

BEFORE  
THE BOARD OF SUPERVISORS  
OF THE COUNTY OF MADERA  
STATE OF CALIFORNIA

In the Matter of )  
POLICIES AND GUIDELINES ON )  
DRUGS AND ALCOHOL USE IN THE )  
WORKPLACE )  
\_\_\_\_\_ )  
Resolution No.: 2016 031  
A RESOLUTION AMENDING THE  
COUNTY OF MADERA POLICIES AND  
GUIDELINES ON DRUG AND ALCOHOL  
USE IN THE WORKPLACE

**WHEREAS**, the County of Madera is committed in supporting and maintaining a drug-free workplace; and

**WHEREAS**, the County of Madera is committed to supporting and maintaining the highest standards of professional conduct in the workplace; and

**WHEREAS**, it is the intention of the Board of Supervisors of the County of Madera to eliminate drug and alcohol abuse and the effects of such abuse in the workplace for all employees; and

**WHEREAS**, the County of Madera has adopted policies and guidelines on drug and alcohol use in the workplace by Madera County Resolution No. 1995-308.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Madera, a political subdivision of the State of California, that:

1. It is the policy of Madera County that all employees shall not possess, use, unlawfully manufacture, distribute, dispense, sell or be under the influence of prohibited substances, as defined in a succeeding section, while on duty, on Madera County property, at work locations, while on break, during the work day or meal periods or on "on-call" time. For purposes of this policy, "on-call" time is time during which an employee is required by the Department Head to be available to perform duties for the County as set forth by Madera County Personnel Ordinances and Memoranda of Understanding. The provisions contained in Memoranda of Understanding shall

supersede the policies and guidelines on drug and alcohol use in the workplace adopted by Madera County Resolution No. 1995-308.

2. Madera County will act to eliminate any drug and alcohol abuse which could impair an employee's ability to safely and effectively perform the functions of their job. Accordingly, employees will receive training to recognize the dangers of abusing drugs or alcohol, of the guidelines for the detection and deterrence of drug and alcohol abuse, of the responsibilities of managers and employees alike, and of resources available for treatment of drug and alcohol abuse.

3. Employees who believe that they may have a drug or alcohol usage problem are encouraged to voluntarily seek confidential assistance from the Employee Assistance Program or their primary treatment medical professional. While it is Madera County Policy to be supportive of those who seek help voluntarily, it is also policy that abuse of alcohol or drugs will not be tolerated and disciplinary action, up to and including termination, will be used as necessary to implement this policy and assure a drug free workplace.

4. Exhibit "A" of Resolution No. 1995-308, entitled "Policies and Guidelines on Drug Use in the Workplace," be replaced in its entirety by the attached Exhibit "A," entitled "Madera County Drug-Free Workplace Policy."

5. The Federal and State statutes accompanying Exhibits "A" and "B" of Resolution No. 1995-308 be replaced in their entirety by a revised set of Federal and State statutes which take into account subsequent amendments and renumbering.

6. Exhibit "B" of Resolution 1995-308, entitled "Drug and Alcohol Testing of Employees in Safety Sensitive Positions," remain in full force and effect.

7. A copy of this Resolution and shall be provided to the Clerk of the Board of Supervisors of the County of Madera and to all departments, boards, and commissions.

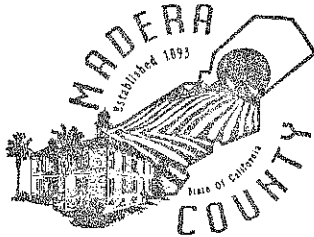
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The foregoing Resolution was adopted this 23<sup>rd</sup> day of February, 2016,  
by the following vote:

Supervisor Frazier voted:	<u>yes</u>
Supervisor Rogers voted:	<u>yes</u>
Supervisor Farinelli voted:	<u>yes</u>
Supervisor Rodriguez voted:	<u>yes</u>
Supervisor Wheeler voted:	<u>yes</u>



[Signature]  
Chairman, Board of Supervisors

ATTEST:

[Signature]  
Clerk, Board of Supervisors

Approved as to Legal Form:  
COUNTY COUNSEL

By [Signature]  
Regina A. Garza

## **EXHIBIT A**

### **MADERA COUNTY DRUG FREE WORKPLACE POLICY**

#### **I. PURPOSE**

The purpose of this policy is to eliminate drug and alcohol abuse and the effects of such abuse in the workplace, thereby providing and maintaining an efficient and safe workplace for all employees. Drug and alcohol abuse increases the potential for accidents, absenteeism, substandard performance, poor morale and damages the public service and Madera County. Involvement with drugs and alcohol can take its toll on job performance and employee safety whether on or off duty. Employees should be in a condition to perform their duties safely and efficiently, in the interest of their co-workers and the public. The presence of drugs and alcohol on the job and the influence of these substances on employees during working hours are inconsistent with the objective of this policy.

#### **II. POLICY**

It is the policy of Madera County that all employees shall not possess, use, unlawfully manufacture, distribute, dispense, sell or be under the influence of prohibited substances, as defined in a succeeding section, while on duty, on Madera County property, at work locations, while on break, during the work day or meal periods or on "on-call" time. For purposes of this policy, "on-call" time is time during which an employee is required by the Department Head to be available to perform duties for the County as set forth by Madera County Personnel Ordinances and Memoranda of Understanding.

Employees who believe that they may have a drug or alcohol usage problem are encouraged to voluntarily seek confidential assistance from the Employee Assistance Program or their primary treatment medical professional. While it is Madera County Policy to be supportive of those who seek help voluntarily, it is also policy that abuse of alcohol or drugs will not be tolerated and disciplinary action, up to and including termination, will be used as necessary to implement this policy and assure a drug free workplace.

Furthermore, it is the policy of Madera County that all employees should be made aware of the dangers of abusing drugs or alcohol, of the guidelines for the detection and deterrence of drug and alcohol abuse, of the responsibilities of managers and employees alike, and of resources available for treatment of drug and alcohol abuse. This shall be accomplished through approved training resources.

#### **III. PROHIBITED SUBSTANCES**

Prohibited substances addressed by this policy include the following:

### Illegal Drugs

For purposes of this policy, illegal drugs shall be Amphetamines, Marijuana, Cocaine, Opiates, and Phencyclidine (PCP), or any other controlled substance taken without a lawful prescription as defined by sections 802(6) and 812 of Title 21 of the United States Code or the California Health and Safety Code.

### Legal Drugs

For purposes of this policy, prohibited substances may include lawfully prescribed legal drugs or non-prescription medications, described in detail in Section VII, that negatively impact the employee's work performance or ability to safely and effectively perform the essential job functions of his or her position. Whether or not legal drugs constitute prohibited substances depends on the extent of impairment of the employee's job performance and in limited circumstances receipt of medical clearance as provided in Section VII below.

### Alcohol

For purposes of this policy, alcohol shall refer to any form of consumable alcohol (ethyl) in any strength (proof) in any quantity.

