AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Amended Department of transportation Drug and Alco

Action Requested: Motion

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

This was on the agenda in mid-December. Since that time our consortium requested a change.

Fiscal Impact:

Submitted by: Marlene D. Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 12/29/17

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/29/2017 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\jost Discharge Date: 12/29/2017

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 1/2/2018

Revised April 2015

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GUNNISON COUNTY
DOT Policy

Department of Transportation drug and alcohol testing policy

I. Policy Objective (382.101)
To comply with applicable Federal Regulations governing workplace drug and alcohol abuse and misuse.

II. Applicability (382.103)
This policy applies to all GUNNISON COUNTY employees and to any future employees that GUNNISON COUNTY may hire to perform a safety sensitive function involving a commercial motor vehicle. Also covered are casual, intermittent, and occasional employees who perform safety sensitive functions involving a commercial motor vehicle.

III. Regulated Substances (Part 40, Subpart B)

A. Controlled Substances
1. Marijuana
2. Opioids
3. Cocaine
4. Amphetamine
5. Phencyclidine

B. Alcohol

Specimen Validity Testing Part 40 (40.89 - 40.95)
All drug testing samples will undergo Specimen Validity testing for adulteration and specimen dilution.

IV. Prohibited Use (382.201 – 382.211)

A. Alcohol – No driver shall or supervisor having knowledge of, permit a driver to:
1. Report for duty or remain on duty requiring performance of safety sensitive functions while having an alcohol concentration of 0.02 or greater.
2. Consume alcohol while on duty
3. Report for duty within four hours of alcohol consumption
4. Possess alcohol while on duty or operating a commercial motor vehicle.
5. Consume alcohol within eight hours of an accident (if required to be tested) or until testing is completed.

B. Controlled Substances – No driver shall, or supervisor having knowledge of, shall permit a driver to:
1. Report for duty or remain on duty requiring performance of safety sensitive functions when using any controlled substance. Exception: If the use is

pursuant to instructions of a physician who has provided written documentation that the substance does not adversely affect the ability to safely operate a motor vehicle.

2. Report for duty or remain on duty or perform a safety sensitive function having tested positive for controlled substances.
3. Employees covered under this policy must report any therapeutic drug use to his/her supervisor immediately.

Prohibited Use Continued

Prescription Medication and Over the counter medication: (GUNNISON COUNTY Policy:)

1. It is the responsibility of each employee to notify GUNNISON COUNTY or their supervisor when they are taking ANY prescription –or- over the counter medication that may create impairment.

2. Employee MUST have a valid and current doctor's prescription and MUST be under the prescribing doctor's care if taking any type of prescription medicine that can create impairment.

3. If an employee tests positive and cannot produce a prescription, the MRO will report a positive result to the employer. **Consequences for a positive test will apply.**

4. If employee tests positive and a prescription exists, the MRO will report the result as a negative, but will also report any safety concerns, which may require further evaluation.

V. Required Testing Circumstances: (382.113)

A. Pre-employment: (382.301)
(GUNNISON COUNTY will pay for pre-employment testing)
Those employed by GUNNISON COUNTY to perform safety sensitive functions while operating a commercial motor must have a verified negative controlled substance test result prior to driving and/or performing a safety sensitive function.

B. Post-Accident testing: (382.303)
(GUNNISON COUNTY will pay for post accident testing)
GUNNISON COUNTY employees must be tested for alcohol and controlled substances as soon as possible when the accident meets **1 of the 3** following DOT criteria:

1. The accident involved the loss of life.
2. A citation for a moving violation was issued to the CDL holder **and** one of the vehicles involved in the accident had to be towed.
3. A citation for a moving violation was issued to the CDL holder **and** one of the people involved in the accident had to receive medical attention immediately away from the scene of the accident.

GUNNISON COUNTY employees must report all accidents to his/her supervisor or designee immediately following the accident. Testing should take place as soon as possible. The supervisor or designee will transport the employee to the test site for a breath alcohol test within 2 hours or at least by 8 hours after the accident. GUNNISON COUNTY employees must submit to a controlled substance test as soon as possible or within 32 hours of accident.

C. Random Testing: (382.305) (GUNNISON COUNTY will pay for random testing)
A minimum annual rate of 10% of those enrolled in the consortium that operate a commercial motor vehicle will be tested for alcohol and a minimum 50% of those enrolled in the consortium will be tested for controlled substances. Testing will be

unannounced and spread throughout the year. Each driver has an equal chance of being selected for testing each time a selection is done.

GUNNISON COUNTY will be enrolled in the PRO COM consortium for random testing. This selection is done by a scientifically valid computer method. Once notified of selection, GUNNISON COUNTY employee must proceed immediately to the collection site for testing.

D. Reasonable Suspicion: (382.307) (GUNNISON COUNTY will pay for reasonable suspicion testing)

Trained supervisors will be authorized to determine, based on observations or behaviors, that alcohol and/or controlled substance testing be conducted. Such testing MUST occur immediately. This includes care, custody and responsibility for the employee. In the event of Alcohol suspicion, if the test is not completed within 2 hours the reason must be documented, and attempts to test discontinued after 8 hours. For Drug suspicion then the discontinuation after 32 hours applies. A Breath Alcohol Technician will make an immediate determination of alcohol level. In the event of a drug test the individual may not be returned to a safety sensitive function until a Negative Test result is reported to the program supervisor.

