



Drug and Alcohol Testing Policy

Approved by the Board of Supervisors

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I. GENERAL STATEMENT

The County of Tuolumne (County) is a place where all citizens enjoy opportunities to thrive in a safe, healthy, and productive community. The County is committed to providing gold standard service to the public and a healthy, safe, professional, and fulfilling work environment for its employees. Substance abuse can detrimentally affect job performance, efficacy, safety and health. It has detrimental effects on the welfare, health, and safety of others, and has the potential to damage the County through property loss and a negative image. The County has a significant interest in ensuring the health and safety of its employees and also has an obligation to ensure that its employees do not present a risk to the public at large.

The County's Policy is designed to promote a drug-free workplace and to comply with applicable State and Federal laws. In recognition of the responsibility of public service entrusted to County employees to create a healthy and safe community, and because drug and alcohol usage can hinder a person's ability to perform duties safely and effectively, the following Policy on drug and alcohol testing is hereby adopted by the County.

II. POLICY PURPOSE

This Policy establishes the rules and procedures regarding the use of drugs (controlled substances) and/or alcohol as it pertains to employment and the procedures to be used to test for drugs and/or alcohol use.

The County provides reasonable accommodations as required by law to those employees whose drug or alcohol problem classifies them as disabled. While the County will be supportive of those who seek help voluntarily, the County will be equally firm in identifying and disciplining those whose continued substance abuse, even if enrolled in counseling or rehabilitation programs, results in performance deficiencies, danger to health and safety of others and themselves, and/or violations of Federal, State, or County laws and/or policies.

III. VIOLATION OF POLICY

All persons covered by this Policy should be aware that violations of the Policy may result in discipline, up to and including termination, and may also impact hiring and/or promotional opportunities.

IV. INDIVIDUALS COVERED

This policy applies to external applicants and to all employees unless otherwise stated. A copy of this Policy will be given to all employees. This policy will be posted to all employees' Vector Solutions accounts, the County website, and copies are also available in the Human Resources Department. All employees must agree to this policy upon initial hire and each time it is updated.

V. DEFINITIONS

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

- i) An individual dies;
- ii) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- iii) 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, mirrors or windshield wipers that makes them inoperative.

Actual Knowledge: for the purpose of this policy, means actual knowledge by an employer that an employee has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the employee's previous employer(s), a traffic citation for driving a Commercial Motor Vehicle (CMV) while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in Code of Federal Regulations, Title 49 (49 CFR) § 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 49 CFR § 382.307. As used in this section, "traffic citation" means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.

Adulterated Specimen: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol. (Ethyl alcohol is the alcohol found in beverages. It can be extremely dangerous to ingest or inhale any other type of alcohol.)

Alcohol Concentration means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this regulation. For example, 0.02 means 0.02 grams of alcohol in 210 liters of expired deep lung air. Blood tests shall not be used to determine alcohol concentration, unless administered by on-site police or public safety officials in a post-accident situation.

Breath Alcohol Technician (BAT) means a person trained to operate the Evidential Breath Testing (EBT) device that the technician is using in the alcohol testing procedures. BATS

are the only qualified personnel to administer the EBT tests.

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

Chain of Custody: The procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen at the certified laboratory.

Collection Site: A clinic/facility designated by the County where applicants or employees may present themselves for the purpose of providing a specimen to be analyzed. The County will select the Collection Site and require that the Collection Site comply with all methods of collection and Chain of Custody and provide documentation of compliance to the County.

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.

Confirmation Test (for alcohol): A second test, following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration. For controlled substances testing, it means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test, in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry (GC/MS) is the only authorized confirmation method of cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Controlled Substance (Drug): a medicine or other substance which has a physiological effect when ingested or otherwise introduced into the body such as: marijuana metabolites, cocaine metabolites, amphetamines, opioids, phencyclidine (PCP).

Controlled Substance “Drug” Test: A method of detecting and measuring the presence of controlled substances, whether legal or illegal, in a person’s body. A controlled substance test may be either an initial test or a confirmation test. An initial controlled substance test is designed to identify specimens having concentrations of a particular class of drug above a specific concentration level. It eliminates negative specimens from further consideration.

Designated Employer Representative (DER): An employee authorized by the County 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 County, consistent with the requirements of DOT regulations.

Department of Transportation (DOT): For the purposed of Drug and Alcohol regulatory oversight, the DOT encompasses all DOT agencies, including, but not limited to: FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency. For the purposes of testing under 49 CFR Part 40, the USCG (in the Department of Homeland Security) is considered to be a DOT agency for drug testing purposes.

Disabling Damage: 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.

Drug: see Controlled Substance

Evidential Breath Testing Device (EBT) means the device to be used for breath alcohol testing.

Federal Motor Carrier Safety Administration (“FMCSA”) Commercial Driver’s License Drug and Alcohol Clearinghouse contains information about holders of commercial driver’s licenses (CDLs) and commercial learner’s permits (CLPs) who are covered by FMCSA’s Drug and Alcohol Testing Program.

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 49 CFR Part 40.

Medical Review Officer (MRO): A licensed physician selected by the County who is knowledgeable of drug abuse disorders and has received appropriate training to interpret and evaluate an employee’s positive test results together with an employee’s medical history and other biomedical information. The MRO reviews all negative and positive test results and interviews individuals who tested positive to verify the laboratory report before the employer is notified.

Negative Test Result: The verified presence, or lack thereof, of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended. An alcohol concentration of 0.00 - 0.02 BAC is a negative test result.

Observed Collection: The specimen collector will directly observe the donor during all steps of the collection process. The collector will give the donor specific instructions to ensure cheating does not occur.

Positive Test means the presence of a drug or a drug metabolite and/or alcohol in a person’s system that is equal to or greater than the levels allowed by this Policy in the confirmation test as determined by appropriate testing of breath, urine, or blood specimen and which is determined by the MRO to be the result of the use of controlled substances and/or alcohol.

Pre-Employment Controlled Substance Testing is conducted before applicants begin work, but after a conditional offer of employment has been given to the employee.

Reasonable Suspicion Alcohol and/or Controlled Substance Testing is conducted when a trained Supervisor has a good faith belief based on specific articulable facts or evidence that an employee may have violated the prohibitions set forth in Part VI. A reasonable suspicion could derive from observation of drug or alcohol use or possession, or the physical symptoms of being

under the influence of controlled substances or alcohol (i.e., body odor, slurred speech, or inability to walk or stand).

Refusal to Submit means failing to provide an adequate breath or urine sample for testing without a valid medical explanation, tampering or adulterating with a specimen or test sample or with the collection process, or engaging in conduct that clearly obstructs the testing process (i.e., verbal declarations, obstructive behavior or physical absence resulting in the inability to conduct the test.) It also includes not providing the County with a signed written consent to take the test.

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service or that require a CDL to operate. Include all ancillary vehicles used in support of the transit system.

Safety-Sensitive Employee: A transportation employee in the aviation, trucking (including school bus drivers, and certain limousine and van drivers), railroads, mass transit, and pipelines industries. This includes certain employees who perform security for their industry and/or maintenance on the transportation equipment.

Screening Test Technician (STT): see Breath Alcohol Technician (BAT)

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) means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker (with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders (the license alone does not authorize this), Certified Employee Assistance Professional (CEAP), or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders. The SAP determines whether an employee is “Fit for Duty” following an employee’s refusal to test or an employee’s failed alcohol or drug test, refers an employee for a return-to-duty test, and schedules unannounced follow-up testing for a period of up to 60 months from the date the employee tested positive.

Third Party Administrator (TPA): An organization that provides direct and administrative services to help an employer or other organization manage a drug and alcohol testing program or a complete drug free workplace program.

