

FORT BEND COUNTY FY 2009
 COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: August 6, 2009	Submitted By: Kent Edwards
Court Agenda Date: August 11, 2009	Department: Human Resources
	Phone Number: 281-341-8631

SUMMARY OF ITEM: Take all appropriate action on revisions to the Employee Information Manual Section 301, Drug and Alcohol Detection and Deterrence.

RENEWAL AGREEMENT/APPOINTMENT YES NO
REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO

List Supporting Documents Attached: *Memo to court and Policy*

FINANCIAL SUMMARY:

BUDGETED ITEM: YES NO

FUNDNG SOURCE: Accounting Unit: _____ Account Number: _____
 Activity (If Applicable): _____

DESCRIPTION OF LAWSOM ACCOUNT: _____

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

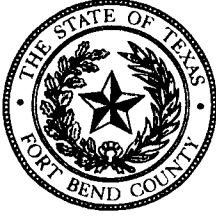
Original Form Submitted with back up to County Judge's Office x (✓ when completed)
 If by E-Mail to ospindon@co.fort-bend.tx.us If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

x	Auditor	(281-341-3774)	x	Comm. Pct. 1	(281-342-0587)
x	Budget Officer	(281-344-3954)	x	Comm. Pct. 2	(281-403-8009)
<input type="checkbox"/>	Facilities/Planning	(281-633-7022)	x	Comm. Pct. 3	(281-242-9060)
<input type="checkbox"/>	Purchasing Agent	(281-341-8642)	x	Comm. Pct. 4	(281-980-9077)
<input type="checkbox"/>	Information Technology	(281-341-4526)	x	County Clerk	(281-341-8697)
x	Other: Drainage		x	County Atty	(281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify): _____



HUMAN RESOURCES DEPARTMENT
FORT BEND COUNTY, TEXAS

Kent M. Edwards, PHR
Director of Human Resources

To: Judge Robert Hebert
Commissioner Richard Morrison
Commissioner Grady Prestage
Commissioner Andy Meyers
Commissioner James Patterson

From: Kent Edwards

Date: August 6, 2009

Subject: Revisions to Section 301: Drug and Alcohol Detection and Deterrence

Human Resources is submitting the attached revised policy for your review and consideration. During the Federal Transportation Administration's Triennial Review of Fort Bend County's Public Transportation Department, the FTA consultant requested revisions to the County's policy. Specifically, the FTA representative felt that the policy should better delineate the FTA requirements in the policy from non-FTA requirements. The County tests employees for drugs and alcohol under three separate authorities: the FTA, the Federal Motor Carrier Safety Administration (FMCSA), and under its own policy.

While the drug and alcohol testing process remains unchanged, Human Resources took this opportunity to remove unnecessary and redundant information from the policy which was originally written in 1996. The policy contains all the information required by the FTA and FMCSA, and presents FTA requirements in italicized print.

The approved revised policy must be submitted to the FTA Region VI office on or before August 23, 2009. The draft revised policy and the current approved policy are attached for your reference. Questions regarding the revisions can be directed to Kathy Novosad at 281-341-8624.

Section 300 - DRUG-FREE AND ALCOHOL-FREE WORKPLACE

Fort Bend County is committed to a drug-free and alcohol-free workplace. The County recognizes the dangers of drug and alcohol abuse, as well as the adverse effects of drug and alcohol abuse on productivity, health, safety and security. An employee who violates the County's policies regarding a drug-free and alcohol-free workplace may be subject to disciplinary action, up to and including immediate termination of employment.

Information regarding the signs, symptoms and dangers of drug and alcohol abuse are presented in Appendix 300-A. Further information can be obtained from the Fort Bend County Employee Assistance Program (EAP) at 1-800-788-5614.

301 - DRUG AND ALCOHOL DETECTION AND DETERRENCE

**Section 301.01
Purpose**

Fort Bend County is committed to maintaining a safe, healthful and productive work environment for all employees, and ensuring the safe and efficient delivery of services to citizens of Fort Bend County. The purpose of this policy is to facilitate the establishment of a work environment that is free from the effects of abuse or misuse of alcohol and any type of illegal or illicit drug and to establish a procedure for drug and alcohol testing.

This policy incorporates the requirements of the federal Drug Free and Alcohol Free Workplace Act, the Omnibus Transportation Employee Testing Act of 1991, and the Department of Transportation regulations 49CFR Part 40, 49CFR Part 382, and 49CFR Part 655. Copies of these regulations are available to employees upon request. Questions regarding this policy and Fort Bend County's drug and alcohol testing program can be addressed to the Director of Human Resources at 281-341-8631.

**Section 301.02
Scope**

The policies and procedures herein apply to all employees in positions which require the performance of safety sensitive duties as defined by the Department of Transportation. A list of these positions is available in appendix 301-A. *When drug or alcohol testing is required as provided in 49CFR Parts 382 and 655 for applicants or employees who perform DOT defined safety sensitive duties, testing will be conducted in accordance with 49 CFR Part 40. The applicant or employee shall be required to sign the Federal Drug Testing Custody and Control Form and/or the DOT Alcohol Testing form. Participation in the drug and alcohol testing program is a condition of employment for all employees in DOT defined safety sensitive positions. The DOT Federal Transportation Administration (FTA) requirements in this policy are presented in italicized print.*

Except where noted, the policies and procedures contained herein also apply to all Fort Bend County employees regardless of rank or position and include temporary and part-time employees, volunteers and appointed officials. Applicants or employees who are tested under the authority of Fort Bend County as provided in this policy will undergo non-DOT drug and alcohol testing. Participation in the drug and alcohol testing program is a condition of employment for all Fort Bend County employees.

**Section 301.03
Prohibited
Activities**

Employees are prohibited from the manufacture, distribution, dispensation, possession, sale, attempted sale, use or having in their control any illegal drug, intoxicant and/or alcohol while in County vehicles whether on or off duty, on County premises whether on or off duty, or while acting in the course and scope of their employment at any geographic location, whether on or off County premises.

Employees are prohibited from performing DOT defined safety-sensitive duties while consuming or impaired by alcohol or other illegal or illicit substances or with alcohol or other illegal or illicit substances present in their systems.

Employees are prohibited from any off-duty use or misuse of any illegal or illicit substances that result in a positive DOT or non-DOT drug test

pursuant to these procedures.

Employees are prohibited from any off-duty use or abuse of alcohol that results in a positive DOT or non-DOT alcohol test while on-duty or while operating a County vehicle.

The following activities are prohibited under DOT regulations, 49CFR Part 40, 382 and 655 for all employees who perform DOT defined safety sensitive duties:

1. *Being on duty and/or operating a commercial motor vehicle (CMV) or Revenue Service Vehicle (RSV) while possessing or consuming alcohol.*
2. *Consuming alcohol during specified on-call hours. An employee will be given the opportunity to acknowledge the use of alcohol at the time they are called to duty and the inability to perform safety sensitive functions.*
3. *When required to take a post-accident alcohol test, using alcohol within (8) hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.*
4. *Refusing to submit to any alcohol or controlled substance test required by this policy.*
5. *Reporting for duty or remaining on duty, if the employee tests positive for alcohol or controlled substances.*
6. *Being on duty when the employee's general appearance or conduct or some other substantiating evidence indicates alcohol use within the preceding four (4) hours.*

**Section 301.04
Notification**

Employees selected for drug and/or alcohol testing for any reason shall be notified by the appropriate elected official or department head or designee to submit to the drug and/or alcohol test and immediately proceed to the testing site. Once an employee has been notified to take a drug and/or alcohol test, unless hospitalized, no sick or other leave may be authorized until the collection process is completed.

The employee shall be notified if the test is required under the regulations of the Department of Transportation, or by County policy.

**Section 301.05
Five-Panel Drug
Test Process**

The use of illegal drugs is prohibited at all times and employees may be tested for drugs anytime while on duty, while operating a County vehicle on or off duty, or when operating any vehicle on County business.

When drug testing is required or authorized under the provisions of this policy and/or DOT regulations, all tests will be conducted as described in this section. *A urinalysis test will be given to detect the presence of amphetamines, cocaine metabolites, opiate metabolites, phencyclidine, and marijuana metabolites.*

An employee has three (3) hours, and may drink up to forty (40) ounces of liquid, from the time of notification to complete all requirements of the drug test collection process. A notified employee may consult with anyone regarding the drug and/or alcohol test so long as the collection process is completed in a timely manner.

Following is a general description of the drug testing urine specimen collection process an applicant or employee can expect to encounter:

1. Picture identification must be presented.
2. The individual will be required to check his or her belongings and remove any unnecessary outer garments. The collector will request that the individual empty his or her pockets, display the items, and explain the need for them during the collection. The individual may retain his or her wallet. If any of the individual's items could be used as a potential adulterant, the collector may check it with the individual's other personal belongings.
3. The individual must rinse his or her hands with water and dry them.
4. A specimen of at least 45 milliliters (about 1 ½ ounces) is required. The donor must urinate into the provided collection cup.
5. The specimen will be sealed and labeled in the presence of the donor. It then will be sent to the laboratory and processed according to specific chain of custody procedures to account for the integrity of the specimen.

Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine.

The initial drug testing shall be by enzyme immunoassay technique (EMIT) test which shall be administered at a laboratory approved by the Federal Department of Health and Human Services, at County expense. If an initial drug test yields a positive result, a second confirmatory test, at County expense, using a gas chromatography/mass spectrometry (GC/MS) test will be conducted on a portion of the same urine sample provided by the applicant or employee for use in the initial drug test.

**Section 301.06
Split Specimen
Testing**

If the second test also results in a positive, the MRO will notify the applicant or employee of the verified positive test result. The applicant or employee has 72 hours from this notification to request a split specimen test. The split specimen refers to the urine specimen collected during drug testing that is sent to the first laboratory and retained unopened. The split specimen is transported to and tested at a second laboratory at the applicant's or employee's request. The applicant or employee must submit the split specimen test fee to Fort Bend County, and the Human Resources Department will coordinate the payment of fees.

**Section 301.07
Minimum Levels**

The minimum levels of positive test results are the levels authorized by the Department of Transportation. Employees may contact the Human Resources Department for information on the current minimum levels.

A negative dilute test result (creatinine level >2mg/dl but <5mg/dl) on a controlled substances test shall require a retest under direct observation. If the retest is negative, the test shall be deemed negative. A positive dilute test result will be considered a positive result.

