HUMAN RESOURCES DEPARTMENT

FORT BEND COUNTY, TEXAS

Kent M. Edwards, PHR
Director of Human Resources

To: Judge KP George
Commissioner Vincent Morales
Commissioner Grady Prestage
Commissioner Andy Meyers
Commissioner Ken DeMerchant

From: Kathy Novosad
Sr. Human Resources Generalist

Date: November 20, 2019

Subject: Revisions to Policies of the Employee Information Manual

Human Resources is submitting revisions to the drug and alcohol testing policies of the Employee Information Manual for your review and consideration. Currently, *Policy 301: Drug and Alcohol Detection and Deterrence,* addresses the drug and alcohol testing requirements of three different authorities: DOT/FTA (Department of Transportation/Federal Transit Administration) DOT/FMCSA (Federal Motor Carrier Safety Administration) and Fort Bend County's non-DOT drug testing policy.

TXDOT recently ordered an audit of our drug and alcohol policy to assess FTA compliance. The auditor suggested multiple revisions to our drug and alcohol policy. However, the revisions would only serve to make the policy much more complicated and an ineffective way of communicating our drug and alcohol testing policy to employees. Therefore, after consultation with the auditor, Human Resources recommends that the policy be split into three separate policies, each one addressing the separate authorities under which drug and alcohol testing may be necessary. The resulting policies are:

- Policy 301: Drug and Alcohol Detection and Deterrence for All FBC Employees
- Policy 302: Drug and Alcohol Testing for Employees Performing FMCSA Defined Safety Sensitive Duties
- Policy 303: Drug and Alcohol Testing for Employees Performing FTA Defined Safety Sensitive Duties

Policy 303 was created using an on-line FTA "policy builder" which is compliant with all the requirements of the DOT and FTA. That same policy was then revised slightly to comply with FMCSA regulations in Policy 302. Finally, Policy 301 uses the same basic structure to communicate the non-DOT policy of Fort Bend County. We feel that the result of these changes is a much more concise and effective communication tool for employees.

If you have any questions, please contact Kent Edwards or Kathy Novosad in Human Resources.

301 – Drug and Alcohol Detection and Deterrence for All Fort Bend County Employees

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.

Section 301.02
Drug-Free Workplace Act

Fort Bend County is subject to the Drug Free Workplace Act of 1988, which requires establishment of workplace policies and reporting of certain drug-related offenses for entities that are federal contractors or receive grant funds.

In accordance with the Drug Free Workplace Act, the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify the Director of Human Resources no later than five days after such conviction.

Section 301.03
Covered Employees

This policy applies to all employees of Fort Bend County regardless of rank or position, and includes temporary and part-time employees, volunteers, and appointed officials. Adherence to this policy is a condition of employment.

Some employees may also be subject to *Policy 302, Drug and Alcohol Testing for Employees Performing FMCSA Safety Sensitive Duties* (Federal Motor Carrier Safety Administration), or *Policy 303, Drug and Alcohol Testing for Employees Performing FTA Safety Sensitive Duties* (Federal Transit Authority), **in addition** to this policy. A list of positions subject to the provisions of Policies 302 and 303 is contained in Appendix 301A. Employees and supervisors should contact Human Resources if there is any doubt as to which policy(s) are applicable for any position.

Section 301.04
Prohibited Behavior

To the greatest extent possible, Fort Bend County drug and alcohol testing procedures shall mirror the provisions of 49CFR Part 40, which implements the drug and alcohol testing procedures for the Department of Transportation (DOT). However, only tests given under the authority of Policy 302 or 303 shall be designated as DOT tests. Any test given under the authority of this Policy 301, shall be designated a non-DOT test.

Use of illegal drugs is prohibited at all times. All Fort Bend County employees are prohibited from operating a County vehicle (on or off-duty), operating any vehicle on County business, or reporting for work or remaining at work any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 CFR Part 40. Prohibited drugs include:

- Marijuana
- Cocaine
- Phencyclidine (PCP)
- Opiods

- Amphetamines

NOTE: Marijuana remains an illegal substance listed on Schedule I of the Federal Controlled Substance Act. At this time there is no valid excuse for the presence of marijuana on a work-related drug test, including use of cannabidiol products, or use of marijuana that may be considered legal under any state law.

All Fort Bend County employees are prohibited from reporting or remaining at work, operating a County vehicle (on or off duty), or operating any vehicle on County business with a blood alcohol concentration (BAC) of 0.02 or greater. A BAC of .04 or greater is considered a positive alcohol test.

All Fort Bend County employees are prohibited from consuming alcohol while at work, or while on call. If an on-call employee has consumed alcohol, they must notify a supervisor they have used alcohol at the time that they are called in to work, and will be prohibited from working if they have a BAC of .02 or greater

All Fort Bend County employees are prohibited from consuming alcohol within four hours before reporting to work.