Trained Supervisor means persons designated to supervise employees receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require an employee to undergo testing. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

VI. PROHIBITIONS

The following prohibitions apply to all employees:

1. Employees may not use, be under the influence, or possess alcohol under any of the following circumstances: while on County property, while performing their duties (whether or not on County property), or at any time when use of alcohol would impair, to any extent, the employee's ability to perform his or her duties or to operate any County equipment. This includes while operating or being responsible for the operation, custody or care of County equipment or property and while subject to duty. "Subject to duty" shall mean being assigned or scheduled to stand-by or on-call duty.
2. No employee shall unlawfully possess, use, sell, transfer, manufacture, purchase, or transport drugs or attempt to do so, or report to work or be subject to duty with illegal controlled substances in his or her system. This prohibition includes the possession or selling (directly or through a third party) of illegal controlled substances or providing illegal controlled substances to anyone (including employees) while at work.
3. No employee shall possess, use, sell, transfer, manufacture, purchase, or transport prescription drugs, or attempt to do so, or report to work or be subject to duty with prescription controlled substances in his or her system, unless the prescription drug has been lawfully prescribed to the employee and used in accordance with that prescription.
4. Employees may not use or be under the influence of any legally obtained drug (over the counter or prescription) while performing County business, while on County property, or while on standby to the extent that such use or influence affects the safety of co-workers, members of the public, the employee's job performance, or the safe or efficient operation of County's business.
 - a. Employees are responsible for complying with the medical reporting requirements set forth in this Policy, when applicable, for their use of prescription and over the counter drugs.
 - b. An employee may face disciplinary action by the County if they are found to be under the influence of a legally obtained drug (over the counter or prescription) while performing their duties. Employees who follow the requirements of Section VII will not be disciplined unless it is determined that the employee has used the drug in a way that does not follow the product packaging or their doctor's prescription, or creates a safety hazard. Before disciplinary action is taken, the employee will be given an opportunity to request a meeting and have their employee representative present during the meeting pursuant to the discipline process set forth in the County's personnel policies and memoranda of understanding with the employee's respective bargaining unit.

VII. MEDICATION REPORTING REQUIREMENTS

Employees shall, in the case of prescription drugs, ask the prescribing physician and/or, in the case of medication available over the counter, review product packaging to determine whether the use of a prescription drug or over the counter medication may impair his or her ability to perform his or her normal job duties or to safely operate County equipment. Any employee taking any over the counter medication or prescription drug marked “do not drive,” “do not operate heavy equipment,” or similarly labeled, shall inform the appropriate Supervisor, prior to reporting to duty, that he or she is using a medication or drug affecting his or her ability to drive, operate heavy equipment, or otherwise affecting his or her ability to work in a manner that impacts the employee’s job performance, the safety of co-workers or members of the public, or the safe or efficient operation of County business. The employee is not required to disclose the particular medical condition for which a prescription drug is prescribed or for which an over-the-counter drug is taken.

The Supervisor shall consult with Human Resources / Risk Management to make an initial determination on whether the employee may work full duty or light duty based on the information provided by the employee, including conversations with the employee and consultation with competent medical authority to the satisfaction of the County, on whether the use of the medication may impair the employee’s ability to perform the essential functions of his or her job. The Supervisor may, upon a determination that the employee is unable to safely perform his or her essential job functions, or that a modified work assignment is not available, direct the employee not to work and to return home on paid leave or industrial leave if appropriate until additional information is provided by the employee’s medical provider.

If the employee’s personal medical provider provides a written opinion that the use of the drug or medication will not impair the employee’s ability to perform his or her essential job functions, the Supervisor will allow the employee to work or return to work. If the employee’s personal medical provider does not clear the employee to work or return to work or to perform all essential job functions, the County will additionally engage in the interactive process to determine whether the limitations on the employee’s ability to perform his or her essential job functions can be reasonably accommodated. Employees whose medical provider have not permitted them to work or return to work or to perform all essential job functions will be able to take any leave provided for by law, and additionally may be permitted as part of the interactive process to take time off when reasonable as an accommodation. The employee may run sick leave or other available leave in connection with the time off. Notices or communications required by this Section shall be confidential and disclosed only to the Supervisor and the other employees specifically authorized to receive information pursuant to this Policy.

VIII. POLICY ENFORCEMENT

A. When Drug and Alcohol Testing is Permitted

1. External Job Applicants

The County has a need to require certain job applicants to take a drug and alcohol test after a conditional job offer has been made. This requirement applies to all external applicants

who apply for these specific positions (including, but not limited to, those jobs where individuals perform work that involves a danger to the public (for example: operation of dangerous instrumentalities such as heavy trucks used to transport hazardous material, work requiring national security, and work involving the enforcement of drug laws) and those jobs that can directly influence children (for example: working directly with children and overseeing those who work directly with children).

An external applicant for these positions who has received a conditional offer of employment shall be required to undergo and successfully pass a pre-placement/post-offer drug screening analysis prior to beginning work with the County. Any offer of employment by the County for a position will be conditioned upon compliance with this Policy. The post-offer external applicant will be requested to execute a consent form for the drug test, which includes a waiver and release. The form will be completed by the applicant and by the collection center at the time of collection.

A positive test indicating the presence of controlled substance as defined in this Policy will result in the withdrawal of the conditional offer and constitute disqualification of the applicant for the position. The applicant will not be considered for employment for a position for one year from the applicant's last positive test.

A post-offer external applicant who refuses to submit to testing as defined herein will be considered to have refused to participate in the testing process and will not be hired. In addition, the applicant will not be considered for employment for one year from the job applicant's refusal to participate in the testing process.

2. Employees

The County may require an employee to submit to a drug and/or alcohol test under the following circumstances:

a. **All Employees:**

Following a work-related accident, incident or mishap that resulted in death or injury requiring medical treatment away from the scene of the accident, or property damage, where drug and/or alcohol use by the employee cannot be ruled out as a contributing factor. Employees involved in a vehicle accident should remain on scene until cleared by a supervisor.

When a trained Supervisor has reasonable suspicion to believe, based upon specific and documented facts and observations, that the employee either possesses, uses, sells, transfers, manufactures, purchases, or illegally transports alcohol, controlled substances and/or drug-related paraphernalia or attempts to do so (see Exhibit A & B) and has received the concurrence of another trained Supervisor, Manager, Department Head or higher authority. All reasonable suspicion observations must be well documented by the observers. (Contact Human Resources / Risk Management for information on Reasonable Suspicion training for

Supervisors.)

When a trained Supervisor has reasonable suspicion to believe, based upon specific and documented facts and observations, that the employee may be under the influence of controlled substances and/or alcohol (see Exhibit A & B) and has received the concurrence of another trained Supervisor, Manager, Department Head or higher authority.

Follow-up testing for employees who have signed a Last Chance Agreement (see section IX part A) and returned to full duty after a negative test and are participating in a drug and/or alcohol rehabilitation program.

When an on-duty employee is contacted by a law enforcement officer who has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances or the employee has been involved in an on-duty vehicle-related incident and the officer suspects the employee is under the influence of controlled substances and/or alcohol.

(Note: Reasonable suspicion shall be evaluated based on personal observations by a trained Manager and/or Supervisor who is familiar with the employee's typical behavior. Typically, two supervisors should concur they have reasonable suspicion, but in some cases reasonable suspicion may be made by a single supervisor. Check with Human Resources / Risk Management before proceeding when only one supervisor is available. Any trained Supervisor who requests that an employee submit to a drug or alcohol test based on reasonable suspicion must document facts constituting reasonable suspicion in writing. See Exhibit A & B. Upon request, the employee will receive a copy of the documented facts within ten (10) working days of the test, which the employee may provide to the employee's representative. Employees reasonably believed to be under the influence of controlled substances or alcohol shall not be permitted to engage in further work and shall not be permitted to drive themselves from the worksite. A Supervisor will see that the employee is transported home and/or to the designated Collection Site and may detain the employee for a reasonable period of time until the employee can be safely transported. The employee should be placed on administrative leave until the test result is received. Employees who refuse to take a test (as defined in this Policy) after direction to do so, or who test positive, will be subject to discipline up to and including termination.)