**Section 301.08
Alcohol Testing
Process**

When alcohol testing is required or authorized under the provisions of this policy and/or DOT regulations, all tests will be conducted as described in this section. A DOT alcohol test may only be conducted just before, during and just after performing DOT safety sensitive functions. A non-DOT alcohol test may be conducted at any time an employee is on duty, is operating a County vehicle while on or off duty, or when operating any vehicle on County business.

Alcohol testing using a National Highway Transportation Safety

Administration certified Evidential Breath Testing (EBT) device, shall be completed by a certified Breath Alcohol Technician (BAT). A breath alcohol level of .04 or greater will constitute a positive result. When an employee is testing for the first time and his breath alcohol level ranges from 0.02 to 0.039, a confirmation test will be performed. If the confirmation test result is in the range of 0.02 to 0.039, the employee will not be allowed to perform safety sensitive functions until the employee's next regularly scheduled duty period, but not less than eight hours following the administration of the test (FTA), 24 hours following the administration of the test (FMCSA).

It shall be the policy of Fort Bend County that any employee whose confirmation test indicates a breath alcohol level of .02 or greater will be relieved from duty for three days without pay. An employee who has had a confirmed positive test at any time in the past who has a subsequent test showing a breath alcohol level of 0.02 or greater, will be subject to discipline, up to and including termination of employment.

**Section 301.09
Third Party
Service Provider**

Fort Bend County will use a third party vendor to provide drug and alcohol testing services. For information concerning the current drug/alcohol testing service provider, please see Appendix 301-B, or contact the Human Resources Director.

**Section 301.10
Refusal To Test**

Any employee, who refuses to consent to a DOT or non-DOT drug and/or alcohol test after notification of the consequences of refusal, shall be immediately removed from performing safety-sensitive functions, referred to a substance abuse professional, indefinitely suspended without pay and is subject to termination of employment. Note that refusal to take a non-DOT test does not constitute refusal to take a DOT test.

Behavior that may constitute refusal to test includes but is not limited to:

- 1. Failure to appear at the collection site in a reasonable time*
- 2. Refusal to provide a specimen (either verbal refusal or physical absence)*
- 3. Failure to provide sufficient specimen with no medical explanation*
- 4. Failure to remain at the testing site until the testing process is completed*
- 5. Failure to have a medical evaluation if required by an MRO*
- 6. Failure to cooperate with any part of the testing process*
- 7. Failure to allow monitoring or direct observation if required by an SAP or because of a suspected adulterated sample*
- 8. Failure to take a second test if directed to do so*
- 9. MRO verification of a test as adulterated or substituted*
- 10. Failure to sign Step 2 of the Alcohol Testing Form*
- 11. Failure to remain available for testing following an accident*
- 12. Failure to cooperate with any part of the observed collection process as specified in 49CFR Part 40*
- 13. Admitting to the collector or Medical Review Officer that the specimen is adulterated or substituted.*

**Section 301.11
Observed
Collections**

Consistent with 49CFR Part 40, DOT drug test urine specimens will be collected under the direct observation of the specimen collector in the following situations:

- 1. All DOT return to duty and follow up tests (see Section 301.46)*
- 2. When the temperature of the original specimen is outside the acceptable range*

3. *When the test result is "negative dilute," meaning the creatinine level is less than 2mg/dl but greater than 5mg/dl*
4. *When the original specimen appears to have been tampered*
5. *When a collector has reason to believe, either from the employee's conduct or possession of certain materials, that there has been an attempt to tamper with the specimen*
6. *When the original specimen is reported by the laboratory as invalid and the MRO determines there is not an adequate medical explanation*
7. *When the original specimen test result is positive, adulterated or substituted, but a split specimen test can not be performed*

The process for direct observation shall be as specified in 49CFR Part 40. Refusal to cooperate with any step in the direct observation process shall be considered refusal to test and the consequences for refusal shall be consistent with Section 301.10 of this policy.

**Section 301.12
Categories of
Testing**

An employee, applicant, reserve deputy or volunteer of Fort Bend County may be required to submit to the following types of drug and/or alcohol testing:

1. Pre-placement
2. Reasonable Suspicion
3. Post Accident
4. Random
5. Return to duty and follow-up

**Section 301.13
Pre-placement
Testing**

Prior to beginning work as a County employee in a DOT regulated position, applicants must submit to a DOT drug test. Applicants for all other positions in the County must submit to a non-DOT drug test. Pre-placement drug tests will be administered after a conditional offer of employment has been made, and the Human Resources Department must receive a negative drug test result before the applicant may report for duty. Applicants are not required to undergo an alcohol test pre-placement.

A pre-placement drug test is good for thirty (30) calendar days. If an applicant does not begin working within thirty calendar days, another drug test will be required prior to placement. In addition, any Fort Bend County employee who takes a non-medical leave of absence for a period of more than 30 calendar days shall be subject to a non-DOT drug test prior to returning to work.

Any Fort Bend County employee who transfers or is promoted into a DOT safety sensitive position from a non-DOT safety sensitive position, or who has been removed from the DOT random pool for 90 days or longer for any reason, must undergo a pre-placement DOT drug test prior to performing safety sensitive functions.

**Section 301.14
Refusal to
Submit to Pre-
Placement Drug
Test**

Any applicant who refuses to consent to a DOT or non-DOT pre-placement drug test, who fails to appear at the designated collection site or who fails to provide his/her urine sample after reasonable opportunity shall have the hiring process terminated and the conditional offer of employment shall be withdrawn.

**Section 301.15
Consequences
Of A Positive
Result**

An applicant who has a confirmed positive test result shall have his/her hiring process terminated and the conditional offer of employment withdrawn. *An applicant for a DOT safety sensitive position who has a positive drug test shall be referred to a Substance Abuse Professional.*

**Section 301.16
Reasonable
Suspicion Drug
And/Or Alcohol
Testing**

Employees who perform safety sensitive duties as defined by the DOT shall be subject to drug and/or alcohol testing if reasonable suspicion exists, as explained in Sec 301.18, that the employee is under the influence of drugs and/or alcohol while on County property or while acting in the scope of their employment. In accordance with DOT regulations, a certified departmental supervisor may require a DOT alcohol test for reasonable suspicion only when the employee is performing, about to perform, or has just performed a DOT defined safety sensitive function. A DOT drug test may be required at any time a certified departmental supervisor determines that reasonable suspicion exists.

It shall be the policy of the County that a certified departmental supervisor may require a non-DOT drug and/or alcohol test if reasonable suspicion exists at any time an employee is performing in their capacity as a Fort Bend County employee.

**Section 301.17
Basis For
Reasonable
Suspicion**

If a certified departmental supervisor finds there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or a body odor of an employee, the supervisor may require the employee to undergo a drug and/or alcohol test. Circumstances which can constitute a basis for determining reasonable suspicion may include, but are not limited to:

- (a) A Pattern of Abnormal or Erratic Behavior - This includes, but is not limited to a single, unexplainable incident of serious abnormal behavior or a pattern of behavior which is radically different from what is normally displayed by the employee or grossly differing from acceptable behavior in the workplace.
- (b) Information provided by a Reliable and Credible Source – The first line supervisor or another supervisor/manager receives information from a reliable and credible source as determined by the Human Resources Administrator that an employee is violating the County's Policy of Drug and/or Alcohol Detection and Deterrence.
- (c) Direct Observation of Drug and/or Alcohol Use - The first line or another supervisor/manager directly observes an employee using drug and/or alcohol while the employee is on duty. Under these circumstances, a request for drug and/or alcohol testing is MANDATORY.
- (d) Presence of Physical Symptoms of Drug and/or Alcohol Use - The supervisor observes physical symptoms that could include but are not limited to glassy or bloodshot eyes, slurred speech, poor motor coordination, or slow or poor reflex responses different from what is usually displayed by the employee or generally associated with common ailments, e.g., colds, sinus, hay fever, diabetes, etc.

**Section 301. 18
Certified
Departmental
Supervisors**

The County shall provide "Certified Departmental Supervisor" training for supervisors on the signs and symptoms of illegal drug use and alcohol misuse or abuse, and the procedure for determining if a reasonable suspicion drug and/or alcohol test is warranted. Certified Departmental Supervisors shall be required to document in writing the specific facts, symptoms, and observations which form the basis for such reasonable suspicion. The certified departmental supervisor will consult with the Human Resources Director or designee on the facts and circumstances of the situation. If a reasonable suspicion drug and/or alcohol test is warranted, the Human Resources department shall assist in securing the appropriate test. If the Human Resources Director or designee is not

available, the certified departmental supervisor shall consult with at least one other certified departmental supervisor and contact the drug and alcohol testing service provider directly to arrange testing. Contact information is provided in Appendix 301-B.

An employee who is directed to undergo reasonable suspicion drug and/or alcohol testing should be accompanied to the testing site by the certified departmental supervisor, and should not be allowed to operate a county vehicle until a confirmed negative test result is received.

**Section 301.19
Post Accident
Testing**

In accordance with 49CFR, an employee in a DOT safety-sensitive position whose performance could have contributed to an accident involving a Commercial Motor Vehicle or Revenue Service Vehicle shall be required to submit to a DOT drug and alcohol test in the following circumstances:

For Employees Subject to FTA Regulations

TYPE OF ACCIDENT	CITATION ISSUED TO DRIVER?	DOT DRUG AND ALCOHOL TEST?
Human Fatality	Yes or No	Yes
Injury to any person requiring immediate medical treatment away from the scene	Yes	Yes
	No	Yes
Disabling damage to any motor vehicle requiring tow	Yes	Yes
	No	Yes

For Employees Subject to FMCSA Regulations*

TYPE OF ACCIDENT	CITATION ISSUED TO DRIVER?	DOT DRUG AND ALCOHOL TEST?
Human Fatality	Yes or No	Yes
Injury to any person requiring immediate medical treatment away from the scene	Yes	Yes
	No	No
Disabling damage to any motor vehicle requiring tow	Yes	Yes
	No	No

*FMCSA = Federal Motor Carrier Safety Administration

A DOT drug or alcohol test will not be required for those employees whose performance can be completely discounted as a contributing factor to an accident. However, a non-DOT test may still be required.

Any employee who has been involved in any type of work related incident or accident involving injury to self or to another or which causes property damage or involves other unusual circumstances shall be required to take a mandatory non-DOT drug and alcohol test under county policy. If a DOT drug or alcohol test is required and administered, a non-DOT test shall not be required.

Workers compensation benefits are not payable in the event an employee is under the influence of drugs or alcohol at the time the injury/accident occurs. Post-accident testing will determine compensability of a claim resulting from such injury or accident.

