

**CITY OF FRESNO**

**CONTROLLED  
SUBSTANCES  
AND ALCOHOL  
TESTING POLICY**

**FOR  
“SAFETY-SENSITIVE”  
EMPLOYEES/APPLICANTS  
SUBJECT TO FEDERAL  
MOTOR CARRIER SAFETY  
ADMINISTRATION  
(FMCSA) REGULATIONS**

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## **POLICY STATEMENT**

This policy applies to all applicants and employees who perform a “safety-sensitive” function for the City as defined by the Federal Motor Carrier Safety Administration (“FMCSA”)(49 Code of Federal Regulations (“CFR”) Part 382)<sup>1</sup> as required by the Federal Omnibus Transportation Employee Testing Act of 1991 (“Act”)(Public Law 102-143, Oct. 28, 1991), as amended. This policy also applies to off-site lunch periods and breaks when the covered safety-sensitive individual is scheduled to return to work, or is on assigned stand-by duty.

The City of Fresno is committed to protecting the health and safety of individual City employees, their co-workers, and the public from the hazards caused by the misuse of drugs and alcohol by its employees. In the interest of safety, employees will not be permitted to perform their duties while using and/or being impaired by the influence of drugs or alcohol. In order to achieve this goal and to comply with the requirements of the Act and FMCSA regulations, the City has developed and implemented, a drug and alcohol testing program designed to prevent accidents and injuries resulting from the misuse of alcohol or prohibited drugs by individuals who perform safety-sensitive functions governed by FMCSA regulations.

## **COMMERCIAL DRIVER’S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE**

The purpose of the Clearinghouse is to maintain records of all drug and alcohol program violations in a central repository and require that employers query the system to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from performing safety sensitive functions covered by the FMCSA.

Federal Regulations require FMCSA-regulated employers, Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), consortia/third party administrators (C/TPAs), and other service agents to report to the Clearinghouse information related to violations of the drug and alcohol regulations in 49 Code of Federal Regulations, parts 40 and 382 by current and prospective employees.

The Clearinghouse also requires the following:

1. As an employer, the City is required to query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle (CMV) on public roads.

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<sup>1</sup> 49 CFR Part 40 is the U.S. Department of Transportation’s (“DOT”) drug and alcohol testing regulation that applies to all DOT-required testing, regardless of the DOT agency-specific rules. The FMCSA regulations are the specific DOT Agency regulations that more specifically dictate who, when, and in what situations, a covered commercial driver employee is subject to drug and/or alcohol testing.

2. In addition, the City is required to annually query the Clearinghouse for each driver they currently employ.

Information maintained in the Clearinghouse will enable the City to identify drivers who commit a drug or alcohol program violation while working for one employer, but who fail to subsequently inform another employer. Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later.

## **EMPLOYEE CONSENT TO CONDUCT A QUERY OF THE FMCSA DRUG & ALCOHOL CLEARINGHOUSE**

By Federal Regulation, the City is required to conduct a query of the Clearinghouse at least once per year to obtain information for all employees subject to drug and alcohol testing under the FMCSA. Employees in positions covered by the FMCSA must provide written or electronic consent, through the Clearinghouse, which will be retained for three years from the date of the last query. CMV Drivers under this policy who refuse to consent to the release of information from the FMCSA Clearinghouse will be immediately removed from safety-sensitive functions and may be subject to disciplinary action, up to and including termination.

## **PROHIBITED SUBSTANCES**

The FMCSA regulations require that all covered employees/applicants be tested for the presences of marijuana, cocaine, amphetamines (including methamphetamine and methylenedioxymethamphetamine (i.e., MDMA)), opiates (including codeine, morphine, heroin), and phencyclidine (PCP). Use of these drugs by safety-sensitive individuals is prohibited at all times under the FMCSA regulations and employees may be tested for the presence of these substances in accordance with the FMCSA regulations.

The use of any drug or substance identified in Schedules I through V of the Controlled Substances Act (21 U.S.C. §§801 et seq.), as further defined by 21 CFR 1308.11 through 1308.15 is prohibited at all times unless a legal prescription has been written for the drug or substance and the minimum standards under the DOT regulations are met as determined by the DOT-certified Medical Review Officer (“MRO”). This includes, but is not limited to marijuana, amphetamines, methamphetamine, opiates, phencyclidine (PCP) and cocaine, as well as any substance which causes the presence of these drugs or drug metabolites not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Prohibited use includes use of any illegal drug or substance, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Marijuana is a drug listed in Schedule I of the Controlled Substances Act and an MRO is prohibited under 49 CFR 40.151 from verifying a test negative even if a safety-sensitive employee has a physician’s recommendation authorizing the use of medical marijuana under California’s “medical marijuana” laws.