- b. **Safety-Sensitive Only:** Safety-sensitive employees (see Appendix A), such as employees who operate or work on commercial motor vehicles for the County, are covered by Department of Transportation (DOT) regulations and have additional requirements under the Code of Federal Regulations (CFR) Title 49 as follows:

When random testing of employees with safety-sensitive duties is required by one of the agencies within the Department of Transportation (DOT), such as the Federal Motor Carrier Safety Administration (FMCSA).

(Note: Random testing is considered by DOT to be the best deterrent to drug and alcohol use. It is important that it be done discreetly, without the employees' knowledge, with as few people's knowledge as possible, and that it is kept confidential. Random testing ensures that every safety-sensitive employee has the same chance of being picked each time. This does mean that some employees will be picked more than others just by chance. In other words, being selected does not lower your chance of being picked next time. The County uses a Third-Party Administrator (TPA) to select employees for random testing according to the most current percentage rates established by Federal regulation. The percentage rate determines how many employees will be picked from the total and may change from year to year. Selections are done quarterly and they are not always the same number as the total requirement is based on one year. The County will randomly assign dates throughout the quarter to those who are selected.)

When an employee is in a last chance agreement (see section IX part A) and going through the SAP process they must complete a return-to-duty test before resuming their safety-sensitive duties. These tests are non-DOT and must be observed, meaning an employee of the testing location and of the same sex must observe the specimen being taken.

When an employee has successfully completed the return-to-duty process they will have up to 60 months of follow-up testing, as determined by the SAP. The SAP will determine the number of follow-up tests that need to be completed each year. These tests are separate and cannot replace any random testing the employee is selected to complete.

When in a vehicle accident and specific circumstances exist (see Table 1). Safety-sensitive drivers involved in a vehicle accident are required to remain on scene until a supervisor arrives on scene and clears the driver of reasonable suspicion. If drugs or alcohol are suspected or the situation requires testing, see Table 1, then the driver should be tested immediately, unless medical attention is required. If the situation requires testing as outlined in Table 1, then DOT regulations restrict that driver from drinking alcohol for the 8 hours following the accident even when cleared at the scene. If testing is not completed within 2 hours, it must be documented why. If the driver still has not been tested after 8 hours for alcohol or 32 hours for drugs, then all efforts to test must cease.

Safety-sensitive employees may be tested from the time they begin work or are required to be in readiness to work until the time they are relieved

from work and all responsibility for performing work. Safety-sensitive functions shall include:

- i. 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;
- ii. All time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- iii. All time spent at the driving controls of a commercial motor vehicle in operation;
- iv. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
- v. 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
- vi. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Table 1 outlines Department of Transportation (DOT) post-accident testing requirements, under Part 382, for employees who drive a commercial motor vehicle (CMV). Note that under Part a above the County may still require testing in situations where DOT does not.

Table 1: Circumstances Under which CMV Drivers will be Tested for Controlled Substances and Alcohol.

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality YES	YES NO	YES YES
ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

B. Drug and Alcohol Testing Process

1. Administration

The Human Resources Director /Risk Manager or their designee is the Designated Employer Representative (“DER”) and shall be responsible for overseeing implementation of this Policy and the testing procedures described herein. The DER will be responsible for reviewing all disciplinary actions resulting from violations of this Policy to ensure that the action proposed or taken is consistent with this Policy. The DER shall be responsible for: (1) communicating directly with the Medical Review Officer (“MRO”) and/or Substance Abuse Professional (“SAP”) and Testing Laboratory regarding any drug and/or alcohol tests; (2) overseeing testing programs; (3) providing training to supervisors and employees; (4) answering questions about the program.

2. Procedures

a. Reporting to Collection Site (Does Not Include Preemployment testing)

- i) The employee is to be discreetly notified with only a limited number of County officials having knowledge. It is important that the employee does not receive any advanced notice.
- ii) When an employee is notified, they must proceed immediately to the collection site. All the employee’s actions must lead them to an immediate specimen collection.
- iii) For reasonable suspicion testing, the employee must be accompanied to the collection site by a supervisor or human resources representative and may not drive themselves. The escort must remain at the site throughout the sample collection process.
 - a. Should the employee become uncooperative and refuse to

test:

- i. Document the refusal and escort the employee home. Do not use or move the employee's vehicle, the employee may make arrangements later to retrieve their vehicle.
- ii. If the employee attempts to leave, do not try to physically detain them, but do try to convince them to accept an escort home.
- iii. If an employee does leave, inform law enforcement of the situation.
- iv) If the employee is testing for reasons other than reasonable suspicion, such as random DOT testing, then the employee's supervisor should accompany them to the collection site if possible.
- v) Do not allow employees to go unescorted to their lockers, personal vehicles, or workstations after notifications.
- vi) If collections are unescorted, establish an expected time of arrival and notify the collection site and Human Resources / Risk Management.
- vii) If an onsite collection has been arranged, do not alert employees to their presence.
- viii) For reasonable suspicion, when feasible the employee must be escorted safely home after the sample is collected and observed gaining access to their residence. In circumstances when this is not feasible, law enforcement shall be consulted.

b. Mandatory Reporting

Any employee who has reason to believe that another employee may be in violation of this Policy shall immediately notify his or her immediate Supervisor. The Supervisor should take whatever immediate action is deemed prudent to ensure the safety of the public and employees. Should the Supervisor have reasonable suspicion to believe, based upon specific and documented facts and observations, that the employee may be under the influence of controlled substances and/or alcohol, the employee should be immediately removed from the workplace and placed upon administrative leave with pay until such time as testing results confirm or refute the presence of controlled substances and/or alcohol. The Supervisor should use the Reasonable Suspicion Evaluation Form (Exhibit B) to assist in making this determination.

c. Acknowledgment and Refusal to Submit

No drug and/or alcohol test may be administered, sample obtained, or drug and/or alcohol test conducted on any sample in the pre-employment context without the written acknowledgment of the applicant being tested. See Exhibit C. Refusal of any applicant or

employee to submit to testing, or attempt to adulterate or evade the testing process, will be treated as a positive test result, requiring drivers be removed from their safety-sensitive duties immediately. In addition, refusals will be viewed as insubordination and will subject the person to disqualification from employment or disciplinary action up to and including termination. The County will pay the cost of all drug and/or alcohol tests required by this Policy. Table 2 lists events DOT regulations have defined as refusals. It is the County's policy that all County employees will be held to the standards outlined in Table 2.

Table 2: Events Considered to be Refusals to Submit.		
Event	Decision Maker	DOT Instructions
Fail to appear at a urine collection site when directed to report	Employer / DER * [after review of the collector documentation]	If the employee did not get to the site or spent too much time getting there, it is a refusal.
Fail to remain at the urine collection site	Employer / DER * [after review of the collector documentation]	If the collector reports that the employee left the collection site before the testing process was complete, it is a refusal.
Fail to provide a urine specimen	Employer / DER * [after review of the collector documentation]	If the collector reports that the employee left the collection site before providing a required specimen, it is a refusal.
Fail to permit a monitored or observed urine collection	Employer / DER * [after review of the collector documentation]	If the employer ordered an observed collection or if the collector required the collection to be monitored or observed, it is a refusal if the employee does not permit it to occur.
Fail to provide a sufficient amount of urine	MRO	If the MRO finds that there was no medical reason for the employee to provide an insufficient amount of urine, it is a refusal.
Fail or decline to take an additional drug test the employer or collector has directed	Employer / DER * [after review of the collector documentation]	If the employer or collector directs the employee to take an additional test, as required or permitted by the DOT, and the employee does not, it is a refusal.
Fail to undergo a medical examination or evaluation the MRO or employer has directed	MRO	If the employee does not go in for a medical evaluation or does not permit it to occur, it is a refusal.
Fail to cooperate with any part of the urine collection process	Employer / DER * [after review of the collector documentation]	Some examples of failure to cooperate are when the employee: 1. Refuses to empty pockets when directed; 2. Behaves in a confrontational manner that disrupts the collection process; 3. Refuses to remove hat, coat, gloves, coveralls when directed; or 4. Fails to wash hands when directed.
For an observed collection, fail to follow the instructions to raise and lower clothing and turn around	Employer / DER * [after review of the collector documentation]	If the employee does not follow these instructions so that the observer can check for prosthetic or other devices that could be used to interfere with the collection process, it is a refusal.
Possess or wear a prosthetic or other device that could be used to interfere with the collection process	Employer / DER * [after review of the collector documentation]	If the employee is found to have or wear a prosthetic or other device designed to carry clean urine or a urine substitute, it is a refusal.
Table 2 Continued: Events Considered to be Refusals to Submit.		
Event	Decision Maker	DOT Instructions
Adulterate or substitute a urine specimen	MRO	If the laboratory reports a confirmed

