

1 **NYE COUNTY RESOLUTION NO. 2018-05**

2 **A RESOLUTION AMENDING THE NYE COUNTY DEPARTMENT OF TRANSPORTATION**
3 **RANDOM DRUG & ALCOHOL TESTING POLICY.**

4 WHEREAS, the Nye County Board of Commissioners (“Board”) is the governing board of Nye
5 County and, therefore setting personnel, and procedural policies for the County, its officials and its
6 employees; and

7 WHEREAS, pursuant to the Federal Motor Carrier Safety Administration (“FMCSA”), the
8 Department of Transportation (DOT) is responsible for establishing a program designed to help prevent
9 accidents and injuries resulting from the misuse of alcohol or use of controlled substances by driver of
10 commercial motor vehicles; and

11 WHEREAS, pursuant to 49 CFR §382.601 the Board authorized the establishment of said policy
12 to establish procedures and controls regarding DOT Random Drug & Alcohol Testing in accordance
13 with FMCSA.

14 NOW THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of the County
15 of Nye, State of Nevada, does hereby find, resolve, determine and order as follows:

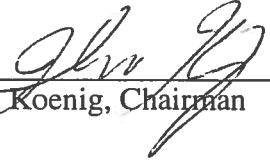
- 16 1. The revised DOT Random Drug & Alcohol Testing Policy submitted by the County Manager
17 hereby is adopted for Nye County and shall supersede and repeal any conflicting policies,
18 procedures, rules or regulations previously promulgated.
- 19 2. The County Manager is directed to take every step necessary to assure that the provisions of the
20 Policy are fully implemented.
- 21 3. Every department head, whether elected or administratively appointed, shall be responsible for his
22 or her department’s compliance with the Policy.
- 23 4. Each applicable employee of Nye County is expected to perform his or her job in compliance with
24 the Policy.


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1 APPROVED this 6th day of February, 2018.

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3 NYE COUNTY
4 BOARD OF COUNTY COMMISSIONERS:

ATTEST:

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7 John Koenig, Chairman

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9 Sandra L. Merlino, Nye County Clerk
10 And Ex-Officio Clerk of the Board

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NYE COUNTY

DOT Random Drug & Alcohol Testing Policy

**compliant with the
Department of Transportation
(DOT);
Federal Motor Carrier Safety Administration
(FMCSA); and
Federal Transit Administration (FTA)**



**Version 1
September 1, 2009**

DOCUMENT AND CONTACT INFORMATION

Policy Manager:	Nye County Human Resources (775) 482-7242 / 751-6301 human_resources@co.nye.nv.us
File Name:	Nye County DOT Random Drug & Alcohol Testing Policy v1.0.docx
To obtain this document or to make inquiries:	Tonopah HR Office (775) 482-7242 human_resources@co.nye.nv.us Pahrump HR Office (775) 751-6301 human_resources@co.nye.nv.us
Requirements for Document acceptance and changes:	Acceptance of, and changes to, this document must be reviewed and approved by the Nye County HR Manager.

HISTORY OF REVISION

Date	Version	Comments
September 1, 2009	0.1	Version 1 – Approved & Adopted by BoCC
June 6, 2017	2-2017	Approved and accepted by the BOCC
February 6, 2018	3-2018	

DOT Agency	Program Manager	Drug & Alcohol Testing Regulations	2009 Random Drug Testing Rate	2009 Random Alcohol Testing Rate
Federal Motor Carrier Safety Admin (FMCSA)	Jim Keenan Enforcement & Compliance Office Room W63-310 1200 New Jersey Ave., SE Washington DC 20590 Phone: 202-366-2096 Fax: 202-366-7908 jim.keenan@dot.gov	For carriers and commercial driver's license holders (CDL) 49 CFR Part 382	50%	10%

I. Policy and/or Objective

In an effort to help prevent accidents and injuries resulting from the misuse of alcohol or the use of controlled substances by drivers of commercial vehicles and to comply with the Omnibus Transportation Employee Testing Act of 1991, it is the policy of Nye County to administer complete commercial driver's license (CDL) physical examinations and alcohol and controlled substance testing for all employees whose job duties require a CDL and/or the transporting of hazardous materials. Additionally, it is the policy of Nye County to administer alcohol and controlled substance testing for all employees who are "safety-sensitive" as defined by the Federal Transit Administration.