## **IV. EMPLOYEE RESPONSIBILITIES**

An employee shall not do any of the following while on duty, on Madera County property, at work locations, while on break, during the work day or meal periods, or on "on-call" time:

- A. Have his or her ability to perform job duties impaired due to any use of a prohibited substance.
- B. Possess or use prohibited substances.
- C. Sell or provide, directly or through any third person, any prohibited substance to any person, including any employee.
- D. Manufacture or procure any prohibited substances.

An employee shall:

- A. Notify his or her Department Head when taking a legal drug as provided in Section VII below.
- B. Notify the Department Head of any criminal drug statute conviction as provided in Section VIII below.
- C. Attend such programs as Madera County may designate for the purpose of instructing employees generally on the dangers of drug and alcohol abuse, which will be scheduled during normal working hours.

- D. Receive a copy of this policy, read this policy, agree to the policy's terms and provide written acknowledgment that these conditions have been met.

V. **MANAGEMENT RESPONSIBILITIES**

Management shall:

- A. Provide each employee with a copy of this policy and the Federal and State Drug-Free Workplace Acts, which shall be received by employees during new employee orientation.
- B. Obtain written acknowledgment from each employee that he or she has received a copy of this policy, read this policy, and agreed to the policy's terms and retain a copy of the written acknowledgement in each employee's personnel file.
- C. Establish a Drug-Free Workplace awareness program to inform employees about:
  - (1) The dangers of drug and alcohol abuse in the workplace;
  - (2) Available counseling and rehabilitation; and
  - (3) The potential discipline of employees for violations of this policy and for drug and alcohol abuse violations.
- D. Notify the Federal sponsoring agency within ten (10) calendar days after receiving notice from an employee of a conviction for criminal drug statute violation occurring in the workplace.
- E. Either within thirty (30) calendar days of receipt of notice from an employee of any conviction for a drug statute violation occurring in the workplace or as soon as possible after learning that an employee was definitively in possession of, using, unlawfully manufacturing, distributing, dispensing, selling or under the influence of a prohibited substance while on duty, on Madera County property, at work locations, while on break, during the work day or meal periods, or on "on-call" time, take one (1) or both of the following actions:
  - (1) Take appropriate personnel action against such employee, up to and including termination;
  - (2) Require such employee to participate satisfactorily in a substance abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement or other appropriate agency. Failure to participate satisfactorily in such program may result in personnel action set forth in paragraph (E)(1) above.
- F. Prevent an employee from engaging in further work when there is reasonable suspicion, as defined in Section IX below, to believe that the employee in question is impaired or under the influence of a prohibited substance.
- G. Order an employee to remain on the premises for a reasonable time to assure that he or she can be safely transported from the work site when there is reasonable suspicion, as

defined in Section IX below, to believe that the employee in question is impaired or under the influence of a prohibited substance.

## **VI. EDUCATION AND TRAINING**

As noted above, every employee shall receive a copy of this policy and the Federal and State Drug-Free Workplace Acts. In addition, every employee shall attend such programs as Madera County may designate for the purpose of instructing employees generally on the dangers of drug and alcohol abuse, available counseling and rehabilitation, and the discipline of employees for violations of this policy and for drug and alcohol abuse violations, which will be scheduled during normal working hours.

All supervisory personnel who are in the position to determine employee fitness for duty (i.e., managers, supervisors, Department Heads) shall receive two (2) hours of reasonable suspicion training on the physical, behavioral and performance indicators of probable drug use and alcohol misuse. In addition, supervisory personnel shall receive training on how to intervene constructively when employee drug or alcohol abuse is suspected, and how to effectively integrate an employee back into his or her work group following intervention and/or treatment. Such training shall occur every two (2) years for current supervisory personnel and within six (6) months of hire for new personnel. The Department Head of each respective County department shall have the sole authority to determine who should receive the training.

## **VII. LEGAL DRUGS**

Legal drugs are lawfully prescribed drugs and non-prescription medications. Their appropriate use is not prohibited by the policy. An employee, however, must immediately report to his or her Department Head about the use of any legal drug which adversely impacts his or her ability to perform the duties of their job safely. Additionally, if a manager, supervisor, or Department Head reasonably suspects that an employee's use of any legal drug adversely affects the employee's ability to perform their job safely and efficiently, the manager, supervisor, or Department Head may request that the employee obtain and provide a written release from a medical professional indicating that the employee can work safely and efficiently while taking the legal drug. The employee need not disclose the name or medical purpose of the legal drug.

The County has the right to restrict an employee's work activities while that employee is using legal drugs. The County may also require an employee using legal drugs to take a leave of absence while taking such legal drugs if a medical professional determines that the employee cannot work safely and efficiently while taking the legal drugs. It is acknowledged that such leave may fall within the parameters of the Family and Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA). In any case, no employee may report to work if he or she is impaired by the use of the legal drugs to the point that the impairment may endanger the

employee's safety or the safety of anyone else, pose a risk of significant breach of security, or substantially interfere with the performance of assigned job duties or the efficient operations of the County.

#### **VIII. DRUG STATUTE CONVICTION**

Consistent with the Federal Drug-Free Workplace Act, every employee is required to notify his or her Department Head of any criminal drug statute conviction for a violation occurring while on duty, on Madera County property, at work locations, while on break, during the work day or meal periods, or on "on-call" time no later than five (5) working days after such conviction or plea. Additionally, the Department Head is required to notify any Federal sponsoring agency within ten (10) calendar days after receiving notice from an employee of a conviction for criminal drug statute occurring in the workplace.

For purposes of this policy, a conviction includes a plea of guilty or nolo contendere pursuant to California Penal Code § 1016.

An employee's failure to report an obligatory drug statute conviction may constitute a cause for serious disciplinary action, up to and including termination.

#### **IX. ABUSE IDENTIFICATION AND MANAGEMENT DIRECTED TESTING**

Madera County is committed to providing reasonable accommodation to employees whose substance abuse problem classifies them as disabled under federal or state law. Where appropriate, the employee will be referred to a substance abuse treatment program.

An employee will be subject to a reasonable suspicion drug and/or alcohol analysis test, as defined in Sections X and XIII below, when a manager or supervisor has reasonable suspicion to believe that an employee is intoxicated or under the influence of a prohibited substance.

Any manager or supervisor who has reasonable suspicion that an employee is under the influence of a prohibited substance or has illegal drugs in his or her possession or stored in County property shall document the facts constituting reasonable suspicion in writing.

If a manager or supervisor has reasonable suspicion that an employee may have any prohibited substance in his or her possession or stored at or in any County property, the manager or supervisor shall notify his or her Department Head. If the Department Head agrees that there is reasonable suspicion that an employee may have any prohibited substance in his or her possession or stored at or in County property, the Department Head shall notify the appropriate law enforcement agency. If the Department Head is unavailable, the Department Head's designee shall stand in their place.



For the purpose of this policy, "reasonable suspicion" is a belief based on objective evidence sufficient to lead a reasonable and prudent manager or supervisor to suspect that an employee:

- (1) is under the influence of, or has used, a prohibited substance so that the employee's ability to perform the functions of his or her job is impaired or so that the employee's ability to perform his or her job safely is reduced.
- (2) has any prohibited substance in his or her possession or stored in any County property.