		adulterated or substituted specimen to the MRO and the MRO determines there is no medical reason for the result, it is a refusal.
Admit to the MRO to having adulterated or substituted the specimen	MRO	If the employee, during a medical review, admits to having tampered with his or her specimen, it is a refusal.
Fail to appear for an alcohol test when directed to report	Employer / DER * [after review of the STT or BAT documentation]	If the employee did not get to the alcohol test site or spent too much time getting there, it is a refusal.
Fail to remain at the alcohol test site	Employer / DER * [after review of the STT or BAT documentation]	If the STT or BAT reports that the employee left the collection site before the testing process was complete, it is a refusal.
Fail to provide an adequate amount of saliva or breath	Employer / DER * [after review of the STT or BAT documentation]	If the STT or BAT reports that the employee left the alcohol testing site before providing a required amount of saliva or breath, it is a refusal.
Fail to provide a sufficient breath specimen	Evaluating Physician	If the evaluating physician finds that there was no medical reason for the employee to provide an insufficient amount of breath, it is a refusal.
Fail to undergo a medical examination or evaluation as the employer has directed as part of the insufficient breath procedures	Employer / DER	If the employee does not go in for a medical evaluation or does not permit it to occur, it is a refusal.
Fail to sign the certification statement at Step 2 of the ATF	Employer / DER * [after review of the STT or BAT documentation]	If the employee does not agree to have a test accomplished by signing Step 2 of the ATF, it is a refusal.
Fail to cooperate with any part of the alcohol testing process	Employer / DER * [after review of the STT or BAT documentation]	One example of failing to cooperate is when the employee behaves in a confrontational manner that disrupts the alcohol testing process.

d. Collection, Integrity, and Identification

After the employee has been advised of the reason for the test by the Supervisor, the employee will proceed directly to the Collection Site and the Collection Site personnel will explain the mechanics of the collection process.

Procedures for urine collection will allow for individual privacy unless there is reason to believe the individual may alter or substitute the specimen to be provided. Samples will be tested for temperature and subject to other validation procedures as appropriate. If the specimen fails to be validated, then the MRO can order an observed collection.

e. Chain of Custody

Procedures for the storage and transportation of test specimens shall conform to the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the Department of Health and Human Services as amended from time to time.

f. Testing Methods

All tests will be screened using an immunoassay technique and for alcohol an Evidential Breath Testing (EBT) device. All presumptive positive drug tests will be confirmed using gas

chromatography/mass spectrometry (GC/MS) and all presumptive positive alcohol tests will be confirmed with a second EBT test performed within 15-30 minutes after the first EBT test is completed. The County will test for marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines as well as alcohol. Tests will seek only information about the presence of controlled substances and/or alcohol in an individual's system and will not test for any medical condition.

g. Positive Test

A drug test for controlled substances is considered positive when a verified confirmation test indicates specimens have measurable concentrations of a particular class of drug. Controlled substances will be tested under the Department of Health and Human Services (DHHS) guidelines. The threshold amounts for a verified positive test are those established in the DHHS guidelines.

An alcohol test is considered positive when a verified confirmation test indicates a breath alcohol content greater than 0.04 "Alcohol Concentration Level" as defined in the Definition Section of this Policy. Employees who, on a verified confirmation test, have a reading greater than 0.00 but below 0.04 will not be returned to duty during that shift; however, they will not be subject to discipline.

h. Notification

Any employee who tests positive will be notified by the Medical Review Officer (MRO) and will be given the opportunity to provide the MRO any reasons he or she may have that would explain the positive drug and/or alcohol test, other than the presence of alcohol or the illegal use of controlled substances. If the employee provides an explanation acceptable to the MRO that the positive drug or alcohol test result is due to factors other than the presence of controlled substances and/or alcohol in the test specimen, the positive test result will be disregarded and reported to the County as negative. Otherwise, the MRO will report the positive test result to the Designated Employee Representative (DER). The results will only be disclosed to the extent expressly authorized by this Policy.

i. Split Sample Testing

An employee who has been subjected to drug and/or alcohol screening may request a split sample test be conducted at a certified laboratory chosen by the employee. All costs associated with an employee's decision to pursue split sample testing will be the full responsibility of the employee. The County will reimburse the employee for all costs associated with the split sample test if the

results of the test come back negative for drugs and alcohol. Employees should contact Human Resources / Risk Management for the most current procedures on split sample testing and reimbursement.

C. Employee Rights

An employee suspected of violating the rules prescribed herein shall be entitled to representation during any interviews that could lead to disciplinary action by the County, regardless of whether those interviews occur before or after the sample is taken.

The sample collection process shall include the opportunity for the employee to provide information about factors other than illegal drug use, such as taking prescribed medication which could cause a positive test result. This information should be submitted in a sealed envelope to be opened only by the Medical Review Officer if the test result is positive (see Section VII.B above).

The employee may request from the DER a full copy of any test results and related documentation of the testing process. The employee may provide a copy to the employee's representative.

All confirmed positive samples shall be retained by the testing laboratory in secure frozen storage for a minimum of one year following the test or until the sample is no longer needed for appeal proceedings or litigation, whichever is longer.

IX. CONSEQUENCES FOR A POSITIVE ALCOHOL AND/OR DRUG TEST

A. Discipline or Last Chance Agreement in Lieu of Discipline

Within the first five (5) working days after a verified positive test result, a conference will be conducted between the employee and a Human Resources representative. The employee may arrange for union representation at the conference.

The first time that an employee tests positive on a drug and/or alcohol test, the County may offer the employee the opportunity to participate in a Last Chance Agreement with a rehabilitation program in lieu of termination or another form of discipline. The Department Head will consult with the Human Resources Director on the employee's performance and disciplinary history to determine if the employee is eligible for a Last Chance Agreement. This opportunity will be offered to the employee on a one-time basis only. The second time the employee receives a verified positive test on a controlled substance and/or alcohol test, the employee shall be subject to discipline up to and including termination following the County's discipline policy.

Participation in the Last Chance Agreement with the rehabilitation program is strictly voluntary. However, once the employee decides to voluntarily participate in the Last Chance Agreement, the employee will be required to complete all portions of the Last Chance Agreement. Failure to complete all portions of the Last Chance Agreement including any rehabilitation program made a requirement of the Agreement will be grounds for discipline up to and including termination.

Employees may use accumulated sick leave, vacation time, administrative leave time, or compensatory time to participate in the rehabilitation program. All program costs and subsequent drug and/or alcohol testing costs are the employee's responsibility.

After completing any rehabilitation program made a requirement of a Last Chance Agreement and prior to returning to duty, the employee must agree to sign a Return-to-Duty Agreement. As part of this agreement the employee will agree to follow up testing. The duration and frequency of follow-up testing will be determined by the SAP and will not be known to the employee. This provision in no way precludes the County from taking appropriate disciplinary action for violation of this policy and does not guarantee an employee will be returned to their current and full duties even after finishing the return-to-duty process.

