RESOLUTION - ACTION REQUESTED 2021-131

MEETING: March 16, 2021

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Approve Amendments to the DOT Drug and Alcohol Testing Policy

RECOMMENDATION AND JUSTIFICATION:
Approve amendments to the Drug and Alcohol Testing Policy for safety-sensitive positions effective immediately as required by the Department of Transportation (DOT).

Safety-sensitive positions are those that perform certain duties under the DOT’s Federal Transit Administration (FTA) and/or the Federal Motor Carriers Safety Administration (FMCSA) regulations. A comprehensive audit of the County’s program was recently completed. The audit determined that the policy needed revisions and updates to bring it into full compliance with all DOT regulations for both FTA and FMCSA. Requested revisions are attached for review and consideration.

The County was required to establish its initial DOT Policy in 1996 because of the implementation of the Omnibus Transportation Employee Testing Act of 1991. The Act was adopted to require drug and alcohol testing of operators of commercial motor vehicles. In 1997, the County’s DOT Policy was amended to add safety-sensitive positions that were affected by funding received by the FTA. The Policy was again updated in 2006 to incorporate changes as a result of an audit of the County’s policy to ensure compliance with federal regulations. In 2016 and 2018, the Policy was again amended to reflect updated drug and alcohol FTA regulations.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board of Supervisors approved the initial DOT Policy on June 18, 1996 by Resolution No. 96-280. Subsequent revisions were made to the County’s policy on September 9, 1997 (Res. No. 97-366), May 9, 2006 (Res. No. 06-169), June 14, 2016 (Res. No. 16-275), and August 14, 2018 (Res. No. 18-397).

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
A negative action would result in non-compliance with the DOT regulations governing safety-sensitive positions, which could place the County’s receipt of federal funding at risk.

FINANCIAL IMPACT:
N/A.
Resolution - Action Requested 2021-131

ATTACHMENTS:
DOT Drug and Alcohol Testing Policy-Revised Draft 3-16-21   (PDF)

RESULT:   ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER:    Miles Menetrey, District V Supervisor
SECONDER: Wayne Forsythe, District IV Supervisor
AYES:     Smallcombe, Sweeney, Long, Forsythe, Menetrey
MARIPOSA COUNTY

DRUG AND ALCOHOL TESTING POLICY

FOR SAFETY-SENSITIVE POSITIONS
MARIPOSA COUNTY

DRUG AND ALCOHOL TESTING POLICY

For Safety-Sensitive Positions

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MARIPOSA COUNTY

DRUG AND ALCOHOL TESTING POLICY

FOR SAFETY-SENSITIVE POSITIONS

A. STATEMENT OF PURPOSE AND POLICY OBJECTIVES

The Mariposa County Board of Supervisors is committed to preventing all substance abuse and its effects in the workplace and to maintaining an alcohol and drug-free environment. Mariposa County recognizes that its employees and contractors have a responsibility to the public to deliver service in a safe and conscientious manner, and that in order to achieve optimum safe and efficient job performance, its employees must be free from the effects of alcohol and other job-impairing substances.

It is Mariposa County’s policy that its employees, contractors, and volunteers shall not be under the influence or in the possession of alcohol or any unauthorized controlled substance while on County property, at identified work locations, or while on duty or assigned on-call duty, shall not utilize, sell or provide drugs or alcohol to any other employee or to any person while employee is on duty, or shall not have their ability to work impaired as a result of the use of alcohol or drugs. This policy does not apply to authorized possession of a controlled substance or alcohol which occurs within the scope and duties of law enforcement employee duties.

Mariposa County provides public transit and paratransit services for the residents of Mariposa County. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, Mariposa County declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.

Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655 and 49 CFR Part 382 for Federal Motor Carrier Safety Administration (FMCSA), as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result or test refusal. The U.S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

Any provisions set forth in this policy that are included under the sole authority of Mariposa County and are not provided under the authority of the above-named Federal regulations are underlined. Tests conducted under the sole authority of Mariposa County will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.
B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full or part-time) when performing safety sensitive duties either under the Federal Transit Administration (FTA) or the Federal Motor Carriers Safety Administration (FMCSA) Regulations. Under the FTA, a safety-sensitive function is the operation of public transit vehicle including the operation of a revenue service vehicle (whether or not the vehicle is in the revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or person controlling the movement of revenue service vehicles and any other transit employee who is required to hold a Commercial Driver’s License. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. Supervisors are only safety-sensitive if they perform one of the above functions. Volunteers are considered safety-sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense. Under the FMCSA, a safety-sensitive function is the operation of a vehicle with a gross weight rating of 26,001 or more pounds; or has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or is used to transport 16 or more passengers, including the driver; or is of any size and is used for the transportation of hazardous materials.

A list of safety-sensitive positions that perform one or more of the above-mentioned duties is provided in Attachment A.

C. DEFINITIONS

Adulterated Specimen: A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food preparation or medication.

Alcohol Concentration is expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

Aliquot: A fractional part of a specimen used for testing; it is taken as a sample representing the whole specimen.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is canceled. A canceled test is neither positive nor negative.

Clearinghouse: The FMCSA database that 49 CFR Part 382 requires employers and service agents to report information to, and to query, regarding CDL drivers who are subject to the DOT controlled substance and alcohol testing regulations.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.
Covered Employee: An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

Drug and Alcohol Program Manager (DAPM): An employee responsible for administrating the program, is responsible for record keeping, preparation of the annual Management Information System (MIS) report, administering and scheduling the random testing process, and serving as the Designated Employer Representative (DER), or liaison with drug and alcohol testing service agents.

DOT, The Department, (DOT Agency): These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.

Dilute Specimen: A specimen with creatinine and specific gravity values that is lower than expected for human urine.

Evidentiary Breath Testing Device (EBT): A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations, and appears on ODAPC’s Web page for “Approved Evidential Breath Measurement Devices” because it conforms with the model specifications available from NHTSA.

FMCSA Accident: An occurrence involving a commercial motor vehicle operating on a public road in commerce and

a. A loss of human life; or
b. Bodily injury and immediately receives medical treatment away from the scene of the accident AND a citation was issued within 8 hours of the occurrence under State or local law for a moving violation arising from the accident; or

FRA Accident: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result—

(1) An individual dies;

(2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
(3) One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle. For purposes of this definition, disabling damage means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

**FMCSA Safety-Sensitive Functions:** All time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include (a) all time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer; (b) all time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; (c) all time spent at the driving controls of a commercial motor vehicle in operation; (d) all time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76 of this subchapter); (e) all time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and (f) all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**FTA Safety-Sensitive Functions:** Includes (a) the operation of a transit revenue service vehicle even when the vehicle is not in revenue service; (b) the operation of a vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Driver's License (CDL); (c) maintaining a revenue service vehicle or equipment used in revenue service; (d) controlling the movement of a revenue service vehicle and (e) carrying a firearm for security purposes. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions that perform one or more of the above-mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

**Initial Drug Test (Screening Drug Test):** The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

**Initial Specimen Validity Test:** The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

**Invalid Result:** The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

**Laboratory:** Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.
Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has creatinine or specific gravity values that are lower than expected for human urine.

Negative Test Result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen. An alcohol concentration of less than 0.02 BAC is a negative test result.

Non-negative Test Result: A test result reported as adulterated, substitute, invalid, or positive for drug/drug metabolites.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function): A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive Test Result: For a drug test is the result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

Prohibited Drug: Marijuana, cocaine, opioids, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS-Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).
Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at https://www.transportation.gov/odapc/sap with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Substituted specimen: A specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Test Refusal: The following are considered a refusal to test should the employee:

- Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
- Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- Fail or decline to take a second test as directed by the collector or the employer for drug testing.
- Fail to undergo a medical evaluation as required by the MRO or the employer’s Designated Employer Representative (DER).
- Fail to cooperate with any part of the testing process.
- Fail to follow an observer’s instructions to raise and lower clothing and turn around during a directly-observed test.
- Possess or wear a prosthetic or other device used to tamper with the collection process.
- Admit to the adulteration or substitution of a specimen to the collector or MRO.
- Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- Fail to remain readily available following an accident.
- As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Verified Negative Test: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified Positive Test: A drug test result reviewed by a medical review officer and determined to have evidence of a prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity Testing: The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