**Section 301.20
Time
Requirements** Nothing in this policy shall be construed to require the delay of necessary medical attention for the injured following an incident or accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident.

Employees who are involved in an incident or accident and are subject to post-accident testing must remain available for testing. Post accident alcohol tests should be administered within two hours of the accident, but may be administered within eight hours following the accident. Post accident drug tests must be administered within 32 hours following the accident. Lack of availability to test within a reasonable time will be considered a refusal to test. Employees must also refrain from consuming alcohol for eight hours following an accident, or until the post-accident alcohol testing is complete, whichever comes first. Failure to do so will be considered refusal to test and subject to the consequences explained in Section 301.10.

The Risk Management Department will coordinate Post Accident testing.

**Section 301.21
Random Testing:
DOT Positions** All County employees in DOT regulated positions shall be subject to Random Drug and Alcohol Testing. The minimum number of tests to be conducted annually shall be as required by the FMCSA, or the FTA, whichever is higher. Currently, a minimum of 50% of DOT regulated employees shall be tested annually for controlled substances. A minimum of 10% of DOT regulated employees shall be tested annually for alcohol just before, during, or just after performing safety sensitive functions.

**Section 301.22
Random Testing:
Safety Impact
Positions** Elected officials and department heads who believe that a position has an impact upon the safety of that individual or others or for appropriate reasons should be subject to random testing, shall identify each such position and submit it to the Human Resources Director. Commissioners Court shall approve all County Safety Impact Positions for the random selection pool. Employees in such positions shall be informed that they are in a safety impact position and are subject to random drug testing. A minimum of 100 such employees shall be tested annually for controlled substances.

**Section 301.23
Random
Computer
Selection** A random computer selection process using a scientifically valid method shall be used to generate random test lists. There shall be two pools for random testing: DOT, and non-DOT Safety Impact employees.

All employees in the random pools will have an equal chance of being selected for testing and will remain in the pool, even after being tested. It is possible for some employees to be tested several times in one year, and other employees not to be tested for several years.

Random testing will be reasonably distributed throughout the year, and shall be immediate and unannounced. Random testing may be conducted during all hours and days when employees are on duty.

**Section 301.24
Randomly
Selected
Employees** Employees selected for a random test shall be notified by the elected official or department head or designee, and must immediately comply with the testing requirements. DOT employees selected for a random test who are on leave for any reason at the time of testing, must be tested upon returning to work. If a non-DOT Safety Impact employee is selected for a random test but is absent or on urgent County business approved by the elected

official or department head, another employee at that location may be selected.

**Section 301.25
Emergency
Personnel** Emergency medical and law enforcement employees are expected to respond immediately to emergency calls or incidents. Random drug and/or alcohol testing may be postponed if the test is interrupted because of an emergency situation.

**Section 301.26
Employee
Assistance
Program** All employees are encouraged to make use of the available resources for treatment of drug and/or alcohol misuse and abuse problems. The Employee Assistance Program (EAP) may provide free or reduced cost access to treatment programs.

Under certain circumstances an employee may be required to seek assistance for drug and/or alcohol misuse and abuse problems. Circumstances which may prompt a mandatory referral to the EAP include a positive test result, other violations of this policy or drug or alcohol use related behavior which negatively impacts an employee's job performance.

Disciplinary action based on a violation of the County's Drug and Alcohol Detection and Deterrence Policy is not suspended by an employee's participation in the Employee Assistance Program or a substance abuse program.

**Section 301.27
Rehabilitation
And Follow-Up
Testing** Following a determination that an employee is in need of assistance in resolving problems associated with drug abuse and/or alcohol misuse, the employee may be subject to return-to-duty and unannounced follow-up drug and/or alcohol testing if directed by the Substance Abuse Professional (SAP). The employee is responsible for all costs of return to duty and follow up testing.

**Section 301.28
Positive Test
Results and
Other Policy
Violations** *Consistent with 49CFR Part 40, a DOT regulated employee with a confirmed positive result on a drug or alcohol test, or who refuses to submit to a DOT test, must be immediately removed from performing safety-sensitive duties and referred to a Substance Abuse Professional.*

An employee who tests positive to a properly authorized and administered test or is found to have any drug and/or alcohol in his/her possession shall be indefinitely suspended without pay and is subject to immediate termination of employment. Possession can include an employee's person or personal property if on County premises, a County motor vehicle or equipment under the employee's control, or County-provided property under an employee's control.

DOT regulations 49CFR Part 40, Part 382 and Part 655 allow for employees to return to duty following a positive DOT test result. Depending on the circumstances and at the discretion of the Elected Official/Department Head, this opportunity may be extended to Fort Bend County employees. The employee must first comply with a course of treatment as recommended by an SAP, and the employee must undergo one (1) return-to-duty test and at least six (6) follow-up controlled substance and/or alcohol tests in the following twelve (12) months, or more if required by the SAP.

At the discretion of the Elected Official/Department Head, employees who test positive on a non-DOT drug or alcohol test may also be allowed to

return to duty under the same treatment and testing requirements as specified above. The cost of the treatment and testing, beyond what may be covered under the Employee Assistance Program (EAP) is the responsibility of the employee.

**Section 301.29
ADA Compliance**

Fort Bend County is aware that drug or alcohol addiction may constitute a disability as defined by the Americans with Disabilities Act. Fort Bend County does not discriminate on the basis of disability in admission, access, treatment, or employment in its programs or activities. However, the ADA does not preclude employers from enforcing the requirements of a drug and alcohol policy regardless of disability. *Applicants for DOT regulated positions may be subject to return to duty and follow up testing if a pre-employment background check reveals a previous positive DOT drug or alcohol test result. Such applicants must provide documentation of successful completion of a substance abuse program.*

**Section 301.30
Grant Or
Contract
Employees**

All employees engaged in the performance of a federal, state or local grant or federal, state or local contract valued at over \$25,000 shall be given a copy of the County's Policy on Drug and Alcohol Detection and Deterrence, and informed that they must comply with the policy as a condition of employment.

**Section 301.31
Drug Statute
Conviction**

Grant or contract employees shall notify the elected or appointed official or the department head of any criminal conviction for a drug statute violation occurring in the workplace no later than five (5) calendar days after the conviction. The elected or appointed official or the department head shall provide written notice to the grantor or contractor agency and the Human Resources Director of any criminal drug statute conviction occurring in the workplace within ten calendar days after receiving notice from the employee, or receiving actual notice of the conviction. The information provided by the appropriate official shall include the employee's position, title and the grant identification(s) for each grant on which the convicted employee was working.

**Section 301.32
Confidential
Records**

All records related to employee drug and alcohol tests are confidential, to the extent allowed by law. Any employee who violates this confidentiality provision shall be subject to disciplinary action up to and including termination of employment. Records related to employee and applicant drug and alcohol testing shall be kept in a confidential file separate from the employee's personnel file. Employees are entitled, upon written request, to obtain copies of any records pertaining to their drug and alcohol tests.

**Section 301.33
DOT Background
Check
Requirements**

DOT regulations require employers to confirm/verify the testing background of new hires and other employees beginning safety-sensitive work. Employers must have an employee's written consent (without which the employer may not hire the applicant) and send the signed consent to all other DOT regulated employers for whom the employee worked within the previous two (2) years. The employer may not allow the employee to perform safety-sensitive duties for more than 30 calendar days without first obtaining, or making and documenting a good faith effort to obtain, the required information from previous employers.

**Section 301.34
Disclosure Of
Information**

An employer must release information if it receives specific, written consent from an employee or former employee authorizing the release of information about the employee's drug or alcohol tests to an identified person.

Employers may release test result information in certain legal proceedings. Written consent authorizing disclosure from an employee is not required when drug and/or alcohol testing becomes the subject of a complaint or other judicial or quasi-judicial proceeding. The employer must immediately notify the employee in writing of any information released for this purpose.

**Section 301.35
County Reserves
Right**

The County reserves the right to interpret, change, suspend, cancel or dispute, with or without written notice, all or any part of this policy, or procedures or benefits discussed herein

**Section 301.36
Policy
Distribution**

A copy of the Fort Bend County Policy for Drug and Alcohol Detection and Deterrence shall be given to all employees. Employees will be required to acknowledge in writing that they have received a copy of this policy.

**Section 301.37
Employment-At-
Will**

Adherence to this policy is a condition of employment, however; nothing in this policy alters an employee's status and shall not constitute, nor be deemed a contract or promise of employment. Employees remain free to resign their employment at any time, for any or no reason, without notice, and the County retains the right to terminate any employee at any time, for any legal reason or no reason, without notice.

Policy Approved and Adopted By:
Fort Bend County Commissioners Court
March 5, 1996
Revised: February 10, 2004
Revised October 3, 2006
Revised: April 28, 2009
Revised: August 11, 2009

APPENDIX 300-A SIGNS, SYMPTOMS AND DANGERS OF ALCOHOL AND DRUG ABUSE

Substance abuse, the misuse of drugs and alcohol, is not a new issue, but it is one of growing concern to employers. Substance abuse is a problem in the workplace, costing businesses billions of dollars per year. Research has shown that substance abuse affects organizations, as evidenced by increased medical benefit claims, increased absenteeism, increased worker's compensation claims, and decreased productivity. Substance abuse poses serious safety and health risks not only to the user, but also to those who work with or come into contact with the abuser.

ALCOHOL FACTS

Alcohol, when consumed primarily for its physical and mood-altering effects, is a substance of abuse. As a depressant it slows down physical responses and progressively impairs mental functions. Signs and symptoms of use include dulled mental processes, lack of coordination, odor of alcohol on the breath, slowed reaction rate, and slurred speech. The chronic consumption of alcohol over time may result in dependency, fatal liver disease, kidney disease, and birth defects.

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

AMPHETAMINE FACTS

Amphetamines are central nervous system stimulants that speed up the mind and body. Signs and symptoms of use include hyper-excitability, restlessness, confusion, panic, talkativeness, inability to concentrate, and heightened aggressive behavior. Regular use produces strong psychological dependence and increasing tolerance to the drug.

Low-dose amphetamine use will cause short-term improvement in mental and physical functioning. With greater use, however, the effect reverses and has an impairing effect. Hangover effect is characterized by physical fatigue and depression, which may make operation of equipment or vehicles dangerous.

COCAINE FACTS

Cocaine is abused as a powerful physical and mental stimulant; the entire central nervous system is energized. Signs and symptoms of use include financial problems, increased physical activity and fatigue, isolation and withdrawal from friends and normal activities, unusual defensiveness, anxiety, agitation, and wide mood swings. Cocaine use causes the heart to beat faster and harder and rapidly increases blood pressure. Cocaine causes spasms of blood vessels in the brain and heart and can lead to ruptured vessels causing strokes or heart attacks. Extreme mood and energy swings create instability. Work performance is characterized by forgetfulness, absenteeism, tardiness, and missed assignments.