All Fort Bend County employees are prohibited from consuming alcohol for eight hours following involvement in an accident that requires post-accident drug and alcohol testing, or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

301.05
Refusal To Test

Employees are required to submit to drug and alcohol testing in accordance with this policy. If an employee refuses to take a required test, the refusal will bear the same consequences as a positive result.

An employee refuses to test if he or she:

1. Fails to appear for any test within a reasonable time, as determined by Fort Bend County.

2. Fails to remain at the testing site until the testing process is complete.

3. Fails to attempt to provide a breath or urine specimen. In the case of a directly-observed or monitored urine drug collection, fails to permit direct observation or monitoring of the provision of the specimen.

4. Fails to provide a sufficient quantity of breath or urine without a valid medical explanation.

5. Fails or declines to take a second test as directed by the collector or Fort Bend County for drug testing.

6. Fails to undergo a medical evaluation as required by the Medical Review Officer (MRO) or Fort Bend County.

7. Fails to cooperate with any part of the testing process.

8. Fails to cooperate with any part of the collector's instructions for direct observation collection.

9. Possesses or wears a prosthetic or other device used to tamper with the collection process.

10. Admits to the collector or MRO that the specimen is adulterated or substituted.

11. Refuses to sign the certification at Step 2 of the Alcohol Testing Form (ATF).

12. Fails to remain readily available for post-accident testing.

If the Medical Review Officer (MRO) responsible for verifying Fort Bend County test results reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Section 301.06 Consequences for Violations of Policy

An employee who has an alcohol test result greater than or equal to .02, must take a second confirmation alcohol test 15 minutes following the first. If the confirmation test result is greater than or equal to .02 but less than .04, the employee will be immediately suspended without pay for three days. Greater consequences, up to and including termination of employment, may apply if the employee has previously tested at or above .02, or at the discretion of the Department Head or Elected Official after careful consideration of the facts and circumstances. If the confirmation test result is .04 or greater, the test result is considered positive.

An employee who refuses to take a required drug or alcohol test, or tests positive on a drug or alcohol test (.04 BAC or greater), or engages in any of the behavior prohibited by Section 301.04, shall be immediately removed from duty, suspended without pay, and is subject to termination of employment.

In limited circumstances, at the discretion of an Elected Official or Department Head and in consultation with Human Resources, an employee may be permitted the opportunity to maintain employment after a positive result if the employee strictly complies with the requirements of a second chance program as detailed in Section 301.11.

Section 301.07 Pre-employment Tests

All candidates for employment with Fort Bend County must submit to a pre-employment drug test. Fort Bend County does not conduct pre-employment alcohol tests.

Pre-employment tests will be coordinated by the Human Resources department after a conditional offer of employment has been made. A positive drug test result will terminate the hiring process and the candidate shall not be eligible for employment. A negative drug test result must be received prior to the applicant's start date. A pre-placement drug test is good for 30 calendar days, and a candidate will be required to retest if more than 30 days elapse between receipt of test results and start date.

Section 301.08 Reasonable Suspicion Tests

Fort Bend County reserves the right to require a County employee to undergo a drug and/or alcohol test if reasonable suspicion exists that the employee has used a prohibited drug and/or is working while under the influence of alcohol. Employees may be subject to a reasonable suspicion drug and/or alcohol test just before, during, or immediately after engaging in any work for the County.

The County shall provide training to supervisors and other officials on recognizing the signs and symptoms of illegal drug use and alcohol misuse or abuse, and determining if a reasonable suspicion drug and/or alcohol test is warranted. A reasonable suspicion referral for a drug or alcohol test will be made by a trained supervisor or official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. It is recommended that the trained supervisor use Form 301A to document the reason for referral for reasonable suspicion training.

If a trained supervisor determines that reasonable suspicion does exist, the employee should be removed from duty until the appropriate test can be conducted. Care should be taken to ensure the protection of the employee's privacy while ensuring the safety of the employee, co-workers and the public. An employee who is directed to undergo a reasonable suspicion test should be accompanied to the collection site by a supervisor and should not be permitted to drive or operate machinery or equipment until the employee's next shift.

Human Resources will help coordinate reasonable suspicion tests. If Human Resources is not available, a trained supervisor may coordinate the tests by contacting the after-hours collection service.

Section 301.09
Post-Accident Tests

A Fort Bend County employee who is involved in a work related incident or accident that results in any property damage or physical injury to self or others, or involves unusual circumstances, will be required take a post accident drug and alcohol test. Employees must remain readily available until the tests are conducted, and must refrain from consuming alcohol for 8 hours following the accident or until an alcohol test is administered, whichever comes first.

All efforts should be made to ensure post accident drug and alcohol tests are conducted promptly, however, nothing in this policy shall be construed to require the delay of emergency medical attention for the injured, or to prohibit an employee from leaving the scene of an accident if necessary to obtain assistance in responding to the accident. The Risk Management Department will coordinate post accident testing.

