DOT Drug and Alcohol Testing

Background

The U.S. Department of Transportation (DOT) requires all agencies under its umbrella to implement drug and alcohol testing rules for safety-sensitive employees. The regulation at 49 CFR 40 details required procedures for drug and alcohol testing and returning employees to safety-sensitive duties after a violation of a DOT drug and alcohol regulation. 49 CFR 40 applies to all DOT-required testing, regardless of mode of transportation. In addition, each DOT agency-specific regulation details who is subject to testing, when, and in what situations for a particular transportation industry.

The Federal Motor Carrier Safety Administration (FMCSA) has developed drug and alcohol testing rules at 49 CFR 382 that apply to commercial motor vehicle (CMV) operators who are required to maintain a commercial driver’s license (CDL). All employers of CDL drivers are responsible for compliance with all applicable requirements and procedures of both 49 CFR 40 and 49 CFR 382. Under the regulations at 49 CFR 382, employers must develop a written policy that details their policies and procedures for meeting the DOT drug and alcohol testing requirements and distribute the policy to all drivers hired or transferred into a position requiring driving a commercial motor vehicle.

Points to Cover

* **Who to test.** You must test all employees who perform “safety-sensitive duties” for alcohol and controlled substances in accordance with 49 CFR 40 and 49 CFR 382. In general, all CDL drivers who operate commercial motor vehicles subject to the CDL requirements on public roads in the United States are considered to be performing safety-sensitive duties and are subject to DOT drug and alcohol testing. This includes full-time drivers; part-time drivers; casual, intermittent, or occasional drivers; leased drivers; and independent owner-operator contractors. Supervisors or other personnel who may be called upon to perform safety-sensitive duties should also be included in the testing program.
* **When to test.** The FMCSA regulations require six types of testing: preemployment testing (drugs only), postaccident testing, random testing, reasonable suspicion testing, return-to-duty testing, and follow-up testing.
* **Which substances to test for.** Drivers must be drug tested for marijuana, cocaine, opioids, amphetamines and methamphetamines, and phencyclidine (PCP). Cutoff concentrations for these substances are listed at 49 CFR 40.87. In addition, alcohol tests must identify alcohol concentration of 0.02 or greater. Employers may test for additional substances if they choose, but this additional testing must be maintained as a distinct program separate from the required DOT drug testing program, and DOT test records must be separated from any additional company testing records.
* **Testing procedures.** Required testing procedures are listed at 49 CFR 40. For DOT drug tests, only urine tests are allowed. Initial screening tests for alcohol may be either a breath or saliva test. If the initial screening test for alcohol shows an alcohol concentration of 0.02 or above, a second test (confirmation test) must be conducted using an evidential breath testing (EBT) device. If a driver tests positive for a prohibited controlled substance or shows an alcohol concentration of 0.04 or higher, he or she must be immediately removed from performing safety-sensitive functions until completion of the return-to-duty process with a DOT-qualified substance abuse professional. A driver’s refusal to submit to a drug or alcohol test is generally equivalent to testing positive.
* **Administering your testing program.** Employers may choose to administer the DOT drug and alcohol testing program internally, they may outsource some of the program functions to service agents, or they may outsource all of the program’s functions to a vendor (called a consortium or a third-party administrator). However, all employers must have a Designated Employer Representative (DER) on staff. The DER, who must be a company employee, receives test results from the Medical Review Officer (MRO) and Breath Alcohol Technician (BAT) and takes immediate action to remove employees from safety-sensitive duties when they violate drug and alcohol testing rules. The DER should have knowledge of and authority to make decisions about the testing process and answer questions about it. A company may have more than one DER.
* **Employee information and training.** Employees subject to DOT drug and alcohol testing must be provided with educational materials that explain the requirements of the FMCSA drug and alcohol testing rules and the employer’s policies and procedures for meeting these requirements. The requirements for what the materials made available to drivers must include are detailed at 49 CFR 382.601.
* **Supervisor training.** All personnel who are designated to supervise drivers must receive at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on controlled substances to enable them to determine whether reasonable suspicion exists to require a driver to undergo testing. The training must include the physical, behavioral, speech, and performance indicators of alcohol misuse and use of controlled substances.