## **PERFORMING A “SAFETY-SENSITIVE” FUNCTION**

A “safety-sensitive” function means all time from the time a commercial driver begins to work or is required to be in readiness to work until the time they are relieved from work and all responsibility for performing work.

Covered employees under this policy include those who hold a commercial driver’s license and operate a commercial motor vehicle if the vehicle:

1. Has a gross combined weight of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver; or
4. Is of any size and is used in the transportation of materials determined to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b) and which require the motor vehicle to be placarded under the Hazardous Materials regulations (49 CFR 172 subpart F).

Essentially, this policy will cover employees/applicants whose duties require the operation of large vehicles or heavy equipment, specialized vehicles, or the road testing of such vehicles. Employees who have questions or concerns regarding a “safety-sensitive” designation of their position may discuss the issue with their supervisor or contact the DER for further information.

Testing for *alcohol* may occur any period in which the covered employee is: (1) performing safety-sensitive duties; (2) just before the employee is to perform safety-sensitive duties; or (3) just after the employee has stopped performing such functions. Performing a safety-sensitive duty includes any period where the employee is actually performing, ready to perform, or immediately available to perform such duties. Testing for *drugs* may occur at any time that the safety-sensitive employee is at work irrespective of actually performing a safety sensitive task. Employees will be paid the applicable rate of pay during the entire period of time that they are participating in the testing process.

Individuals who are identified as falling under the provisions of this policy are required to participate as a condition of employment. Employees who are unsure if they are covered by this regulation or have questions regarding the application of this policy are encouraged to contact the DER designated in this document.

## **CIRCUMSTANCES FOR TESTING**

The FMCSA guidelines require the following types of tests to be performed:

1. Pre-Employment, Promotional or Transfer Testing

Pre-employment testing will occur after the applicant has been provided a

conditional offer of employment. A pre-employment candidate must produce a verified negative drug test result prior to first performing a safety-sensitive duty. If the test is cancelled, the individual must re-take and successfully pass the test prior to being hired.

Employees who are being transferred or promoted from a non-safety-sensitive position to a safety-sensitive position will be required to undergo drug-testing. Employees who are currently employed in a safety-sensitive position seeking transfer or promotion to another safety-sensitive position will not be required to undergo further testing. Employees who have not performed a safety-sensitive function for 30 consecutive calendar days, and who have not been subject to random testing, shall undergo drug testing prior to returning to a safety sensitive position. Employees who have returned to work, but are performing duty in a non-safety-sensitive function (i.e. light duty) shall remain in the pool and subject to testing. Employees who have not performed in a safety-sensitive capacity for 30 consecutive days and are awaiting clearance after undergoing a return to work drug test, shall be assigned to a non-safety-sensitive function at their regular rate of compensation.

## 2. Post-Accident Testing

Post-accident controlled testing, pursuant to this policy, will occur under the following circumstances:

- a) **FATALITY.** Drug and alcohol testing will occur in all cases involving a fatality.
- b) **NON-FATAL.** Drug and alcohol testing will occur if the driver received a citation under State or local law for a moving traffic violation arising from the accident within eight (8) hours of the occurrence, if the accident involved:
  - i. Bodily injury to any person who, as a result of the injury, receives immediate medical treatment away from the scene; or
  - ii. One or more motor vehicles incur disabling damage as a result of the occurrence and such vehicle(s) are towed away from the scene.

The following table notes when a post-accident test is required to be conducted:

Table for 49 CFR 382.303(a) and (b)		
Type of accident involved	If citation issued to the CMV driver	Then test must be performed by employer
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

Table 1 - 49 CFR 382.303(a) and (b)

Drug testing in post-accident situations shall occur as soon as possible, but no later than 32 hours after the accident. If the controlled substances test cannot be performed within this time period, the reason shall be documented.

Alcohol testing shall occur within 2 hours of the accident. If the alcohol test cannot be performed within this time period the reason shall be documented. In no case shall an alcohol test be administered later than eight (8) hours past the time of the accident and the reason for delay shall be documented. A driver who has been involved in an accident which requires a post-accident test, shall not consume any alcohol for a period of eight (8) hours after the occurrence or until such time as the post-accident alcohol test has been performed.