This policy, along with the regulations governed by the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA), and Federal Transit Administration (FTA), (49 CFR Part 40, Part 382, and Part 655, respectively) is applicable to all Nye County employees whose job duties require a CDL; and/or the transporting of hazardous materials; and/or the performance of a "safety-sensitive" function, as defined by FTA; and are considered a 'covered employee' as defined under section III. All covered employees will be provided with a written notice of the availability of information regarding the Omnibus Transportation Act, FMCSA/FTA testing requirements, and a copy of this policy which provides for compliance with the federal requirements.

Nothing in this policy lessens Nye County's ability to discipline in accordance with Nye County's disciplinary policies (49 CFR §382.111). The minimum sanctions in this policy and federal law shall not lessen Nye County's ability to impose greater sanctions, up to and including termination under the Nye County Personnel Policy Manual and/or collective bargaining agreements.

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

II. Administration of Policy

Administration of this policy is the responsibility of the Human Resources Department with covered employees. Department heads are responsible for ensuring that the creation of any position or the addition of responsibilities requiring a CDL, or performance of a "safety-sensitive" function, is communicated to the Human Resources Department. Department heads are also responsible to ensure those employees who are required to maintain a CDL, and/or perform a

“safety-sensitive” function, as condition of employment, complete their required CDL physical examinations and testing, and CDL renewals are maintained on each employee, as applicable.

Prior to an applicant being formally offered a position with Nye County as a covered employee, applicant will sign a “Release of Information Form.” Nye County will, per FMCSA requirements, acquire applicants prior three-year drug and alcohol testing history (§382.413). If Nye County is unable to acquire the past three-year history, Nye County will document all attempts made per 49 CFR §40.25.

III. Definitions

For purpose of this policy, the following definitions will apply:

- A. "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
 - B. "Alcohol concentration" (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.
 - C. "Alcohol use" means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication) containing alcohol.
 - D. "Breath Alcohol Technician" (BAT) means an individual who instructs or assists in the alcohol testing process and operates an evidential breath testing device (EBTD).
 - E. "CFR" means Code of Federal Regulations. Title 49 Code of Federal Regulations Part 382 pertains to Federal Motor Carriers Safety Administration; and Part 655 pertains to FTA.
 - F. "Collection site" means a place designated by Nye County where employees/applicants present themselves for the purpose of providing a specimen provided by those employees/applicants.
 - G. "Commercial Driver's License" or "CDL" means a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR Part 383, to an individual which authorizes the individual to operate a class of a commercial motor vehicle.
 - H. "Commercial Motor Vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property, as follows:
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- (1) CLASS A: Any combination of vehicles with a gross vehicle weight rating (GCWR) of 26,001 or more pounds, provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.
- (2) CLASS B: Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.
- (3) Any vehicle designed to transport 16 or more passengers, including the driver; or
- (4) A vehicle of any size that is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

I. "Confirmation (or confirmatory) drug test" means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

J. "Confirmation alcohol test" means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

K. "Controlled substance test" 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.

L. "Controlled substance" means (a) marijuana metabolites; (b) cocaine metabolites; (c) amphetamines; (d) opiate metabolites; (e) Phencyclidine (PCP).

M. "Covered employee" means any Nye County employee who performs safety sensitive functions, requiring a CDL (49 CFR §382.103). This includes, but is not limited to full-time, regularly employed drivers as well as casual, intermittent, temporary, part-time, occasional, or self-employed drivers, including contractors or volunteers, as covered by DOT agency regulations. These functions may constitute part or all of the job duties in the operation of a Nye County owned, leased, or borrowed commercial motor vehicle. The term includes an applicant for employment Covered employees are Nye County employees (including mechanics who may test drive a repaired vehicle) who operate a commercial vehicle (see definition of commercial vehicles) owned or leased by Nye County.