MARIJUANA FACTS

People use marijuana for the mildly tranquilizing, mood altering and perception altering effects it produces. Signs and symptoms of use include reddened eyes, slowed speech, chronic fatigue, and lack of motivation. Chronic smoking of marijuana causes emphysema-like conditions.

Regular use can cause diminished concentration, impaired short-term memory, impaired signal detection and impaired tracking (the ability to follow a moving object with the eye.)

Marijuana smoking has a long-term effect on performance. Combining alcohol and other depressant drugs and marijuana can produce a multiplied effect, increasing the impairing effect of both the depressant and marijuana.

OPIATES (NARCOTICS) FACTS

Opiates (also called narcotics) are drugs that alleviate pain, depress body functions, and when taken in large doses, cause a strong euphoric feeling. Signs and symptoms of use include mood changes, impaired mental functioning, depression and apathy, impaired coordination, and physical fatigue and drowsiness. IV needle users have a high risk for contracting hepatitis and AIDS due to sharing of needles.

Side effects of opiates such as nausea, vomiting, dizziness, mental clouding, and drowsiness place the legitimate user and abuser at higher risk for an accident. Workplace use may cause impairment of physical and mental functions.

PHENCYCLIDINE (PCP) FACTS

Phencyclidine acts as both a depressant and a hallucinogen, and sometimes a stimulant. Signs and symptoms of use include impaired coordination, severe confusion and agitation extreme mood shifts, rapid heartbeat, and dizziness. The potential for accidents and overdose is high due to the extreme mental effects combined with the anesthetic effect on the body. PCP use can cause irreversible memory loss, personality changes, and thought disorders.

APPENDIX 301-A

**Department of Transportation
Safety-Sensitive Functions**

The Federal Transit Administration (FTA) defines safety-sensitive functions as those duties that require:

- Operating a Revenue Service Vehicle
- Maintaining a Revenue Service Vehicle
- Dispatching or controlling movement of a Revenue Service Vehicle
- Carrying a firearm when required for security purposes
- Operating a non-Revenue Vehicle which requires a Commercial Driver's License

Where a Revenue Service Vehicle is a vehicle used for the transportation of passengers as anticipated by the recipient.

The Federal Motor Carriers Administration (FMCA) defines safety-sensitive functions as any time an employee begins to work, or is required to be in readiness to work, until they are relieved from work, in the following functions:

- Waiting to be dispatched to operate a Commercial Motor Vehicle
- Inspecting, servicing or conditioning any Commercial Motor Vehicle
- Driving a Commercial Motor Vehicle
- Loading, unloading, supervising or assisting in loading or unloading of a Commercial Motor Vehicle
- Repairing, obtaining assistance, or remaining in attendance upon a disabled Commercial Motor Vehicle

Where a Commercial Motor Vehicle is a vehicle with a gross combination weight or gross vehicle weight rating of 26,001 pounds or more, is designed to transport 16 or more passengers, or is of any size and is used in the transportation of materials found to be hazardous and requires the vehicle to be placarded.

Fort Bend County positions that are required to perform Safety-Sensitive functions are listed on the following page. This list is subject to change without notice. Please contact Human Resources at 281-341-8624 for questions regarding DOT Safety-Sensitive functions.

**FORT BEND COUNTY
POSITIONS SUBJECT TO DOT
DRUG AND ALCOHOL TESTING POLICY**

DRAINAGE	ROAD & BRIDGE	OTHER
Asst Foreman-Bridge Crew	Equipment Operator	Vehicle Maint: Master Mechanic & Mechanic
Bridge Crew	Heavy Equipment Operator	Fairgrounds: Supervisor, Maintenance Worker
Construction Supervisor	Master Equipment Operator	Public Transportation: Reservationist** Scheduler** Operations Manager**
Equipment Operator	Master Mechanic	Engineering: Recycle Center Coordinator
Heavy Equipment Operator	Mechanic	Parks: Supervisor & Parks Operator I and II
Maintenance Superintendent	Traffic Control Tech I	
Master Equipment Operator	Traffic Control Tech II	
Master Mechanic	Laborer in Training	
Master Welder	Surveyor/Technician	
Mechanic	Vector/Herbicide Supervisor	
Project Coor/Herbicide Supervisor	Vector/Herbicide Tech I	
Tire Service Technician	Vector/Herbicide Tech II	
	Supervisor	
	Fitter/Welder	
	Tire Service Technician	

** Denotes positions subject to the regulations of the FTA.
All other positions subject to the regulations of the FMCSA

APPENDIX 301-B
Drug and Alcohol Detection and Deterrence Policy
List of Contacts

**Designated Employer Representative/
Drug and Alcohol Program Manager**

Fort Bend County Human Resources
Director of HR or Designee
4520 Reading Road
Rosenberg, TX 77471
(281)341-8631

Drug and Alcohol Program Administrator

Fort Bend County Human Resources
Administrative Coordinator
4520 Reading Road
Rosenberg, TX 77471
(281)341-8616

**Drug and Alcohol Testing Services Provider And
Medical Review Officer**

Houston Medical Testing Services, Inc
2646 South Loop West, Suite 550
Houston TX 77054
(713)655-4687

**Employee Assistance Program/
Substance Abuse Professional**

United Behavioral Health
(866)828-6049

Section 300 - DRUG-FREE AND ALCOHOL-FREE WORKPLACE

Fort Bend County is a drug-free and alcohol-free workplace. An employee who violates the County's policies regarding a drug-free and alcohol-free workplace may be subject to disciplinary action, up to and including immediate termination of employment.

Fort Bend County recognizes the dangers of drug and alcohol abuse. Fort Bend County also recognizes the adverse effects of drug and alcohol abuse on productivity, health, safety and security. Information regarding the signs, symptoms and dangers of drug and alcohol abuse are presented in Appendix 300-A. Further information can be obtained from the Fort Bend County Employee Assistance Program (EAP) at 1-866-828-6049.

301 - DRUG AND ALCOHOL DETECTION AND DETERRENCE

- Section 301.01
Policy** It is the policy of Fort Bend County that the manufacture, distribution, dispensation, possession, sale, attempted sale or use of illegal drugs, intoxicants or alcohol by employees is prohibited while on duty for or acting on behalf of the County and/or in County vehicles whether on or off duty. The County's goal is to establish and maintain a work environment that is free from the effects of abuse or misuse of any type of drug or alcohol. Consequently, employees are prohibited from being at work or acting in the scope of their employment with the County, whether on or off County premises, while consuming alcohol, while impaired by alcohol, intoxicant(s) or with illegal or illicit substances present in their systems, on their persons, on County premises, or in County vehicles whether on or off duty.
- This policy incorporates any off-duty use or misuse of illegal or illicit substances that result in a positive drug test pursuant to these procedures. This policy also incorporates any off-duty use or abuse of alcohol that results in a positive alcohol test pursuant to these procedures.
- Questions regarding this policy and Fort Bend County's Drug and Alcohol Testing Program can be addressed to the Director of Human Resources at 281-341-8631.
- Section 301.02
Purpose** The purpose of this policy is to provide procedures for implementation of the County's Policy for Drug and Alcohol Detection and Deterrence. Fort Bend County is committed to maintaining a safe, healthful and productive work environment for all employees, and ensuring the safe and efficient delivery of services to citizens of Fort Bend County.
- Section 301.03
Scope of Policy** This policy applies to all employees of the County regardless of rank or position and includes temporary and part-time employees, volunteers and appointed officials.
- Section 301.04
Scope of Procedures** The drug and alcohol testing procedure is applicable to individuals applying for employment with the County and all Fort Bend County employees as defined above.
- Section 301.05
Compliance** Compliance with this policy is a condition of employment.
- Section 301.06
Objectives** To establish a procedure to achieve a drug-free and alcohol-free workforce and to provide a workplace that is free from the use of illegal drugs, as well as alcohol and substance abuse.
- To establish a procedure for drug testing of applicants for County employment.
- To establish a procedure for drug and alcohol testing of employees where there is reasonable suspicion that an employee has illegal substances or alcohol in their system while on duty or in the scope of their employment with the County.

To establish a procedure of random drug and alcohol testing for personnel in positions which have a significant impact upon the public safety of themselves or others.

To establish a procedure for drug and alcohol testing of personnel employed as certified peace officers assigned to, or who are applicants for, positions as certified peace officers within the County.

To establish a procedure for drug and alcohol testing of personnel employed as reserve deputies and volunteer arson investigators within the County. Drug and alcohol testing of personnel acting as reserve deputies or as volunteer arson investigators shall be at the expense of the reserve deputy or volunteer arson investigator.

To establish a procedure that complies with the Omnibus Transportation Employee Testing Act of 1991, and the Department of Transportation regulations 49CFR, Part 40, as amended August 25, 2008, and 49CFR Part 655 (FTA), and 49CFR Part 382 (FMCSA). Copies of these regulations are available to employees upon request.

Definitions

Section 301.07 Definitions

- A. ADULTERATED DRUG TEST means the result of a drug test from a urine specimen that contains an unidentified adulterant of an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.
- B. APPLICANT FOR EMPLOYMENT means a person applying for any position with the County.
- C. CERTIFIED DEPARTMENTAL SUPERVISOR means a supervisor who has attended the mandatory two-hour training provided by a Certified Department of Transportation (DOT) trainer.
- D. CERTIFIED PEACE OFFICER means an employee authorized under state law as a peace officer.
- E. COLLECTION SITE means a place selected by the County where urine samples are collected from an employee or applicant by a qualified collection technician.
- F. CONFIRMATION OF DRUG AND/OR ALCOHOL TEST RESULTS means a form issued to an applicant, employee or employer that informs them of the results from a confirmatory drug and/or alcohol test.
- G. CONTRACT EMPLOYEE means a County employee directly

engaged in the performance of work pursuant to the provisions of a federal contract valued in excess of \$25,000.