An employee must remain readily available for an alcohol test, cooperate with the testing process, and refrain from consuming alcohol, for 8 hours or until an alcohol test is conducted, whichever comes first. Failure to do so may be considered a refusal to test.

An employee must remain readily available to take a drug test until the test is conducted, and cooperate with the testing process. Failure to do so may be considered a refusal to test.

The Department of Transportation defines certain circumstances under which a covered employee must undergo post-accident testing (see Policies 302 and 303). If a DOT test is required and performed, a non-DOT test will not be required**.**

Workers Compensation benefits are not payable in the event illicit drugs and/or alcohol are present in an employee's system at the time of the injury or accident.

Section 301.10
Random Tests

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 drug testing, shall designate such position as a Safety Impact Position (SIP). All employees in SIP positions shall be in one random testing pool. If a position is designated as a DOT safety sensitive position, that position shall not be designated as SIP.

Random testing shall be conducted any time that employees are on duty, and shall be immediate and unannounced. Employees are required to cooperate with the random testing process.

The list of safety impact positions shall be maintained by Human Resources, and Human Resources will coordinate the random testing process. A minimum of 100 SIP random tests will be conducted each calendar year.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. All employees in the random pool 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.

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 301.11
Second Chance Program and Return to Duty and Follow-up Tests

Any Fort Bend County employee who refuses to take a required drug or alcohol test, or tests positive on a drug or alcohol test shall bear the consequences as detailed in Section 301.06. In limited circumstances, at the discretion of an Elected Official or Department Head and in consultation with Human Resources, an employee may be granted the opportunity to maintain employment. The employee must strictly comply with all aspects of the second chance program and testing requirements. The decision to offer the employee the second chance will be made by the Department Head or Elected Official in consultation with Human Resources.

The second chance program will require the following:

1. Employee is immediately suspended without pay
2. Employee is mandatorily referred through the Employee Assistance Program for evaluation and treatment for substance abuse. The employee must comply with all the recommendations and requirements of the substance abuse referral.
3. The substance abuse professional or other treatment professional shall determine when the employee is able to return to work. The employee must undergo a Return to Duty drug and/or alcohol test, and negative results must be received before the employee can return to work.
4. The employee will then be subject to a number of unannounced Follow Up drug and/or alcohol tests. The type (drug or alcohol), number, frequency and duration of the tests shall be directed by the SAP or other treatment professional.
5. Any cost of the second chance program, including the cost of the Return to Duty and Follow Up drug and/or alcohol tests must be paid by the employee.

Any employee who refuses to test, or tests positive on a drug or alcohol test for a second time at any time in their employ with the County shall be subject to immediate termination of employment.

Section 301.12

Employees who may be experiencing problems with drug or alcohol abuse or misuse are encouraged to reach out for help. The Employee Assistance Program can provide free and confidential counseling, guidance, and other resources to address addiction or substance abuse. Contact information for the EAP can be found below in Section 301.14, or by contacting the Risk Management Department.

Section 301.13
Testing Procedures

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment and laboratory facilities which have been approved by the U. S. Department of Health and Human Service (HHS). All drug and alcohol testing performed under the authority of this policy shall closely mirror the procedures specified in 49 CFR Part 40, but will not be conducted under the authority of the DOT. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

Fort Bend County may accept a negative dilute drug test result and no retest will be required. However, if the negative dilute result shows a creatinine concentration of greater than or equal to 2 mg/dL, but less than or equal to 5 mg/dL, an immediate recollection under direct observation will be required.

In the event of a verified positive drug test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The split specimen testing will be conducted in a timely manner, but the employee requesting the test will be required to pay the cost of the test.

Section 301.14
Contact Information

The Fort Bend County Drug and Alcohol testing program is administered by Human Resources.

For questions regarding policy and procedure:

Drug and Alcohol Program Manager
Director of Human Resources or Designee
301 Jackson Street, Suite 243
Richmond TX 77469
281-341-8631

To schedule tests:

Designated Employee Representative (except Post Accident)
Human Resources Administrative Coordinator
301 Jackson Street, Suite 243
Richmond TX 77469
281-341-8616

Designated Employee Representative (Post Accident Only)
Director of Risk Management or Designee
301 Jackson Street, Suite 224
Richmond TX 77469

281-341-8630

To schedule After Hours Reasonable Suspicion Tests
Houston Medical Testing Services, A DISA Company
713-665-4687

For assistance with drug or alcohol abuse or misuse:
Deer Oaks Employee Assistance Program
Helpline: 866-327-2400
Website: www.deeroakseap.com (Login & Password: fortbend)
Email: eap@deeroaks.com

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
Revised: October 26, 2010
Revised: April 9, 2013
Revised: February 4, 2014
Revised: December 19, 2017
Revised: May 14, 2019
Revised: November 26, 2019

APPENDIX 301-A

Department of Transportation
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** Operations Supervisor** Operations Assistant**
Equipment Operator	Master Mechanic	Parks: Supervisor & Parks Operator I and II
Heavy Equipment Operator	Mechanic	
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 where an employee in the position possesses a Commercial Driver's License

REASONABLE SUSPICION INCIDENT CHECKLIST

_____ _____
Employee's Full Name Date / Time of Observation

_____
Supervisor's Full Name & Telephone

_____
Date of Supervisor's Reasonable Suspicion Decision Training

This checklist is to be completed when a supervisor trained in accordance with FBC and USDOT Agency regulations for reasonable suspicion/cause determination requirements – determines that an incident has occurred which provides reasonable suspicion that an employee is exhibiting behaviors consistent with the symptoms of drug use and / or alcohol misuse. Mark each applicable item on this form and add any additional facts or circumstances which you have observed.