Reasonable suspicion may, without limitation, include any of the following objective factors singly or in combination:

1. Incoherent and/or slurred speech.
2. Rapid speech.
3. Dry mouth with frequent swallowing and/or lip wetting.
4. Unusual odor emanating from breath and/or person.
5. Red and/or watery eyes.
6. Dilated and/or constricted pupils.
7. Poor balance and/or coordination (i.e., Unsteadiness afoot).
8. Hand tremors.
9. Disorientation and/or inattention.
10. Erratic and/or volatile behavior.
11. Drowsiness.
12. Detachment from physical and/or emotion pain.
13. Physical and/or verbal altercations.
14. Information from a reliable source with personal knowledge

An employee who refuses an order to submit to a drug and/or alcohol analysis test under these circumstances, or refuses to authorize release of the results of this testing to the authorized representative(s) of the County, shall be subject to disciplinary action, up to and including termination.

Any manager or supervisor encountering an employee who refuses an order to a drug and/or alcohol analysis test under these circumstances or refuses to authorize release of the results of this testing to the authorized representative(s) of the County shall remind the employee that failure to comply is insubordination and may result in disciplinary action.

An employee shall be placed on administrative leave pending the test results

#### **X. [REASONABLE SUSPICION] TESTING REQUIREMENTS**

1. A determination that an employee's conduct and behavior gives rise to a reasonable suspicion that the employee is under the influence of a prohibited substance so that the

employee's ability to perform the functions of his or her job is impaired or so that the employee's ability to perform his or job safely is reduced shall be made by one (1) or more managers and/or supervisors, or by the Department Head, who are trained in detecting indicators of probable drug and/or alcohol influence and intoxication.

2. Upon the determination of reasonable suspicion that an employee is intoxicated or under the influence of a prohibited substance so that the employee's ability to perform the functions of his or her job is impaired or so that the employee's ability to perform his or her job safely is reduced, the employee shall submit to testing for the use of prohibited substances when requested to do so by the manager, supervisor, or Department Head.
3. Any manager, supervisor or Department Head requesting or ordering an employee to submit to a drug and/or alcohol analysis test shall, prior to the test, document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of a prohibited substance. In the event that extenuating circumstances prevent a manager, supervisor or Department Head from completing the required written documentation prior to testing, such manager, supervisor or Department Head shall complete the documentation as soon as possible but not later than twenty-four (24) hours after the test. The documentation also shall specify the extenuating circumstances.
4. A manager or supervisor requesting or ordering an employee to submit to a drug and/or alcohol analysis test shall notify his or her Department Head before the test is required of the employee. The Department Head shall possess the final authority on whether or not a drug and/or alcohol analysis test is needed. If the Department Head is unavailable, the Department Head's designee shall stand in their place.

## **XI. RETURN-TO-DUTY TESTING**

Before returning to work after either testing positive on a drug or alcohol analysis test, or refusing to take a test when properly ordered, an employee must: (i) test negative for drugs and/or have a blood alcohol content below 0.02 percent; and (ii) be evaluated and released by a Substance Abuse Professional.

For a first-time positive drug test, a Return-to-Duty drug test is required and an alcohol test is optional, at the discretion of the County. For a first-time positive alcohol test, a Return-to-Duty alcohol test is required and a drug test is optional, at the discretion of the County.

## **XII. FOLLOW-UP TESTING**

All employees who have returned to work following their Return-to-Duty test will be required to undergo random and unannounced follow-up drug and/or alcohol analysis testing. The follow-up testing will be performed for a period of up to three (3) years, with no minimum or maximum cap on the number of tests performed the first year and a maximum cap of three (3) tests performed in the second and third year. The frequency of the follow-up tests, beyond the first year, will be determined by a Substance Abuse Professional reflecting the Substance Abuse Professional's assessment of the employee's unique situation and recovery progress. The follow-up testing should be frequent enough to deter and/or detect a relapse. The follow-up testing is separate and in addition to reasonable suspicion and Return-to-Duty testing. An employee shall be responsible for the cost for follow-up testing as required by this Policy.

## **XIII. DRUG AND ALCOHOL TESTING PROCEDURES**

1. The County shall ensure that an employee ordered to submit to a drug and/or alcohol analysis test is transported immediately to a collection site for the collection of a urine and/or breath sample.
2. The County shall ensure that the drug and/or alcohol analysis test(s) is in accordance with 49 Code of Federal Regulation (C.F.R.) part 40.

## **XIV. RESULTS OF DRUG/ALCOHOL ANALYSIS TEST**

1. An employee who has a verified positive drug and/or alcohol analysis test will be removed from duty, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional for assessment. No employee will be allowed to return to duty without a Return-to-Duty test as provided in Section XI and the release of a Substance Abuse Professional.
2. A drug test with the result of negative dilute<sup>1</sup> shall be retested.
3. A positive drug and/or alcohol analysis test ordered in compliance with this policy may result in disciplinary action, up to and including termination.
4. Refusal to submit to a drug and/or alcohol analysis test shall be considered a positive test and a direct act of insubordination and shall result in disciplinary action, up to and including termination.

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<sup>1</sup> Negative Dilute -- A drug test result which is negative for the five (5) drug metabolites but has a specific gravity value lower than expected for human urine.

5. The cost of any treatment or rehabilitation services shall be paid directly by an employee or the employee's insurance provider pursuant to the plans coverage limitations.
  - a. An employee shall be permitted to take accrued sick leave to participate in the Substance Abuse Professional prescribed treatment program. If an employee has no accrued sick leave, time off to participate in a treatment program can be charged to either vacation or compensatory time off.
  - b. If an employee has insufficient accrued leave, the employee shall be placed on leave without pay until the Substance Abuse Professional has determined that the employee has successfully completed the required treatment program and releases the employee to return-to-duty.
  - c. Any leave taken, either paid or unpaid, shall be considered leave taken under the FMLA or CFRA if an employee otherwise qualifies for FMLA/CFRA.
  - d. An employee who, after failing a drug and/or alcohol analysis test, fails or refuses in participating the treatment program prescribed Substance Abuse Professional shall be considered insubordinate and shall face additional disciplinary action, up to an including termination.
  - e. An employee shall be responsible for the cost for follow-up testing as required by this Policy. All costs charged by the service provider for follow-up testing shall be incurred by the employee, and the service provider shall invoice the employee directly.

## EXHIBIT B

### DRUG AND ALCOHOL TESTING OF EMPLOYEES IN SAFETY SENSITIVE POSITIONS

#### I. STATEMENT OF PURPOSE AND SCOPE

The purpose of this procedure is to reduce accidents, injuries, property damage, and other risk to public health and safety which may result from employee use of controlled substances and/or alcohol. All parts of this program shall apply to "drivers". The program uses the model of the Federal requirements for operation (Omnibus Transportation Employee Testing Act of 1991, Regulations of the Department of Transportation, Federal Highway Administration). Specifically is intended to detect and deter use of controlled substances as defined in 49 C.F.R. part 40 and alcohol. It further is to ensure, to the extent of the Federal mandates, that covered employees shall not be on duty and possess, be under the influence of, use, or consume any controlled substance as defined by 49 C.F.R. part 40 (marijuana, cocaine, opiates, amphetamines and phencyclidine, e.g. PCP or alcohol as described in C.F.R. part 392.5 (intoxicating beverage).