Employees who do not qualify for the Last Chance agreement will be subject to disciplinary action up to and including termination.

B. Safety-Sensitive Employees Only

The process outlined in this section only applies to safety-sensitive employees. This is in addition to any disciplinary action that may take place as outlined in this policy.

i. Removal from Duty

After the County has been notified of a positive test result, the employee is to be removed from their safety-sensitive duties immediately. If the employee is performing their safety-sensitive duties at the time of removal, they must be removed as safely and quickly as possible.

The County will make every effort to inform the employee of the positive result as soon as possible if they are not at work. This includes notifying former employees who no longer work for the County. The employee is to be informed of the positive result, including what they tested positive for, provide the employee with the contact information for the Medical Review Officer (MRO), inform the employee they have 72 hours to contact the MRO, and provided the employee with a list of Substance Abuse Professionals (SAP) in the area. If the employee wants to have their split sample tested, they should inform the MRO at this time. Requests to test the split sample after 72 hours will not be accepted without well documented good reason for the delay in contacting the MRO. If a split sample test is requested, the employee may not return to their safety-sensitive duties until a confirmed negative test result is posted. It is the employee's responsibility to take the initiative to contact the SAP and make all arrangements for their return-to-duty test. All fees for the SAP's services will also be the employee's responsibility. The employee is required by DOT regulations to complete the SAP process with their current employer. Neither the employee nor the employer can request to change the SAP once one has been selected.

A safety-sensitive employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall be removed from their safety-sensitive functions for a minimum of 24 hours. Under this circumstance the County will take no disciplinary action.

If the employee qualifies for a last chance agreement, then they may continue to perform

their other duties while completing the Return-to-Duty process. Any pay increase they received for their safety-sensitive duties should be removed.

ii. Reporting Requirements

All positive test results, refusals included, for safety-sensitive employees with commercial driver's licenses are required to be reported to the Federal Motor Carrier Safety Administration ("FMCSA") Commercial Driver's License Drug and Alcohol Clearinghouse, a department within the DOT. The following personal information will be collected and maintained by the County and shall be reported to the Clearinghouse:

- i) A verified positive, adulterated, or substituted drug test result;
- ii) An alcohol confirmation test with a concentration of 0.04 or higher;
- iii) A refusal to submit to any DOT required testing as outlined in this policy;
- iv) An employer's report of 'actual knowledge'
 - a. On duty alcohol use;
 - b. Pre-duty alcohol use;
 - c. Alcohol use following an accident; and
 - d. Controlled substance (drug) use;
- v. A substance abuse professional (SAP) report of the successful completion of the return-to-duty process;
- w. A negative return-to-duty test; and
- x. An employer's report of completion of follow-up testing.

In addition, the County is required to run a yearly query on each safety-sensitive driver through the Clearinghouse. For a driver to maintain their safety-sensitive duties they must submit the consent form, see Exhibit D, to the Human Resources / Risk Management Department. All newly hired safety-sensitive drivers will have their previous 3-year record queried through the Clearinghouse as a condition of employment. In addition, until January 6, 2023, new hires will have their drug and alcohol records requested from all their previous employers within the last 3-years.

iii. Return-to-Duty and Follow-up Testing

Employees who have violated the prohibition set forth in this Policy but qualify for and participate in a Last Chance agreement shall submit to a return-to-duty test before resuming their safety-sensitive duties. The test result must indicate no presence of alcohol and/or a verified negative result on a drug test.

After the return-to-duty test, employees will also be subject to unannounced follow up testing. The number and frequency of tests shall be determined by an SAP, but at least six tests shall be performed during the first 12 months following the employee's return to duty. Follow up testing may be done for up to 60 months, but the SAP can terminate the requirement after the first six tests, if he/she determines testing is no longer necessary. There is no guarantee that an employee who has completed the return-to-duty process will be returned to their safety-sensitive duties.

X. VOLUNTARY ADMITTANCE

Employees who believe they may have a substance abuse problem are encouraged to

voluntarily seek assistance. Those who voluntarily disclose the substance abuse problem to the DER will be referred to the Employee Assistance Program (EAP). An employee requesting this assistance may, at the Supervisor's discretion, be transferred, given work restrictions, or placed on leave while receiving treatment and until the employee is drug- and/or alcohol-free.

An employee's voluntary disclosure of a substance or alcohol problem will not terminate any investigation, criminal or administrative, initiated prior to the disclosure. Each employee is responsible for seeking assistance before the employee's drug and/or alcohol problem leads to a violation of this Policy, or before the employee is asked to submit to a reasonable suspicion drug and/or alcohol test.

Employees are responsible for program costs and may use accumulated sick leave, vacation time, or compensatory time to participate in a rehabilitation program. The employee's decision to seek assistance will not be used as the basis of discipline. However, seeking help will not be a defense to imposition of discipline if facts indicating a violation of this Policy exist separate from the seeking of assistance.

NOTE: Health insurance plans may provide coverage for rehabilitation costs. Health benefits information can be obtained from the County's benefit information contact.

XI. SEARCHES

County reserves the right to search all County property or equipment and to enlist the assistance of law enforcement personnel in connection with the enforcement of this Policy. The employee's personal property kept within County property will not be searched without the employee's consent. Before commencing the search, the County employee performing the search will first explain to the employee under suspicion which items cannot be searched without consent. The County will then request the employee's consent prior to searching purses, personal briefcases or backpacks, and personal toolboxes that are kept in County vehicles when necessary for performance of the employee's assigned duties. Nothing in this provision shall be interpreted to permit violation of the provisions above prohibiting the unlawful manufacturing, distributing, dispensing, possession, or consuming any drug or alcohol.

XII. CONFIDENTIALITY

Any information about an employee's use of prescription or non-prescription medication, the results of any pre-employment or reasonable suspicion drug and/or alcohol testing, and/or any employee's past or present participation in rehabilitation or treatment for substance abuse shall be considered confidential personnel information. The information received in enforcing this Policy shall be disclosed only as necessary for: disciplinary actions and appeals; interactive process meetings and reasonable accommodation efforts; or resolving legal issues. Any reports or test results generated pursuant to this Policy shall be stored in a confidential file, accessible only by those authorized to receive the information, and separate and distinct from the employee's personnel file. The individuals authorized to access this information include:

1. The employee who was tested or other individuals designated in writing by that employee;

2. The Medical Review Officer; and
3. Individuals who need the records or information to:
 - i. Determine or assist in determining what action the County should take in response to positive test results including, but not limited to, any disciplinary actions and appeals in connection with any interactive process meetings and reasonable accommodation efforts; or
 - ii. Resolve legal disputes including but not limited to responding to appeals or litigation arising from the drug or alcohol test or related actions.
 - iii. **Safety-sensitive only:** Secretary of Transportation, any of the DOT departments (FMCSA), State or Local officials with authority (CHP), when required by the National Transportation Safety Board for an investigation, the employee's future employers who request it.

The minimum record keeping requirements mandated by the Department of Transportation (DOT) are highlighted in Table 3 below. The County will retain additional information that is determined to be necessary in enforcing this policy. All records will be stored together in the same confidential file.

Table 3: The Minimum Record Keeping Requirements Mandated by DOT.

Schedule	Type of Records
Five Years	Records of alcohol test results indicating an alcohol concentration of 0.02 or greater; Records of verified positive drug test results; Documentation of refusals to take required alcohol and drug tests (including substituted or adulterated drug test results); Annual MIS Report; SAP reports; and All follow-up tests and schedules for follow-up tests.
Three Years	Information obtained from previous employers concerning DOT related drug and alcohol test results of employees.
Two Years	Records of the inspection, maintenance, and calibration of EBTs; and Records related to the alcohol and drug collection process. These include, documents related to random selections, reasonable suspicion determinations, and post-accident determinations; medical evaluations for insufficient amounts of urine and breath; and supervisor and employee education and training records. Supervisor, employee, BAT, and STT education and training records will be retained for two years <u>after</u> a safety-sensitive driver ceases those specific functions.
One Year	Records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02.