Employee Information

Employees subject to DOT drug and alcohol testing must be provided with educational materials that explain the requirements of the FMCSA drug and alcohol testing rules and the employer’s policies and procedures for meeting these requirements. Employers must ensure that a copy of these materials is distributed to each driver before the start of FMCSA drug and alcohol testing and to each driver subsequently hired or transferred into a position requiring driving a commercial vehicle. Employers must ensure that each driver signs a statement certifying that he or she has received a copy of the required educational materials. Employers must maintain the signed certificate and may provide a copy to the driver.

The materials made available to drivers must include, at a minimum:

* The identity of the person designated by the employer to answer questions about the materials.
* The categories of drivers who are subject to the DOT drug and alcohol testing rules.
* Information about the safety-sensitive functions performed by those drivers to make clear when the driver is required to comply with the DOT alcohol and drug testing rules.
* Specific information about prohibited driver drug- and alcohol-related conduct under DOT rules and the consequences for engaging in prohibited conduct.
* The circumstances under which a driver will be tested for alcohol and/or controlled substances under DOT regulations.
* The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04.
* The procedures used to conduct drug and alcohol tests and to protect the integrity and accuracy of the testing process.
* The requirement that a driver submit to drug and alcohol tests required by DOT regulations.
* An explanation of what constitutes a refusal to submit to a drug or alcohol test and the consequences for a refusal.
* Information about the effects of drug and alcohol use on an individual’s health, work, and personal life; signs and symptoms of a drug or alcohol problem; and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program (EAP), and referral to management.
* The requirement that the following information collected under the DOT drug and alcohol testing rules will be reported to the Clearinghouse:
	+ A verified positive, adulterated, or substituted test result;
	+ An alcohol confirmation test with a concentration of 0.04 or higher;
	+ A refusal to submit to any DOT-required drug or alcohol test;
	+ An employer’s report of actual knowledge of prohibited drug or alcohol use;
	+ On-duty alcohol use as defined at 49 CFR 382.205;
	+ Prohibited preduty alcohol use as defined at 49 CFR 382.207;
	+ Prohibited alcohol use following an accident as defined at 49 CFR 382.209;
	+ Prohibited drug use as defined at 49 CFR 382.213;
	+ A substance abuse professional’s report of the successful completion of the return-to-duty process;
	+ A negative return-to-duty test; *and*
	+ An employer’s report of completion of follow-up testing.

In addition to the above required elements, the materials supplied to drivers may include information on additional employer policies or consequences regarding the use of drugs and alcohol. If included, this information must clearly designate these policies or consequences as based on the employer’s independent authority and separate from DOT-required policies.

DOT Drug and Alcohol Testing Policy

[Company Name]

Date created:

Last reviewed:

This policy is approved by:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Policy statement

It is the policy of [Company Name] to maintain a safe workplace free of alcohol and controlled substances. As a motor carrier required to adhere to Department of Transportation (DOT) and Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations, [Company Name] maintains a drug and alcohol testing program consistent with 49 CFR Parts 40 and 382. All employees in safety-sensitive positions will be tested for alcohol and controlled substances in accordance with these regulations and must not engage in prohibited drug- or alcohol-related conduct as defined in this policy and at 49 CFR 382 Subpart B.

The purpose of this policy is to outline the procedures [Company Name] will follow to maintain compliance with DOT/FMCSA drug and alcohol testing regulations and set clear expectations for employees, supervisors, contractors, and all other persons affected by this policy in order to maintain a safe and productive workplace and prevent accidents and injuries.

Authority and scope

This policy is carried out under the authority of the following laws and regulations:

[List additional federal and/or state laws if applicable.]

* 49 CFR Part 40
* 49 CFR Part 382
* Omnibus Transportation Employee Testing Act of 1991

This policy applies to all [Company Name] employees who drive commercial motor vehicles (CMVs) or perform other safety-sensitive duties as defined in this policy, as well as to all individuals with responsibilities for carrying out duties under this policy. All contractors and other third parties that perform commercial driving services for [Company Name] are also expected to be in compliance with all applicable DOT drug and alcohol regulations.