D. EDUCATION AND TRAINING

For FMCSA Agencies: The County will provide educational materials that explain the requirements of Part 382 as well as this policy. The County will ensure that a copy of these materials is distributed to each driver prior to the start
of alcohol and controlled substances testing and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

The materials to be made available to drivers shall include what is provided in this policy document in addition to a detailed discussion the following:

a. Information concerning the effects of alcohol and controlled substances use on an individual’s health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver’s or a co-worker’s); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management; and

b. The requirement that the following personal information collected and maintained under this Part 382 and this policy shall be reported to the FMCSA Clearinghouse:

1. A verified positive, adulterated, or substituted drug test result;
2. An alcohol confirmation test with a concentration of 0.04 or higher;
3. A refusal to submit to any test required by subpart C of this part;
4. An employer’s report of actual knowledge, as defined at §382.107;
5. On duty alcohol use pursuant to §382.205;
6. Pre-duty alcohol use pursuant to §382.207;
7. Alcohol use following an accident pursuant to §382.209; and
8. Controlled substance use, pursuant to §382.213;
9. A substance abuse professional (SAP as defined in §40.3 of this title) report of the successful completion of the return-to-duty process;
10. A negative return-to-duty test; and
11. An employer’s report of completion of follow-up testing.

Every FTA-covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

All supervisory personnel or County officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment B of this policy.

E. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following:

1. **Illegally Used Controlled Substance or Drugs:** Under the Drug-Free Workplace Act of 1988 and any drug or any substance identified in Schedule I through V of section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Enforcement Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

2. **Legal Drugs:** The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to their supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions. This information will be maintained in strict confidence.

3. **Alcohol:** The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances containing alcohol in a manner which violates the conduct listed in this policy is prohibited. A random or reasonable suspicion alcohol test can only be performed on a covered employee just before, during, or just after the performance of safety-sensitive job functions. Under County authority, a NON-DOT alcohol test can be performed any time a covered employee is on duty.

F. PROHIBITED CONDUCT

1. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

2. Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report
for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.

(3) The County shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.

(4) Each covered employee is prohibited from reporting to work or remaining duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.

a. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT drug and alcohol regulations, provided the employee hasn’t consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, if a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT regulations require the employee to be removed from the performance of safety-sensitive duties until:

i. The employee’s alcohol concentration measures less than 0.02; or

ii. FOR FTA COVERED EMPLOYEES: The start of the employee’s next regularly scheduled duty period, but not less than eight hours following administration of the test.

iii. FOR FMCSA COVERED EMPLOYEES: The start of the employee’s next regularly scheduled duty period, but not less than twenty-four hours following administration of the test.

(5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

(6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

(7) The County, under its own authority also prohibits the consumption of alcohol all time’s employee is on duty, or anytime the employee is in uniform.

(8) 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 Transit Department premises and transit vehicles.

G. DRUG STATUTE CONVICTION

Consistent with the Drug-Free Workplace Act of 1998, all employees are required to notify the Department management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in section Q of this policy.

H. TESTING REQUIREMENTS

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40, as amended. All covered employees shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.
All covered employees who have tested positive for drugs or alcohol will be tested prior to returning to duty after completion of a USDOT qualified Substance Abuse Professional’s recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

A drug test can be performed any time a covered employee is on duty. A reasonable suspicion, random, or follow-up alcohol test can only be performed just before, during, or after the performance of a safety-sensitive job function. **Under County authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.**

All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with Mariposa County. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in section Q of this policy.

I. DRUG TESTING PROCEDURES

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test or Liquid Chromatography/Mass Spectrometry (LC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS or LC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for the confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory test result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee’s medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the County. If a legitimate explanation is found, the MRO will report the result as negative. If the test is invalid without a medical explanation, a retest will
be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.

Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee’s request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documental facts that were beyond the control of the employee. The County will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample; however, the County may seek reimbursement for the split sample test from the employee if the re-test comes back positive.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

**Observed collections:**

Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

1. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the DAPM that there was not an adequate medical explanation for the result;
2. The MRO reports to the DAPM that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
3. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1));
4. The collector observes materials brought to the collection site or the employee’s conduct clearly indicates an attempt to tamper with a specimen;
5. The temperature on the original specimen was out of range;
6. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
7. All follow-up-tests; or
8. All return-to-duty tests.
J. ALCOHOL TESTING PROCEDURES

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBTS can be found on ODAPC’s Web page for “Approved Evidential Breath Measurement Devices”. Alcohol screening tests may be performed using a non-evidential testing device (alcohol screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC’s Web page for “Approved Screening Devices to Measure Alcohol in Bodily Fluids”. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

An employee who has confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

Mariposa County affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a canceled test.

The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA/FMCSA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

K. PRE-EMPLOYMENT TESTING

All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

1. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be placed into a safety-sensitive position unless the applicant takes a drug test with verified negative results.

2. An employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results.
(3) If an applicant fails a pre-employment test, the conditional offer of employment shall be rescinded and the applicant will be referred to a list of at least two (2) USDOT-qualified Substance Abuse Professionals. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(4) When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.

(5) If a pre-employment/pre-transfer test is canceled, the DAPM will require the applicant to take and pass another pre-employment drug test.

(6) In instances where an FTA-covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool, the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions. In instances when a FMCSA-covered employee does not perform a safety-sensitive function for a period of 30 consecutive days or more regardless of reason, and during that period is not in the random testing pool, the employee will be required to take a USDOT pre-employment drug test under 49 CFR Part 382 and have negative test results prior to the conduct of safety-sensitive job functions.

(7) An applicant with a dilute negative test result will be required to retest. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

(8) Applicants are required (even if ultimately not hired) to provide Mariposa County with signed written releases requesting USDOT drug and alcohol records from all previous. USDOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. Mariposa County is required to ask all applicants to safety-sensitive positions (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a USDOT-covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a USDOT-covered employer, the applicant must provide the DAPM proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

I. REASONABLE SUSPICION TESTING

All County covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee’s appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test
can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under the County’s authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

The DAPM shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the management, and shall be attached to the forms reporting the test results. (See Attachment D)

When there are no specific, contemporaneous, articulate objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the misuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred to for an assessment. The Department Head shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the County. Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

M. POST ACCIDENT TESTING

All covered employees will be required to undergo urine and breath testing if they are involved in an accident as defined in Section C of this policy.

FTA Fatal Accident - All FTA covered employees involved in an accident with a transit vehicle regardless of whether or not the vehicle is in revenue service at the time of the accident that results in a fatality will be tested, including all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident as determined by the employer using the best information available at the time of the decision.

FMCSA Fatal Accident - All FMCSA covered drivers who were performing safety-sensitive functions with respect to the vehicle involved in an accident with a commercial motor vehicle operating on a public road in commerce that results in a fatality will be tested.

FTA Non-Fatal Accident - A FTA post-accident test of the operator will be conducted if an accident occurs and at least one of the following conditions is met:

a. The accident results in injuries requiring immediate medical treatment away for the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.
b. One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision, will be tested.

**FMCSA Non-Fatal Accident** - As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and not involving the loss of a human life, an alcohol test will be conducted on each driver who receives a citation within eight (8) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if:

1. The accident results in injuries requiring immediate medical treatment away from the scene; or
2. One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and not involving the loss of a human life, a drug test will be conducted on each driver who receives a citation within thirty-two (32) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if:

1. The accident results in injuries requiring immediate medical treatment away from the scene; or
2. One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

As soon as practicable following an accident, as defined in this policy, the supervisor investigating the accident will notify the covered employee(s) operating of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

The appropriate supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
In the rare event that the County is unable to perform an FTA/FMCSA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), The County may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA/FMCSA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

N. RANDOM TESTING

(1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

(2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

(3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall not be less than the percentage rates set each year by the FTA/FMCSA administrator. The current year testing rates can be viewed online at https://www.transportation.gov/odapc/random-testing-rates.

(4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

(5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random testing pool of employees that are included under FMCSA authority.

(6) Random tests can be conducted at any time during an employee’s shift for drug testing. Alcohol random tests can only be performed just before, during, or just after the performance of a safety-sensitive duty. However, under the County’s authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee’s shift.

