

RESOLUTION NO. 2-2015

A RESOLUTION ADOPTING A POLICY
REGARDING RANDOM DRUG TESTING

WHEREAS, the Board of Commissioners is responsible for overall management of Fergus County, and the Board has an interest in insuring that the County employees who are in positions subject to Commercial Drivers' License (CDL) requirements and who perform safety-sensitive functions, do so safely; and

WHEREAS, the Board is responsible for making sure that those in covered positions are in compliance with all applicable federal regulations governing workplace anti-drug programs;

NOW THEREFORE BE IT RESOLVED THAT the attached Drug and Alcohol Testing Policy for Fergus County is hereby adopted, effective upon passage of this Resolution; and

BE IT FURTHER RESOLVED THAT this Resolution with its attached policy shall be distributed to all employees in covered positions for information and notice of implementation.

PASSED AND APPROVED this 9 day of January, 2015.

BOARD OF COMMISSIONERS:



SANDRA YOUNGBAUER



ROSS BUTCHER



CARL SEILSTAD

ATTEST:



RANA WICHMAN, Clerk & Recorder

DRUG AND ALCOHOL TESTING POLICY FOR FERGUS COUNTY

INTRODUCTION

This policy applies to all Fergus County employees who are in positions subject to Commercial Drivers' License (CDL) requirements and who perform safety-sensitive functions, hereafter referred to as "covered positions."

The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the use of alcohol and prohibited substances. This policy is also intended to comply with all applicable federal regulations governing workplace anti-drug programs. The Federal Highway Administration (FHWA) of the U. S. Department of Transportation has enacted 49 CFR Pages 40, 382, 391, 392, and 395, as amended, which mandate urine drug (controlled substance) testing and breath alcohol testing for persons who are subject to CDL requirements and perform safety-sensitive functions.

PROPER APPLICATION OF POLICY

The County is dedicated to assuring fair and equitable application of this policy. 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 and is found to have deliberately misused the policy in regard to a subordinate shall be subject to disciplinary action up to and including termination.

Nothing in this policy is intended to preclude disciplinary action being taken under existing County policy.

DEFINITIONS

Controlled Substance: Drugs whose general availability is restricted; any one of a number of drugs or other substances which are strictly regulated or outlawed because of their potential for abuse or addiction. Such drugs include those classified as narcotics, stimulants, depressants, hallucinogens, and cannabis.

Designated Employer Representative: As defined by the Federal Motor Carrier Safety Administration, a Designated Employer Representative (DER) is an individual identified by the employer as being able to receive communications and test results from service agents and who is authorized to take immediate action to remove employees from safety-sensitive duties and make required decisions in the testing and evaluation processes. The individual must be an employee of the County, and shall annually be designated by the Board of County Commissioners.

Legal Drugs That May Affect Performance: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, employees taking any prescribed or over-the-counter substance which carries a warning label indicating that mental functions, motor skills, or judgment may be adversely affected must immediately report this use to their supervisor.

Medical Review Officer: A Medical Review Officer (MRO) is a licensed physician (Doctor of Medicine or Osteopathy) responsible for receiving laboratory results generated by the County's controlled substance

testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his or her medical history and any other relevant biomedical information.

Substance Abuse Professional: The Substance Abuse Professional (SAP) is a person who possesses the requirements listed in 49 CFR Subpart O, §40.281. The SAP provides a comprehensive face-to-face evaluation of employees who have violated a County drug and alcohol program regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

TESTING REQUIREMENTS

Employees in covered positions will be subject to urine drug testing and breath alcohol testing in accordance with CFE Part 40, as amended. Covered positions will be subject to the following tests: Pre-employment, Post-accident, Random, Reasonable Suspicion, Return-to-Duty, and Follow-up.

REFUSAL TO TEST – CONTROLLED SUBSTANCES OR ALCOHOL

The following actions will be considered refusal to test and will be handled accordingly as a positive test.

Any employee or prospective employee who:

- Arrives at the test clinic without a valid driver's license;
- Fails to comply with a request for testing;
- Fails to arrive at the testing site;
- Fails to remain at the testing site until the testing process is complete;
- Provides false information in connection with a test;
- Attempts to falsify test results through tampering, contamination, adulteration, or substitution;
- Fails to provide a sufficient urine or breath sample and it has been determined, through a required medical evaluation, that there was not an adequate medical explanation for the failure;
- Demonstrates verbal or obstructive behavior that results in the inability to conduct the test;
- Is unavailable for Post-accident testing, unless injury prevents testing;
- Fails to undergo a medical examination if directed;
- Fails to permit direct observation collection required for Return-to-Duty or Follow-up testing;
- Fails to sign Step #2 of the Alcohol Testing Form;
- Fails to follow the program recommended by the SAP.