A. Nature of Incident / Cause for Suspicion

___1. Observed/reported possession or use of a prohibited substance (including passenger complaint).
___2. Apparent drug or alcohol intoxication.
___3. Observed drug or alcohol intoxication.
___4. Arrest for drug-related offense
___5. Other (e.g. flagrant violation of safety or serious misconduct, accident or 'near miss,' fighting or argumentative/abusive language, refusal of supervisor instruction, unauthorized absence on the job) Please specify:

_____

_____

_____

_____

B. Behavioral Indicators

___1. Verbal abusiveness
___2. Physical abusiveness
___3. Extreme aggressiveness or agitation
___4. Withdrawal, depression, tearfulness, or responsiveness
___5. Inappropriate verbal responses to questioning or instruction
___6. Other erratic or inappropriate behavior (e.g. hallucinations, disoriented, confused) Please specify:

_____

_____

CONFIDENTIAL

C. Physical Signs and Symptoms

___1. Possession, dispensing, or using prohibited substance
___2. Slurred or incoherent speech
___3. Unsteady gait or other loss of physical control, poor conditioning
___4. Dilated or constricted pupils or unusual eye movement
___5. Bloodshot or watery eyes
___6. Extreme aggressiveness or agitation
___7. Excessive sweating or clamminess of skin
___8. Flushed or very pale face
___9. Highly excited or nervous
___10. Nausea or vomiting
___11. Disheveled appearance or out of uniform
___12. Odor of alcohol
___13. Odor of Marijuana
___14. Dry mouth (frequent swallowing/lip wetting)
___15. Shaking hands or body tremors/twitching
___16. Dizziness or fainting
___17. Breathing irregularity or difficulty breathing
___18. Runny nose or sores around nostrils
___19. Inappropriate wearing of sunglasses
___20. Puncture marks or "tracks"
___21. Other (Specify)_____

_____

_____

D. Written Summary

Please summarize the facts and circumstances surrounding the incident. The observations must be specific, contemporaneous, and articulable regarding the appearance, behavior, speech, or body odors of the safety-sensitive employee. Attach additional sheets as needed.

_____

_____

_____

_____

_____

_____

The above document of physical, behavioral, and performance indicators of the named employee were observed by:

_____	_____	_____
Supervisor's Full Name	Signature	Date

CONFIDENTIAL

302 – Drug and Alcohol Testing for Employees Performing FMCSA Defined Safety Sensitive Duties

Section 302.01
Purpose

The purpose of this policy is to comply with 49CFR Part 40, as amended, and 49CFR Part 382, as amended, which implement the Drug and Alcohol Testing regulations of the Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA), respectively. Copies of these regulations can be obtained from the Human Resources Department, or on the internet at www.transportation.gov/ODAPC (Office of Drug and Alcohol Policy and Compliance).

All covered employees as defined in Section 302.02 of this policy are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 382. All covered employees as defined in Section 302.02 are also subject to the provisions of 49 CFR Part 32, which implements the Drug-Free Workplace Act of 1988, requiring the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify the Director of Human Resources no later than five days after such conviction.

In addition to this policy, all covered employees are subject to the non-DOT provisions of Policy 301: Drug and Alcohol Detection and Deterrence for All Employees.

Section 302.02
Covered Employees

This policy applies to every person, including an applicant or transferee who performs or will perform a "safety-sensitive" function as defined in Part 382.103. An employee who possesses a Commercial Driver's License or Permit and performs safety sensitive duties, is a covered employee for purposes of this policy.

The FMCSA defines safety sensitive duties as:

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

See Appendix 301A for a current list of covered positions by job title.

Section 302.03
Prohibited Behavior

Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in Part 40. Prohibited drugs include:

- Marijuana

- Cocaine
- Phencyclidine (PCP)
- Opiods
- Amphetamines

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having a blood alcohol concentration (BAC) of 0.04 or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must notify a supervisor they have used alcohol at the time that they are called to report for duty, and will be prohibited from performing safety-sensitive duties with an alcohol concentration of .02 or greater

All covered employees are prohibited from consuming alcohol within four hours prior to the performance of safety-sensitive job functions.