A. DRUG AND ALCOHOL FREE WORKPLACE

To fulfill its obligations under the Federal Drug-Free Workplace Act of 1988, the County will:

- a. Require any employee who is convicted of any criminal drug statute for violations occurring while conducting County business (whether on or off County premises), to report the conviction in writing to the Human Resources Director within five (5) days after the conviction. Failure to report such convictions will subject the employee to discipline up to and including termination in accordance with County rules and regulations,
- b. Educate employees on the harmful effects of using and abusing controlled substances and/or alcohol.
- c. Provide an Employee Assistance Program (EAP) where employees can

willfully seek help for problems with controlled substances and alcohol.

d. **EMPLOYEE CRIMINAL CONVICTION REPORTING
RESPONSIBILITY**

- i. As required by law, the County will notify federal contracting agencies within ten (10) days after receiving notice that an employee directly engaged in performance of work on a federal contract has been convicted of a criminal drug statute violation resulting from conduct occurring in the workplace.
 - ii. Whenever the County has reason to believe that Federal, State, or local drug and alcohol laws are being violated, the County may refer the matter to the appropriate law enforcement agencies for investigation and possible criminal prosecution.
- e. Benefits of a drug and alcohol-free workplace are:
- i. To protect the health and safety of all employees and the public.
 - ii. To safeguard County assets from theft and destruction.
 - iii. To protect public trust and confidential information.
 - iv. To maintain quality and organizational integrity and reputation.
 - v. To help the County to avoid unnecessary work stoppages.

B. PROPER APPLICATION OF THE POLICY

Tuolumne County is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/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 regard to subordinates, shall be subject to disciplinary action, up to and including termination. This policy shall be in no way used to retaliate against any employee for reporting a workplace injury or accident.

APPENDIX A
SAFETY-SENSITIVE CLASSIFICATIONS COVERED

If an employee in one of the positions below does not hold a commercial driver's license (CDL) as a condition to perform certain duties for the County, then they would not be classified as safety-sensitive and not covered by those sections of this policy.

Libraries and Recreation

Youth Center Coordinator

Public Works – Roads

Road Superintendent

Road Supervisor

Support Services Supervisor

Lead Road Worker

Construction Services Support Technician

Senior Road Worker

Road Worker

Public Works – Fleet

Fleet Manager

Senior Equipment Worker

Equipment Technician

EXHIBIT A

REASONABLE CAUSE GUIDELINES AND TIPS FOR SUPERVISORY INTERVENTION

How to Document Reasonable Suspicion:

1. Receive complaint

Concerns that an employee is under the influence often come from co-workers or even clients or vendors before a supervisor or manager notices. Managers or HR professionals do not want to send an employee for testing based on hearsay or gossip, but they should document the complaint or concerns of co-workers who bring this information forward. Managers or HR professionals should take a few extra minutes to ask what the employee observed, when the employee observed it and if others witnessed or commented on this situation. The employer should also determine if the behavior is new or has happened in the past (possibly indicating a pattern of behavior).

2. Observe the employee

- a. Firsthand observation should be made by two members of management. Immediately upon notice of this type of concern, the employee's supervisor, an available manager, or HR personnel should go to this employee's work area for firsthand observation. The observer may be able to view the employee from afar, but usually he or she will need to talk with the employee directly to observe any smell of alcohol, eye dilation, slurred speech, or other behaviors. The supervisor, manager, or HR personnel who performed the initial observation should seek a second member of management or HR to confirm initial suspicions. The second observer should perform his or her own firsthand observation of the employee.
- b. Remove the Employee from Safety-Sensitive Areas: If the employee is working around machinery or heavy equipment or is in any other type of safety-sensitive job or is acting out in a way that appears to be a safety concern for the employee or others, managers or HR staff may need to immediately remove the employee from the work area and ask him or her to wait in a conference room or an office.

3. Document the observations

- a. Both observers should clearly document their observations, including any abnormal behaviors. The observers should be as specific as possible in their descriptions but not attempt to diagnose the situation.
- b. After the situation has been clearly documented, managers or HR staff need to assess what they know and observed to determine next steps. If both observers witnessed behaviors that create a suspicion and the documentation supports this suspicion, then managers or HR should meet with the employee. If there is disagreement, managers or HR may need to bring in a third party to also observe and help make a determination. Managers or HR may decide that a reasonable suspicion of use of drugs or alcohol does not exist and that no further action is necessary other than documentation of the complaint and subsequent observations.

4. Meet with the employee

- a. When reasonable suspicion testing is warranted, both management and HR should meet with the employee in a private setting as to avoid a public scene and maintain confidentiality. Speak in a calm voice and maintain your composure. Remember, you want to keep control of the situation.
- b. Those leading the meeting should clearly explain what has been observed and documented by management and that, in order to rule out the possibility that the employee is in violation of the County's drug and alcohol policy, the organization will send the employee for a drug or alcohol test. Be objective when communicating what you have observed. Use statements like, "your speech is slurred, or I smell alcohol on your breath." Explaining it in this manner shows the employee that the

County has not jumped to any conclusions, but is simply following procedures, and if the employee is not under the influence of drugs or alcohol at work, the test will prove this. Once you communicate the observations, ask non-threatening questions. Say something like, “is there anything you would like to share?”

- c. If the County has not obtained a drug testing consent previously, the manager or HR staff member must have a consent form available at this meeting for the employee's signature.
- d. Keep in mind that some medical conditions can mimic the signs or symptoms of drug/alcohol impairment. You may need to explain that in addition to drug/alcohol testing, a medical exam may be needed to rule out potential medical problems before returning to work.

5. Prepare transportation

Managers should not allow employees suspected of being under the influence behind the wheel of a car; therefore, the manager or HR should ensure the employee does not drive to the testing center or home afterward. Managers or their supervisory designee should escort the employee to the testing facility and then drive them home afterward.

6. Send the employee for testing

The manager or HR should contact the drug test facility to advise that an employee is on the way for reasonable suspicion testing. The employee should be escorted to the facility by their manager and then driven home.

7. **Respond to employees’ refusal to test

8. Wait for test results

The employee needs to know what to do and expect the following day. County policy should address this situation, but if not, the County should set a consistent practice. In most cases, the County does not want an employee to return to work until the test results are available.

9. Discuss next steps with Human Resources

SITUATION EXAMPLES

Scenario 1

The supervisor of a two-person department receives an e-mail from employee Mike stating that he thinks Dave, the other employee in the department, is coming to work drunk. The e-mail states, "On Monday Dave smelled like a brewery." It is now Thursday. The supervisor talks with Mike to get more information, but there are no other witnesses because no other employees work in the department. The supervisor thanks Mike for coming forward with his concerns and asks Mike to let him know immediately if the situation happens again, and if the supervisor is not in the office, to contact HR or the department head. The supervisor meets with Dave but observes no signs of Dave being under the influence at work. The supervisor talks with HR and the department head, and they agree that they cannot move forward with any testing based on one employee's complaint about a concern a few days old. The supervisor is asked to document the situation and provide it to HR so that HR can maintain this documentation in a separate investigation file for future reference. The supervisor will keep his eyes open and decides to make a point to check in on Mike and Dave each morning and after lunch for the next week or so.