Covered employee also means any Nye County Employee who performs safety sensitive functions, not requiring a CDL, which requires compliance with Federal Transit Administration (FTA) drug and alcohol testing regulations. Employee covered under the FTA would include any employee whose duties include any of the following:

- 1) The operation of a public transit revenue service vehicle, even when the vehicle is not in revenue service.

- 2) Maintaining a public transit revenue service vehicle or equipment used in revenue service.
- 3) Controlling the movement of a public transit revenue service vehicle

N. "Designated employer representative" (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual will be an employee of the Human Resources Department.

O. "Dilute Negative – Low level" creatinine level in a specimen is greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and when such level is indicated, the employer must direct the employee to undergo an immediate recollection under direct observation.

P. "EBTD" or "evidential breath testing device" means an EBTD approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List" (CPL) of Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from the NHTSA and Office of Alcohol and State Programs (49 CFR §40.3)

Q. "Medical Review Officer" (MRO) means a licensed physician (medical doctor or doctor of osteopathy) who is responsible for receiving laboratory results generated by Nye County's alcohol and controlled substance testing program, who has knowledge of substance abuse disorders, and who has appropriate medical training to interpret and evaluate a covered employee's medical history and any other relevant biomedical information.

R. "Omnibus Transportation Employee Testing Act of 1991" requires drug and alcohol testing of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines and other transportation industries. DOT publishes rules on who must conduct drug and alcohol tests, how to conduct those tests and what procedures to use when testing.

S. "Performing (a safety-sensitive function)" means a covered employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

T. "Refuse to submit" (to an alcohol or controlled substances test) means that an employee: (1) Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer; (2) 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; (3) Fails to attempt to provide a urine specimen for any drug test required by this part 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; (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the employee's provision of a specimen; (5) Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure; (6) Fails or declines to take a second test the employer or collector has directed the employee to take; (7) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER; (8) Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); (9) Is reported by the MRO as having a verified adulterated or substituted test result; (10) Fails or refuses to sign Step 2 of the alcohol testing form (ATF); (11) Fails 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; (12) Possess or wear a prosthetic or other device that could be used to interfere with the collection process; (13) Admit to the collector or MRO that you adulterated or substituted the specimen; and (14) fail to remain readily available following an accident

U. "Safety-sensitive function" under FMCSA includes all time from the time a employee 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 but are not limited to: (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the employee has been relieved from duty by the employer; (2) All time inspecting equipment as required by 49 CFR §392.7-8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; (3) All time spent at the driving controls of a commercial motor vehicle in operation; (4) 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 49 CFR §393.76 of this sub-chapter); (5) 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 (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

"Safety-sensitive function" under FTA includes: (1) The operation of a public transit revenue service vehicle, even when the vehicle is not in revenue service; (2) Maintaining a public transit revenue service vehicle or equipment used in revenue service; (3) Controlling the movement of a public transit revenue service vehicle

V. "Screening test" (or initial)

- (1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.
- (2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

W. "Split test" means at the collection site a collector will pour an employee's urine into two separate bottles. Controlled substance test is based on bottle A (primary), if the test result is positive, employee has 72 hours to request a split test, test based on bottle B (split). Nye County will pay for the split specimen test if the split specimen fails to reconfirm the primary specimen's results. However, if the split test results turn out to be same as the primary result, employee will be responsible for the cost of the test, which may be withheld from the employee's pay check.

- X. "Substance Abuse Professional" A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse(ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC)) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

IV. Required Testing

Any covered employee shall be tested for alcohol and controlled substances in accordance with the following:

A. Pre-Employment Testing (49 CFR §382.301) (49 CFR Part 655.41)

Prior to the first time a covered employee performs safety-sensitive functions for Nye County, whether as a new hire or a current employee transferring from a non-safety-sensitive function into a safety-sensitive position, he or she will undergo a drug test for controlled substances. The controlled substances test must be verified by a medical review officer indicating a negative test result. Employment with Nye County is contingent upon successful completion of pre-employment testing.

If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be referred to a Substance Abuse Professional. If a pre-employment test is canceled, Nye County will require the applicant to take and pass another pre-employment drug test.