All covered employees are prohibited from consuming alcohol for eight hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

Section 302.04
Refusal To Test

A refusal to submit to a duly authorized DOT drug or alcohol test shall bear the same consequences as a positive result. A covered employee refuses to test if he or she:

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by Fort Bend County.
2. Fails to remain at the testing site until the testing process is complete. (An employee who leave the testing site before the testing process commences for a pre-employment test has not refused to test.)
3. Fails to attempt to provide a breath or urine specimen. (An employee who does not provide a breath or urine specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.)
4. In the case of a directly-observed or monitored urine drug collection, fails to permit direct observation or monitoring of the provision of the specimen.
5. Fails to provide a sufficient quantity of breath or urine without a valid medical explanation.
6. Fails or declines to take a second drug test as directed by the collector or Fort Bend County.
7. Fails to undergo a medical evaluation as required by the Medical Review Officer (MRO) or Fort Bend County.
8. Fails to cooperate with any part of the testing process.
9. Fails to cooperate with any part of the collector's instructions to raise and lower clothing and turn around during a direct observation collection.
10. Possesses or wears a prosthetic or other device used to tamper with the collection process.
11. Admits to the collector or MRO that the specimen is adulterated or substituted.
12. Refuses to sign the certification at Step 2 of the Alcohol Testing Form (ATF).

13. Fails to remain readily available after an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Section 302.05 Consequences for Violation

A covered employee is in violation of this policy if they refuse to take a required drug or alcohol test, test positive for the presence of drugs, or have a confirmed alcohol test showing a BAC of .04 or greater. A covered employee who violates this policy will be immediately removed from safety-sensitive duties and referred to a Substance Abuse Professional. **Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, employees who test positive on a drug or alcohol test shall be immediately suspended without pay and are subject to immediate termination of employment.**

Following an alcohol confirmation test showing a BAC greater than or equal to .02 but less than .04, the employee must be immediately removed from performing safety-sensitive duties for at least 24 hours. **As specified in the non-DOT provisions of Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, an employee will be suspended without pay for at least 3 days, and may be subject to termination of employment for a confirmed alcohol test greater than or equal to .02 but less than .04.**

In limited circumstances, at the discretion of an Elected Official or Department Head and in consultation with Human Resources, an employee may be permitted the opportunity to maintain employment after a positive result if the employee strictly complies with the requirements of a second chance program. Refer to Section 302.10, as well as Policy 301 for more information.

Section 302.06 Pre-employment Tests

A negative DOT pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a DOT pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug or alcohol test must provide proof of successful completion of a DOT compliant substance abuse evaluation and treatment plan.

Section 302.07 Reasonable Suspicion Tests

All covered employees shall be subject to a drug and/or alcohol test when Fort Bend County has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. It is recommended that the trained supervisor use Form 301A to document the reason for referral for reasonable suspicion training.

Covered employees may be subject to a DOT reasonable suspicion drug test any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or immediately after the employee has ceased performing such functions.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, employees may be subject to a non-DOT reasonable suspicion drug and/or alcohol test while performing any function as an employee of the County.

Section 302.08
Post-Accident Tests

Covered employees operating a CMV shall be subject to post accident drug and alcohol testing when involved in an accident that involves a fatality. In addition to the operator of the CMV, any other covered employee whose performance could have contributed to an accident involving a fatality shall be subject to a post-accident drug and alcohol test. A Fort Bend County official shall determine the employee(s) who are subject to testing based on the best available information.

Covered employees operating a CMV, or whose performance could have contributed to the accident shall be subject to post accident drug and alcohol testing when involved in an accident that does not involve a fatality, if the driver is issued a citation for the accident, and one or more of the below factors is present:

1. A non-fatality accident that results in injuries to one or more persons that require immediate medical treatment away from the scene.

2. A non-fatality accident that results in disabling damage to one or more vehicles that must be towed away from the scene.

A Fort Bend County official shall determine the employee(s) who are subject to testing based on the best available information.

An alcohol test shall be administered within 2 hours of the accident. However, if the test cannot be conducted within 2 hours, it must be conducted within 8 hours of the accident. After 8 hours, an alcohol test will not be conducted. An employee must remain readily available for an alcohol test, cooperate with the testing process, and refrain from consuming alcohol, for 8 hours or until the test is conducted, whichever comes first. Failure to do so may be considered a refusal to test.

A drug test shall be administered as soon as possible, but not more than 32 hours following the accident. An employee must remain readily available to take a drug test until the test is conducted, and cooperate with the testing process. Failure to do so may be considered a refusal to test.

A covered employee subject to post-accident testing must remain readily available to test, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or obtain emergency medical care.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and

Deterrence for All Employees, employees may be subject to non-DOT post accident drug and/or alcohol tests for any work-related incident involving property damage or physical injury.

Section 302.09
Random Tests

DOT random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FMCSA administrator. The current year testing rates can be viewed online at: www.transportation.gov/odapc/random-testing-rates.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, or just before or just after the employee performs safety-sensitive functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty. An employee who is notified of selection for random testing must immediately proceed with testing.