E. Return To Duty Testing: (382.309) (Employee pays for return to duty testing)
If any of the testing results are positive, employees must obtain the service of a SAP (substance abuse professional) and abide by his or her recommendation at the employee's expense, to rehabilitate before resuming safety sensitive functions. Once treatment is completed employee must take a return to duty test. If the test is negative, employee may, upon release from Substance Abuse Professional and approval from program supervisor, return to his/her previous duties.

F. Follow Up Testing: (382.311) (Employee pays for follow up testing)
If it is determined that an employee is in need of assistance in resolving misuse, the employee understands that they are subject to unannounced follow-up testing as directed through a cooperative effort between the SAP and program supervisor. A minimum of 6 follow up tests must take place during the first 12 consecutive months after treatment is completed. Follow up testing may continue for up to 5 years.

Direct Observation Collections: (Part 40, 40.67)
Any employee, who during the collection process, attempts to substitute, tamper with, or adulterate a urine sample will be required to provide a urine sample under direct observation.

Direct Observation Procedure:
Once in the bathroom with the observer the donor must lower pants and also under garments to mid-thigh level. The donor is also required to raise their shirt above the navel. The observer will then ask donor to turn 360 degrees (one complete circle) to show the observer that no prosthetic device is being used to "beat the test". If no devise is detected, the donor is permitted to return clothing to GUNNISON COUNTY proper observed collection position.

VI. Testing Procedures: (382.407 – 409)

Testing shall be conducted in a manner to ensure adherence to standards of confidentiality, privacy, accuracy, and reliability as approved by the Department of Transportation and the Department of Health and Human Services.

A. Controlled Substance Testing: (Part 40, Subpart B)
1. Urine will be the required substance and will be collected under controlled circumstances.
2. Urine shall be divided into split specimens (2 containers) and each shall be labeled thoroughly to preserve identity.

3. Specimens are transported to Department of Health and Human Services approved testing lab.
4. Specimens undergo testing by an initial screening procedure, which is followed by GC-MS confirmation testing if necessary.
5. The urine is positive for a substance if the substance is present in an amount greater than the minimum threshold.
6. A Medical Review Officer will contact the employee if there is a positive result, to verify the result.
7. The Medical Review Officer or MRO assistant reports the result to the DER (designated employer representative) or other authorized company official.
8. The Medical Review Officer gives the donor employee the option of testing the remaining split specimen at a HHS certified laboratory of their choice at their expense.

B. Alcohol: (Part 40, Subpart B)
1. A breath specimen or a saliva specimen is required to test for alcohol.
2. Breath Test or Saliva test will be conducted by a certified alcohol technician.
3. Tester uses an approved Evidential Breath testing devise, or DOT approved saliva test kit.
4. The initial test must give results of less than 0.02 or a retest (confirmation) test must be done following a 15-minute wait.
5. If the confirmation reveals a concentration of greater than 0.02, the individual is in violation of this policy.

Post accident breath or blood testing may be conducted by Federal, State, or local official having independent authority, if the results can be obtained by the employer. (382.303)

Refusal To Submit: (382.107 and 382.211)

Refusal to Submit to a Test: It is prohibited conduct to refuse to submit to a controlled substance or alcohol test as required by this policy. A refusal to submit is defined as follows:

1. Fail 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. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of this title);
2. Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see § 40.63(c) of this title) a pre-employment test is not deemed to have refused to test;
3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see § 40.63(c) of this title) for a pre-employment test is not deemed to have 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 driver's provision of a specimen (see § 40.67(1) and 40.69(g) of this title);
5. Failure 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 (see § 40.193(d)(2) of this title);
6. Fail or declines to take a second test the employer or collector has directed the driver to take;
7. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under § 40. 193(d) of this title. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted after a contingent offer of employment has been made;
8. Fail 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); or
9. Is reported by the MRO as having a verified adulterated or substituted test result.
10. The employee behaves in a confrontational way that disrupts the collection process.

11. The employee fails to follow the observer's instructions to raise and lower their clothing and to turn around to permit the observer to determine if the employee has a prosthetic or other device that could be used to interfere with the collection process.
12. The employee possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
13. The employee refuses to wash his or her hands – after being directed to do so.

VII. **Consequences:**

Upon notification of a confirmed positive drug or alcohol test, employee will not be allowed to perform any safety sensitive type functions involving a commercial motor vehicle. The employee must undergo the return to duty process in order to be eligible to perform a DOT safety sensitive function. As part of the return to duty process, the employee will be required to take a return to duty drug and/or alcohol test. The employee is also subject to unannounced follow up testing as directed by the Substance Abuse Professional (SAP). A minimum of 6 tests during the first 12 months after completing treatment must take place. The Substance Abuse Professional may require additional testing. Follow up testing may at the sole discretion of the employer and/or Substance Abuse Professional continue for up to 5 years.