B. Post-Accident Testing (49 CFR §382.303) (49 CFR Part 655.44)

FMCSA Covered Post-Accident Testing (Part 382.303)

As soon as practicable following an accident, Nye County must test each surviving covered employee for alcohol and controlled substance if:

1. An occurrence involving a commercial motor vehicle operating on a public road in commerce, and involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee who was performing safety-sensitive functions with respect to the vehicle, *or*
2. One or more motor vehicles incur disabling damage and must be transported away from the scene or in which someone is injured and requires immediate medical treatment away from the scene; **and** the employee receives a citation under state or local law for a moving traffic violation arising out of the accident.

For a FATAL accident meeting a condition listed in #1 above, the post-accident alcohol and drug test will be conducted as soon as possible. For NON-FATAL accidents meeting a condition listed in #2 above, if the citation is received within 8 hours of the occurrence, the post-accident alcohol test will be conducted; and if the citation is received within thirty-two hours of the occurrence, the post-accident drug test will be conducted. If a required post-accident alcohol test is not administered within two hours following the accident, Nye County must submit a report to the U.S. DOT stating why the test was not promptly administered. In the event a post-accident alcohol test is not administered within eight hours following an accident, attempts to administer the test must cease. In the event a post-accident drug test is not administered within thirty-two hours, attempts to administer the test must cease. The post-accident testing report must contain an explanation of the events that resulted in the failure to administer the test.

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

FTA Covered Post-Accident Testing (Part 655.44)

Covered employees shall be subject to FTA post-accident drug and alcohol testing under the following circumstances:

Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee

whose performance could have contributed to the accident, as determined by Nye County using the best information available at the time of the decision, will be tested.

Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

- 1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- 2) One or more vehicles incurs disabling damage and must be towed 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 Nye County using the best information available at the time of the decision, will be tested.

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

C. Random Testing (49 CFR §382.305) (49 CFR §655.45)

Under the random testing requirements, Nye County must randomly select covered employees at anytime employees are on duty or while performing safety-sensitive duties for alcohol and substance abuse testing. The selection process is based on a scientifically valid method. A minimum of ten percent (10%) per year of all covered employees will be tested for alcohol use. A minimum of twenty-five percent (25%) per year of all covered employees will be tested for substance abuse. Each covered employee in the pool shall have an equal chance of selection each time the selections are made.

Note: Covered employees may only be tested for alcohol misuse just before, during, or just after the employee performs a safety-sensitive function (§382.305 (1)) (§655.45(i)).

Random testing dates and times shall be unannounced and conducted in strict confidence, with a limited number of people having knowledge of the selection list. The names of employees who are selected for testing must be kept confidential until such time that the carrier notifies the employee to take the test. Supervisors will be notified at start of shift of those employees that shall be tested and are required to immediately ensure all steps are met to obtain collection of said employee. Any employee identified for alcohol and substance abuse testing will be advised where and when to report. Once the employee is notified, he/she must immediately proceed to the testing facility and undergo testing. Testing shall be conducted during an employee's normal work hours.

D. Reasonable Suspicion Testing (49 CFR §382.307) (49 CFR §655.43)

Under the guidelines of CFR and the Nye County Personnel Policy Manual, if a reasonable suspicion exists that a covered employee has violated the rules for alcohol misuse or controlled substances use, the employee shall be required to be tested for alcohol misuse or substance use. Any employee identified will be advised where and when to report for testing. Testing shall be conducted during an employee's normal work hours. Direct observation shall be made by a Supervisor whom has been trained pursuant to 49 CFR §382.603. Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. A written record shall be made of the observation on a County designated form by the supervisor who made the observations. See Nye County Personnel Policy Manual and 49 CFR §382.307 for further guidelines. Reasonable suspicion alcohol testing can only be conducted just before, during, or just after the performance of a safety-sensitive function.