A driver who is subject to post-accident drug and alcohol testing shall remain readily available in the event testing is required. Failure to remain readily available for testing can be deemed a refusal to submit to the drug and alcohol test.

Nothing in this section shall delay medical attention for an injured individual following an accident or prohibit an individual from leaving the immediate scene of the accident for the period of time necessary to obtain assistance in responding to the accident or to obtain necessary medical treatment.

### 3. Reasonable Suspicion Testing

Employees may be subject to reasonable suspicion testing when there is reasonable suspicion to believe that the individual has used a prohibited drug or alcohol. For a reasonable suspicion test to occur under the FMCSA regulations, the individual must be observed by a supervisor who has been trained in the detection of drug or alcohol misuse in accordance with the applicable Federal regulations. The supervisor shall require the individual to undergo such testing based only on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered individual. The observations may include indications of the chronic and withdrawal effects of controlled substances. The employee shall be immediately informed of the supervisor's observations and suspicions and advised that they may have a representative present. The notification to the employee shall be documented on the Reasonable Suspicion Testing Checklist form. The employee shall proceed immediately to the testing facility or location for reasonable suspicion testing for drugs and/or alcohol.

Reasonable suspicion alcohol testing is only permissible under the FMCSA regulations just before an employee performs safety-sensitive duties, during that performance, and just after an employee has performed covered duties; and that the observations leading to that testing must be made during, just preceding, or just after the employee has performed safety sensitive duties.

The employee shall be immediately informed of the supervisor's suspicions and advised that they may have a representative present. The notification to the employee shall be documented on the Incident Report Form or Reasonable Suspicion Testing Form. If any test for alcohol is not conducted within two (2) hours following the determination to test the employee, the reasons shall be documented. If testing is delayed beyond eight (8) hours, the testing process shall be terminated and the reasons for not conducting the test shall be documented.

### 4. Random Testing

Random testing for alcohol will be conducted on an unannounced basis just before, during, or after the performance of a safety-sensitive function. Testing for drugs may be performed at any time while the individual is present at work, irrespective of the performance of a safety-sensitive function.

Random tests will be spread reasonably throughout the calendar year. Random testing will be unannounced and conducted at all times of the day, any day of the week, when safety-sensitive functions are performed. This ensures that employees will have a reasonable expectation that they might be called for a test on any day and at any time they are at work. Every employee randomly selected for drug and/or alcohol testing shall be directed to proceed to the test site immediately.

The name of each individual who is subject to random testing will be placed into a pool from which the names will be randomly drawn. Each employee shall have an equal chance at selection and shall remain in the pool even after being tested. The basis for random selection shall be by a scientifically valid random number generation method initiated by computer. A designated representative from the affected labor organizations shall be permitted to authenticate and confirm the scientific validity of the random selection process, but shall not be permitted to view the names of employees who are selected for testing. Such labor representatives shall be designated in January or each calendar year on a rotational basis along the following order: CFMEA (January 1), CFPEA (January 1), FPOA (January 1), IBEW (January 1), ATU (January 1), Local 39 (January 1), and FCEA (January 1). Random drug and alcohol testing shall conform to and not exceed the testing limits established by Federal Law.

#### **PROCEDURE FOR RANDOM TESTING:**

- a) Risk Management will select a date and time for random list generation and requests the designated labor organization observer to attend. The date is usually selected 24 hours prior to the creation of the list of names for actual testing. In order to facilitate testing, Risk Management will notify the designated testing facility of the date and time of expected testing so that adequate staffing needs are met.
- b) At the appointed time of list creation, Risk Management will request the designated labor organization observer to select a random number between 1-10.
- c) Based upon the number selected, the computer will generate lists until that numbered list is reached. That list will be used for testing and all others will be discarded. Both Risk Management and the observer will sign the selected list to verify its authenticity as being the list selected.
- d) Risk Management will review the list and identify the physical location of all employees selected.
- e) Risk Management will contact the departmental representative(s) and provide the names of employees who require drug and/or alcohol testing.
- f) The departmental representative(s) shall notify selected employees that they have been chosen for random testing and shall direct each selected employee to proceed to the test site immediately. Selected employees for testing shall be subject to testing from the time the employee begins to work or is required to be in readiness to work until the time they are relieved from work and all responsibility for performing work. Employees who are selected, but who are not reasonably expected to return to work before the next list is drawn, shall not be tested.
- g) The departmental representative(s) shall notify Risk Management of the

availability of the selected employees and provide the information for the file if a selected employee was not tested.