(7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

O. RETURN-TO-DUTY TESTING

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by a Substance Abuse Professional before returning to work. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the Return-to-Duty test only when the employee has successfully completed the treatment requirement and is known to be drug-and-alcohol-free and there are no undo concerns for public safety. The SAP will determine whether the employee will require a return-to-duty drug test, alcohol test, or both.
P. FOLLOW-UP TESTING

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP’s assessment of the employee’s unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing. In the instance of a self-referral or a management referral, the employee will be subject to non-US DOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-US DOT follow-up tests and all paperwork associated with an employee’s return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations, will be conducted under County authority, and will be performed using non-DOT testing forms.

Q. RESULT OF DRUG/ALCOHOL TEST

Any covered employee that has a verified positive drug or alcohol test with BAC 0/04 or above, or refusal to test, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available and referred to a list of USDOT qualified Substance Abuse Professionals (SAPs) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer.

Other than pre-employment testing, a drug test with the result of negative dilute will not be retested.

A positive drug and/or alcohol test will also result in disciplinary action as specified herein:

(1) As soon as practicable after receiving notice of a verified positive drug test result, a confirmed positive alcohol test result, or a test refusal, the County Drug and Alcohol Program Manager will contact the employee’s supervisor to have the employee cease performing any safety-sensitive function.

(2) The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.

(3) Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result and a direct act of insubordination and may result in termination and referral to a list of USDOT-qualified SAPs. A test refusal includes the following circumstances.
   a. Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer;
   b. Fails to remain at the testing site until the testing process is complete; an employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test;
   c. Fails to attempt to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations; An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test;
d. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen;
e. Fails to provide a sufficient amount of urine or breath without a valid medical explanation;
f. Fails or declines to take a second test as directed by the collector or the employer for drug testing;
g. Fails to undergo a medical examination or evaluation, as directed by the MRO, or as directed by the DER;
h. Fails to cooperate with any part of the testing process;
i. If the MRO reports that there is verified adulterated or substituted test result;
j. Failure or refusal to sign Step 2 of the alcohol testing form;
k. Failure to follow the observer’s instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
l. Possess or wear a prosthetic or other device that could be used to interfere with the collection process;
m. Admit to the collector or MRO that you adulterated or substituted the specimen;
n. Fail to remain readily available following an accident.

(4) For the first instance of a verified positive test from a sample submitted as the result of a random, drug/alcohol test (＞0.04 BAC), disciplinary action against the employee shall include:

(a) Mandatory referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a Return-to-Work Agreement (See Attachment C);

(b) Failure to execute, or remain compliant with the Return-to-Work Agreement shall result in termination from employment.

i. Compliance with the Return-to-Work Agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in section P of this policy;

(c) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.

(d) A periodic unannounced follow-up drug/alcohol test which results in a verified positive shall result in termination from employment.

(5) An initial verified positive or test refusal, post-accident or reasonable suspicion drug and/or alcohol (>0.04) test shall result in termination.

(6) The second instance of a verified positive drug or alcohol (> 0.04 BAC) test result, or test refusal, on any type of test for an employee who has returned to work following an initial positive random test shall result in termination from employment.

(7) An alcohol test result of ≥0.02 to ≤0.039 BAC shall result in the removal of the employee from duty for 8 hours or the remainder of the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to a non-DOT alcohol test with a result of less than 0.02 BAC. If the employee has an alcohol test result of >0.02 to <0.039 two or more times
within a six-month period, the employee will be removed from duty and referred to for assessment and treatment consistent with Section Q of this policy.

(8) The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or administrative leave to participate in the prescribed treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay until that the employee has successfully completed the required treatment program and has been released to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

(9) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:

(a) Mandatory referral to an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a Return-to-Work Agreement;

(b) Failure to execute, or remain compliant with the Return-to-Work Agreement shall result in termination from employment. Compliance with the Return-to-Work Agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy;

(c) Refusal to submit to periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. All tests conducted as part of the self-referral or management-referral return to work agreement will be conducted under County authority and will be performed using non-DOT testing forms.

(d) A self-referral or a management referral to the employer approved counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.

(e) Periodic unannounced follow-up drug/alcohol tests conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test in relation to the progressive discipline defined in Section Q of this policy.