Section 302.10
Return to Duty and Follow-up Tests

Any Fort Bend County employee who refuses a DOT drug or alcohol test, or tests positive on a DOT drug or alcohol test shall bear the consequences as detailed in Section 302.04. If the employee is granted the opportunity to maintain employment, an evaluation by a Substance Abuse Professional is required, and the employee must provide a negative DOT Return to Duty drug and/or alcohol result, conducted in accordance with 49 CFR Part 40 Subpart O, before performing safety sensitive duties. The employee must pay for the cost of the Return to Duty test.

After returning to safety sensitive duties, the employee will be subject to a series of unannounced Follow Up drug and/or alcohol tests conducted in accordance with 49 CFR Part 40 Subpart O. The type, number, frequency and duration of the testing shall be directed by the SAP. The employee must pay for the cost of all Follow Up tests.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, any employee who subsequently tests positive on a drug or alcohol test shall be subject to immediate termination of employment. Individuals who have previously refused a DOT drug or alcohol test, or tested positive on a DOT drug or alcohol test, will not be considered for employment in a safety sensitive position unless they provide proof of completion of a DOT compliant substance abuse program and the requisite testing.

Section 302.11
Testing Procedures

All DOT drug and alcohol testing will be conducted in accordance with 49CFR Part 40, as amended.

Fort Bend County may accept a negative dilute drug test result and no retest will be required. However, if the negative dilute result shows a creatinine concentration of greater than or equal to 2 mg/dL, but less than or equal to 5

mg/Dl, an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67) will be required.

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The split specimen testing will be conducted in a timely manner, but the employee requesting the test will be required to pay the cost of the test.

Section 302.12
FMCSA Drug and Alcohol Clearinghouse

The FMCSA Drug and Alcohol Clearinghouse is a national database of information on covered drivers who have tested positive on a DOT drug or alcohol test. Employers are required to report any positive test results to the Clearinghouse beginning January 6, 2020. Positive test results that occurred prior to January 6, 2020 will not be reported in the Clearinghouse.

At the time of hire or placement of an individual in a DOT-FMCSA safety sensitive position, the employer must run a full query of the Clearinghouse to check for prior positive results. The individual must register with the Clearinghouse and must provide online consent for the employer to run the full query. If the individual does not give consent, he or she may not perform safety sensitive functions.

Employers are also required to run a limited query of the Clearinghouse on each covered employee once per year. The employer must obtain employee consent prior to running the query. If the employee does not consent, then the employee cannot perform safety sensitive duties. If a limited query indicates that the Clearinghouse has additional drug and alcohol test information on an individual, then a full query must be conducted. This will require the employee to register with the Clearinghouse and provide online consent. If the employee does not do so, he or she cannot perform safety sensitive duties. Employees who are unable to perform safety sensitive functions based on failure to provide consent for a Clearinghouse query will be subject to discipline, up to and including termination of employment.

The Human Resources department will be responsible for obtaining employee consent and running both pre-employment and annual Clearinghouse queries.

Section 302.13
Effects of Alcohol and Controlled Substance Abuse and Misuse

Appendix 300A contains information on the effects of alcohol and controlled substance abuse or misuse on an individual's health, work, and personal life, and the signs and symptoms of an alcohol problem. Assistance with intervention, prevention, and treatment of addiction or abuse can be obtained through the Employee Assistance Program. See the section below for contact information.

Section 302.14
Contacts

The Fort Bend County Drug and Alcohol testing program is administered by the Human Resources Department.

For questions regarding policy and procedure:

Drug and Alcohol Program Manager
Director of Human Resources or Designee
301 Jackson Street, Suite 243
Richmond TX 77469
281-341-8631

To schedule tests:

Designated Employee Representative (except Post Accident)
Human Resources Administrative Coordinator
301 Jackson Street, Suite 243
Richmond TX 77469
281-341-8616

Designated Employee Representative (Post Accident Only)
Director of Risk Management or Designee
301 Jackson Street, Suite 224
Richmond TX 77469
281-341-8630

To schedule After Hours Reasonable Suspicion Tests:

Houston Medical Testing Services, A DISA Company
713-665-4687

For assistance with drug or alcohol abuse or misuse:
Deer Oaks Employee Assistance Program
Helpline: 866-327-2400
Website: www.deeroakseap.com (Login & Password: fortbend)
Email: eap@deeroaks.com

Policy Approved and Adopted by
Fort Bend County Commissioners Court
November 26, 2019

303 – Drug and Alcohol Testing for Employees Performing FTA Defined Safety Sensitive Duties

Section 303.01
Purpose

The purpose of this policy is to comply with 49CFR Part 40, as amended, and 49CFR Part 655, as amended, which implement the Drug and Alcohol Testing regulations of the Department of Transportation (DOT) and the Federal Transit Authority (FTA), respectively. Copies of these regulations can be obtained from the Human Resources Department, or on the internet at www.transportation.gov/ODAPC (Office of Drug and Alcohol Policy and Compliance).