- h) Risk Management shall maintain a separate file for each date that random test lists are generated. The file shall contain the original list from which the names were used to identify employees to be tested.
- i) Risk Management shall place a copy of the completed drug testing report into each corresponding file for that specific date of testing.
- j) Upon receipt of information from the MRO that an employee has tested positive for drugs and/or alcohol, Risk Management shall advise the employee's departmental representative(s) that the employee must be precluded from performing in a safety-sensitive capacity. Except as provided in 49 CFR Part 40, Subpart P, no medical information or drug and/or alcohol testing results shall be released to third parties without the employee's specific written consent.
- k) Risk Management shall contact a Substance Abuse Professional (SAP) and shall advise the employee of a date and time for referral when there has been a verified positive DOT drug test and/or DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater. No SAP referral shall be made for a refusal to submit to a drug and/or alcohol test as defined in 49 CFR 40.191 and 40.261, or for alcohol concentration results of less than 0.04. However, Risk Management will provide the employee a listing of available SAP names, addresses, and telephone numbers for the employee's voluntary consultation at their own expense.
- l) Upon receipt of the recommendation of the SAP when there has been a verified positive DOT drug test and/or DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, the Risk Manager shall confer with the employee, the employee's representative should they choose to be represented, and the appropriate management representative for the purpose of discussing the recommendation of the SAP.
- m) A positive drug and/or alcohol test result, or a refusal to submit to a drug and/or alcohol test as defined in 49 CFR 40.191 and 40.261, may subject the employee to disciplinary action up to and including termination. In collaboration with the Personnel Services Department, management may determine the level of discipline, including whether a Last Chance Agreement shall be offered, with final approval by the City Manager. The purpose of the Last Chance Agreement, should one be offered, is to allow the employee to return to work (upon testing negative for drugs and alcohol) with the understanding that the recommendation of the SAP must be completed and that any future positive test will result in termination without appeal.

## 5. Return to Duty and Follow Up Testing

These tests will be conducted when an individual returns to duty following a violation of this policy. Follow up testing after returning to work is unannounced and shall be conducted at least six times during the following year. During this period of time, the individual will also remain subject to testing under the previously established random testing requirements as outlined above in the previous section.

All return to duty and follow up testing will be conducted under direct observation and in accordance with the DOT protocols as contained in 49 CFR Part 40, as may be amended.

Employees seeking specific details regarding the procedures and methodology of drug and/or alcohol testing are referred to 49 CFR Part 40 of the Federal regulations. Employees who wish to review this information may contact the DER for assistance in securing a written copy of these regulations.

Employees are also directed to Administrative Order 2-25 Policy on Drug and Substance Abuse, as amended, for information relating to the City of Fresno's internal policy on reasonable suspicion drug and/or alcohol testing. A copy of this policy may be obtained from the City's website, or by contacting management personnel or the DER.

All testing that is required by the Federal regulations will be conducted at the expense of the City of Fresno and employees shall remain in a full pay status during any period of time connected to or associated with the compliance of these regulations.

## **TESTING FOR DRUGS**

Employees who may be called upon to perform work in a safety-sensitive capacity are subject to drug and alcohol testing as outlined in the Federal regulations.

Covered employees are prohibited from reporting for duty or remaining on duty if there is a quantitative presence of a prohibited drug in their system which measures above the minimum thresholds as defined in 49 CFR PART 40, as amended. Consistent with the Drug Free Workplace Act of 1988, all covered employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including FAX premises, vehicles, or while conducting official City business. All employees are further reminded that they must notify department management of any criminal conviction for a drug-related activity occurring in the workplace within five (5) days after such conviction.

Urine specimens will be collected in accordance with 49 CFR Part 40, Subpart E, as may be amended from time to time.

Employees may request a copy of these procedures from the DER.

Each urine specimen will be tested at a DOT-certified laboratory for the specific substances and their respective detection levels contained in 49 CFR Part 40 which may be amended from time to time. At the present time, the substances and their detection levels are as follows:

<u>Initial test analyte</u>	<u>Initial test cutoff concentration</u>	<u>Confirmatory test analyte</u>	<u>Confirmatory test cutoff concentration</u>
Marijuana metabolites	50 ng/mL	THCA <sup>1</sup>	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoylecgonine	100 ng/mL
Opiate metabolites			
Codeine/Morphine <sup>2</sup>	2000 ng/mL	Codeine	2000 ng/mL
		Morphine	2000 ng/mL
Hydrocodone	300 ng/mL	Hydrocodone	100 ng/mL
Hydromorphone	300 ng/mL	Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL	Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL	Oxymorphone	100 ng/mL
6–Acetylmorphine	10 ng/mL	6–Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamines <sup>3</sup>			
AMP/MAMP <sup>4</sup>	500 ng/mL	Amphetamine	250 ng/mL
		Methamphetamine <sup>5</sup>	250 ng/mL
MDMA <sup>4</sup> /MDA <sup>5</sup>	500 ng/mL	MDMA	250 ng/mL
		MDA	250 ng/mL