In the case of breath alcohol testing if the employee has an alcohol level of (.02 - .039) the employee will be removed from duty for a period of 24 hours. If the breath test result is greater than (.039) the same consequence stated above for a positive drug result will apply.

(382.501, 382.505, 382.605)

GUNNISON COUNTY POLICY:

- **Any employee testing positive for a controlled substance, and/or tests positive for alcohol at a level greater than .039 will be subject to disciplinary action, including but not limited to termination of employment.**

Other Prohibitions:

- **Any employee who is found to have adulterated, substituted, tampered, misidentified, or other wise act to deceive the employer regarding test samples will be immediately terminated.**

- **Controlled Substances: The employee is responsible to pay for all return to duty testing, all follow up testing and all rehabilitation costs.**

- **Breath Alcohol Testing: The employee is responsible to pay for all return to duty testing, all follow up testing and all rehabilitation costs.**

- **Second Offense: Any employee testing positive for controlled substances any time after the first, original positive drug test will be terminated immediately.**

- **Second Offense: Any employee testing positive for any detectable level of alcohol any time after the first, original positive alcohol test will be immediately terminated.**

VIII. Records: (382.401 - 403)

All records must be made available at the place of business within 2 days of a request by state or federal authorized officials. Not all records must be kept on site, some may be the responsibility of the consortium or testing site.

A. Retention Period

1. The following records must be retained for 5 years:
   - Verified positive results

- Alcohol results over 0.02
- Documentations of refusals.
- Employee referrals to the Substance Abuse Professionals
- Annual management system information reports.

Substance Abuse Professional evaluations and other documentation

- Determinations by the SAP of assistance needed to resolve misuse.
- Compliance with SAP

2. The following results must be retained for 2 years:
   - Records related to all processes and employee training.

3. The following results must be retained for 1 year:
   - Records of negative drug and alcohol results less than 0.02

B. Types of Records:

1. Collection processes:

   - Log books (if used)
   - Random selection documents
   - Calibration documents (EBT)
   - BAT training documents
   - Reasonable suspicion documents
   - Post accident decision documents
   - Documents verifying medical inability to provide adequate breath or urine
   - MIS reports

2. Test Results:
   - Employer's copy of alcohol test
   - Employer's copy of controlled substance chain of custody
   - Documents from MRO
   - Documents related to refusal to submit
   - Documents presented by driver to dispute refusal to submit

3. Education and Training:
   - Materials on misuse awareness, including the policy.
   - Driver's signed receipt of education materials
   - Documents of supervisor training to qualify for making reasonable suspicion of judgments.

4. Agreements with collection site, labs, MRO, and consortium.

C. Access to Records: (382.405 – 382.413)

1. The driver is entitled to a copy of his/her records
2. Records are available for officials with regulatory authority of the NTSB
3. Subsequent employers or others may have a copy of the records upon specific written request from the driver.
4. Records are available to State and/or Federal inspection officers.

IX. **Training: (382.601)**

When 1 or more drivers are hired GUNNISON COUNTY agrees to complete the following training requirement.

If driver is owner operator, supervisory training is not required. Owner operator agrees to fulfill the required 2-hour supervisor training in the event of adding 1 or more drivers to company.

A. Those designated to determine if reasonable suspicion exists must receive 60 minutes of

alcohol and 60 minutes of controlled substance training, which covers the physical, speech, and performance indicators of misuse.

B. Each covered employee must be provided materials about the effects of drug and alcohol use (such as film or written) and the company policy and the name of the supervisor who can answer their questions about the material.

C. Each employee must sign a certificate of receipt of the materials.

X. Reporting By Employees

The following procedure shall be used when an employee suspects controlled substance use or alcohol misuse by another employee who are subject to the requirements of this policy/procedure.

A. The employee shall report the concern to his/her supervisor. If the supervisor is not available the employee shall report the concern to the owner. All such reports shall be held in confidence.

B. The employee shall not discuss their concern with other employees.

C. The supervisor or other authorized person to whom the report has been made shall take the necessary steps to confront the employee suspected of having the controlled substance and/or alcohol problems and take the necessary action pursuant to this policy.

D. I understand that the DER (Designated Employee Representative) is:

Marlene D. Crosby

I further understand that if I have questions regarding this DOT drug testing policy or other questions regarding DOT regulations that apply to me I may contact this person for assistance.

XI. Employment Agreement:

I understand and agree to comply with the GUNNISON COUNTY policy regarding alcohol and controlled substance use and/or abuse. I further understand that failure to comply with this policy may result in dismissal from employment.

I understand that I am responsible for paying for return to duty, follow up testing and for any required rehabilitation under this policy. I also understand that GUNNISON COUNTY will pay for post accident, random and reasonable suspicion testing.

I also understand that if I have any questions on this policy and procedure I can contact the under signed Supervisor and/or his superior.

Employee Name (printed): _____

Employee Signature: _____

Date: _____

Supervisor's Name (printed): _____

Supervisor's Signature: _____

Date: _____