Scenario 2

The shipping supervisor, Tim, walks past Sandy in the packing department. Sandy stumbles into him. When Tim helps her up, he notices that her eyes are making unusual movements, and she seems confused and acts as if she does not recognize Tim. Tim goes back to his office and calls in Sandy's supervisor, John. Tim asks if John has noticed anything odd about Sandy lately. John states that Sandy had been very erratic, that she is coming in late and that she never seems to be at her workstation when John walks through. John wrote her

up just last week for both issues but admits he has not talked to her yet today. Tim relays what he had observed. John asks Tim to report this information to HR while he looks for Sandy. When John finds her, she is standing at her workstation but is not working—she is staring off in a daydream. When John asks Sandy what she is working on, she does not hear him at first and then has a hard time focusing on him. Her eyes will not hold steady, her pupils are dilated, and finally she starts rambling on and on. John asks Sandy to walk with him to the conference room and to remain there for a few minutes because he wants to talk with her some more.

HR's office is across the hall, and Tim is already reporting what he has observed. John fills HR in on his additional observations. HR asks John to document what he observed, and after reviewing all the information, they agree to send Sandy for reasonable suspicion drug and alcohol testing. The HR manager calls the cab company to arrange transportation to the facility and prints out the drug testing consent form. John and the HR representative return to the conference room to meet with Sandy. HR explains what had been observed today and states that to rule out the possibility that Sandy has violated the company's drug and alcohol policy, they will send her for drug and alcohol testing. Sandy starts crying and shaking her head. She balls up the drug test consent form and throws it in the trash and stands up to leave. The HR representative explains that the test is the only way to rule out the possibility of policy violation, but if Sandy refuses to sign the consent form or go for testing, it would be treated as a positive test and Sandy would be subject to immediate termination of employment. Sandy pushes past her supervisor and runs out the door. John follows Sandy into the parking lot, pleading, "Sandy, I don't want you to drive so upset. Listen, a cab should be here any minute. If you still don't want to go for testing when it arrives, then I will pay for the cab to take you home." Sandy drives away. HR had written down her license plate and calls the police. HR sends Sandy a termination letter in accordance with the company's drug testing policy.

Scenario 3

Jane tells her manager that she suspects Joe in accounting had a few drinks at lunch. She had suspected Joe was drinking at lunch in the past, but this is the first time she smells the alcohol on his breath. The manager asks Jane when she observed this and how, why she had suspected it before, if she observed any other concerning behaviors, and whether anyone else commented on this behavior or witnessed it. The manager then approaches Joe's workstation and asks him a few questions about the project he is working on today. During this exchange, the manager observes the smell of alcohol when Joe speaks; also, his speech is slurred, and he seems distracted and flushed. The manager asks his lead to stop by Joe's desk to drop off some papers and chat with him. The manager asks the lead to let him know if he notices anything odd. The lead returns 10 minutes later and says that something was definitely off with Joe; he was talking slower and sounded as if his words were slurred. His desk was a mess (unusual for this employee), and he was dropping papers and folders and even bumped into his coffee cup. They both document what they observed and call HR. HR reviews their observations, prints off a drug test consent form and a copy of the drug and alcohol policy, and agrees they should send Joe for reasonable suspicion testing according to company policy. The HR representative contacts the cab company and arranges for the cab to arrive in half an hour. Then they call Joe into a meeting with the manager and the HR representative.

In the meeting, the manager explains what he had observed, and the HR representative confirms that he can smell alcohol on Joe's breath right now. The HR representative explains that to rule out the possibility that Joe violated the drug and alcohol policy, they will send him for testing.

After Joe signs the consent form, the HR representative explains that he would take a cab to the testing facility, and then the cab would take him home. Receiving the test results usually takes up to 48 hours, and according to procedure Joe would be called back to work after the results come back. An employee with negative test results will be paid for the days missed waiting for the results.

Joe has a positive test result. The company procedure is to offer a last-chance agreement to the employee, and Joe accepts this. The company refers Joe to its EAP, and he signs the last-chance agreement and puts in

a request for Family and Medical Leave Act (FMLA) leave for treatment.

Supervisors Intervention Tips:

DO NOT:	DO:
Diagnose	Know the County's policy
Moralize	Focus on the job performance / safety
Be overly sympathetic	Be specific
Cover-up	Be respectful
Physically search the employee	Notify your Department Head
Search the employee's personal possessions without consent and in the presence of the employee.	Notify Human Resources that an employee is under reasonable suspicion of drug/alcohol use or is suspected of possession.
Search County-owned property if it is expected that the employee's personal items are stored within and they have a right to privacy (e.g. uniform, backpack).	Search County-owned property where there is no right to privacy and with another supervisor, manager, department head, or Human Resources representative as a witness (e.g. desk, vehicle).
Direct the employee to leave or drive anywhere (home, collection facility, another County location)	Contact Human Resources if you have notified law enforcement that the employee is in possession of illegal substances or if the employee left the premises (driving).
Discuss with others	DOCUMENT EVERYTHING

Reasonable Cause Script:

(employee name), as you know the County has a Drug and Alcohol Free Workplace Policy and as an employee you have agreed to abide by the Policy to prevent drug and alcohol abuse in the workplace.

At this time, as your supervisor I am notifying you that a reasonable suspicion determination of drug or alcohol use has been made against you. You are required to submit to a drug test and/or breath alcohol test at this time. A County representative will go with you to the collection facility.

***Suspected employees are not allowed to drive themselves to the collection facility or to drive themselves home. If an employee leaves the premises in a private vehicle against the supervisor's instruction, the supervisor may consider notifying local authorities and must notify Human Resources. Please include this information in your documentation.**

Time Critical: DOT regulations require that a reasonable suspicion alcohol test should be performed within 2 hours of the determination and no later than 8 hours. Documentation must exist if efforts to complete this requirement after the first two hours. Urine collection for a drug test must be performed within 32 hours from the determination or document the reason for no collection.

EXHIBIT B
REASONABLE SUSPICION
BEHAVIORAL OBSERVATION CHECKLIST (DOT AND NON-DOT)
(CONFIDENTIAL)

Employee Name:				Date of Observation:					
Job Title:				Time of Observation:					
Location of Observation:									
Trained Supervisor's Name & Signature									
Concurring Supervisor's Name & Signature									
DOT – Covered?		Yes		No	Open Worker's Comp Claim?		Yes		No

It is the supervisor's responsibility to make an assessment of each suspected employee. Such a determination results from the supervisor's knowledge of the job and objective observations of any employee's ability to perform job duties in a safe and efficient manner. The employee must exhibit at least one articulable fact that you directly observed regarding specific physical, behavioral, odorous, or performance indicators sufficient to create reasonable suspicion warranting a drug or alcohol test.

SECTION A: Physical, Behavioral, and Odorous Indicators. Check all that apply.

BEHAVIORAL		APPEARANCE		SPEECH	
☐	Unsteady gait, stumbling	☐	Flushed complexion	☐	Slurred, thick
☐	Drowsy, lethargic	☐	Clammy, sweating	☐	Incoherent
☐	Agitated, anxious	☐	Bloodshot eyes	☐	Exaggerated enunciation
☐	Hostile, belligerent,	☐	Tearing, watery eyes	☐	Loud, Boisterous
☐	Irritable, moody	☐	Irritable, moody	☐	Rapid, pressured
☐	Depressed, withdrawn	☐	Large dilated pupils	☐	Excessively talking
☐	Unresponsive	☐	Small pupils	☐	Nonsensical, silly
☐	Distracted	☐	Clumsy, uncoordinated	☐	Cursing, inappropriate
☐	Clumsy, uncoordinated	☐	Unfocused, blank stare	☐	
☐	Tremors, shakes	☐	Disheveled clothing	BODY ODOR/SMELLS	
☐	Suspicious, paranoid	☐	Unkempt appearance	☐	Alcohol
☐	Hyperactive, fidgety	☐	Consistent nosebleeds	☐	Marijuana
☐	Inappropriate	☐		☐	
☐	Aggressive, throwing things, yelling at co-workers	☐		☐	
☐	Frequent breath freshener usage	☐		☐	
Other Observations:					