- H. CONTROLLED SUBSTANCE means any substance listed in Schedule I V of Section 202 of the Controlled Substance Act (21 U.S.C. S 812), as amended, or in the Texas Health and Safety Code Ann. 481.001, et. Seq. (Vernon 1992).
- I. CONVICTION means a finding of guilt or imposition of sentence, including deferred adjudication or probation, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug statutes.
- J. COUNTY PREMISES means all County owned or leased real or personal property and facilities, their surrounding grounds and parking lots, and County provided motor driven equipment/vehicles.
- K. CRIMINAL DRUG STATUTE means a federal or non-federal criminal statute pertaining to the manufacture, distribution, dispensation, sale, use or possession of any controlled substance.
- L. DEPARTMENT OF TRANSPORTATION (DOT) is a federal regulatory agency which mandates drug-related testing requirements on businesses subject to their regulatory authority. Employees who are required to have a commercial driver's license (CDL) to perform the scope of their work, must comply with DOT regulations
- M. DESIGNATED EMPLOYER REPRESENTATIVE (DER) means an employee authorized by the County to receive drug and/or alcohol test results and other communications for the employer.
- N. DILUTE SPECIMEN is a urine specimen with creatinine and specific gravity values that are lower than those expected for human urine.
- O. DRUG PARAPHERNALIA means any equipment, product or material that is used or intended for use in concealing an illegal drug or for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal drug or a controlled substance.
- P. DRUG TEST means a procedure to test urine samples for the purpose of detecting the presence of amphetamines, cocaine metabolites, opiate metabolites, phencyclidine, and marijuana metabolites.
- Q. DRUG means any chemical substance that is defined by criminal statute as a controlled substance or which may produce physical, mental, emotional, or behavioral change in the user.

- R. EMPLOYEE means all individuals engaged in the performance of work for or on behalf of Fort Bend County whether hired or appointed, whether full or part time.
- S. FEDERAL MOTOR CARRIERS SAFETY ADMINISTRATION (FMCSA) is the agency of the Department of Transportation which regulates the operation of Commercial Motor Vehicles.
- T. FEDERAL TRANSIT ADMINISTRATION (FTA) is the agency of the Department of Transportation which regulates the operation of Revenue Service Vehicles.
- U. GRANT EMPLOYEE means a County employee directly engaged in the performance of work pursuant to the provisions of a federal or state grant, including all direct charge employees and indirect charge employees unless their impact or involvement is insignificant to the performance of the grant as determined by the Commissioners Court.
- V. GRANT means an award of funds by a foundation or a state or federal agency.
- W. ILLEGAL DRUG means any drug or derivative thereof, the use, possession, sale, transfer, attempted sale, or transfer, manufacture or storage of which is illegal, or regulated under any federal, state or local law or regulation and any other drug, including, but not limited to, a prescription drug, over the counter drug or inhalant, used for any reason other than a legitimate medical reason. Marijuana or cannabis in all forms included.
- X. INFORMED CONSENT means a form of authorization completed by an applicant or employee consenting to a drug and/or alcohol test and permitting the release of test results to the Human Resources Director and/or designee.
- Y. INTOXICANT means any of the following: Alcohol, a controlled substance, a controlled substance analog, any other drug, or a vapor-releasing substance, and any combination of alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor-releasing substance.
- Z. LABORATORY means a Department of Health and Human Services certified laboratory authorized by the County to perform drug testing.
- AA. MEDICAL REVIEW OFFICER (MRO) means a licensed physician certified as an MRO, who is authorized by the County to review laboratory results generated by the County's drug testing program and evaluating medical explanations for positive drug and/or alcohol test results.
- BB. NOTICE means an approved condensed and written notice of Fort Bend County's Policy on Drug and/or alcohol Detection and Deterrence.
- CC. OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF

1991 means the performance of work at which County employees are prohibited from engaging in unlawful manufacture, distribution, dispensation, possession, sale, or use of a controlled substance.

DD. ON DUTY means that time period which constitutes an employee's work day, or that time period when he or she has been recalled to work.

EE. POSITIVE TEST RESULT means that the drug specimen or alcohol test contains traces of illegal drugs

FF. POST-ACCIDENT DRUG/ALCOHOL TESTING is conducted when an employee is involved in an accident causing injury to self or others, or resulting in property damage.

GG. PRE-PLACEMENT DRUG TESTING is performed on all applicants who have received a conditional offer of employment pending the result of their drug test.

HH. PRIMARY SPECIMEN refers to the urine specimen collected during drug testing that is tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

II. RANDOM DRUG/ALCOHOL TESTING is a systematic method of unscheduled and unannounced urine sample or breath-alcohol testing using a process designed to ensure that selections are made in a non-discriminatory manner.

JJ. REASONABLE SUSPICION means an articulable belief based on specific facts and reasonable inferences drawn from those facts.

KK. RETURN-TO-DUTY TEST will be conducted when an employee has successfully completed a drug and/or alcohol treatment or rehabilitation program and desires to return to his/her regular duties. A return-to-duty test may also be conducted when an employee returns from a non-medical leave of absence that lasted longer than 30 calendar days.

LL. SAFETY IMPACT POSITION (SIP) means a position with the County involving job duties which if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health and/or safety of the employee, co-workers, and/or the public. Positions that may be considered SIP include, but are not limited to, positions requiring operation of a County-owned or lease vehicle or motor driven or heavy equipment as part of the primary duties; positions required to drive on County business as a regular, primary, or substantial part of the duties; and positions that involve contact with or access to drugs. The Human Resources Department will update and maintain a list of positions identified as SIP.

MM. SAFETY SENSITIVE DUTIES are those duties, as defined by the Department of Transportation, which require a commercial driver's license. See Appendix 301A for a list of safety sensitive duties.

NN. SPLIT SPECIMEN refers to the urine specimen collected during drug testing that is sent to the first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result. The employee must make a request for a split specimen to the MRO within 72 hours of receiving notification of the initial result. A "split specimen" may also be referred to in this policy as a "split sample."

OO. SUBSTANCE ABUSE PROFESSIONAL (SAP) is a person who evaluates employees who have violated DOT drug and alcohol regulations and makes recommendations concerning education, treatment, follow-up testing, and after-care.

PP. VOLUNTEER means an individual who performs or gives service to Fort Bend County of his or her own free will without any expectation of compensation, benefits or future employment.

**Section 301.08
Human
Resources
Director (or
Designated
Administrator),
Responsibilities**

The Human Resources Director or designee is responsible for:

Identifying Safety Impact Positions for approval by the Commissioners Court;

Notifying Elected Officials and Department Heads of the positions within their respective offices which are classified as DOT or SIP and where those employees will be subject to random drug and/or alcohol testing;

Coordinating random drug and/or alcohol tests with the appropriate vendor;

Receiving the results of drug and/or alcohol tests of departmental employees and applicants;

Notifying the employee or applicant of positive test results and the right to a split-sample testing (also performed by the MRO);

Retaining all drug and/or alcohol test-related records for employees and applicants;

Ensuring policies are prominently displayed at all County facilities housing employees;

Ensuring all drug and/or alcohol tests, notices, forms and results are kept confidential, to the extent allowed by law;

Providing initial communication and training for departments;

Coordinating the use of the Employee Assistance Program (EAP) with the Risk Management Department;

Developing a training program to assist supervisors to recognize the conduct and behavior that gives rise to a reasonable suspicion of drug and/or alcohol use by employees;

Collecting and maintaining employee drug and/or alcohol testing records and files from all sources and assuring that they are kept confidential, to the extent allowed by law;

Making drug and/or alcohol testing consent forms available to departments;

Notifying a department of its employees randomly selected for drug and/or alcohol testing;

Issuing a Request for Quotations and administering the contract to provide urine sample collection and drug and/or alcohol testing; and

Overseeing the administration of the County's Drug and Alcohol Detection and Deterrence Policy.

**Section 301.09
Risk
Management
Responsibilities
(Post-Accident)**

The Risk Management Department is responsible for:

1. Coordinating all post-accident drug and alcohol tests;
2. Coordinating the use of the Employee Assistance Program (EAP) with the Human Resources Department; and
3. Retaining all drug and/or alcohol test results and documentation pertaining to post-accident testing, and ensuring all test results and documentation are kept confidential, to the extent allowed by law.

**Section 301.10
Certified
Departmental
Supervisor
Responsibilities**

Certified Departmental Supervisors (CDS) are responsible for:

1. Determining if reasonable suspicion exists to warrant drug and/or alcohol testing and detailing in writing the specific facts, symptoms, or observations which form the basis for the reasonable suspicion;
2. Submitting the documentation to the Human Resources Director; and
3. Enforcing the appropriate provisions outlined in this procedure.

**Section 301.11
Employee And
Volunteer
Responsibilities**

Employees and volunteers are responsible for:

1. Signing the acknowledgment form upon receipt of the County's Drug and Alcohol Detection and Deterrence Policy and returning the form to the Human Resources Department; and
2. Reviewing and complying with the County's Drug and Alcohol Detection and Deterrence Policy.

Grant or Contract Employees are additionally responsible for:

1. Notifying their immediate supervisor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction.

DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES

- Section 301.12 Application** In accordance with 49CFR Part 655 (FTA), and 49CFR Part 382 (FMCSA) the following policies and procedures are required for those employees who, as a requirement of their position, perform safety-sensitive functions as defined by the Department of Transportation. Further, it shall be the policy of Fort Bend County to follow the same testing procedures for all employees, except where noted. It is the responsibility of the DER, or his or her designee, to determine if testing is to be performed by requirement of 49CFR, or by requirement of County Policy.
- Section 301.13 Prohibited Alcohol and Controlled Substance-Related Conduct** The following activities are prohibited:
1. Being on duty and/or operating a commercial motor vehicle (CMV) or Revenue Service Vehicle (RSV) while possessing or consuming alcohol.
 2. Consuming alcohol during specified on-call hours. An employee will be given the opportunity to acknowledge the use of alcohol at the time they are called to duty and the inability to perform safety sensitive functions.
 3. When required to take a post-accident alcohol test, using alcohol within (8) hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
 4. Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion, or follow-up testing requirements.
 5. Reporting for duty or remaining on duty, if the driver tests positive for controlled substances.
 6. Being on duty when the employee's general appearance or conduct or some other substantiating evidence indicates he has used alcohol within the preceding four (4) hours.
- Section 301.14 Notification** Employees selected for drug and/or alcohol testing for any reason shall be notified by the appropriate elected official or department head or designee to submit to the drug and/or alcohol test and immediately proceed to the testing site.
- Section 301.15 No Leave Authorization** Once an employee has been notified to take a drug and/or alcohol test, unless hospitalized, no sick or other leave may be authorized until the collection process is completed.
- Section 301.16 Collection Process** An employee has three (3) hours, and may drink up to forty (40) ounces of liquid, from the time of notification to complete all requirements of the drug test collection process. A notified employee may consult with anyone regarding the drug and/or alcohol test so long as the informed consent and the collection process is completed in a timely manner.
- Section 301.17 Five-Panel Drug Test Process** The use of illegal drugs is prohibited at all times. When drug testing is required or authorized under the provisions of this policy and/or DOT regulations, all tests will be conducted in accordance with 49CFR Part 40. A urinalysis test will be given to detect the presence of amphetamines, cocaine metabolites, opiate metabolites, phencyclidine, and marijuana metabolites.