#### II. DEFENITIONS

##### A. Safety Sensitive Positions

Safety Sensitive Driver, hereinafter referred to as a "driver", as used herein means any county Employee whose position requires that he or she:

- a. Operate a motor vehicle which requires a commercial driver's license;
- b. Operate a motor vehicle which has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds;
- c. Operate a motor vehicle of any size transporting hazardous materials in amounts requiring placarding; or
- d. Operate a motor vehicle designed to transport 15 or more passengers, including the driver.

##### B. Collection Site

A "collection site" as used herein means a place where individuals present themselves for the purpose of providing breath sample, body fluid or tissue samples to be analyzed for specified controlled substances and/or alcohol.

##### C. Medical Review Officer

A "medical review officer" as used herein means a licensed physician, e.g. doctor of medicine or osteopathy, with knowledge of drug and alcohol abuse disorders that is employed or used by the County to conduct drug and alcohol testing in accordance with this procedure.

D. Non-Suspicion-Based Post-Accident Testing

“Non-suspicion-based post-accident testing” as used herein means that testing of a driver after an accident involving bodily injury or property damage exceeding \$1,000, if there is reasonable cause to believe either that the driver has been operating a motor vehicle or performing their job while under the influence of drugs and/or alcohol; was at fault in the accident and drug and/or alcohol use may have been a factor; or in the case of a motor vehicle accident a citation for a moving traffic violation arising from the accident is issued – without regard to whether there is any reasonable suspicion of alcohol and/or drug usage.

E. Random Selection Process

“Random Selection Process” as used herein means that drug and alcohol testing is unannounced and that every driver has an equal chance of being selected for testing.

F. Reasonable Cause

“Reasonable Cause” as used herein means that the County believes the actions or appearance or conduct of a driver while employed by the County and on duty are indicative of the use of a controlled substance and/or alcohol.

G. Prescription Drugs

Employees are responsible for notifying their supervisor any time they are taking a prescription drug which may impair their ability to safely perform their job.

III. REASONABLE CAUSE TESTING

A. Reasonable Cause Testing Requirements

1. The County shall require a driver to be tested, upon reasonable cause, for the use of controlled substances and/or alcohol.
2. A driver shall submit to testing, upon reasonable cause, for the use of controlled substances and/or alcohol when requested to do so by the County.
3. The conduct must be witnessed by at least two supervisors, or by the department head and the immediate supervisor, if feasible. If not feasible, only one supervisor need witness the conduct. The witness or witnesses must have received training in the identification of actions, appearances, or conduct which are indicative of the use of a controlled substance and/or alcohol.
4. The documentation of the driver’s conduct shall be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the tests are released, which ever is earlier.

B. Reasonable Cause Testing Procedure

1. The County shall ensure that the driver is transported immediately to a collection site for the collection of a breath or urine sample.
2. The County shall ensure that the tests performed pursuant to Article III (A) hereinabove conform with 49 C.F.R. part 40 and 40 C.F.R. part 391, subpart H.

IV. PRE-EMPLOYMENT TESTING

A. Pre-employment Testing Requirements

1. The County shall require a driver-applicant who the County has made an offer to hire or use to be tested for the use of controlled substances as a prequalification condition. This includes appointments made on a promotional basis.
2. A driver-applicant shall submit to controlled substance testing as a prequalification condition.
3. Prior to collection of a urine sample under Article IV (B) herein below, a driver applicant shall be notified that the sample will be tested for the presence of controlled substance.
4. Exceptions
  - a. The County may use a driver who is not tested by the County without complying with Paragraph 1 of Article IV (A), provided the County assures itself:
    - (1) That the driver has participated in a drug testing program that meets the requirements of this procedure within the previous 30 days; and
    - (2) While participating in that program, was either,
      - (a) Tested for controlled substances within the past 6 months (from the date of application with the County) or
      - (b) Participated in the drug testing program for the previous 12 months (from the date of application with the County).
  - b. If the County exercises paragraph 4 (a) of Article IV (A), it shall contact the controlled substances testing program in which the driver participates or participated and shall obtain the following information:
    - (1) Name and address of the program.
    - (2) Verification that the driver or covered employee-applicant participates or participated in the program.
    - (3) Verification that the program conforms to 49 C.F.R. part 40.

- (4) Verification that the driver or covered employee-applicant is qualified under the rules of this part, including that the driver or covered employee-applicant has not refused to be tested for controlled substances.
  - (5) The date the driver or covered employee-applicant was last tested for controlled substances.
  - (6) The results, positive or negative, of any test taken.
- c. If the County uses, but does not employ, such a driver more than once a year, it must assure itself once every 6 months that the driver participated in a controlled substance program that meets the requirements of 49 C.F.R. part 391, subpart H.

B. Pre-employment Testing Procedures

1. The sample shall consist of a urine specimen.
2. The County shall ensure that the test performed under the requirements of the Article IV (A) hereinabove conforms with 49 C.F.R. part 40 and 49 C.F.R. part 391, subpart H.

V. PERIODIC TESTING

A. Periodic Testing Requirements

1. Except as provided herein below, the County shall require a driver to be tested in accordance with the procedures set forth in Article V (B) at least once every two years commencing with the driver's first medical examination after the County's implementation of a drug and alcohol testing program in accordance with 49 C.F.R. part 391, subpart H and 49 C.F.R. part 392.
  - a. The County may use a driver who participates in a drug and alcohol testing program of another employer or controlled substance program of another employer or controlled substance test consortium.
  - b. The County may discontinue periodic testing after a driver has been tested at least once under:
    - (1) The requirements of article V (A) (1) hereinabove;
    - (2) The requirements of article IV (A) hereinabove; or
    - (3) The requirements of article VI (A) below.



B. Periodic Testing Procedures

1. The sample shall consist of a breath sample or urine specimen.
2. The County shall ensure that the test performed under the requirements of Article V (A) hereinabove conforms with 49 C.F.R. part 40 and 49 C.F.R. part 391, subpart H.

VI. RANDOM TESTING

A. Random Testing Requirements

1. The number of test conducted under this section annually shall equal or exceed 50 percent (50%) of the average number of drivers, for which testing is required pursuant to federal mandates and this program.
2. The county shall use a random selection process to select and request a driver to be tested for the use of controlled substances and/or alcohol.
3. A driver shall submit to controlled substance and alcohol testing when selected by a random selection process used by the County.
4. Exception – The County may use the results of another employer’s controlled substances and alcohol testing program that a driver participates in to meet the requirements of this section provided that the County obtains the following information from the controlled substances and alcohol testing program entity:
  - a. Name and address of the program.
  - b. Verification that the driver or covered employee participates in the program.
  - c. Verification that the program conforms to the 49 C.F.R. part 40.
  - d. Verification that the driver is qualified under the rules of this part, including that the driver of covered employee has not refused to be tested for controlled substances and/or alcohol.
  - e. The date the driver was last tested for controlled substances and/or alcohol.
  - f. The results, positive or negative, of any tests taken.