Supervisor Responsibilities:

When notified that an employee has been scheduled for a Random test, the supervisor (or designee) must inform the employee that he or she has been selected for Random testing and that he or she should report *immediately* to the testing facility.

If there is an emergency or special circumstance that keeps the supervisor (or designee) from informing the employee, the supervisor should make every effort to contact the County Human Resource Department or the Designated Employer Representative in the County *immediately* to reschedule the test.

Employee Responsibilities:

When notified that he or she has been scheduled for a Random test, the employee must *immediately* stop performing safety-sensitive functions and report to the assigned testing facility.

PRE-EMPLOYMENT TESTING

The successful applicant for a covered position will be required to undergo urine drug testing after an offer of employment has been made. The employment offer is conditional upon receipt of negative controlled substance test results. The prospective employee must provide a written release to the County to allow the County to obtain the information from previous employers for the last three (3) years as provided in 49 CFD Part 40, as amended.

A prospective employee with a confirmed positive controlled substance test will be disqualified from further consideration for the position being filled. The disqualification will not prevent the same individual from being considered for any subsequent vacancy if the applicant can document that he or she has sought an SAP and is in compliance with the SAP's recommendations for that positive controlled substance test. **The Federal Motor Carrier Safety Administration requires that all violators must complete the return to duty standards of CFR 49, Part 40.285.**

If a prospective employee receives a dilute positive result, and if directed by the MRO, the prospective employee must submit to a second test within twenty-four hours, and receive a confirmed negative test result on the second test.

Failure to submit to the second test or failure to bring medical proof within 5 working days to achieve a negative test result will disqualify the person from further consideration for the position. The disqualification will not prevent the same individual from being considered for any subsequent vacancy if the applicant can document that he or she has sought an SAP and is in compliance with the SAP's recommendations for that positive controlled substance test. **The Federal Motor Carrier Safety Administration requires that all violators must complete the Return to Duty standards of CFR 49, Part 40.285.**

REASONABLE SUSPICION TESTING

Employees in covered positions may be subject to a Fitness for Duty evaluation that includes urine and breath testing when there is reason to believe that controlled substance or alcohol use is a potential factor in affecting their job performance.

A supervisor must complete Reasonable Suspicion Training in identifying controlled substance use and alcohol misuse symptoms before they can require an employee to be tested based on reasonable suspicion.

POST-ACCIDENT TESTING

An accident that meets the following criteria subjects the employee to controlled substance and alcohol testing. *If an accident does not meet the following criteria, do not have the employee tested.*

Accident Criteria:

1. The accident occurs on a public road and involves a covered driver operating a commercial motor vehicle (CMV), and the accident results in either
 - A fatality as a result of the accident, or
 - The driver receives a citation from a law enforcement officer as a result of the accident and the injured received immediate medical attention away from the accident site;

OR

- The driver received a citation from a law enforcement officer as a result of the accident, and one or more of the involved vehicles is towed away from the scene of the accident.

RANDOM TESTING

Employees in covered positions will be subject to random, unannounced alcohol and/or controlled substance testing. Supervisors shall ensure that random alcohol and/or controlled substance tests are unannounced. Testing for alcohol and/or controlled substances may occur anytime during the employee's work shift.

In accordance with FMCSA Part 382.305 - Random Testing, the selection for Random testing will be made by a scientifically valid method, and each employee shall have an equal chance of being tested each time selections are made. A segment of those tested for controlled substances will also be subject to alcohol testing.

RETURN-TO-DUTY AND FOLLOW-UP TESTING

In accordance with Part 40.67, Return-to-Duty and Follow-up testing shall be collected under direct observation. Employees who previously had a confirmed positive controlled substance or alcohol test must be evaluated and released to duty by the SAP and have a negative Return-to-Duty test result before returning to perform safety-sensitive functions for the County.

Employees will be required to undergo unannounced Follow-up alcohol and/or controlled substance testing as directed by the SAP. The employee is subject to Random testing in addition to Return-to-Duty and Follow-up testing.

DILUTE URINE SAMPLES

If directed by the MRO to conduct a re-collection due to a dilute result, CFR 40.155 requires direct observation on negative or positive dilutes, and the following will apply:

The employee will be immediately removed from safety-sensitive work and immediately retested. The employee may not return to work until a negative test result with non-dilute urine is received from the subsequent test, no sooner than the start of the employee's next regularly scheduled duty period, and not less than twenty-four hours following the administration of the test.