Following is a general description of the drug testing urine specimen collection process an applicant or employee can expect to encounter:

1. Picture identification must be presented.
2. The individual will be required to check his or her belongings and remove any unnecessary outer garments. The collector will request that the individual empty his or her pockets, display the items, and explain the need for them during the collection. The individual may retain his or her wallet. If any of the individual's items could be used as a potential adulterant, the collector may check it with the individual's other personal belongings.
3. The individual must rinse his or her hands with water and dry them.
4. A specimen of at least 45 milliliters (about 1 ½ ounces of urine) is required. The donor must urinate into the provided collection cup.
5. The specimen will be sealed and labeled in the presence of the donor. It then will be sent to the laboratory and processed according to specific chain of custody procedures to account for the integrity of the specimen.

Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine.

The initial drug testing shall be by enzyme immunoassay technique (EMIT) test that shall be administered at a laboratory approved by the Federal Department of Health and Human Services, at County expense. If an initial drug test yields a positive result, a second confirmatory test, at County expense, using a gas chromatography/mass spectrometry (GC/MS) test will be conducted on a portion of the same urine sample provided by the applicant or employee for use in the initial drug test.

If the second test also results in a positive, the MRO will notify the applicant or employee of the verified positive test result. The applicant or employee has 72 hours from this notification to request a split specimen test. The split specimen refers to the urine specimen collected during drug testing that is sent to the first laboratory and retained unopened. The split specimen is transported to and tested at a second laboratory at the applicant's or employee's request. The applicant or employee must submit the split specimen test fee to Fort Bend County. The Human Resources Department will coordinate the payment of fees.

**Section 301.18
Alcohol Testing
Process**

When alcohol testing is required or authorized under the provisions of this policy and/or DOT regulations, all tests will be conducted in accordance with 49CFR Part 40. Alcohol testing using a National Highway Transportation Safety Administration certified Evidential Breath Testing (EBT) device, shall be completed by a certified Breath Alcohol Technician (BAT). When an employee is testing for the first time and his breath alcohol level ranges from 0.02 to 0.039, a confirmation test will be performed. If the confirmation test result is in the range of 0.02 to 0.039, the employee will not be allowed to perform safety sensitive functions until the employee's next regularly scheduled duty period, but not less than eight hours following the administration of the test (FTA), 24 hours following the administration of the test (FMCSA), or until a third or subsequent test results in a breath alcohol level of less than 0.02.

It shall be the policy of Fort Bend County that any employee whose confirmation test indicates a breath alcohol level of .02 or greater will be relieved from duty for three days without pay. An employee who has had a confirmed positive test at any time in the past who has a subsequent test showing a breath alcohol level of 0.02 or greater, will be subject to discipline, up to and including termination.

**Section 301.19
Third Party
Service Provider** Fort Bend County will use a third party vendor to provide drug and alcohol testing services. For information concerning the current drug/alcohol testing service provider, please see Appendix 301-B, or contact the Human Resources Director.

**Section 301.20
Minimum Levels** The minimum levels of positive test results are the levels authorized by the Department of Transportation. Employees may contact the Human Resources Department for information on the current minimum levels.

A negative dilute test result on a controlled substances test shall require a retest. If the result of the second test is negative dilute, the test shall be considered negative. A positive dilute test result will be considered a positive result.

**Section 301.21
Supervisor
Accompaniment
– Reasonable
Suspicion And
Post-Accident** When drug and/or alcohol testing is authorized by Sections 301.29 and 301.30 herein due to reasonable suspicion, arrangements for obtaining a breath and/or urine sample from the employee shall be made as soon as possible following the decision to test by the Certified Departmental Supervisor.

A department supervisor of the tested employee shall accompany an employee to reasonable suspicion and post-accident testing under these sections. The employee's urine sample shall be collected on-site or at a facility designated by the County's drug/alcohol testing service provider. If on-site testing is not available, at least one supervisor shall accompany the employee to the County approved facility. When only one supervisor accompanies the employee, that supervisor shall be of the same sex as the employee to be tested.

**Section 301.22
Supervisor
Accompaniment
– Random,
Assignment Or
Follow-Up** A supervisor shall not be required to, but may, accompany an employee for random, assignment or follow-up drug and/or alcohol testing. The supervisor shall be of the same sex as the employee to be tested.

Pre- Placement Testing

**Section 301.23
Pre-Placement
Testing** Prior to beginning work as a County employee, any applicant for employment who has been made a conditional offer of employment will be required to undergo a drug test for the presence of drugs in their system. The Human Resources Department must receive a negative drug test result before the applicant may report for duty. Applicants are not required to undergo an alcohol test pre-placement.

A pre-placement drug test is good for thirty (30) calendar days. If an applicant is not hired within thirty calendar days, the applicant will be

required to undergo another drug test.

Any Fort Bend County employee who transfers or is promoted into a DOT safety sensitive position from a non-DOT safety sensitive position, or who has been removed from the DOT random pool for 90 days or longer, must undergo a pre-placement drug test prior to performing safety sensitive functions, as required by 49CFR.

In addition, any Fort Bend County employee who takes a non-medical leave of absence for a period of more than 30 calendar days shall be subject to a non-DOT drug test prior to returning to work.

**Section 301.24
Pre-Placement
Testing Consent
Form**

All applicants must complete the appropriate consent form titled "Application Authentication Form" that accompanies the Fort Bend County Application for Employment. Any applicant selected for a position with Fort Bend County must comply with the procedures outlined in this Policy.

**Section 301.25
Pre-Placement
Testing Refusal
To Consent**

Any applicant who refuses to consent to a drug test, who fails to appear at the designated collection site, or who fails to provide his/her urine sample after reasonable opportunity shall have the hiring process terminated and the conditional offer of employment shall be withdrawn.

**Section 301.26
Pre-Placement
Testing
Collection Site**

If selected for employment with Fort Bend County, the applicant must report to the collection site on the designated day to submit to a drug test. See Section 301.17. Photo identification is required to submit to a drug test.

**Section 301.27
Procedures**

Drug and/or alcohol testing procedures for reasonable suspicion testing will be consistent with SECTION 301.17 and 301.18, et. seq.

**Section 301.28
Pre-Placement
Testing
Adulteration**

An applicant whose sample is suspect due to adulteration, will be given an opportunity to re-test without prior notice and under direct observation. The Human Resources Director and/or designee shall coordinate the re-testing.

**Section 301.29
Pre-Placement
Testing
Confirmation Of
A Positive Result**

A Medical Review Officer (MRO) will review all drug test results and report to the Designated Employee Representative (Human Resources Director) or his/her designee, the results of the applicant's drug test. If the result is "positive", a verbal and/or written notice shall be sent to the applicant by the Medical Review Officer. This notice shall confirm the positive result and explain the procedure for obtaining, at the applicant's own expense, an additional urinalysis test conducted on the "split sample" of the urine specimen at an HHS certified laboratory and selected by the applicant. The Medical Review Officer shall coordinate the re-testing of the applicant's specimen.

**Section 301.30
Consequences
Of A Positive
Result**

An applicant who has a confirmed positive test result shall have his/her hiring process terminated and the conditional offer of employment withdrawn. An applicant with a dilute negative test result shall be required to re-test. Any applicant who has tested positive for drugs during the application process may reapply for employment with Fort Bend County

following a period of one (1) year and provided they present documented proof of successful completion of drug rehabilitation therapy. The applicant must also agree to at least one year of random drug tests (6 tests during the 1 year period) and paid for by the County.

Reasonable Suspicion Testing

**Section 301.31
Reasonable
Suspicion Of
Drug And/Or
Alcohol Use**

The County may require an employee to undergo a drug and/or alcohol test if there is reasonable suspicion that the employee is under the influence of drugs and/or alcohol while on County property or while acting in the scope of their employment.

**Section 301.32
Basis For
Reasonable
Suspicion**

Only Certified Departmental Supervisors who have received the required training shall be responsible to determine if reasonable suspicion exists to warrant drug and/or alcohol testing, and shall be required to document in writing the specific facts, symptoms, or observations which form the basis for such reasonable suspicion. The certified departmental supervisor shall contact the Human Resources Director or designee for instructions regarding a "reasonable suspicion" interview. If the Human Resources Director or designee is not available, the certified departmental supervisor shall consult with a second certified departmental supervisor and contact the drug and alcohol testing service provider directly to arrange testing.

Consistent with 49CFR, a certified departmental supervisor may require a DOT alcohol test for reasonable suspicion only when the employee is performing, about to perform, or has just performed a DOT defined safety sensitive function. A DOT drug test may be required at any time a certified departmental supervisor determines that reasonable suspicion exists.

It shall be the policy of Fort Bend County that a certified departmental supervisor may require a non-DOT drug and/or alcohol test if reasonable suspicion exists at any time an employee is performing in their capacity as a Fort Bend County employee.

If specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or a body odor of the employee exist, a certified departmental supervisor may require an employee to undergo a drug and/or alcohol test. Circumstances which can constitute a basis for determining reasonable suspicion may include, but are not limited to:

- (a) A Pattern of Abnormal or Erratic Behavior - This includes, but is not limited to a single, unexplainable incident of serious abnormal behavior or a pattern of behavior which is radically different from what is normally displayed by the employee or grossly differing from acceptable behavior in the workplace.
- (b) Information provided by a Reliable and Credible Source – The first line supervisor or another supervisor/manager receives information from a reliable and credible source as determined by the Human Resources Administrator that an employee is violating the County's Policy of Drug and/or Alcohol Detection and Deterrence.

(c) Direct Observation of Drug and/or Alcohol Use - The first line or another supervisor/manager directly observes an employee using drug and/or alcohol while the employee is on duty. Under these circumstances, a request for drug and/or alcohol testing is MANDATORY.

(d) Presence of Physical Symptoms of Drug and/or Alcohol Use - The supervisor observes physical symptoms that could include but are not limited to glassy or bloodshot eyes, slurred speech, poor motor coordination, or slow or poor reflex responses different from what is usually displayed by the employee or generally associated with common ailments, e.g., colds, sinus, hay fever, diabetes, etc.