**Table 2 - Substances and Their Detection Levels in Urine Specimens**

<sup>1</sup>For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

*Immunoassay:* The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

*Alternate technology:* Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory’s validated limit of quantification) must be equal to or greater than the initial test cutoff.

<sup>2</sup> An immunoassay must be calibrated with the target analyte, D-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

<sup>3</sup> *Alternate technology (THCA and Benzoylecgonine):* When using an alternate technology initial test for the specific target analytes of THCA and Benzoylecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylecgonine).

<sup>4</sup> Methylenedioxymethamphetamine (MDMA).

<sup>5</sup> Methylenedioxyamphetamine (MDA).

Important: To repeat, consumption of any of the above controlled substances is prohibited by the DOT regulations. Individuals who have been identified as being safety-sensitive are encouraged to seek immediate, confidential, professional/medical assistance to initiate treatment and recovery.

The DOT-certified laboratory is required to test all incoming primary specimens for dilution, substitution, and adulteration in a two-step process. The first is a screening test. If the screening test is positive for one or more of the above substances, a confirmation test is performed for each identified drug using gas-chromatography/mass spectrometry (GC/MS) analysis. As noted, all samples will also be examined to determine if it has been diluted or adulterated with any other substances designed to mask prohibited substance use.

Employees who are found positive for one or more of the above substances will be contacted by telephone by the MRO. The MRO will inform the individual of the finding and allow the individual to provide an explanation which may medically justify use of the identified substance. The use of other outside medical experts may be utilized in this process the direction of the MRO. Unjustified use of the substance will result in the MRO reporting the finding as a verified positive test result to the City. Findings which are determined to be medically acceptable in the opinion of the MRO will be reported as verified negative test result to the City representative.

Any individual who has been tested and disagrees with the MRO's finding that the specimen is verified positive or that the specimen has been adulterated or substituted, may request that the "split" specimen be sent to another DOT-certified laboratory for analysis. The employee must make this request within 72 hours of being notified by the MRO of the finding. The City will initially pay for the split sample to be tested upon an employee's request for an appeal determination. In the event that the MRO's decision is not reversed, the employee will be responsible to reimburse the City for the second analysis.

**IMPORTANT:**

Employees who are found positive for one or more of the above substances shall be immediately removed from their safety-sensitive position and referred to a SAP.

Dilute Negative with Low Creatinine: In accordance with 49 CFR 40.67, if the MRO finds a recollection under direct observation is required because the creatinine concentration of the specimen was equal to or greater than 2 mg/dl but less than or equal to 5 mg/dl, the City must immediately instruct the employee to undergo a recollection under direct observation. The DOT's stated purpose for this requirement is so that people who may naturally produce low creatinine levels will not be reported to employers as having substituted their specimens.

Other Dilute Negative: If the creatinine concentration of the dilute specimen is

greater than 5 mg/dl, but less than 20 mg/dl, the City will direct the employee to take another test immediately in all DOT test types. Such recollections will be unobserved, unless there is another basis for use of direct observation (for example, 49 CFR 40.67(b) and (c)). The requirement to undergo a recollection/retest of a dilute negative will uniformly apply to all individuals subject to DOT testing regulations. A refusal to submit to the second test as directed by the City will be deemed a test refusal and a violation of DOT drug regulations. The result of the second test – not the original dilute result – will be the test of record upon which the City will rely. If the second test is also a dilute negative, the City will not make the employee take a third test because the second test was dilute, unless the MRO directs a recollection under direct observation.

## **TESTING FOR ALCOHOL**

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol. Employees are cautioned against the use of various medications or remedies that may contain alcohol.

Alcohol testing is performed through the use of an evidential breath test which measures the amount of alcohol concentration in the individual's system. In order to perform the test, the employee will be asked to provide a breath sample into the device which then calculates the extent of alcohol concentration. The machines used to perform these tests are required to be calibrated and the operators are required to undergo training and testing in order to meet the DOT criteria. Refusal to submit to a required alcohol test as required by the DOT regulations will be a violation of this policy and FMCSA regulations and the employee shall be removed from performing safety-sensitive duties and subject to disciplinary action as discussed below.