B. Random Testing Procedures

1. The sample shall consist of a breath sample or urine specimen.
2. The County shall ensure that the test performed under the requirements of Article VI (A) hereinabove conforms with 49 C.F.R. part 40 and 49 C.F.R. part 391, subpart H.

## VII. POST-ACCIDENT TESTING

### A. Post-Accident Testing Requirement

1. A driver shall provide a urine sample to be tested for the use of controlled substances and/or alcohol as soon as possible, but not later than 32 hours, after an accident if the driver, while operating a motor vehicle on County business, receives a citation for a moving violation, arising from the accident. This testing procedure shall also apply whenever an accident of any kind, resulting a bodily injury to the employee, a fellow employee or the public, or results in property damage in excess of \$1,000.
2. An employee who is subject to testing, who is seriously injured and cannot provide a specimen at the time of the accident, shall provide necessary authorization for obtaining hospital, medical reports and other documents that would indicate whether there were any controlled substances and/or alcohol in his or her system.

### B. Post-Accident Testing Procedures

1. The sample shall consist of a breath sample or urine specimen.
2. The County shall ensure that the test performed under the requirements of Article VII (A) hereinabove conforms with 49 C.F.R. part 40 and 49 C.F.R. part 391, subpart H.
3. An employee subject to testing shall ensure that a specimen is collected and forwarded to a certified laboratory.

## VIII. SEARCH OF EMPLOYEE AND COUNTY PROPERTY

County property, including desks, file cabinets, lockers, motor vehicles are to be used for official County business, this does not include use of county property for illegal purposes, including, but not limited to unauthorized storage of alcohol and illegal drugs. Subject to the requirements of Government Code Section 3309, the County may at its discretion through its supervisors and managers search without notice such county property with or without reasonable cause, and employees are not to have an expectation of privacy as to storage of personal property in such areas.

## IX. EMPLOYEE ASSISTANCE PROGRAM (EAP)

### A. Establishment of EAP

1. The County has established a voluntary Employee Assistance Program (EAP) to assist those employees who may choose to voluntarily seek help for a variety of personal issues including drug or alcohol problems. The County is committed to encouraging its employees to voluntarily and confidentially seek assistance from the EAP or any other program designed to assist them in

addressing alcohol or drug abuse. This program may be administered by one or more vendors to comply with this policy.

2. The EAP must include:
  - a. An education and training component for drivers, covered employees which addresses controlled substances and alcohol;
  - b. An education and training component for supervisors and County officials which addresses controlled substances and alcohol.
3. The County shall maintain, on file with the Human Resources/Operations Division and available for inspection, a written statement outlining the County's EAP.

B. EAP Training

1. The EAP will be administered separately from the testing program, and shall be available to drivers. Department heads and supervisors are encouraged to seek technical assistance from the EAP resource for consultation as required.
2. The training program must, at a minimum, be 60 minutes in length and must contain:
  - a. The affects and consequences of controlled substances and/or alcohol use on personal health, safety and the work environment;
  - b. The manifestations and behavioral changes that may indicate controlled substance and/or alcohol use or abuse; and
  - c. Documentation of the training provided to drivers and driver supervisors.

X. REFUSAL TO TEST

A driver as to reasonable cause testing, who refuses to be tested under the provisions of this procedure shall not permitted to operate a County vehicle in the course and scope to work. Such refusal shall be treated as a positive test and the driver, as to reasonable cause testing, shall be subject to discipline pursuant to the Madera County Drug and Alcohol Policy and County Code.

XI. NOTIFICATION, RECORDING, AND CONFIDENTIALITY OF TEST RESULTS

A. Notification of Test Results

1. The Medical Review Officer shall report to the County whether a tested employee was positive or negative and with regard to controlled substances, identify, if possible, the specific controlled substance for which the test was positive.
2. The County shall notify those tested of the results of a controlled substance and/or alcohol test.

3. The County shall notify a driver-applicant of the results of a pre-employment controlled substance test conducted if the driver-applicant requests such results within 60 days of being notified of the disposition of the employment determination.
4. The County shall notify those tested of the results of any periodic, random, reasonable cause, or post-accident controlled substance and/or alcohol test if the results of any such test were positive. The driver shall be advised of what substance was identified in any such positive test.

B. Recordkeeping

1. The County shall ensure that all records related to the administration and results of the testing program for those tested and described herein are maintained for a minimum of 5 years except that individual negative test results shall be maintained for a minimum of 12 months.
2. The Medical Review Officer shall be the sole custodian of all individual test results.
3. The County shall maintain in separate files the following information concerning the testing of all drivers who have been the subject of testing:
  - a. The type of testing for which the employee submitted a breath sample or urine specimen.
  - b. The date of such collection.
  - c. The location of such collection.
  - d. The identity of the person or entity performing the collection.
  - e. The identity of the person or entity performing the analysis of the specimens.
  - f. The identity of the person acting as the Medical Review Officer.
  - g. Whether the test finding was positive or negative and if positive, the substance identified in the test.
4. The County shall produce upon demand and shall permit the Federal Highway Administration to examine all records related to the administration and results of the testing performed on drivers pursuant to this procedure.

C. Confidentiality

All controlled substance and/or alcohol test results shall be kept confidential and not subject to disclosure except as provided for herein or otherwise required by State and Federal law.

**California Drug-Free  
Workplace Act Statutes**

**DRUG-FREE WORKPLACE**

**Div. 1**

Former § 8340, added by Stats.1968, c. 1352, p.2583, § 3, derived from former § 8325, added by Stats.1965, c. 1157, p. 2912, § 5, declaring the state's policy to foster world trade and Stats.1969, c. 1161, p. 2250, § 10.

Former § 8340, added by Stats.1965, c. 1157, p.2915, § 5, relating to payment of San Francisco world trade center authority members expenses, was repealed by Stats.1968, c. 1352, p. 2582, § 1.

**§§ 8340.1 to 8346.8. Repealed by Stats. 1968, c. 1352, § 1**

**Historical and Statutory Notes**

Section 8340.1 to 8340.8, added by Stats. 1965, c. 1157, pp. 2915, § 5, related to the administration of the San Francisco world trade center authority, and in particular to promotion financing, chairman selection, hiring of assistants, meetings, quorum, office site seal, and records.

Section 8340.8 was also repealed by Stats. 1968, c. 1473, § 41.

Section 8345 to 8346.8, added by Stats.1965, c.1157, pp. 2916 to 2921, §5, provided for the perpetual succession of the authority, and listed its general powers.