**Section 301.33
Basis For
Requesting
Drug And/Or
Alcohol Test**

The following will be deemed reasonable suspicion and may provide a sufficient basis for requesting a drug and/or alcohol test:

1. Violent or Threatening Behavior - First Incident: If an employee engages in unprovoked, unexplained, aggressive, violent and/or threatening behavior against a fellow employee or a citizen, the department may request that the employee submit to drug and/or alcohol testing;
2. Violent or Threatening Behavior – Subsequent Incident: Whether or not an employee has previously received formal counseling or disciplinary action for unprovoked, unexplained, aggressive, violent or threatening behavior against a fellow employee or a citizen, upon a second or subsequent episode of similar behavior/conduct (within twelve months), the department shall request that the employee undergo drug and/or alcohol testing.
3. Absenteeism and/or Tardiness – If an employee has previously received a suspension action for absenteeism and/or tardiness, a continued poor record (within twelve months) that warrants a second or subsequent suspension action may result in a request for a drug and/or alcohol test.
4. Loss – First Occurrence: Any undocumented, unexplained loss of County property, equipment, money or other asset(s) may result in a required drug and/or alcohol test of the employee accountable for the lost asset(s).
5. Loss – Subsequent Occurrence: A second or subsequent (within twelve months) documented, unexplained loss of County property, equipment, money or other asset(s) shall result in a request for a drug and/or alcohol test of the employee accountable for the lost asset(s).

Certified departmental supervisors of employees are required to detail in writing the specific facts, symptoms or observations that formed the basis for their determination that reasonable suspicion exists to warrant the testing of an employee. This documentation shall be forwarded to the Human Resources Director or designee.

Section 301.34 Drug and/or alcohol testing procedures for reasonable suspicion testing will

Procedures be consistent with SECTION 301.17 and 301.18, et. seq.

Post-Accident Testing

**Section 301.35
Post-Accident**

Any employee who has been involved in a work related accident which involves injury/accident to self or to another or which causes property damage or involves other unusual circumstances shall be required to take a mandatory non-DOT drug and alcohol test under County policy.

Further, in accordance with 49CFR, an employee in a DOT safety-sensitive position whose performance could have contributed to an accident involving a CMV or RMV shall be required to submit to a DOT drug and alcohol test under the following circumstances:

For Employees Subject to FMCSA Regulations

TYPE OF ACCIDENT	CITATION ISSUED TO DRIVER?	DOT DRUG AND ALCOHOL TEST?
Human Fatality	Yes or No	Yes
Injury to any person requiring immediate medical treatment away from the scene	Yes	Yes
	No	No
Disabling damage to any motor vehicle requiring tow	Yes	Yes
	No	No

For Employees Subject to FTA Regulations

TYPE OF ACCIDENT	CITATION ISSUED TO DRIVER?	DOT DRUG AND ALCOHOL TEST?
Human Fatality	Yes or No	Yes
Injury to any person requiring immediate medical treatment away from the scene	Yes	Yes
	No	Yes
Disabling damage to any motor vehicle requiring tow	Yes	Yes
	No	Yes

A DOT drug or alcohol test will not be required on those employees whose performance can be completely discounted as a contributing factor to an accident.

(If a DOT drug and alcohol test is required and administered, a non-DOT drug and alcohol test shall not be required.)

Workers compensation benefits are not payable in the event an employee is under the influence of drugs or alcohol at the time the injury/accident occurs. Post-accident testing will determine compensability of a claim resulting from such injury or accident.

**Section 301.36
Time Requirement**

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

Employees should notify their supervisor or department head/elected official as soon as possible following an accident . Post accident testing should be immediately arranged through the Risk Management Department.

The employee subject to post-accident testing must refrain from consuming alcohol for eight (8) hours following the accident or until he/she submits to an alcohol test, whichever comes first. The employee must remain available for testing, and if he is not, his lack of availability will be considered as a refusal to take the test.

When an alcohol or controlled substance test has not been administered within a reasonable time frame following the accident, the following actions shall be taken:

- a) If the employee has not submitted to an alcohol test within two (2) hours, Fort Bend County shall prepare and maintain on file a record stating the reason a test was not promptly administered.
- b) If the employee has not submitted to an alcohol test after eight (8) hours, attempts to administer the alcohol test shall cease, and documentation shall be prepared and maintained as described above.
- c) If the employee has not submitted to a controlled substance test within thirty two (32) hours, Fort Bend County shall cease attempts to administer the test and shall prepare and maintain the record as described above.
- d) Re-testing without notice and under direct observation shall occur when an employee's sample has been determined by the collector to be suspect due to adulteration.

**Section 301.37
Procedures**

Drug and/or alcohol testing procedures for post-accident testing will be consistent with SECTION 301.17 and 301.18, et. seq.

Random Drug And Alcohol Testing

**Section 301.38
Random Drug
And/Or Alcohol
Testing**

All County employees in DOT regulated positions shall be subject to Random Drug and Alcohol Testing. The minimum number of tests to be conducted annually shall be as required by the FMCSA, or the FTA, whichever is higher. Currently, a minimum of 50% of DOT regulated employees shall be tested annually for controlled substances. A minimum of 10% of DOT regulated employees shall be tested annually for

alcohol either just before, during, or just after performing safety sensitive functions.

All County employees in Safety Impact Positions, as approved by Commissioners Court, shall be subject to random drug testing. A minimum of 100 such employees shall be tested annually for controlled substances.

All employees in the random pools will have an equal chance of being selected for testing and will remain in the pool, even after being tested. It is possible for some employees to be tested several times in one year, and other employees not to be tested for several years.

Random testing will be reasonably distributed throughout the year, and shall be immediate and unannounced. Random testing may be conducted during all hours and days when employees are on duty.

**Section 301.39
Safety Impact
Positions**

Elected officials and department heads who believe that a position has an impact upon the safety of that individual or others or for appropriate reasons should be subject to random testing, shall identify each such position and submit it to the Human Resources Director. The Human Resources Director, in consultation with the County Attorney when necessary, shall review the request. Commissioners Court shall approve all County Safety Impact Positions for the random selection pool. Employees in such positions shall be informed that they are in a safety impact position and are subject to random drug and/or alcohol testing.

**Section 301.40
Random
Computer
Selection**

A random computer selection process using a scientifically valid method shall be used to generate random test lists. There shall be two pools for random testing: DOT, and non-DOT Safety Impact employees.

**Section 301.41
Randomly
Selected
Employees**

Employees selected for a random test shall be notified by the elected official or department head or designee to submit to a drug and/or alcohol test. If a non-DOT Safety Impact employee is selected for a random test, but is absent due to vacation, sick leave, other leave, or on urgent County business approved by the elected official or department head, another employee at that location may be selected. DOT employees selected for a random test but absent for any reason at the time of testing, must be tested upon returning to work.

**Section 301.42
Emergency
Medical And Law
Enforcement
Employees**

Emergency medical and law enforcement employees are expected to respond immediately to emergency calls or incidents. Random drug and/or alcohol testing may be postponed if the test is interrupted because of an emergency situation.

**Section 301.43
Procedures**

Drug and/or alcohol testing procedures for random testing are consistent with SECTION 301.17 and 301.18, et. seq.

Circumstances Requiring Direct Observation

**Section 301.44
Observed**

Consistent with 49CFR Part 40, DOT drug test urine specimens will be collected under the direct observation of the specimen collector in the

Collections

following situations:

1. All DOT return to duty and follow up tests (see Section 301.46)
2. When the temperature of the original specimen is outside the acceptable range
3. When the original specimen appears to have been tampered
4. When a collector has reason to believe, either from the employee's conduct or possession of certain materials, that there has been an attempt to tamper with the specimen
5. When the original specimen is reported by the laboratory as invalid and the MRO determines there is not an adequate medical explanation
6. When the original specimen test result is positive, adulterated or substituted, but a split specimen test can not be performed

The process for direct observation shall be as specified in 49CFR Part 40. Refusal to cooperate with any step in the direct observation process shall be considered refusal to test and the consequences for refusal shall be consistent with Section 301.51 of this policy.

Consequence Of A Positive Result

**Section 301.45
Consequence Of
Positive Result**

An employee whose alcohol and/or drug test result has been confirmed positive by the MRO shall be indefinitely suspended without pay and subject to disciplinary procedures, up to and including immediate termination or removal from office or employment, in accordance with applicable statutory or constitutional provisions.

Return-To-Duty And Follow-Up Testing

**Section 301.46
Return-To-Duty
And Follow-Up
Testing
Following a
Positive Test
Result**

It is the policy of Fort Bend County that any employee who has had a confirmed positive drug and or alcohol test result shall be indefinitely suspended without pay and subject to further discipline up to and including termination.

Consistent with 49CFR Part 40, a DOT regulated employee with a confirmed positive result, or who refuses to submit to testing, must be immediately removed from performing safety-sensitive duties and must be referred to a Substance Abuse Professional. Further, at the discretion of the Department Head or Elected Official, any employee in a full-time budgeted position may be referred to a Substance Abuse Professional. Disciplinary action based on a violation of the County's Drug and Alcohol Detection and Deterrence Policy is not suspended by an employee's participation in the Employee Assistance Program or a Substance Abuse Program.

In lieu of immediate termination, a Department Head/Elected Official may suspend the employee without pay until the employee has complied with an SAP recommended course of treatment. The cost of the treatment and testing, beyond that covered under the Employee Assistance Program (EAP), is the responsibility of the employee. An employee who has successfully completed a drug and/or alcohol rehabilitation program as

ordered by the SAP, may be allowed to return to duty. The employee shall be subject to one (1) return-to-duty test and six (6) follow-up controlled substance and/or alcohol tests, or more if required by the SAP, in the following twelve (12) months. In addition, the employee will remain in any random testing pool as required by DOT regulations and/or County policy.

Part-time and Temporary employees are not eligible for benefits through the EAP, and must seek treatment independently of the County. These employees are subject to immediate termination after a drug or alcohol test has been confirmed positive. Following evaluation by a SAP and successful completion of a treatment program, the terminated employee may reapply for employment with the County, provided they present documented proof of successful completion of drug rehabilitation therapy. They will be subject to at least one year of random drug tests (6 tests during the 1 year period) and all associated costs will be the responsibility of the employee.

**Section 301.48
Cost
Responsibility
And
Coordination Of
Benefits**

Employees are responsible for all costs associated with EAP drug counseling and/or rehabilitation program, and follow-up testing. Employees may use their six (6) free EAP visits to offset the cost of counseling and rehabilitation following a mandatory referral. Employees should contact Human Resources or Risk Management to coordinate benefits with the medical provider to determine if treatment costs may be reduced.