Definitions

*Alcohol concentration—*The alcohol in a volume of breath, expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

*Breath Alcohol Technician (BAT)—*A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

*Commercial Driver’s License Drug and Alcohol Clearinghouse (Clearinghouse)—*The FMCSA database to which employers and service agents are required to report certain information and to query regarding drivers who are subject to the DOT drug and alcohol testing regulations. [Company Name] is required to query the Clearinghouse for current and prospective employees’ drug and alcohol violations before permitting those employees to operate a CMV on public roads, annually query the Clearinghouse for each driver they currently employ, and report information about violations of the drug and alcohol regulations in 49 Part 40 and 49 Part 382 to the Clearinghouse.

*Consortium/Third-party administrator (C/TPA)—*A service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. This definition includes groups of employers that join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool).

*Designated employer representative (DER)*—An individual identified by [Company Name] 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 DER must be a [Company Name] employee. Service agents cannot serve as DERs.

*Driver*—Any person who operates a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers; and independent owner-operator contractors.

*Laboratory*—Any U.S. laboratory certified by the U.S. Department of Health and Human Services (HHS) as meeting the minimum standards of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs.

*Medical Review Officer (MRO)—*A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

*Safety-sensitive function—*All the time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. A driver is considered to be performing a safety-sensitive function during any period when he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. Safety-sensitive functions include the following:

* All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
* All time inspecting equipment as required by 49 CFR 392.7 and 49 CFR 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
* All time spent at the driving controls of a commercial motor vehicle in operation;
* All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
* All time loading or unloading a vehicle, supervising, or assisting in the loading or loading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving receipts for shipments being loaded or unloaded; *and*
* All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

*Screening Test Technician (STT)—*A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device (ASD).

*Service agent—*Any person or entity, other than an employee of [Company Name], who provides services to [Company Name] and its employees in connection with DOT drug and alcohol testing requirements. Service agents include collectors, BATs, STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. Service agents must meet DOT qualifications.

*Substance Abuse Professional (SAP)—*A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Policy administration

*[Choose one of the following options to describe the administration of your program; delete the options that do not apply.]*

[Option 1]

[Company Name] administers its DOT-required drug and alcohol testing program internally, using company employees to carry out testing and associated functions. All individuals with responsibilities under the program have the necessary certification(s) and/or training to carry out these responsibilities in accordance with all applicable laws.

[Option 2]

[Company Name] uses qualified service agent(s) to carry out some or all functions of its DOT drug and alcohol testing program. All service agents must submit documentation of their qualifications under DOT regulations to perform the functions they are tasked with. [Company Name] uses the following service agents to perform the following functions:

[List service agents and functions as applicable.]

[Option 3]

[Company Name] uses the services of [name of C/TPA] to operate its random testing program and assist with preemployment, postaccident, reasonable suspicion, return-to-duty, and follow-up testing. The C/TPA is authorized to act as an intermediary in the transmission of drug and alcohol testing information as allowed by 49 CFR 40, Appendix F. The C/TPA performs the following functions related to the DOT drug and alcohol testing program:

*[List C/TPA functions as applicable.]*

Responsibility for this program is delegated to the following persons:

*[Edit the roles and identities of the individuals responsible for performing these roles as appropriate. An employer must have at least one Designated Employer Representative on staff but may have more than one. Other roles may vary depending on whether the company administers its DOT drug and alcohol testing program in-house or uses an outside vendor or C/TPA.]*

|  |  |  |
| --- | --- | --- |
| Role | Name / Job Title | Contact Information |
| Designated Employer Representative (DER) |  | Phone:E-mail: |
| Designated Employer Representative (DER) |  | Phone:E-mail: |
| Service Agent |  | Phone:E-mail: |
| Medical Review Officer |  | Phone:E-mail: |
| Breath Alcohol Technician |  | Phone:E-mail: |
| Supervisor |  | Phone:E-mail: |
| Supervisor |  | Phone:E-mail: |
| *[Other]* |  | Phone:E-mail: |

**Designated Employer Representative (DER).** The DER, who must be a [Company Name] employee, is responsible for answering questions from [Company Name] employees regarding the DOT drug and alcohol testing policy and educational materials. In addition, the DER receives test results from the Medical Review Officer (MRO) and Breath Alcohol Technician (BAT) and takes immediate action to remove employees from safety-sensitive duties when they violate drug and alcohol testing rules.