E. Return-To-Duty Testing (49 CFR §382.309) (49 CFR §655.46)

Before the covered employee returns to duty in a safety-sensitive function following a positive test or a test refusal, the covered employee must be evaluated and undergo testing in accordance with 49 CFR Part 40, Subpart O. The alcohol test must have results less than 0.02 before returning to a safety-sensitive function. Controlled substance testing must be verified as negative results (49 CFR §382.605(c)(1))(49 CFR §655.46).

F. Follow-Up Testing (49 CFR §382.311) (49 CFR §655.47)

Covered employees that have returned to duty following a positive or refused a 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.

G. Required hours of compliance

Each covered employee must maintain compliance during normal work hours and schedule. No employee shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that an employee has used alcohol within four hours shall permit a employee to perform or continue to perform safety-sensitive functions (§382.207). No employee required to take a post-accident alcohol test under §382.303 or §655.44 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

V. Testing Administration

A. Refusal to submit to a required alcohol or controlled substances test §382.211 and §655.49

No employee shall refuse to submit to a pre-employment test required under §382.301 or §655.41. No employee shall refuse to submit to a post-accident alcohol or controlled substances test required under §382.303 or §655.44, a random alcohol or controlled substances test required under §382.305 or §655.45, a reasonable suspicion alcohol or controlled substances test required under §382.307 or §655.43, or a return-to-duty or follow-up alcohol or controlled substances test required under §382.311 or §655.46 and 655.47. No employer shall permit a employee who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. See "Refuse to Submit" under section III of this policy.

B. Employee not available for testing

Nye County procedures are in place to ensure that each employee receives no advanced notice of selection, from time to time an employee will be off duty and unable to complete the testing. If an employee selected for testing is unavailable (no employee shall be excused from testing because of logistical difficulties, operational requirements, or complicating personnel issues that make the testing process more difficult are not acceptable reasons) the reason will be documented, and the Supervisor shall maintain strict confidentiality that the employee was selected and notify only HR of the employee's absence. Every effort shall be made to test the individual selected, therefore the Supervisor will notify HR as soon as the employee returns back to work so a test may be completed. If the return of the employee is unknown, the employee will be excused but strict confidentiality of the employee being selected will remain intact, an extra selection will be made during the next selection cycle.

C. Time limit

When an employee is notified of testing, he or she must proceed immediately to the collection site. Immediately meaning that after notification, all the employee's actions must lead to an immediate specimen collection. An employee who engages in conduct which does not lead to testing as soon as possible after notification may be considered to have refused to be tested. The Supervisor or designee will escort the employee to the testing facility, and will remain with the employee until all testing is complete.

D. Facility

Nye County will approve all testing facilities which may include an approved on-site testing facility or use of a mobile testing facility.

E. Test

Alcohol and controlled substance tests shall be administered as follows and in accordance with 49 CFR Part 40, as amended:

1. Alcohol: A covered employee shall be tested for alcohol by a trained breath alcohol technician utilizing an Evidential Breath Testing Device (EBTD).
2. Controlled Substances: A covered employee being tested for controlled substances shall be required to provide a urine sample which will be split into two bottles by a collection site employee. The collection site employee will complete a chain of custody form and ship both bottles to a Department of Health and Human Services (DHHS) certified laboratory for analysis.

F. Failure to Report for Testing

Any covered employee/applicant scheduled for testing, who does not report for testing upon notification, within one (1) hour following the scheduled appointment time, shall be considered for disciplinary actions under Nye County procedures pending an investigation. Any covered employee, who is involved in an accident in which the employee is performing a safety-sensitive function and who does not submit for testing, shall be presumed to have refused testing and shall not perform and safety-sensitive function until an investigation is conducted. Disciplinary actions under Nye County policies and procedures including suspension or separation could be imposed on the employee.

G. Absence

A covered employee who has been on a layoff or who is off work for a flex leave during which the employee was not subject to random testing shall submit to controlled substance testing when returning to work. If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days, and has not been in the random testing pool during that

time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.

H. Controlled substances use

No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 49 CFR §382.107, who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a commercial motor vehicle.

No employer having actual knowledge that an employee has used a controlled substance shall permit the employee to perform or continue to perform a safety-sensitive function.