**Chapter 5.5**

**DRUG-FREE WORKPLACE**

<b>Article</b>	<b>Section</b>
<b>1. Definitions.....</b>	<b>8350</b>
<b>2. State contractors and Grantees.....</b>	<b>8355</b>

*Chapter 5.5 was added by Stats.1990, c. 1170 (s.b.1120) §1.*

*Former Chapter 5.5, California Industry and World Trade, comprising §§8320 to 8372, added by Stats. 1969, c. 1161, p. 2251, § 1, was repealed by Stats.1977, c. 345, p. 1315, § 8.*

*Former Chapter 5.5, California World trade Authority, comprising §§ 8320 TO 8403, ADDED BY Stats.1968, c. 1352, § 3, was repealed by Stats.1969, c. 1161, § 10.*

*Former Chapter 5.5, San Francisco World Trade Center Authority, Comprising §§ 8320 to 8368.2, added by Stats.1965, c. 1157, § 5, was Repealed by Stats.1968, c. 1352, § 1.*

**Article 1**

**DEFENITIONS**

<b>Section</b>
8350. Short title.
8350.1 to 8350.9 Repealed
8351. Definitions.
8351.1 to 8354.3. Repealed

*Article I was added by Stats.1990, c. 1170(S.B. 1120) § 1.*

§ 8350. Short title

This chapter shall be known, and may be cited, as the Drug-Free Workplace Act of 1990.

(Added by Stats.1990, c. 1170 (S.B.1120), § 1.)

**Historical and Statutory Notes**

Former § 8350, added by Stats.1972, c. 1242, p. 2427, § 4, authorizing the division of world trade to publish and distribute world trade statistics pertaining to California, was repealed by Stats.1977, c.345, p. 1315, § 8. The repealed section was derived from former §§ 8350, 8355, added by Stats.1969, c. 1161, p.2250, § 11; former § 8380, added by Stats. 1968, c. 1352, p. 2584, § 3; former § 8386, added by Stats.1968, c. 1352, p. 2585, § 3.

Former § 8350, added by Stats. 1969, c. 1161, p. 2251, § 11, relating to the collection and dissemination of general information on international trade

opportunities to business and industry, was repealed by Stats.1972, c. 1242, p. 2427, § 3.  
C.J.S. Searches and Seizures § 24.

Former § 8350, added by Stats. 1968, c. 1352, p. 2583, § 3, declaring the existence of a California world trade authority and a world trade division in the department of commerce, was repealed by Stats. 1969, c. 1161, p. 2250, § 10.

Former § 8350, added by Stats.1965, c. 1157, p. 2921, § 5, empowering the authority to issue revenue bonds, was repealed by Stats.1968, c. 1352, p. 2582, §1.

**Library References**

Searches and Seizures ←78.  
WESTLW Topic No. 349.

**§§ 8350.1 to 8350.9. Repealed Stats. 1968, c. 1352, § 1**

**Historical and Statutory Notes**

Sections 8350.1 to 8350.9, added y Stats. 1965, c. 1157, pp. 2921, 2922, § 5, related to revenue bonds.

**§ 8351. Definitions**

As used in the chapter:

(a) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract described in Article 2 (commencing with Section 8355) of an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this chapter.

(b) "Employee" means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the grant or contract described in Article 2 (commencing with Section 8355).

(c) "Controlled Substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).

(d) "Grantee" means the department, division, or other unit of a person or organization responsible for the performance under the grant.

(e) "Contractor" means the department, division, or other unit of a person or organization responsible for the performance under the contract.

(Added by Stats.1990, c. 1170 (S.B.1120), § 1.)

## **DRUG-FREE WORKPLACE**

### **Div. 1**

**§8353  
Repealed**

#### **Historical and Statutory Notes**

Former § 8351, added by Stats.1972, c. 1242, p.2427, § 4, derived from former § 8354, added by Stats.1969, c. 1161, p. 2250, § 22; former § 8385, added by Stats.1968, c. 1352, p. 2585, § 3, authorizing the division of world trade to publish a directory of California products and firms available for export, was repealed by Stats.1977, c. 345, p. 1315 § 8.

Former § 8351, added by Stats.1969, c. 1161, p. 2251 § aa, derived from former § 8381, added by Stats.1968, c. 1352, p. 2585 § 3, relating to the division of world trade's responsibility with respect to foreign trade missions, trade fairs, Exhibits, and displays, was repealed by Stats.1972, c/ 1242, p. 2427, § 3.

Former § 8351, added by Stats.1968, c. 1352, p.2583, § 3, relating to the appointment, qualifications, and number of members of the California world trade authority, was repealed by Stats.1969, c. 1161, p. 2250, § 10. The repealed section was derived from former § 8336, added by Stats.1965, c. 1157, p. 2914 § 5.

Former § 8351, added by Stats.1965, c. 1157, p. 2922, § 5, permitting a clause in an indenture requiring the authority to protect and preserve the security of revenue bonds and to warrant and defend bondholders' security right, was repealed by Stats.1968, c. 1352, p. 2582, § 1.

### **§§ 8351.1 TO 8351.9. Repealed by Stats.1968, c. 1352 § 1**

#### **Historical and Statutory Notes**

The repealed sections, added by Stats.1965, c. 1157, pp. 2922 to 2924, § 5, related to the

inclusion of particular clauses in revenue bond indentures.

### **§§ 8352. Repealed by Stats.1977, c. 345 § 8**

#### **Historical and Statutory Notes**

The repealed section, added by Stats.1972, c. 1242, p. 2427, § 4, derived from former § 8353, added by Stats.1969, c. 1161, p. 2250, § 11; former § 8383, added by Stats.1968, c.1352, p. 2585, § 3, required the division of world trade to process trade leads and answer inquiries.

Former § 8352, added by Stats.1969, c. 1161, p. 2251, § 11, derived from former § 8383, added by Stats.1968, c. 1352, p. 2585, § 3, requiring the division of world trade to provide assistance to businesses in securing state representation to foreign governments relative to

trade matters or agreements, was repealed by Stats. 1972, c. 1242, p. 2427, § 3.

Former § 8352, added by Stats.1968, c. 1352, p. 2583, § 3, entitling members of the California world trade authority to their actual and necessary expenses, Was repealed by Stats.1969, c. 1161, p. 2250, § 10.

Former § 8352, added by Stats.1965, c. 1157, p. 2924 § 4, permitting a clause in a revenue bond indenture specifying the events creating a default and making the bonds payable before maturity, and providing a waiver, was repealed by Stats.1968, c. 1352, p. 2582 § 1.

### **§§ 8352.1 to 8352.9. Repealed by Stats.1968, c. 1352, § 1**

#### **Historical and Statutory Notes**

The repealed sections, added by Stats.1965, c. 1157, § 5, related to bonds of the San Francisco World Trade Center Authority.

### **§§ 8353. Repealed by Stats.1977, c. 345 § 8**

#### **Historical and Statutory Notes**

The repealed section, added by Stats.1972, c. 1242, p. 2427, § a, derived from former § 8352, 8356, added by Stats.1969, c. 1161, p. 2250, § 11; former § 8383, added by Stats. 1968, c. 1352, p. 2585, § 3, required the divi

sion of world trade to engage in the development of the export trade.