Substances tested

Employees covered by DOT-required controlled substance testing will be tested for the following five classes of controlled substances:

* Marijuana
* Cocaine
* Amphetamines and methamphetamines
* Opioids
* Phencyclidine

A laboratory will first conduct an initial drug test; any result below the initial test cutoff concentration will be reported as negative. If the initial test is at or above the cutoff concentration, a confirmatory test will be conducted. If the confirmatory test result is below the relevant cutoff concentration for the substance, the result will be reported as negative. A confirmatory test result at or above the relevant cutoff concentration for the substance will be reported as positive.

The following cutoff concentrations apply for tested substances:

|  |  |  |
| --- | --- | --- |
| **Substance** | **Initial test cutoff** | **Cutoff concentration (confirmatory test)** |
| Marijuana metabolites (THCA) | 50 nanograms per milliliter (ng/mL) | 15 ng/mL |
| Cocaine metabolite (Benzoylecgonine) | 150 ng/mL | 100 ng/mL |
| Codeine / Morphine | 2,000 ng/mL | 2,000 ng/mL |
| Hydrocodone / Hydromorphone | 300 ng/mL | 100 ng/mL |
| Oxycodone / Oxymorphone | 100 ng/mL | 100 ng/mL |
| 6-Acetylmorphine | 10 ng/mL | 10 ng/mL |
| Phencyclidine | 25 ng/mL | 25 ng/mL |
| Amphetamine / Methamphetamine | 500 ng/mL | 250 ng/mL |
| MDMA/MDA | 500 ng/mL | 250 ng/mL |

In addition, employees who perform safety-sensitive functions will be required to undergo alcohol testing. Employees will first undergo a screening test. If the screening test result is an alcohol concentration below 0.02, the test result will be reported as negative, and the test is concluded.

If the screening test result is an alcohol concentration of 0.02 or higher, a confirmation test will be required. An alcohol concentration of 0.02 or lower will be considered a negative test result. An alcohol concentration of 0.02 or higher in a confirmation test will be reported to the DER.

Prescription and over-the-counter medications

Employees who possess a valid prescription issued by a licensed medical professional for a controlled substance subject to testing are not prohibited from using such substances in a manner consistent with the prescription. However, for employees who perform safety-sensitive duties, the medical professional who issues the prescription must be familiar with the employee’s job duties and must advise the driver that the substance will not adversely affect the driver’s ability to safely operate a motor vehicle.

An employee who tests positive for a controlled substance where that employee has a valid prescription for the substance will be required to speak to an MRO and provide evidence of a legitimate medical reason for the positive result.

Any safety-sensitive employee who uses a substance, whether prescription or over-the-counter, that carries a warning label stating that motor skills, judgment, vision, or mental functioning may be negatively impacted should report the use of this substance to a supervisor or to the DER. Employees may be required to provide a written statement from a doctor, pharmacist, or other licensed medical professional attesting that the employee can safely perform his or her assigned functions while using the substance in a manner consistent with its instructions.

**Note:** Under U.S. federal law, marijuana is not considered a legal substance under any circumstances. As a DOT-regulated employer, [Company Name] may not accept a prescription for medical marijuana as a valid reason for a positive marijuana test result or the use of marijuana by any safety-sensitive employee at any time, regardless of any applicable state laws allowing the medical use of marijuana. Similarly, state laws allowing the recreational use of marijuana do not affect [Company Name] safety-sensitive employees’ responsibility to refrain from marijuana use at all times.

Tests Required

All commercial drivers will be required to undergo drug and/or alcohol testing in the following situations:

Preemployment testing

Before performing safety-sensitive functions for [Company Name], all drivers will undergo testing for controlled substances. Drivers will not be allowed to perform safety-sensitive functions unless and until [Company Name] receives a verified negative test result from the medical review officer (MRO) or C/TPA, as applicable.