All covered employees as defined in Section 303.02 of this policy are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655. All covered employees as defined in Section 303.02 are also subject to the provisions of 49 CFR Part 32, which implements the Drug-Free Workplace Act of 1988, requiring the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify the Director of Human Resources no later than five days after such conviction.

In addition to this policy, all covered employees are subject to the non-DOT provisions of Policy 301: Drug and Alcohol Detection and Deterrence for All Employees.

Section 303.02
Covered Employees

This policy applies to every person, including an applicant or transferee who performs or will perform a "safety-sensitive" function as defined in Part 655.4. You are a covered employee for purposes of this policy if you perform any of the following:

- Operating a revenue service vehicle, in or out of revenue service
- Operating a non-revenue vehicle requiring a commercial driver's license
- Controlling movement or dispatch of a revenue service vehicle
- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

See Appendix 302A for a current list of covered positions by job title.

Section 303.03
Prohibited Behavior

Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in Part 40. Prohibited drugs include:

- Marijuana
- Cocaine
- Phencyclidine (PCP)

- Opiods
- Amphetamines

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having a blood alcohol concentration (BAC) of 0.04 or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must notify a supervisor they have used alcohol at the time that they are called to report for duty, and will be prohibited from performing safety-sensitive duties with an alcohol concentration of .02 or greater

All covered employees are prohibited from consuming alcohol within four hours prior to the performance of safety-sensitive job functions.

All covered employees are prohibited from consuming alcohol for eight hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

Section 303.04
Refusal To Test

A refusal to submit to a duly authorized DOT drug or alcohol test shall bear the same consequences as a positive result. A covered employee refuses to test if he or she:

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by Fort Bend County.

2. Fails to remain at the testing site until the testing process is complete. (An employee who leave the testing site before the testing process commences for a pre-employment test has not refused to test.)

3. Fails to attempt to provide a breath or urine specimen. (An employee who does not provide a breath or urine specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.)

4. In the case of a directly-observed or monitored urine drug collection, fails to permit direct observation or monitoring of the provision of the specimen.

5. Fails to provide a sufficient quantity of breath or urine without a valid medical explanation.

6. Fails or declines to take a second drug test as directed by the collector or Fort Bend County.

7. Fails to undergo a medical evaluation as required by the Medical Review Officer (MRO) or Fort Bend County.

8. Fails to cooperate with any part of the testing process.

9. Fails to cooperate with any part of the collector's instructions to raise and lower clothing and turn around during a direct observation collection.

10. Possesses or wears a prosthetic or other device used to tamper with the collection process.

11. Admits to the collector or MRO that the specimen is adulterated or substituted.

12. Refuses to sign the certification at Step 2 of the Alcohol Testing Form (ATF).

13. Fails to remain readily available after an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Section 303.05 Consequences for Violation

A covered employee is in violation of this policy if they refuse to take a required drug or alcohol test, test positive for the presence of drugs, or have a confirmed alcohol test showing a BAC of .04 or greater. A covered employee who violates this policy will be immediately removed from safety-sensitive duties and referred to a Substance Abuse Professional. **Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, employees who test positive on a drug or alcohol test shall be immediately suspended without pay and are subject to immediate termination of employment.**

Following an alcohol confirmation test showing a BAC greater than or equal to .02 but less than .04, the employee must be immediately removed from performing safety-sensitive duties for at least 8 hours. **As specified in the non-DOT provisions of Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, an employee will be suspended without pay for at least 3 days, and may be subject to termination of employment for a confirmed alcohol test greater than or equal to .02 but less than .04.**

In limited circumstances, at the discretion of an Elected Official or Department Head and in consultation with Human Resources, an employee may be permitted the opportunity to maintain employment after a positive result if the employee strictly complies with the requirements of a second chance program. Refer to Section 303.10, as well as Policy 301 for more information.

Section 303.06 Pre-employment Tests

A negative DOT pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a DOT pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug or alcohol test must provide proof of successful completion of a DOT compliant substance abuse evaluation and treatment plan.

Section 303.07

All covered employees shall be subject to a drug and/or alcohol test when

Reasonable Suspicion Tests

Fort Bend County has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. It is recommended that the trained supervisor use Form 301A to document the reason for referral for reasonable suspicion training.

Covered employees may be subject to a DOT reasonable suspicion drug test any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or immediately after the employee has ceased performing such functions.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, employees may be subject to a non-DOT reasonable suspicion drug and/or alcohol test while performing any function as an employee of the County.

Section 303.08 Post-Accident Tests

Covered employees shall be subject to post accident drug and alcohol testing when involved in an accident that involves a fatality. A DOT post-accident drug and alcohol test shall be required of the covered employee(s) operating the public transportation vehicle, and may be required of any other covered employee whose performance could have in any way contributed to the accident. A County official shall determine the employee(s) subject to testing using the best information available at the time, and testing shall be conducted as soon as practicable.