Former § 8353, added by Stats.1969, c. 1161, P. 2251, § 11, derived from former § 8384, added by Stats.1968, c. 1352, p. 2585, § 3, re-



**§ 8350**  
**Repealed**

**STATE GOVERNMENT**  
**Title 2**

quiring the division of world trade to maintain a referral service for trade lead inquiries, was repealed by Stats.1972, c. 1242, p. 2427, § 3.  
Former § 8353, added by Stats.1968, c. 1352, p. 2583, § 3, relating to the appointment of a chairman, a commissioner, and a deputy of the

California world trade authority, was repealed by Stats.1969, c. 1161, p. 2250, § 10.  
Former § 8353, added by Stats.1965, c. 1157, p. 2925, § 5, relating to the callability and redemption of revenue bonds, was repealed by Stats.1968, c. 1352, p. 2582, § 1.

**§§ 8353.1 to 8353.9. Repealed by Stats.1968, c. 1352, § 1**  
**Historical and Statutory Notes**

The repealed sections, added by Stats.1965, c. 1157, § 5, related to bonds of the San Francisco World Trade Center Authority

**Article 2**

**STATE CONTRACTORS AND GRANTEES**

**Section**

8355. Certification to contracting or granting agency; requisites..  
8356. Suspension of payments; termination of contract or grant; list of canceled awards.  
8357. Subcontractors.  
8358 to 8387. Repealed

*Article 2 was added by Stats.1990, c. 1170(S.B. 1120) § 1.*

**§ 8355. Certification to contracting or granting agency; requisites**

(a) Every person or organization awarded a contract or a grant for the procurement of any property or services from any state agency shall certify to the contracting or granting agency that it will provide a drug-free workplace by doing all of the following:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- (2) Establishing a drug-free awareness program to inform employees about all of the following:
  - (A) The dangers of drug abuse in the workplace.
  - (B) The person's or organization's policy of maintaining a drug-free workplace.
  - (C) Any available drug counseling, rehabilitation, and employee assistance programs.
  - (D) The penalties that may be imposed upon employees for drug abuse violation.
- (3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

(b)(1) The certification requirement set forth in subdivision (a) does not apply to credit card purchases of goods of two thousand five hundred dollars (\$2,500) or less.

- (2) The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars (\$7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

(Added by Stats.1990, c. 1170 (S.B.1120), § 1. Amended by Stats.2005, c. 381 (S.B.828), § 1.)

**Historical and Statutory Notes**

Former § 8355, added by Stats.1969, c. 1161 p.2250, § 1, derived from former § 8386, added by Stats.1968, c. 1352, p. 2585, § 3, authorizing private and public, state and local collaboration on information systems, was repealed By Stats.1972, c. 1242, p. 2427, § 3.

Former § 8355, added by Stats.1968, c. 1352, p. 2584, § 3, derived from former § 8340.3, added by Stats.1965, c. 1157, p. 2916, § 5, relating to quorum for transaction of business, was repealed by Stats.1969, c. 1161, p. 2250, § 10.

**§ 8356. Suspension of payments; termination of contract or grant; list of canceled awards**

(a) Each contract or grant awarded by a state agency may be subject to suspension of payments under the contract or grant or termination of the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of this article, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

(b) The Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with this chapter. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with this chapter.

(Added by Stats.1990, c. 1170 (S.B.1120), § 1.)

**Federal Drug-Free  
Workplace Act Statutes**

## 41 U.S.C.A § 8101. Definitions

### (a) Definitions.--

In this chapter:

#### (1) Contractor.--

The term "contractor" means the department, division, or other unit of a person responsible for the performance under the contract.

#### (2) Controlled substance.--

The term "controlled substance" means a controlled substance in schedules I through V of section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812).

#### (3) Conviction.--

The term "conviction" means a finding of guilt (including a plea of nolo contendere), an imposition of sentence, or both, by a judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.

#### (4) Criminal drug statute.--

The term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of a controlled substance.

#### (5) Drug-free workplace.--

The term "drug-free workplace" means a site of an entity—

(A) for the performance of work done in connection with a specific contract or grant described in section 8102 or 8103 of this title; and

(B) at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Anti-Drug Abuse Act of 1988 (Public Law 100-690, 102 Stat. 4181).

#### (6) Employee.--

The term "employee" means the employee of a contractor or grantee directly engaged in the performance of work pursuant to the contract or grant described in section 8102 or 8103 of this title.

#### (7) Federal agency.--

The term "Federal agency" means an agency as defined in section 552(f) of title 5.

#### (8) Grantee.--

The term "grantee" means the department, division, or other unit of a person responsible for the performance under the grant.

### (b) Construction.--

This chapter does not require law enforcement agencies to comply with this chapter if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations.

## 41 U.S.C.A § 8102. Drug-free workplace requirements for Federal contractors

### (a) In general.--

(1) Persons other than individuals.--A person other than an individual shall not be considered a responsible source (as defined in section 113 of this title) for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 134 of this title) by a Federal agency, other than a contract for the procurement of commercial items (as defined in section 103 of this title), unless the person agrees to provide a drug-free workplace by--

- (A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
- (B) establishing a drug-free awareness program to inform employees about--
  - (i) the dangers of drug abuse in the workplace;
  - (ii) the person's policy of maintaining a drug-free workplace;
  - (iii) available drug counseling, rehabilitation, and employee assistance programs;
  - and
  - (iv) the penalties that may be imposed on employees for drug abuse violations;
- (C) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (A);
- (D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on the contract the employee will--
  - (i) abide by the terms of the statement; and
  - (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;
- (E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;
- (F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and
- (G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) Individuals.--A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

### (b) Suspension, termination, or debarment of contractor.--

(1) Grounds for suspension, termination, or debarment.--Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that--

- (A) the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(B) the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) Conduct of suspension, termination, and debarment proceedings.--A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual.

(3) Effect of debarment.--A contractor or individual debarred by a final decision under this subsection is ineligible for award of a contract by a Federal agency, and for participation in a future procurement by a Federal agency, for a period specified in the decision, not to exceed 5 years.

## 41 U.S.C.A § 8103. Drug-free workplace requirements for Federal grant recipients

### (a) In general.--

(1) Persons other than individuals.--A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by--

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about--

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs;

and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment in the grant the employee will--

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) Individuals.--A Federal agency shall not make a grant to an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting an activity with the grant.

### (b) Suspension, termination, or debarment of grantee.--

(1) Grounds for suspension, termination, or debarment.--Payment under a grant awarded by a Federal agency may be suspended and the grant may be terminated, and the grantee may be suspended or debarred, in accordance with the requirements of this section, if the head of the agency or the official designee of the head of the agency determines in writing that--

(A) the grantee is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

(B) the number of employees of the grantee who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

(2) Conduct of suspension, termination, and debarment proceedings.--A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding executive order and any regulations prescribed to implement the law or executive order.

