of the test result, and inform the employee that she/he has 72 hours in which to request a test of the split specimen at his/her own expense. If the employee requests a test of the split specimen within 72 hours, the County shall direct the laboratory to release the split specimen for testing by a DHHS certified laboratory. Action required by applicable Department of Transportation regulations (e.g., removal from a safety-sensitive position) is not stayed pending the result of the test of the split specimen. If the result of the split specimen fails to reconfirm the presence of an alcohol concentration of 0.04 or greater, the first test will be considered invalid. If the test result of the requested split specimen disproves the result of the first test then the first test shall be considered nullified. In such case, the County shall bare the expense for the second (split) test (40.77)

b. If an employee has not contacted the County within 72 hours, as provided immediately above, the employee may present to the County information documenting that serious illness, injury, inability to contact the County, lack of actual notice of the verified positive test, or other circumstances unavoidably preventing the employee from timely contacting the County. If the County concludes that there is a legitimate explanation for the employee's failure to contact the County within 72 hours, the County shall direct the analysis of the split specimen be performed at the employee's expense. (40.77)

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4. Controlled Substance Use.

- a. An MRO shall report to the employer that she/he has made all reasonable efforts to contact the employee when there is a verified positive test. The employer shall, as soon as practicable, request the employee to contact the MRO prior to the employee's next shift or within 24 hours, whichever is earlier. (382.409)
- b. The Designated County Representative shall make reasonable efforts to contact and request each driver whose controlled substances test is verified as positive to contact the MRO and discuss the results with the MRO who has been unable to contact the driver. The Designated County Representative shall immediately notify the MRO that the employee has been notified to contact the MRO within 24 hours. (382.411)
- c. When the test result of a primary specimen or a single specimen is positive, the employee may request the MRO to have the split sample tested or the single specimen retested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained. Such test or retest shall be at the employee's own expense. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result. Action required by applicable Department of Transportation regulations. (e.g., removal from a safety-sensitive position) is not stayed pending the result of the test of the split sample. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall consider the first test invalid (40.25; 40.33)
- d. If an employee has not contacted the MRO within 72 hours (as provided, immediately above), the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably preventing the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO

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within 72 hours, the MRO shall direct the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed at the employee's expense. If the reanalysis fails to confirm the results of the primary specimen analysis, the employee shall not be responsible for payment of the second test. (40.33)

e. If an employee is unable to provide an adequate urine sample, the MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test. (For pre-employment testing, the MRO is not required to make such a referral.)

Upon completion of the medical evaluation, the MRO shall report his/her conclusions to the County in writing. The cost of such evaluation and report shall be borne by the employee. (40.25)

XIII. COUNTY CONTROL AND ACCESS TO PROPERTY:

A. The County retains the right to enter and inspect all County owned, leased and/or controlled property, including vehicles even though it has assigned the use of such property to a particular employee.

B. Providing that reasonable suspicion and business necessity can be demonstrated and documented, all County owned, leased and/or controlled property, including but not limited to its vehicles, offices, desks, and lockers are subject to search without the consent of the employee and without a search warrant for business necessity and/or reasonable suspicion purposes.

XIV. VENDORS/CONTRACTORS:

A. Vendors/contractors used by the County to implement this policy are listed on Attachment A, including their addresses

B. Each vendor/contractor will perform those duties and responsibilities specified in applicable Federal regulations.

XV. SEVERABILITY:

In the event any provision of this Policy is declared by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be null and void, but such nullification shall not affect any other provisions of this Policy, all of which other provisions shall remain in full force and effect.

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ATTACHMENT A

VENDORS/CONTRACTORS USED BY THE COUNTY OF COLUSA

1. MEDICAL REVIEW OFFICER (MRO). The primary MRO for this policy will be:
Greystone Health Sciences Corporation, 7777 Alvarado Road, La Mesa, CA 91941.
2. SUBSTANCE ABUSE PROFESSIONAL (SAP). The primary SAP for this policy will be:
National Substance Abuse Professional Network, 1615 Orange Tree Lane, Redlands, CA 94025 .
3. DRUG TESTING LABORATORY. The primary laboratory for testing of controlled substances samples will be:
PharmChem, Laboratories, Inc., 1505A O'Brien Drive, Menlo Park, CA 94025.
4. DRUG TESTING COLLECTION AGENCY. The primary collection agency for drug sample collection will be:
Colusa Community Hospital, 199 E. Webster Street, Colusa, CA 95932 .

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