(f) A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Mariposa County.

(g) A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

(10) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.
S. PROPER APPLICATION OF THE POLICY

Mariposa County is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisor/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regards to subordinates, shall be subject to disciplinary action, up to and including termination.

T. INFORMATION DISCLOSURE

Drug/alcohol testing records shall be maintained by the County Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

(1) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

(2) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, Department Supervisor and Personnel Manager on a need-to-know basis.

(3) Records will be released to a subsequent employer only upon receipt of a written request from the employee.

(4) Records of an employee’s drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding. The information will only be released with binding stipulation from the decision maker who will make it available only to parties in the proceeding.

(5) Records will be released to the National Transportation Safety Board during an accident investigation.

(6) Information will be released in a criminal or civil action resulting from an employee’s performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

(7) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

(8) Records will be released if requested by a Federal, State or local safety agency with regulatory authority over Mariposa County or the employee.

(9) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40, as amended, necessary legal steps to contest the issuance of the order will be taken.

(10) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.
U. SYSTEM CONTACTS

Employees or any other interested party should direct questions concerning employee rights and obligations under this policy or any other aspect of Mariposa County's drug-free and alcohol-free workplace commitment to one of the following County representatives.

Mariposa County Drug and Alcohol Program Manager (DAPM)
Designated Employer Representative (DER)
Deputy Director of Administrative Services-HHSAP.O. Box 99
Mariposa, CA 95338
Telephone: 209-742-0923
FAX: 209-966-8251

Designated Employer Representative (DER)
County Administrative Officer, Assistant County Administrative Officer, County Counsel/Risk Manager Mariposa County
P.O. Box 1917
Mariposa, CA. 95338
Telephone: 209-742-1379
FAX: 209-742-1378

Medical Review Officer

IMRO Express
Philip A. Lopez, M.D. (or other contracted Medical Review Officer)
Medical Review Officer
3501 SW 18th Ave.
Miramar, FL 33029
Telephone: 954-592-8912

Third Party Administrator

Drugtech Toxicology Service, Jill Craig-Owner
P.O. Box 156
Awhahnee, CA. 93601
Telephone: 209-966-6454 or 1-800-362-0614
FAX: 209-966-6453
Attachment A
Administration Covered Classifications
Subject to Drug and Alcohol Testing

Title

Fleet Manager***
Public Works Superintendent*
Program Assistant/Dispatcher**

Safety-Sensitive – Job Classifications
Subject to Drug and Alcohol Testing

Title

Equipment Mechanic/Heavy Equipment Mechanic ***
Equipment Mechanic Supervisor***
Equipment Operator – Solid Waste*
Maintenance and Construction Supervisor – Roads*
Maintenance Worker I–Roads*
Maintenance Worker II—Roads*
Maintenance Worker III—Roads*
Maintenance Worker I – Solid Waste*
Maintenance Worker II – Solid Waste*
Maintenance Worker III – Solid Waste*
Medical Transportation Drivers**
Solid Waste and Recycling Manager*
Transit System Bus Driver**

Notes:
(1) Only those employees classified in any of the above positions who are deemed to have safety-sensitive functions assigned to them will be subject to testing. Some individual employees not assigned to safety-sensitive functions may not be affected.
(2) This Attachment may be amended by the County from time-to-time as required.

* Covered pursuant to Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) Regulations.

** Covered pursuant to Department of Transportation (DOT), Federal Transit Authority (FTA) Regulations.

*** Covered pursuant to both FTA and FMCSA Regulations.
Attachment B
Alcohol Fact Sheet

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

**Signs and Symptoms of Use**

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

**Health Effects**

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6-ounce glass] over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed “alcoholic”)
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related)

**Social Issues**

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.

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• Forty percent of family court cases are alcohol problem related.
• Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
• More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

The Annual Toll

• 24,000 people will die on the highway due to the legally impaired driver.
• 12,000 more will die on the highway due to the alcohol-affected driver.
• 15,800 will die in non-highway accidents.
• 30,000 will die due to alcohol-caused liver disease.
• 10,000 will die due to alcohol-induced brain disease or suicide.
• Up to another 125,000 will die due to alcohol-related conditions or accidents.