If the subsequent test is dilute, the County may send the employee to a physician to determine if there is a medical reason for the dilute sample. If the physician determines there is no medical reason for a dilute urine sample, the test will be treated as a positive test. The County will refer the employee to a SAP for evaluation and require a negative, non-dilute Return-to-Duty test or certification from a physician that the appearance of a dilute sample is normal for the employee.

ALCOHOL TESTING

Employees who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. Employees who have engaged in alcohol misuse cannot return to safety-sensitive duties until they have been evaluated by a SAP and have complied with any treatment recommendations. To further safeguard transportation safety, employees who have an alcohol concentration

(defined as 0.02 or greater) when tested just before, during, or just after performing safety-sensitive functions must be removed from performing such duties for 24 hours. If an employee's behavior or appearance suggests alcohol misuse, a Reasonable Suspicion alcohol test must be conducted. If a breath test cannot be administered, the employee must be removed from performing safety-sensitive duties for at least 24 hours.

Alcohol testing shall be performed only when the employee is **performing** safety-sensitive functions, **immediately prior** or **immediately after** performing safety-sensitive functions.

If an employee is unable to provide sufficient breath for the alcohol test, the County will require the employee to be examined by a physician within 5 working days to determine whether there is a medical condition that prevents him or her from providing adequate breath for a test. If no medical reason exists for inability to provide adequate breath, the employee will be subject to discipline for refusal to test.

A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test, and the employee will be subject to disciplinary action and must obtain an evaluation and Return-to-Duty plan by a SAP.

ALCOHOL CONCENTRATION OF 0.02 – 0.04:

An employee with a confirmed alcohol concentration from 0.02 up to 0.04 may not perform safety-sensitive functions; and while they are not subject to disciplinary action, they may be subject to follow-up procedures described below:

First Occurrence:

Removal from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period, not less than 24 hours following administration of the test and completion of a Return-to-Duty alcohol test indicating a breath alcohol concentration of less than 0.02.

Second and Any Additional Occurrences:

Removal from performing safety-sensitive functions under the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test. The employee will be referred to the SAP for evaluation to determine what assistance the employee needs in resolving problems associated with alcohol misuse. The employee must be released to duty by the SAP with completion of a Return-to-Duty alcohol test indicating an alcohol concentration of less than 0.02 prior to being allowed to resume normal work duties.

This also applies to an employee whose first confirmed alcohol concentration test results are 0.04 up to 0.08 and a second test with concentration results of 0.02 up to 0.04.

Delay in Receiving Test Results: Drug test results are usually received within 3 working days from the date of the test. A delay in receiving the test results does not indicate a positive test; however, supervisors have the option to assign the employee to non-safety-sensitive work responsibilities until the County receives the results. This work reassignment is *not* a disciplinary action.

Disciplinary Action – Positive Controlled Substance and/or Alcohol Test Result:

The following actions will occur as a result of a confirmed positive controlled substances test or a confirmed positive alcohol test. Additional disciplinary actions may be levied outside of this policy if the employee violates other County policies.

First Occurrence:

Once notified, the supervisor removes the employee from performing safety-sensitive functions and conducts a meeting with the HR Department and the employee to discuss results, policy, and the employee’s responsibilities. The employee will be given 10 working days’ disciplinary suspension without pay. The DER will refer the employee to a SAP for evaluation and program recommendations for return to duty and completion of a return-to-duty alcohol or controlled substance test with a verified negative result.

Drug testing: Direct observation collection follow-up tests will be required in accordance with the SAP’s program recommendations. An employee’s failure to follow SAP recommendations will be considered as a result to submit to testing and will be handled as a second positive test.

Second Occurrence:

Once notified, the supervisor will immediately remove the employee from performing safety-sensitive functions. The supervisor will have a discussion with the HR Specialist in regard to the employee’s second occurrence positive test result, which will include disciplinary action and termination of employment.

EMPLOYEE ADMISSION OF ALCOHOL OR CONTROLLED SUBSTANCE USE

No adverse action will be taken against an employee in a covered position who admits to misuse of alcohol or use of a controlled substance covered by this policy and federal regulations (see CFR 49 Part 382.121) if the following conditions apply:

The employee:

- Makes the admission prior to reporting to duty; and
- Has not been notified to report for a random test for which he or she has not yet been tested.

The supervisor must document this admission and notify the HR contact for this policy. The employee must sign a release allowing the SAP to notify the County of successful completion of the program and of the return-to-duty test results.

An employee who admits to alcohol or controlled substance use in accordance with this policy will be allowed to use sick or annual leave to complete evaluation, education, or treatment and complete the Return-to-Duty testing. The employee may not perform safety-sensitive functions until he or she has successfully completed the treatment program and has a verified negative test result.

PROGRAM CONTACT

Any questions regarding this policy should be directed to the County DER (Designated Employee Representative at (406) _____.