Prohibited use of alcohol under FMCSA regulations includes the following:

1. Covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on paid status to perform safety-sensitive functions. An on-call employee who has consumed alcohol is required to acknowledge their consumption at the time that they are called to duty.
2. Reporting for duty or remaining on duty in a safety-sensitive position while having an alcohol concentration of .04 or greater.
3. Using alcohol within 4 hours prior to performing a safety-sensitive function.

Employees who are on paid or "standby" status are prohibited from using alcohol. Employees who violate this provision and are recalled to duty are required to acknowledge the use of alcohol and their inability to perform safety-sensitive duties. Employees who acknowledge the use of alcohol, but claim that they are able to perform in a safety-sensitive capacity will be required to submit to an alcohol test.

4. An employee who is required to undergo alcohol testing as part of a post-accident

test may not use alcohol for eight (8) hours following the accident or until such time as the post-accident test is completed.

Usually, two breath tests will be performed in order to determine if an individual has a prohibited alcohol concentration. A screening test is conducted first. A result less than 0.02 alcohol concentration is considered a negative test result. If the concentration is 0.02 or greater, a second confirmation test is conducted. If the confirmation test results in a value of 0.02 or greater but less than 0.04, the employee will be removed from the safety-sensitive function until the alcohol level measures below 0.02, or the next regular scheduled duty period but not less than eight (8) hours following the test. Employees with an alcohol concentration level of 0.04 or greater will be removed from the safety-sensitive position and referred to a SAP. These regulations are outlined in 49 CFR 382.505, as may be amended from time to time.

## **REFUSING TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST**

Employees are required to submit to a drug and/or alcohol test as a result of a post-accident, reasonable suspicion, random, or follow-up incident as prescribed under the DOT regulations. Failure to appear at the medical collection facility within a reasonable time after being notified of the need for testing or failure to remain at the facility until testing has been completed, being uncooperative with medical collection personnel, failure to provide an adequate specimen for testing, or leaving the scene of an accident without justifiable cause are examples of a refusal to test. In the event that an individual refuses to submit to a drug and/or alcohol test, the test shall be deemed a violation of the FMCSA regulations and the individual shall be removed from performing a safety-sensitive duties and subject to disciplinary action as discussed below.

An employee has refused to submit to a drug and/or alcohol test under any of the following situations:

1. If the employee fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by Risk Management, consistent with applicable DOT regulations, after being directed to do so by management. The employee must immediately proceed to the testing site upon notification of their selection for random testing.
2. Failure to remain at the testing site until the testing process is complete. An employment candidate who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
3. Failure to provide a sufficient amount of urine/breath sample for any drug or alcohol test required by the DOT regulations when directed, and it has been determined by the MRO that there was no adequate medical explanation for the failure.
4. Failure to permit monitoring or observation while providing a urine specimen.
5. Failure to follow an observer's instructions to raise and lower clothing and turn

around during a directly observed test.

6. Possessing or wearing a prosthetic or other device used to tamper with the testing process.
7. Admitting the adulteration or substitution of a specimen to the collector or MRO.
8. Failure to undergo a medical examination or evaluation as directed by the MRO as part of the verification process or as directed by the DER.
9. Failure to take a second drug test when directed by the collector or the DER.
10. Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational manner that disrupts the collected process, etc.).
11. If the MRO verifies that the test was adulterated or that the employee used a substitute urine specimen.
12. Failure to sign Step 2 of the Alcohol Testing Form.

Employees should note that the above circumstances regarding refusal to test for alcohol or drugs are only applicable to DOT testing. If an employee refuses to take a non-DOT test or to sign a non-DOT form, it is not considered a refusal to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

### **WHAT HAPPENS WHEN AN EMPLOYEE IS FOUND TO HAVE A POSITIVE RESULT OR REFUSES TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST?**

Employees are subject to disciplinary action up to and including termination upon the City's notice of a verified positive drug test result, if they have an alcohol concentration which exceeds .02, or if they refuse to submit to a drug and/or alcohol test as defined in 49 CFR Part 40.191 and 40.261.

Any disciplinary action taken by the City as a result of this policy will be subject to the applicable provisions of current MOU's, Administrative Orders, and the Fresno Municipal Code (FMC) concerning representation and hearing appeals process. Among the factors to be considered in determining the appropriate disciplinary action, the level of the offense, the nature and requirements of the work, length of employment, current job performance, and history of past disciplinary action shall be included. Pursuant to the provisions of FMC sections 3-605(a)(5) and 3-286, Causes for Suspension or Removal, the City reserves the exclusive right to determine the level of disciplinary action.