Workplace Issues

• It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
• Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
• A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.
Attachment C
Return-to-Work Agreement

This AGREEMENT is entered into on the date last below written by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as “COUNTY” and ______________________________, hereinafter referred to as “EMPLOYEE”, in consideration of County’s agreement to continue employment subsequent to the post-rehabilitation of Employee subject to Employee’s agreement to the following:

(1) To abstain from the manufacture, distribution, possession or use of illegal drugs at any time.
(2) Not to report to work under the influence of illegal drugs or alcohol and not to possess or consume illegal drugs or alcohol while at work or working.
(3) To devote my best efforts to an earnest and sincere effort at rehabilitation and to follow my counselor’s and therapist’s directions and recommendations.
(4) To authorize persons involved in counseling, diagnosing, and treating me to disclose to my employer my progress and cooperation, my drug and alcohol use, and any dangers they perceive in connection with the performance of my job duties.
(5) To cooperate in a test of my breath, blood, or urine for evidence of alcohol/drug use on completion of rehabilitation.
(6) To cooperate in a minimum of six (6) unannounced follow-up tests of my breath, blood or urine for evidence of alcohol/drug use for a period of at least twelve (12) months following reinstatement to my job and, for additional testing as determined by a substance abuse professional for an additional 48 months of safety-sensitive duty following this first 12-month period.

I understand and agree that I am responsible for payment of all costs associated with my re-entry rehabilitation program and any required associated follow-up drug and alcohol testing. I understand and agree that I will be terminated from my employment with Mariposa County if I violate or revoke any part of this Agreement and also understand that after this Return-to-Work Agreement lapses and I test positive from any further drug/alcohol test, I will be terminated.

Further, I understand that this Agreement is not a guarantee of employment and that I may be terminated for lack of work, attendance or performance problems, future violations or other reasons, notwithstanding my compliance with this Agreement.

______________________________  ______________________________
Signature of Employee  Date

______________________________  ______________________________
Signature of Department Head  Date

(Printed name of Department Head)  Date
ATTACHMENT D
OBSERVED BEHAVIOR
REASONABLE SUSPICION RECORD

Employee Name: ____________________________________________

Department: ______________________________________________

Area of Observations: ______________________________________

Date/Time: ________________________ (am/pm)

Date of Observations: ____________________________

Time of Observations: ____________________________

Only a County manager or Supervisor trained by CFR 49, Sec. 382.603 may complete this form regarding any employee whose behavior indicates the possible use/misuse of alcohol and/or a controlled substance.

RECORD OF OBSERVATIONS

Reasonable suspicion determined for: ___________ Alcohol ___________ Controlled Substances

1. APPEARANCE: Eyes_____ Clothing_____ Face_____ Hair_____ Cleanliness_____ Alertness_____

Describe remarks listed above: ____________________________________________________________

(Use reverse side of this page for continuation/additional remarks. All continued information must be initialed and dated)

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2. BEHAVIOR: Normal_____ Irritable_____ Mood Swings____ Confused_____ Lethargic_____ Excited_____

Depressed_____ Excessive Gaiety_____ Confrontational_____ Staggers_____ Sways/Leans_____

Describe behavior: __________________________________________________________________________

(Use reverse side of this page for continuation/additional remarks. All continued information must be initialed and dated)

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3. SPEECH: Normal_____ Slow_____ Deliberate_____ Confused_____ Exaggerated_____ Loud_____ Soft_____

Describe Speech: ____________________________________________________________________________

(Use reverse side of this page for continuation/additional remarks. All continued information must be initialed and dated)

=================================================================================================

4. ODORS: Normal_____ Body_____ Clothing_____ Breath_____ Masked_____

Describe Odors: ____________________________________________________________________________

(Use reverse side of this page for continuation/additional remarks. All continued information must be initialed and dated)

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5. OTHER INDICATORS of controlled substances and/or alcohol abuse. Specify and describe: ____________________________________________________________________________

(Use reverse side of this page for continuation/additional remarks. All continued information must be initialed and dated)

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OBSERVED BY:

Signature: ___________________________________________ Title: ____________________________ Date: ____________

Signature: ___________________________________________ Title: ____________________________ Date: ____________

(Second observer optional)