The circumstances listed below shall also require drug and alcohol testing of the covered employee(s) operating the public transportation vehicle, unless an operator's performance can be completely discounted as a contributing factor to the accident. In addition, any other covered employee whose performance could have in any way contributed to an accident shall be subject to DOT drug and alcohol testing. A County official shall determine the employee(s) subject to testing using the best information available at the time, and testing shall be conducted as soon as practicable.

1. A non-fatality accident that results in injuries to one or more persons that require immediate medical treatment away from the scene.

1. A non-fatality accident that results in disabling damage to one or more vehicles that must be towed away from the scene.

2. A non-fatality accident that involves a rail car, trolley car or bus, or vessel, that must be removed from operation.

An alcohol test shall be administered within 2 hours of the accident. However, if the test cannot be conducted within 2 hours, it must be conducted within 8 hours of the accident. After 8 hours, a DOT alcohol test will not be conducted. An employee must remain readily available for an alcohol test, cooperate with the testing process, and refrain from consuming alcohol, for 8 hours or until the test is conducted, whichever comes first. Failure to do so may be considered a refusal to test.

A DOT drug test shall be administered as soon as possible, but not more than

32 hours following the accident. An employee must remain readily available to take a drug test until the test is conducted, and cooperate with the testing process. Failure to do so may be considered a refusal to test.

A covered employee subject to post-accident testing must remain readily available to test, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or obtain emergency medical care.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, employees may be subject to non-DOT post accident drug and/or alcohol tests for any work-related incident involving property damage or physical injury.

Section 303.09
Random Tests

DOT random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at: www.transportation.gov/odapc/random-testing-rates.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, or just before or just after the employee performs safety-sensitive functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty. An employee who is notified of selection for random testing must immediately proceed with testing.

Random testing may be performed toward the end of an employee's shift, therefore, employees must provide advance, verifiable notice of scheduled medical care or child care commitments that immediately follow the shift. Such employees must provide notice no less than 8 hours before the end of the shift so that a required random test can commence no less than three hours (drug) or 30 minutes (alcohol) before the end of the shift.

Section 303.10
Return to Duty and Follow-up Tests

Any Fort Bend County employee who refuses a DOT drug or alcohol test, or tests positive on a DOT drug or alcohol test shall bear the consequences as detailed in Section 303.04. If the employee is granted the opportunity to maintain employment, an evaluation by a Substance Abuse Professional (SAP) is required, and the employee must provide a negative DOT Return to Duty drug and/or alcohol result, conducted in accordance with 49 CFR Part 40 Subpart O, before performing safety sensitive duties. The employee must pay the cost of the Return to Duty drug and alcohol test.

After returning to safety sensitive duties, the employee will be subject to a series of unannounced Follow Up drug and/or alcohol tests conducted in

accordance with 49 CFR Part 40 Subpart O. The type, number, frequency and duration of the testing shall be directed by the SAP. The employee must pay for all Follow Up drug and alcohol tests.

Per Fort Bend County Policy 301: Drug and Alcohol Detection and Deterrence for All Employees, any employee who subsequently tests positive on a drug or alcohol test shall be subject to immediate termination of employment. Individuals who have previously refused a DOT drug or alcohol test, or tested positive on a DOT drug or alcohol test, will not be considered for employment in a safety sensitive position unless they provide proof of completion of a DOT compliant substance abuse program and the requisite testing.

Section 303.11
Testing Procedures

All FTA drug and alcohol testing will be conducted in accordance with 49CFR Part 40, as amended.

Fort Bend County may accept a negative dilute drug test result and no retest will be required. However, if the negative dilute result shows a creatinine concentration of greater than or equal to 2 mg/dL, but less than or equal to 5 mg/Dl, an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67) will be required.

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The split specimen testing will be conducted in a timely manner, but the employee requesting the test will be required to pay the cost of the test.

Section 303.12
Contacts

The Fort Bend County Drug and Alcohol testing program is administered by the Human Resources Department.

For questions regarding policy and procedure:

Drug and Alcohol Program Manager:
Director of Human Resources or Designee
301 Jackson Street, Suite 243
Richmond TX 77469
281-341-8631

To schedule tests:

Designated Employee Representative (except Post Accident)
Human Resources Administrative Coordinator
301 Jackson Street, Suite 243
Richmond TX 77469
281-341-8616

Designated Employee Representative (Post Accident Only)
Director of Risk Management or Designee
301 Jackson Street, Suite 224
Richmond TX 77469
281-341-8630

To schedule After Hours Reasonable Suspicion Tests:
Houston Medical Testing Services, A DISA Company
713-665-4687

For assistance with drug or alcohol abuse or misuse:
Deer Oaks Employee Assistance Program
Helpline: 866-327-2400
Website: www.deeroakseap.com (Login & Password: fortbend)
Email: eap@deeroaks.com

Policy Approved and Adopted by
Fort Bend County Commissioners Court
November 26, 2019