SECTION B: Quality and Quantity of Work

Yes	No	Observations
☐	☐	Clear refusal to do assigned tasks
☐	☐	Repeated errors in spite of increased guidance

		Reduced quantity of work
		Behavior that disrupts workflow
		More than usual supervision necessary
		Other:

SECTION C: Interpersonal Work Relationships

Yes	No	Observations
		Significant change in relations with co-workers, supervisors
		Frequent or intense arguments
		Physical abusiveness
		Intentional avoidance of supervisor
		Complains by co-workers or subordinates (angry, outbursts, temper-tantrums)
		Demanding, rigid, inflexible
		Other:

SECTION D: General Job Performance

Yes	No	Observations
		Excessive absences in the last 12 months
		Frequent Monday/Friday absences or other similar patterns
		Major change in duty or responsibility
		Interferes with or ignores established procedures/protocols
		Experiences or causes job related incidents/accidents: <i>*Post-accident testing may be warranted where reasonable suspicion of drugs/alcohol use exists after an accident. If applicable, this box should be checked "yes" and the circumstances creating the reasonable suspicion after an accident, in addition to any applicable indicators above, should be further described in the space below.</i>
Articulate facts creating reasonable suspicion of drug or alcohol use after an incident/accident:		

I hereby certify that the information given above is true to the best of my knowledge.

Print Employee/Witness Name

Employee/Witness Signature

Date

Print Supervisor/Witness* Name

Supervisor/Witness Signature

Date

**When a non-supervisor employee has reasonable suspicion, the signature of the supervisor (or a second witness) should also be obtained if possible but is not required.*

Note: A violation includes a verified positive drug test result; confirmed breath alcohol test result of 0.04 or greater; on-duty alcohol use; pre-duty alcohol use; alcohol use following an accident; or refusal to test for any drug or alcohol test.

EXHIBIT C
DRUG AND ALCOHOL POLICY
ACKNOWLEDGEMENT OF SUBMISSION TO DRUG AND/OR ALCOHOL TESTING
BY THE COUNTY OF TUOLUMNE

I, _____ [PRINT
NAME], understand and acknowledge that I have reviewed a copy of the County of Tuolumne Drug and Alcohol Testing Policy (Policy). I hereby acknowledge that I am required to submit to drug and/or alcohol testing pursuant to the Policy.

I understand and acknowledge that information regarding the test results will be released to the County of Tuolumne and that such information may be used as grounds for disqualification from employment and/or for disciplinary action up to and including termination.

I further understand and acknowledge that:

1. The County of Tuolumne will pay the cost of all drug and/or alcohol tests required or requested by the County;
2. I may request in writing a copy of the results of any such test;
3. I may request that a split sample test be sent to a certified Testing Laboratory of my choice consistent with the procedures outlined in the County of Tuolumne Drug and Alcohol Testing Policy and that I will bear all of the costs associated with the split sample testing;
4. By signing this form I hereby acknowledge that the split sample test results will be released to the County of Tuolumne; and
5. I have the right to refuse to submit to such testing; however, refusal by me to submit to or cooperate at any stage of the testing shall be considered equivalent to a confirmed “positive” test for purposes of disqualification from employment and/or disciplinary action up to and including termination from my employment with the County of Tuolumne.
6. I may also be required to execute forms at the Collection Site of Testing Laboratory.

I hereby CONSENT to allow the County of Tuolumne to take a specimen of my urine, and submit it for a pre-employment, random, reasonable suspicion, or any drug test screen required by this policy. I FURTHER CONSENT to allow the laboratory testing service to make the results of such screen available to the prospective or current employer, the County of Tuolumne.

In consideration for such services being rendered on my behalf, I hereby RELEASE the laboratory testing service, its officers, agents, and employees, from any and all claims which I might otherwise have due to such results being made so available. I hereby CONSENT NOT TO FILE ANY ACTION at law or in equity against the County of Tuolumne, the laboratory testing service, their respective officers, agents or employees in connection with the results of such screen being made so available, and I hereby agree to INDEMNIFY and SAVE HARMLESS the County of Tuolumne, the laboratory testing service, their respective officers, agents, and employees from all damages, expenses, reasonable attorney's fees, and costs of court which they or any of them may suffer or incur, jointly or severally, due to the results of such screen being made so available.

I have read the above acknowledgement and certify that I have signed this document with full knowledge and understanding of its contents.

Signature: _____ Date: _____

EXHIBIT D
DRUG AND ALCOHOL POLICY
LIMITED QUERY CONSENT FORM
(Safety-Sensitive Employees Only)

I, _____, hereby provide consent to the County of Tuolumne ("County") to conduct a limited query of the Federal Motor Carrier Safety Administration ("FMCSA") Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) to determine whether drug or alcohol violation information about me exists in the Clearinghouse. This consent is effective immediately and will continue for the duration of my employment with the County.

I understand that if the limited query indicates that drug or alcohol violation information about me exists in the Clearinghouse a full query will be conducted, and FMCSA will not disclose that information to the County without first obtaining additional specific consent from me.

The County is subject to the FMCSA's drug and alcohol use and testing regulations in 49 CFR Part 382 and is required to query all employees performing safety sensitive functions, including driving a commercial motor vehicle. I understand that if I refuse to provide the County with consent to conduct a limited query of the Clearinghouse, I will be prohibited from performing safety-sensitive functions and my employment may be terminated.

Employee Signature

Date

Driver License Number

Date of Birth

EXHIBIT E
Prior Testing History Release of Information Format

[Note: **FMCSA** for **CMV Drivers** – records for **3** years; **FAA** for **Pilots** – records for **5** years.]
Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:

Employee Printed or Typed Name: _____

Employee SS or ID Number: _____

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in *Section I-B*, to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in *Section II-A* by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: _____ Date: _____

I-A. New Employer Name: _____ **Address:** _____

Phone #: _____ Fax #: _____

Designated Employer Representative: _____

I-B. New Employer Name: _____ **Address:** _____

Phone #: _____ Fax #: _____

Designated Employer Representative (if known): _____

Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:

II-A. In the two years prior to the date of the employee's signature (in Section I), for DOT-regulated testing

- | | |
|---|--------------------|
| 1. Did the employee have alcohol tests with a result of 0.04 or higher? | YES _____ NO _____ |
| 2. Did the employee have verified positive drug tests? | YES _____ NO _____ |
| 3. Did the employee refuse to be tested? | YES _____ NO _____ |
| 4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? | YES _____ NO _____ |
| 5. Did a previous employer report a drug and alcohol rule violation to you? | YES _____ NO _____ |
| 6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process? N/A _____ | YES _____ NO _____ |

NOTE: If you answered "yes" to item 5, you must provide the previous employer's report. If you answered "yes" to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).

II-B. Name of person providing information in Section II-A: _____

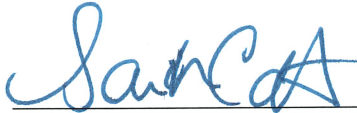
Title: _____ **Phone #:** _____ **Date:** _____

BOS Approval

The County of Tuolumne's Drug and Alcohol Testing Policy was approved by the Board of Supervisors and became effective on

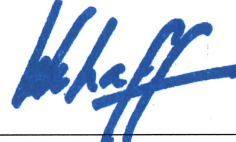
JUNE 20, 2023.

APPROVED AS TO LEGAL FORM:



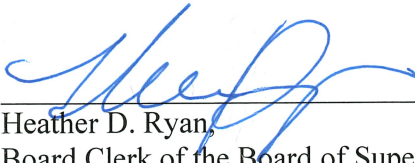
Sarah Carrillo, County Counsel

APPROVED:



Kathleen K. Haff, CHAIR

ATTEST:



Heather D. Ryan,
Board Clerk of the Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

HEATHER D. RYAN
Board Clerk

By: 