An employer may require an employee to inform the employer of any therapeutic drug use. It should be noted that the use of prescription drugs which may affect one's ability to perform a safety-sensitive function is a violation of federal law.

VI. Test Results

Test results are communicated by the approved medical testing facility to the Human Resources department, as soon as possible, following the administering of the tests. If a positive test occurs, the test results and other confidential information may be released only to Human Resources and a substance abuse professional. Any other release of this information is only with the employee's written consent or as required by law.

A. Procedures for negative test results

1. If the test results do not indicate alcohol misuse or controlled substance use, the covered employee may continue performing safety-sensitive functions as scheduled.
2. If the test results do not indicate controlled substance use, the applicant for a position requiring a CDL will continue to be considered for the position.

B. Procedures for positive test results

1. A test of the split urine sample will be conducted as appropriate under the Omnibus Transportation Employee Testing Act of 1991. If the test results indicate alcohol use or controlled substance use, the employee will be immediately removed from the performance of any safety-sensitive function, referred to a substance abuse professional (SAP) for assistance (49 CFR §382.605 and §655.62) and may be subject to appropriate discipline under Nye County policies.
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2. If the tests indicate controlled substance use, the applicant will not be considered for employment in the CDL required position.

Nye County shall not permit any employee to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the employee has violated this policy. In the event a positive test result occurs, employee will be placed on administrative leave pending investigation and possible discipline as delineated in the Nye County Personnel Policy Manual.

C. Confidentiality

All test results shall be recorded and communicated in a confidential manner. The Medical Review Officer (MRO) will discuss a test result indicating controlled substance use with the affected covered employee to ascertain whether the covered employee/applicant is taking prescription drugs.

D. Record Keeping

Employers covered under DOT drug & alcohol testing regulations must maintain records that document their testing program consistent with 49 CFR Part 40, FMCSA, and FTA regulations. In addition to the record keeping outlined below, Nye County will thoroughly document the program, decision-making and compliance with respective DOT regulations, including but not limited to test results; testing process administration; return to duty process administration; employee training; and supervisor training. The following documentation will be retained for the duration of an employee's employment with Nye County or at minimum as outlined below:

- 1 Year:** Negative drug test results
Alcohol test results less than 0.02
 - 2 Years:** Records related to the alcohol and drug collection process
 - 3 Years:** Previous employer records
 - 5 Years:** Annual MIS reports
Employee evaluation and referrals to SAPs
Follow-up tests and follow-up schedules
Refusals to test
Alcohol test results 0.02 or greater
Verified positive drug test results
EBT calibration documentation
-

Indefinite period: Education and Training records, plus two years after ceasing to perform functions.

VII. Alcohol Violations:

For alcohol violations, 49 CFR §383.51 (c) mandates certain minimum sanctions (see 49 CFR §382.201, 382.204, 382.205, 382.207 382.301, 382.605 and §655). Nothing in this section lessens Nye County's ability to discipline in accordance with Nye County's Personnel Policy or bargaining agreements and merely outlines minimum actions to be taken based on DOT and FMCSA regulations. The mandatory minimum sanctions are as follows:

A. A covered employee with an alcohol concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform safety-sensitive functions until the next scheduled duty period, but not less than twenty four (24) hours following administration of the initial test. However, federal law states such employee shall be prohibited from driving for a period of one (1) year following an alcohol test indicating an alcohol concentration of 0.02 or greater when the covered employee has been involved in a fatal accident.

B. A covered employee with an alcohol concentration of 0.04 or greater shall not drive a commercial motor vehicle for a period of sixty (60) consecutive days.

C. A covered employee who during any three-year period is found (as a result of alcohol testing conducted by Nye County in conformity with federal alcohol testing requirements or a federal, state, or local government official) to have an alcohol concentration of 0.04 or greater in two separate incidents may not drive for a period of 60 consecutive days.

D. A covered employee who during any three (3) year period is found (as a result of alcohol testing conducted by Nye County in conformity with federal alcohol testing requirements or a federal, state, or local government official) to have an alcohol concentration of 0.04 or greater three or more times in separate incidents shall not drive for a period of one hundred twenty (120) consecutive days.