(3) Effect of debarment.--A grantee debarred by a final decision under this subsection is ineligible for award of a grant by a Federal agency, and for participation in a future grant by a Federal agency, for a period specified in the decision, not to exceed 5 years.



#### **41 U.S.C.A § 8104. Employee sanctions and remedies**

Within 30 days after receiving notice from an employee of a conviction pursuant to section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a contractor or grantee shall--

- (1) take appropriate personnel action against the employee, up to and including termination; or
- (2) require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for those purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

#### **41 U.S.C.A § 8105. Waiver**

(a) In general.--

The head of an agency may waive a suspension of payments, termination of the contract or grant, or suspension or debarment of a contractor or grantee under this chapter with respect to a particular contract or grant if--

(1) in the case of a contract, the head of the agency determines under section 8102(b)(1) of this title, after a final determination is issued under section 8102(b)(1), that suspension of payments, termination of the contract, suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract would severely disrupt the operation of the agency to the detriment of the Federal Government or the general public; or

(2) in the case of a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) Waiver authority may not be delegated.—

The authority of the head of an agency under this section to waive a suspension, termination, or debarment shall not be delegated.

**41 U.S.C.A § 8106. Regulations**

Government-wide regulations governing actions under this chapter shall be issued pursuant to division B of subtitle I of this title.

## 21 U.S.C.A § 812. Schedules of controlled substances

### (a) Establishment

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

### (b) Placement on schedules; findings required

Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

#### (1) Schedule I--

- (A) The drug or other substance has a high potential for abuse.
- (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
- (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

#### (2) Schedule II--

- (A) The drug or other substance has a high potential for abuse.
- (B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
- (C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

#### (3) Schedule III--

- (A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.
- (B) The drug or other substance has a currently accepted medical use in treatment in the United States.
- (C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

#### (4) Schedule IV--

- (A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.
- (B) The drug or other substance has a currently accepted medical use in treatment in the United States.
- (C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

#### (5) Schedule V--

- (A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Initial schedules of controlled substances

Schedules I, II, III, IV, and V shall, unless and until amended<sup>1</sup> pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

**Schedule I**

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol.<sup>2</sup>
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Dextrorphan.
- (14) Diampromide.
- (15) Diethylthiambutene.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.
- (21) Ethylmethylthiambutene.
- (22) Etonitazene.
- (23) Etoxadine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacymorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.

- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.
- (37) Phenoperidine.
- (38) Piritramide.
- (39) Proheptazine.
- (40) Properidine.
- (41) Racemoramide.
- (42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-Oxide.
- (6) Cyprenorphine.
- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Etorphine.
- (10) Heroin.
- (11) Hydromorphenol.
- (12) Methyldesorphine.
- (13) Methylhydromorphine.
- (14) Morphine methylbromide.
- (15) Morphine methylsulfonate.
- (16) Morphine-N-Oxide.
- (17) Myorphine.
- (18) Nicocodeine.
- (19) Nicomorphine.
- (20) Normorphine.
- (21) Pholcodine.
- (22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine.
- (2) 5-methoxy-3,4-methylenedioxy amphetamine.
- (3) 3,4,5-trimethoxy amphetamine.
- (4) Bufotenine.
- (5) Diethyltryptamine.
- (6) Dimethyltryptamine.
- (7) 4-methyl-2,5-dimethoxyamphetamine.

- (8) Ibogaine.
- (9) Lysergic acid diethylamide.
- (10) Marihuana.
- (11) Mescaline.
- (12) Peyote.
- (13) N-ethyl-3-piperidyl benzilate.
- (14) N-methyl-3-piperidyl benzilate.
- (15) Psilocybin.
- (16) Psilocyn.
- (17) Tetrahydrocannabinols.
- (18) 4-methylmethcathinone (Mephedrone).
- (19) 3,4-methylenedioxypropylvalerone (MDPV).
- (20) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).
- (21) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).
- (22) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).
- (23) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).
- (24) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2).
- (25) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4).
- (26) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H).
- (27) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N).
- (28) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).

(d)(1) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(2) In paragraph (1):

(A) The term “cannabimimetic agents” means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(i) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(ii) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(iii) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(iv) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(v) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any

extent, whether or not substituted on the phenyl ring to any extent.

(B) Such term includes--

- (i) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol(CP-47,497);
- (ii)5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog);
- (iii) 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678);
- (iv) 1-butyl-3-(1-naphthoyl)indole (JWH-073);
- (v) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);
- (vi) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);
- (vii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250);
- (viii) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);
- (ix) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122);
- (x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398);
- (xi) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);
- (xii) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694);
- (xiii) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4);
- (xiv) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8);
- and
- (xv) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203).

## Schedule II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) coca<sup>3</sup> leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:



- (1) Alphaprodine.
- (2) Anileridine.
- (3) Bezitramide.
- (4) Dihydrocodeine.
- (5) Diphenoxylate.
- (6) Fentanyl.
- (7) Isomethadone.
- (8) Levomethorphan.
- (9) Levorphanol.
- (10) Metazocine.
- (11) Methadone.
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
- (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
- (14) Pethidine.
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- (18) Phenazocine.
- (19) Piminodine.
- (20) Racemethorphan.
- (21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

### Schedule III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- (2) Phenmetrazine and its salts.
- (3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
- (4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
- (2) Chorhexadol.
- (3) Glutethimide.
- (4) Lysergic acid.
- (5) Lysergic acid amide.
- (6) Methyprylon.
- (7) Phencyclidine.

- (8) Sulfondiethylmethane.
- (9) Sulfonethylmethane.
- (10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Anabolic steroids.

#### **Schedule IV**

- (1) Barbital.
- (2) Chloral betaine.
- (3) Chloral hydrate.
- (4) Ethchlorvynol.
- (5) Ethinamate.

- (6) Methohexital.
- (7) Meprobamate.
- (8) Methylphenobarbital.
- (9) Paraldehyde.
- (10) Petrichloral.
- (11) Phenobarbital.

### Schedule V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

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#### CREDIT(S)

(Pub.L. 91-513, Title II, § 202, Oct. 27, 1970, 84 Stat. 1247; Pub.L. 95-633, Title I, § 103, Nov. 10, 1978, 92 Stat. 3772; Pub.L. 98-473, Title II, §§ 507(c), 509(b), Oct. 12, 1984, 98 Stat. 2071, 2072; Pub.L. 99-570, Title I, § 1867, Oct. 27, 1986, 100 Stat. 3207-55; Pub.L. 99-646, § 84, Nov. 10, 1986, 100 Stat. 3619; Pub.L. 101-647, Title XIX, § 1902(a), Nov. 29, 1990, 104 Stat. 4851; Pub.L. 112-144, Title XI, § 1152, July 9, 2012, 126 Stat. 1130.)

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#### Footnotes

1

Revised schedules are published in the Code of Federal Regulations, Part 1308 of Title 21, Food and Drugs.

2

So in original. Probably should be "Alphacetylmethadol".

3

So in original. Probably should be capitalized.