*[Delete the following paragraph if your company does not perform preemployment alcohol testing.]*

Every safety-sensitive employee of [Company Name] will also be required to undergo preemployment alcohol testing after receiving a contingent offer of employment but before performing safety-sensitive duties. Alcohol testing will be conducted in accordance with the procedures listed at 49 CFR 40. Employees will not be allowed to perform safety-sensitive functions unless the results of the preemployment alcohol test indicate an alcohol concentration of less than 0.04.

Postaccident testing

Drivers will be required to submit to postaccident alcohol and/or controlled substances testing under the circumstances described below. A driver subject to postaccident testing must remain available for testing; otherwise, he or she may be considered to have refused to test. However, drivers involved in an accident may leave the accident scene to obtain assistance in responding to the accident or necessary emergency medical care without being considered to have refused testing.

***Alcohol.***After an accident involving a commercial motor vehicle operating on a public road in commerce, a driver will be required to undergo testing for alcohol in the following circumstances:

* The driver was performing safety-sensitive functions with respect to the vehicle, and the accident involved the loss of human life.
* The driver received a citation within 8 hours of the accident under state or local law for a moving traffic violation arising from the accident, *and*
	+ The accident involved bodily injury to any person who, as a result of the injury, immediately received medical treatment away from the scene of the accident, *or*
	+ One or more motor vehicles incurred disabling damage as a result of the accident that required the motor vehicle to be transported away from the accident scene by a tow truck or other motor vehicle.

Drivers required to undergo postaccident alcohol testing must not use alcohol before undergoing an alcohol test or for 8 hours after the accident, whichever comes first.

If an alcohol test required under the above conditions is not administered within 2 hours following the accident, [Company Name] will document the reasons the test was not promptly administered and maintain this record. If the test is not administered within 8 hours following the accident, [Company Name] will cease attempting to administer an alcohol test and will prepare and maintain the same record. Records of the reasons a test was not promptly administered will be submitted to the FMCSA on request.

***Controlled substances.***After an accident involving a commercial motor vehicle operating on a public road in commerce, a driver will be required to undergo testing for controlled substances in the following circumstances:

* The driver was performing safety-sensitive functions with respect to the vehicle, and the accident involved the loss of human life.
* The driver received a citation within 32 hours of the accident under state or local law for a moving violation arising from the accident, *and*
	+ The accident involved bodily injury to any person who, as a result of the injury, immediately received medical treatment away from the scene of the accident, *or*
	+ One or more motor vehicles incurred disabling damage as a result of the accident that required the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

If a controlled substance test required under the above conditions is not administered within 32 hours following the accident, [Company Name] will cease to administer the test and will prepare and maintain a file stating the reasons the test was not promptly administered. The records will be submitted to the FMCSA on request.

Random testing

[Company Name] has established a random testing program consistent with the requirements of 49 CFR 382.305. All drivers are required to submit to random alcohol and controlled substances testing conducted under this program.

[Company Name] uses a scientifically valid method to select drivers for random alcohol and controlled substances testing. Each driver has an equal chance of being selected using this method. Random testing will not be announced in advance.

Random testing for alcohol will take place only while a driver is performing safety-sensitive functions, just before a driver performs safety-sensitive functions, or just after a driver ceases performing safety-sensitive functions. Random testing for controlled substances may take place at any time.

Upon notification of selection for random alcohol or controlled substances testing, a driver must proceed to the testing site immediately. If a driver is performing safety-sensitive functions other than driving a commercial motor vehicle at the time of notification, he or she must cease to perform the safety-sensitive function and report to the testing site as soon as possible.

Reasonable suspicion testing

Drivers may be required to submit to alcohol and/or controlled substances testing when [Company Name] has reasonable suspicion to believe they have engaged in prohibited drug- or alcohol-related conduct as defined in this policy and in 49 CFR 382, Subpart B. Reasonable suspicion determinations will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. For controlled substances, these observations may include indications of the chronic and withdrawal effects of these substances.

Observations used to justify reasonable suspicion testing will be made by a supervisor or other company official who has received training in making reasonable suspicion determinations. A written record will be created of the observations leading to an alcohol or controlled substances reasonable suspicion test and will be signed by the supervisor or company official who made the observations. This record will be created within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

For alcohol testing, reasonable suspicion testing will be conducted only if the observations of suspected alcohol use occur during the period of the workday that the driver is required to comply with the alcohol regulations at 49 CFR 382. Alcohol testing will occur only during, just preceding, or just after the driver performs safety-sensitive functions.

