



SAFETY SHORTS

General Safety • Highway Departments • Law Enforcement & Corrections

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GENERAL SAFETY

By: Chad Engle, Loss Prevention Manager and Safety Specialist

When Can an “Alternate” Be Substituted on the List of Employees Selected for Random Drug & Alcohol Testing?

Many Nebraska counties employ Commercial Driver's License (CDL) holders who operate Commercial Motor Vehicles (CMVs). These employees are subject to the U.S. Department of Transportation (DOT) drug and alcohol testing requirements administered by the Federal Motor Carrier Safety Administration (FMCSA) as the regulatory federal agency. Counties must enroll these employees in a DOT random drug and alcohol testing program.

How Employees are Selected for Random Testing

For many years, NIRMA has partnered with Medical Enterprises, Inc. (MEI) to provide consortium and third-party administrator (C/TPA) services for members who choose to utilize them. Counties are free to use any qualified C/TPA of their choosing. While ultimate responsibility for compliance remains with the employer, a C/TPA can assist with the administration and logistics necessary to maintain a compliant testing program. DOT guidance specifically recognizes the role of C/TPAs in administering drug and alcohol testing programs.

One important service provided by a C/TPA is the management of a random testing pool. MEI combines CDL drivers from multiple employers into a single consortium pool. This approach is especially beneficial for smaller employers because it provides a larger population of drivers from which random selections are made, helping ensure a truly random and statistically valid testing process.

Each quarter, MEI or your chosen C/TPA will provide your Designated Employer Representative (DER) with a list of employees selected for random drug and/or alcohol testing. These primary selected employees should be tested whenever possible during the designated testing period.

When an Alternate on the List Can Be Substituted

In addition to primary selections, your C/TPA may provide alternate selections. However, alternates cannot simply be substituted for convenience. FMCSA guidance permits the use of an alternate only when the originally selected driver is unavailable for testing during the entire selection period due to a long-term absence.¹

Examples of unavailability of the originally selected driver include:

- Extended medical leave due to illness or injury
- Extended vacation
- Long-term layoff
- Termination or resignation of employment
- Other circumstances resulting in the driver's unavailability for the entire testing period

Examples of what would NOT qualify as “unavailable” for the originally selected driver include:

- Short-term absences
- Testing would be inconvenient to the driver’s schedule
- The driver is off work on the day the employer chooses to conduct testing
- The employer for business or other reasons wants to avoid testing the driver

If an alternate is used, employers must meet two important compliance requirements:²

1. The alternate selection must have been generated through a scientifically valid random selection process. Employers may not hand-pick drivers to replace a selected employee.
2. The employer must document why the primary driver was unavailable and maintain that documentation for review during a DOT audit or investigation.

Compliance Matters

The FMCSA takes drug and alcohol testing compliance seriously. During audits, one of the first items investigators review is whether random selections were handled properly and whether sufficient documentation exists when alternates were used. Failure to comply with DOT drug and alcohol testing requirements can result in significant penalties, enforcement actions, and potential operational disruptions.

¹ <https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/it-permissible-select-alternates-purpose-complying-random-testing>

² <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-III/subchapter-B/part-382/subpart-C/section-382.305>

The goal of random drug and alcohol testing is simple: ensure that our nation's roads remain safe by keeping impaired drivers from operating commercial motor vehicles. Counties play an important role in achieving that goal through diligent program administration and compliance.

If you need assistance understanding or meeting the DOT's requirements for random drug and alcohol testing of employees with a CDL, contact NIRMA's Loss Prevention Department. We are happy to help ensure your county remains compliant.

LAW ENFORCEMENT/CORRECTIONS

By: Todd Duncan, NIRMA Law Enforcement and Safety Specialist

Entering a Residence to Execute an Arrest Warrant

The home receives the highest level of Fourth Amendment protection. An arrest warrant gives deputies authority to arrest the person named in the warrant, but it does not automatically authorize entry into every residence where deputies believe that person may be located. An unlawful entry may result in suppression of evidence and potential civil liability.

Know What Your Warrant Authorizes Before You Cross the Threshold

FIRST QUESTION: Whose Home Is It?

1. The Wanted Person's Residence

Under *Payton v. New York*, an arrest warrant generally provides deputies limited authority to enter the wanted person's own residence to make the arrest when deputies have reason to believe the wanted person is inside. *Payton v. New York*, 445 U.S. 573, 602-03 (1980).

Before entering, ask:

- Do we have a valid arrest warrant?
- Do we have sufficient facts to reasonably believe this is the wanted person's residence?
- Do we have sufficient facts to reasonably believe the wanted person is presently inside?

Nebraska law adds an important requirement when forcing entry. Neb. Rev. Stat. § 29-411 provides that a deputy executing an arrest warrant may break an outer or inner door or window after giving notice of the deputy's office and purpose and being refused admittance. Nebraska case law interpreting this statute states that forced entry is conditioned upon probable cause to believe the person sought is inside the building.