E. In addition to any driving prohibitions, a covered employee who is found through testing (conducted in conformity with the federal rules) to have an alcohol concentration of 0.04 or greater may not perform any safety-sensitive functions until he or she has been evaluated by a substance abuse professional (SAP), completed any rehabilitation required by the substance abuse professional, and tests at less than 0.02 for the presence of alcohol (49 CFR §382.605). * NOTE: the minimum sanctions in this policy and federal law shall not lessen Nye County's ability to impose greater sanctions, up to and including suspension or termination.

VIII. Controlled Substance Violations

For controlled substances violations, federal law mandates certain minimum sanctions. Nothing in this section lessens Nye County's ability to discipline in accordance with Nye County's disciplinary policies and merely outlines minimum actions to be taken based on DOT and FMCSA regulations. The mandatory minimum sanctions are as follows:

- A. For any offense, a covered employee shall be referred to a substance abuse professional (SAP).
- B. For a second offense with a three (3) year period, a covered employee shall not drive a commercial vehicle for sixty (60) consecutive days.
- C. For a third offense or greater within a three (3) year period, a covered employee shall not drive a commercial vehicle for one hundred twenty (120) consecutive days.
- D. Any covered employee who refuses to be tested shall not drive a commercial vehicle for a minimum of one (1) year and until he/she has submitted a urine specimen that has a "negative" result. * NOTE: The minimum sanctions in this policy and federal law shall not lessen Nye County's ability to impose greater sanctions, up to and including suspension or termination.

IX. Training

A. Employees

Each employer shall provide educational materials that explain the requirements of 49 CFR §382.601 and §655.14(b)(1), and the employer's policies and procedures with respect to meeting these requirements.

1. The employer shall ensure that a copy of these materials is distributed to each employee prior to the start of alcohol and controlled substances testing under this part and to each employee subsequently hired or transferred into a position requiring driving a commercial motor vehicle.
2. Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

B. Supervisors

Training will be provided to appropriate supervisors to determine whether or not reasonable suspicion exists to conduct an alcohol and/ or controlled substance test. Individuals shall receive sixty (60) minutes of training on alcohol misuse and an additional sixty (60) minutes of training on controlled substance use. The training will assist them on determining whether reasonable

suspicion exists to require an employee to undergo testing. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol and/or controlled substance use (49 CFR §382.603 and §655.14(b)(2)).

X. Effects of Alcohol and Controlled Substances

To learn more about the effects of alcohol and controlled substances visit www.nhtsa.dot.gov • www.nida.nih.gov • www.workplace.samhsa.gov • www.whitehousedrugpolicy.gov • www.health.org.

XI. Questions

Contact Nye County Human Resources Manager with any questions pertaining to the contents of this policy and the Nye County Random Drug and Alcohol Testing Process.

Nye County expressly reserves the right at any time to modify, alter, or amend this policy in whole or in part. Nye County shall have the unlimited right to amend this policy at any time, retroactively or otherwise, in such respect and to such extent as may be necessary to meet any legal requirement and to the extent as necessary to accomplish this purpose. The Human Resources Manager or his/her designee is hereby granted authority to issue interpretations and clarify rules under this policy and to coordinate it with or modify other rules of the Nye County as required from time to time for compliance with the law.

Acknowledgment of DOT Random Drug Screen & Alcohol Testing Policy

This form is used to acknowledge receipt of, and compliance with, the Nye County DOT Random Drug & Alcohol Testing Policy.

Procedure

Complete the following steps:

- Read the "Nye County DOT Random Drug & Alcohol Testing Policy".
- Read the "What Employees need to know about DOT Drug & Alcohol Testing".
- Contact Nye County Human Resources Manager with any questions (775-482-7240 / 775-751-6300).
- Sign and date in the spaces provided below.
- Return this page only to the Nye County Human Resources Department.

Signature

By signing below, I agree to the following terms:

- I have received and read a copy of the, "Nye County Random DOT Drug & Alcohol Testing Policy" and agree to address any questions to the Nye County Human Resources Manager.

Employee signature: _____

Employee name: _____

Date: _____

Department: _____