**Section 301.49
Positive Result
on a Return to
Duty or Follow-
up Test**

Any employee who has completed rehabilitation and receives a positive drug and/or alcohol test during return-to-duty or follow-up tests is subject to immediate termination.

An employee testing positive following a leave of absence will be subject to SECTION 301.45 herein, and the employee will be subject to disciplinary action up to and including termination.

**Section 301.50
Procedures**

Drug and/or alcohol testing procedures for return-to-duty and follow-up testing are consistent with SECTION 301.17 and 301.18, et. Seq.

**Consequence of Refusal to Consent to a Drug and /or
Alcohol Test**

**Section 301.51
Refusal To Test**

Any employee, who refuses to consent to a drug and/or alcohol test after notification of the consequences of refusal, shall be immediately removed from performing safety-sensitive functions, indefinitely suspended without pay and is subject to termination.

Behavior that may constitute refusal to test includes but is not limited to:

1. Failure to appear at the collection site in a reasonable time
2. Refusal to provide a specimen (either verbal refusal or physical absence)
3. Failure to provide sufficient specimen with no medical explanation
4. Failure to remain at the testing site until the testing process is completed
5. Failure to have a medical evaluation if required by an MRO
6. Failure to cooperate with any part of the testing process
7. Failure to allow monitoring or direct observation if required by an SAP or because of a suspected adulterated sample

8. Failure to take a second test if directed to do so
9. MRO verification of a test as adulterated or substituted
10. Failure to sign Step 2 of the Alcohol Testing Form
11. Failure to remain available for testing following an accident
12. Failure to cooperate with any part of the observed collection process as specified in 49CFR Part 40
13. Admitting to the collector or Medical Review Officer that the specimen is adulterated or substituted.

Manufacture, Distribution, Dispensation, Possession, Sale, Attempted Sale, And/Or Use Of Illegal Drugs, Intoxicants And/Or Alcohol

Section 301.52 Prohibited Activities Employees are prohibited from the manufacture, distribution, dispensation, possession, sale, attempted sale, use or having in their control any illegal drug, intoxicant and/or alcohol while in County vehicles whether on or off duty, on County premises during work hours whether on or off duty, or while acting in the course and scope of their employment at any geographic location, whether on or off County premises.

Section 301.53 Suspension Or Termination An employee who is determined to have any drug and/or alcohol in his/her possession shall be indefinitely suspended without pay and is subject to termination.

Possession can include an employee's person or personal property if on County premises, a County motor vehicle or equipment under the employee's control, or County-provided property under an employee's control.

Employee Assistance Program (EAP) And Follow-Up Testing

Section 301.54 Employee Assistance Program – Voluntary Any employee who is eligible for County medical benefits (having met the waiting period requirements) may request a referral to the Employee Assistance Program for assessment, counseling and rehabilitation at any time. Participation in the EAP is voluntary and encouraged.

Section 301.55 Employee Assistance Program – Mandatory An employee, may receive a mandatory referral to the EAP for assessment, counseling and rehabilitation as a result of a positive drug or alcohol test. DOT regulations (49CFR) stipulate that employees who are required to have a commercial driver's license to perform their job duties must comply with a treatment and follow-up program prescribed by a substance abuse professional.

Section 301.56 Drug-Free And Alcohol-Free Status Employees shall remain drug-free and alcohol-free while seeking and/or undergoing drug and/or alcohol rehabilitation or employee assistance counseling.

Section 301.57 Disciplinary Action Disciplinary action based on a violation of the County's Drug and Alcohol Detection and Deterrence Policy is not suspended by an employee's participation in the Employee Assistance Program.

- Section 301.58
Rehabilitation
And Follow-Up
Testing** Following a determination that an employee is in need of assistance in resolving problems associated with drug abuse and/or alcohol misuse, the employee is subject to unannounced follow-up alcohol testing and/or controlled substances testing (at the employee's expense) as directed by the substance abuse professional. The employee shall be subject to one (1) return-to-duty test and a minimum of six (6) follow-up controlled substance and/or alcohol tests in the following twelve (12) months. The employee may be subject to unannounced testing for the next 60 months (5 years) in addition to possible selection through the random pool.
- Section 301.59
Cost
Responsibility
And
Coordination Of
Benefits** Employees are responsible for all costs associated with EAP drug counseling and/or rehabilitation program, and follow-up testing. Employees may use their six (6) free EAP visits to offset the cost of counseling and rehabilitation following a mandatory referral. Employees should contact Human Resources or Risk Management to coordinate benefits to determine if treatment costs may be reduced.
- Section 301.60
Positive Result** Any positive drug and/or alcohol test result is subject to Section 301.49 herein and the elected or appointed official or the department head will impose discipline.

Omnibus Transportation Employee Testing Act Of 1991 – Requirements For Employees Of Grant-Funded Programs

- Section 301.61
Grant Or
Contract
Employees** All employees engaged in the performance of a federal, state or local grant or federal, state or local contract valued at over \$25,000 shall be given a copy of the County's Policy on Drug and Alcohol Detection and Deterrence, and informed that they must comply with the policy as a condition of employment.
- Section 301.62
Conviction On
Drug Statute
Violation** Grant or contract employees shall notify the elected or appointed official or the department head of any criminal conviction for a drug statute violation occurring in the workplace no later than five (5) calendar days after the conviction.
- Section 301.63
Criminal Drug
Statute
Conviction** The elected or appointed official or the department head shall provide written notice to the grantor or contractor agency and the Administrative Services Director and Human Resources Director of any criminal drug statute conviction occurring in the workplace within ten calendar days after receiving notice from the employee, or receiving actual notice of the conviction. The information provided by the appropriate official shall include the employee's position, title and the grant identification(s) for each grant on which the convicted employee was working.

Americans With Disabilities Act Compliance

- Section 301.64
ADA
Compliance** Fort Bend County is aware that certain applicants and employees may have rights guaranteed by the Americans with Disabilities Act, 42 U.S.C. 12101, and et. seq. (1990). Fort Bend County does not discriminate on the basis of disability in admission, access, treatment, or employment in its programs or activities.

Confidentiality And Record-Keeping

Section 301.65 Confidentiality All records relating to the taking or ordering of an employee drug and/or alcohol test, and results of such testing, shall be confidential, to the extent allowed by law. Any employee who violates this confidentiality provision shall be subject to disciplinary action up to and including indefinite suspension and/or termination.

Section 301.66 Record-Keeping Requirements Employers are required to keep the following records for five (5) years:

1. alcohol test results indicating an alcohol concentration of 0.02 or greater;
2. verified positive drug test results;
3. documentation of refusal to take required alcohol and/or drug tests;
4. reports of SAPs; and
5. all follow-up tests and schedules for follow-up tests.

Employers are required to keep records of information obtained from previous employers concerning drug and alcohol test results of employees for three years.

Employers must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one (1) year.

All records must be kept in a location with controlled access.

Section 301.67 Applicant Records The Medical Review Officer shall maintain drug test-related records on applicants.

Section 301.68 Employee Drug and Alcohol Test Records The Human Resources Department shall retain and maintain all final drug and/or alcohol testing records from pre-placement, random, reasonable suspicion, return to duty, and follow-up testing. All final records relating to the taking or ordering of an employee drug and/or alcohol test shall be kept in a separate, secure and confidential file in the Human Resources Department.

Section 301.69 Employee Records – Post-Accident The Risk Management Department shall retain and maintain all final drug and/or alcohol records from post-accident testing. These records will be kept in a separate, secure and confidential file in the Risk Management Department.

Employees are entitled, upon written request, to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol, including records of drug and alcohol tests.

Employer Disclosure Requirements For Applicants Applying To DOT Safety-Sensitive Positions

**Section 301.70
DOT
Requirements** DOT regulations require employers to confirm/verify the testing background of new hires and other employees **beginning** safety-sensitive work. Employers must have an employee's written consent (without which the employer may not hire the applicant) and send the signed consent to all other DOT regulated employers for whom the employee worked within the previous two (2) years. The employer may not allow the employee to perform safety-sensitive duties for more than 30 calendar days without first obtaining, or making and documenting a good faith effort to obtain, the required information from previous employers. (49 C.F.R. section 40.25)

**Section 301.71
Information
From Previous
Employers** Employers must request the following information from previous employers:

1. alcohol tests with a result of 0.04 or higher;
2. verified positive drug tests;
3. refusals to be tested or verified adulterated or substituted drug tests;
4. other violations of DOT drug and alcohol regulations; and
5. documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). (49 C.F.R. section 40.25)

**Section 301.72
Information
From Applicants** DOT regulations require the employer to ask the applicant if, within the previous two (2) years, the applicant has failed or refused a DOT drug and alcohol pre-placement test from an employer who did not hire them within the previous two years. (49 C.F.R. section 40.25)

**Section 301.73
Disclosure Of
Information** Employers must release information if it receives specific, written consent from an employee authorizing the release of information about the employee's drug or alcohol tests to an identified person. (49 C.F.R. section 40.321)

MROs are prohibited from releasing positive test results to third parties without the employee's written consent. (49 C.F.R. section 40.321)

Employers may release test result information in certain legal proceedings. Written consent authorizing disclosure from an employee is not required when drug and/or alcohol testing becomes the subject of a complaint or other judicial or quasi-judicial proceeding. The employer must immediately notify the employee in writing of any information released for this purpose. (49 C.F.R. section 40.323)

Reservation Of Rights

**Section 301.74
County
Reserves Right** The County reserves the right to interpret, change, suspend, cancel or dispute, with or without written notice, all or any part of this policy, or procedures or benefits discussed herein. Employees will be notified before implementation of any change.

Employee Acknowledgement

- Section 301.75
Policy
Distribution** A copy of the Fort Bend County Policy for Drug and Alcohol Detection and Deterrence shall be given to all employees.
- Section 301.76
Receipt Of
Policy** Each and every County employee shall receive and acknowledge, in writing, a copy of this policy.
- Section 301.77
Employment-At-
Will** Adherence to this policy is a condition of employment, however; nothing in this policy alters an employee's status and shall not constitute, nor be deemed a contract or promise of employment. Employees remain free to resign their employment at any time, for any or no reason, without notice, and the County retains the right to terminate any employee at any time, for any legal reason or no reason, without notice.
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Policy Approved And Adopted By:
Fort Bend County Commissioners Court
March 5, 1996
Revised: February 10, 2004
Revised October 3, 2006
Revised April 28, 2009