In the event an employee is afforded a Last Chance Agreement, they shall comply with the recommendations outlined by the SAP. An employee who fails to inform the City concerning the status of treatment, refuses to undergo recommended treatment, does not complete the recommended program and follow up protocol, fails any follow

up or random testing, or refuses to return to work after being released from rehabilitation treatment, will be subject to disciplinary action up to and including termination.

All employee records regarding drug and alcohol testing and any follow up testing are maintained with the utmost confidentiality. Access to these records is extremely restricted to only those individuals who have direct responsibility for the operation of the program or authorized Federal representatives conducting official business.

Medications prescribed for someone other than the employee, will be considered unlawfully used under any circumstance. The DOT also indicates that an employee's purported use of marijuana for medical purposes (even if pursuant to state "medical marijuana" law) or use of hemp or marijuana-related products does not constitute a legitimate medical explanation for a positive test result and these are insufficient grounds for the MRO to verify the test result as negative.

### **REQUIRED CLEARINGHOUSE REPORTING**

The City must report the following information to the Clearinghouse about drivers by the third business day following the date when the information was obtained:

- (i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- (ii) A negative return-to-duty test result;
- (iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;
- (iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
- (v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with Sec. 40.307, 40.309, and 40.311 of this title.

The information required to be reported must include, as applicable, the following:

- (i) Reason for the test;
- (ii) Driver's name, date of birth, and CDL number and State of issuance;
- (iii) Employer name, address, and USDOT number;
- (iv) Date of the test;
- (v) Date the result was reported; and (vi) Test result. The test result must be one of the following:

- a. Negative (only required for return-to-duty tests administered in accordance with Sec. 382.309);
- b. Positive; or
- c. Refusal to take a test.

For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the City must report the following information:

- (i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was
- (ii) notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
- (iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
- (iv) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and
- (v) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.

The City must also report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at Sec. 382.107, of:

- (i) On-duty alcohol use pursuant to Sec. 382.205;
- (ii) (ii) Pre-duty alcohol use pursuant to Sec. 382.207;
- (iii) (iii) Alcohol use following an accident pursuant to Sec. 382.209; and
- (iv) (iv) Controlled substance use pursuant to Sec. 382.213. As a result of these violations the following information must be reported:
  - a. Driver's name, date of birth, CDL number and State of issuance;
  - b. Employer name, address, and USDOT number, if applicable;
  - c. Date the employer obtained actual knowledge of the violation;

- d. Witnesses to the violation, if any, including contact information;
- e. Description of the violation;
- f. Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to Sec. 382.121), correspondence, or other documentation; and
- g. A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

### **EMPLOYEE LEAVE STATUS AFTER A POSITIVE DRUG/ALCOHOL RESULT OR REFUSAL TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST**

Employees who test positive for drugs or alcohol or who are determined to have refused to submit to a drug and/or alcohol test, will be removed from performing a safety-sensitive function and temporarily assigned alternate work or placed on paid administrative leave pending determination of the employee's employment status with the City. Employees may elect to use other accumulated leave balances at their option in lieu of their placement on paid administrative leave.

### **THE ROLE OF THE SUBSTANCE ABUSE PROFESSIONAL (SAP)**

In the event that an employee has been reported as having a positive alcohol or drug test, the City of Fresno representative will contact the individual for the purpose of arranging a referral to a SAP. SAPs are licensed medical physicians, certified social workers, psychologists, employee assistance professionals and drug and addiction counselors who have met certification requirements outlined by the Federal government to perform this function. This referral is made at no cost to the employee. The function of the SAP is to meet with the employee and make recommendations concerning education, treatment, follow-up testing, and aftercare.

In all cases where the employee has had a positive drug/alcohol test, the employee shall be required to undergo an additional follow-up test with a negative finding prior to being allowed to return to work and perform in a safety sensitive capacity.

### **THE ROLE OF THE DESIGNATED EMPLOYER REPRESENTATIVE (DER)**

Federal law requires that employers designate an individual within the organization who will be responsible to facilitate and communicate with outside providers including the medical collection facility, Medical Review Officer, and SAPs. The DER is also available to respond to employee questions or concerns regarding the administration of the program and how the DOT guidelines are implemented. The DER for the City of Fresno is the Risk Manager and may be contacted at (559) 621-6900.