Practical Rule: An arrest warrant is not a blanket authorization to immediately force entry. Knock, announce your authority and purpose, and allow a reasonable opportunity for admittance before forcing entry, unless another recognized legal justification for entry exists, e.g., exigent circumstances.

2. Someone Else's Residence

The rules change when the wanted person is believed to be staying or hiding in someone else's home.

In *Steagald v. United States*, 451 U.S. 204 (1981), the Supreme Court held that an arrest warrant for a suspect does not, by itself, authorize deputies to enter and search a third party's home for that suspect. The arrest warrant protects the wanted person's interest in being free from an unreasonable seizure; it does not adequately protect the homeowner's separate privacy interest in their home.

Absent an applicable exception, deputies seeking a wanted person inside a third party's residence should obtain a search warrant for that residence, supported by probable cause to believe the wanted

person will be found there. Valid consent or exigent circumstances may provide an independent basis for entry.

THE SIMPLE RULE

Wanted Person's Home	Third Party's Home
Arrest warrant + lawful basis to believe the suspect resides there and is presently inside → entry may be permissible.	Arrest warrant alone → NOT enough. Obtain a search warrant, consent, or establish another recognized exception to the warrant requirement.

Why It Matters

Entering a home is one of the most significant intrusions governed by the Fourth Amendment. The Supreme Court has described the home's entrance as a constitutional dividing line that generally cannot be crossed without appropriate legal authority.

Before crossing that line, deputies should be able to answer:

“Whose residence is this, what facts establish the wanted person is inside, and what legal authority permits me to enter?”

When the answer is uncertain, slow down, secure the situation when legally permissible, consult a supervisor or prosecutor, and obtain the appropriate warrant before entering.

Stay professional. Stay accountable. Protect the badge.

NIRMA.Member.Officials?Supervisors?and.Managers;

Have.a.human.resource.question.or.issue?.Contact.NIRMA's.Human.Resources.
Helpline.at.(422).452_2089;

Have.a.non_HR.legal.question.or.issue?.Contact.NIRMA's.Legal.Link.at.(068).308_
3306.or.by.email.at.legallink@nirma.info

ROAD/HIGHWAY DEPARTMENTS

By: KC Pawling, NIRMA Road Safety and Loss Prevention Specialist

The Most Dangerous Words in Road Maintenance: "I Think I Remember"

For many county road departments, the tasks performed every day become second nature. Routine grading, roadway maintenance, equipment operation, and inspections are activities employees do regularly. The associated procedures and safety practices remain fresh in their minds.

While complacency in routine operations can result in injuries, equipment damage, liability claims, or roadway hazards, these kinds of losses tend to arise more frequently during seasonal or infrequent tasks that may only be performed once or twice each year.

Some of these tasks might include:

- Snow removal operations
- Storm response and debris cleanup
- Flood response activities
- Wintertime sign replacement and repair
- Tree and vegetation removal
- Emergency traffic control and detour setup

Because these tasks occur infrequently, employees, especially new employees, may not be as familiar with the specific safety procedures, equipment, hazards, and traffic control requirements involved. Even experienced operators can overlook critical steps when performing a task they have not needed to perform in several months.

A snowstorm after a mild winter, a severe weather event requiring emergency response, or a flooded roadway can quickly place employees in situations where decisions must be made under pressure. Without a recent review of procedures, workers may unknowingly expose themselves, the public, or county property to unnecessary risk.

The solution is simple: conduct refresher training before the season or event occurs.

Brief, focused training sessions can remind employees of key operating procedures, personal protective equipment requirements, equipment inspections, communication protocols, and traffic control expectations. Refresher training is also an excellent opportunity to discuss lessons learned from previous incidents, review recent changes in policies or standards, and address concerns any employees may have.

Supervisors should consider developing annual safety reviews for seasonal activities, including snow and ice control, flood response, chainsaw safety, work zone traffic control, and wintertime sign maintenance

operations. These discussions do not have to be lengthy, but they should be documented and conducted before employees are asked to perform the work.

At NIRMA, we have seen that proactive training and preparation can significantly reduce both employee injuries and liability exposures. Taking the time to revisit procedures before a seasonal task begins is far less costly than responding to an avoidable accident afterward.

As NIRMA's Road Safety and Loss Prevention Specialist, I am available to assist counties with identifying roadway-related risks, reviewing traffic control practices, discussing work zone safety concerns, and providing guidance on loss prevention strategies. Whether your county is preparing for winter operations, reviewing emergency response procedures, or addressing other roadway safety challenges, I am happy to be a resource. You can contact me via email at kcpawling@nirma.info or phone at 402-310-4417.

The best time to prepare for an infrequent task is before the season arrives. A short refresher today may prevent a serious loss tomorrow.