In addition to the DER, an Advisory Committee shall be maintained to review the

impact, modification, or repeal of the Omnibus Transportation Employee Testing Act and make recommendations to the City Manager on all matters relevant to the implementation of this policy. Half of the Committee members shall be appointed by the City and half shall be appointed by those recognized employee organizations subject to this policy and shall meet at the request of any member.

## **EMPLOYEE ADMISSION OF ALCOHOL OR CONTROLLED SUBSTANCES ABUSE**

Any City of Fresno employee covered by this policy who admits to alcohol misuse or controlled substances use prior to performing a safety-sensitive function and does not self-identify in order to avoid testing under the requirements of this policy, shall be provided special consideration. Employees making such a voluntary admission will not be subject to adverse disciplinary action for violations of this policy and shall be afforded the opportunity to seek professional evaluation, education or treatment to establish control over the employee's drug or alcohol problem. Employees who successfully complete an education or treatment program, as determined by a qualified drug or alcohol abuse evaluation expert (e.g.: a SAP, an employee assistance professional, or a qualified drug and alcohol counselor) shall be permitted to return to safety-sensitive duties upon evidence of a verified negative drug and alcohol test as provided by DOT regulations.

## **WHERE TO SEEK HELP**

It is the policy of the City of Fresno to encourage employees to seek assistance regarding problems with substance use prior to actual detection as part of a drug/alcohol test. Employees who seek professional assistance on a voluntary basis will be afforded the opportunity to seek professional treatment on a confidential basis to assist them in achieving full recovery and the ability to return to productive work. Employees may call the City's Employee Assistance Program provider, Avante Behavioral Health, to access professional assistance with substance abuse at (559) 261-9053 or (800) 498-9055.

**Questions or concerns regarding the administration of the program and the implementation of DOT drug and alcohol testing guidelines may be directed to the City of Fresno Risk Manager at (559) 621-6900, who is the Designated Employer Representative ("DER") for the City's program.**

Employees may also consider consulting with the providers listed in the attached Appendix.

## **APPENDIX**

### **ALCOHOLICS ANONYMOUS**

(559) 221-6907 and (559) 266-6752 (Spanish)

1755 N. Gateway #102, Fresno, CA 93727

Hours: 24-hour hotline; M, T, Th, F, 9:00am - 4:30pm; W 9:00am – 6:00pm;

Sat 9:00am – 1:00pm

### **FRESNO NEW CONNECTIONS, INC.**

(559) 283-8319

4411 N. Cedar Avenue, Suite 108, Fresno, CA

Hours: M-F 8:00am – 5:00pm

### **B.A.A.R.T.**

(559) 266-9581

539 N. Van Ness Avenue, Fresno, CA

Hours: M-W & F 6:00am – 11:00am & 12:00pm – 2:00pm; Th 6:00am - 12:30pm;

Sat & Sun 6:00am – 10:00am; Holidays 6:00am – 9:00am

### **COMPREHENSIVE ADDICTION PROGRAM, INC.**

(559) 485-6364

2445 W. Whitesbridge Avenue, Fresno, CA

Hours: 24 hours, 7 days a week

### **DRUG TREATMENT CENTER**

(800) 711-6375

24-Hour Help Line. No charge to calling party.

### **FRESNO COUNTY HISPANIC COMMISSION ON ALCOHOL AND DRUG ABUSE SERVICES, INC.**

(559) 268-6475

1803 Broadway St. Fresno, CA 93721

Hours: M-F 9:00am -9:00pm

### **KING OF KINGS - MEN'S RESIDENTIAL RECOVERY HOME**

(559) 425-3011

2267 S. Geneva Avenue, Fresno, CA

Hours: 24 hours, 7 days a week

KING OF KINGS DRUG ABUSE CENTER

(559) 442-0400

2302 Martin Luther King Jr. Blvd. Fresno, CA 93706

NARCOTICS ANONYMOUS

(559) 255-5881

NUUESTRA CASA RECOVERY HOME

(559) 485-0501

1414 W. Kearney Blvd., Fresno, CA

Hours: 24 hours, 7 days a week

SALVATION ARMY A.R.C.

(559) 490-7080

804 S. Parallel Ave., Fresno, CA

VA MEDICAL CENTER

(559) 225-6100

2615 E. Clinton, Fresno, CA

Hours: M-F 8:00am – 4:00pm

WESTCARE

(559) 265-4818

2772 Martin Luther King Blvd., Fresno, CA