If an alcohol test is not performed within 2 hours of the reasonable suspicion determination, [Company Name] will document the reasons the alcohol test was not promptly administered and maintain this record. If an alcohol test is not performed within 8 hours following a reasonable suspicion determination, [Company Name] will cease attempts to perform the test and will document the reasons for not performing the test.

An employee who is the subject of a reasonable suspicion determination will not be permitted to perform or continue to perform safety-sensitive functions until an alcohol test is administered and the driver’s alcohol concentration is below 0.02 or 24 hours have passed following the reasonable suspicion determination.

Return-to-duty testing

Return-to-duty testing will be conducted for employees who have violated a DOT alcohol or drug regulation and successfully complete the substance abuse professional evaluation, referral, and education/treatment process.

Before being allowed to return to safety-sensitive duties, the employee must have a verified negative drug test result and/or an alcohol test result with an alcohol concentration of less than 0.02, as applicable. This test will take place after the SAP has determined that the employee has complied with all prescribed education and/or treatment.

Note that the actual decision regarding whether to return an employee to safety-sensitive duties following the SAP education and treatment process will be made on a case-by-case basis at the sole discretion of [Company Name]. Nothing in this section is intended to be construed as a guarantee that any employee who violates a DOT drug and/or alcohol regulation will be returned to safety-sensitive duties. Rather, this section establishes minimum requirements for *consideration* to be returned to duty.

Follow-up testing

All employees who return to safety-sensitive duties after successful completion of the substance abuse professional evaluation, referral, and education/treatment process and a negative return-to-duty test will be required to undergo follow-up testing for drugs and/or alcohol as recommended by the SAP. At a minimum, such employees will undergo at least six unannounced follow-up tests in the first 12 months of safety-sensitive duties. [Company Name] will follow all specifications of the SAP’s follow-up testing plan. Successful adherence to the SAP’s follow-up testing requirements is a condition of being allowed to perform safety-sensitive duties.

Testing conducted under an SAP’s follow-up testing program are in addition to and separate from any other required drug and/or alcohol tests an employee may be required to undergo, such as random testing, postaccident testing, and reasonable suspicion testing.

If an employee leaves [Company Name] before the completion of his or her follow-up testing plan, the requirements of the SAP’s follow-up testing plan follow the employee to subsequent DOT-regulated employers and through any breaks in service (e.g., layoffs). Any employee who is hired at [Company Name] while currently subject to an SAP-ordered follow-up testing program based on prior employment will complete the program while employed at [Company Name].

Testing procedures

All testing will be conducted in a manner consistent with procedures specified in 49 CFR 40. Testing will be conducted in a private, confidential manner, and all effort will be made to protect the employee, the integrity of the testing process, and the validity of the test results. Detailed descriptions of testing procedures that employees can expect can be found in Attachment [Number], *What Employees Need to Know About DOT Drug & Alcohol Testing*.

When an employee is directed to take a drug or alcohol test, he or she must proceed promptly to the testing site at the specified time. The employee must bring a current valid photo ID such as a driver’s license or passport. Once the employee arrives at the testing site, testing must begin without undue delay.

For controlled substances, employees will undergo urine testing. Employees must provide at least 45 milliliters (mL) of urine. If an employee is unable to do so within 3 hours, he or she must obtain a medical evaluation within 5 days to determine if there is a legitimate medical reason for not being able to provide a specimen. If it is determined that there is no legitimate physiological or preexisting psychological reason, it will be considered a failure to test. The specimen will be divided into two containers (A or primary and B or split) and sent to a certified laboratory for analysis. The laboratory that analyzes the results will open only the A or primary container.

For alcohol, employees will undergo a breath or saliva test for initial screening and a breath test for confirmation, if necessary. If the screening test shows an alcohol concentration of less than 0.02, no further testing is needed, and a negative result will be reported to the DER. If the screening test result is 0.02 or greater, the employee will be required to take a confirmation test administered by a BAT using an Evidential Breath Testing (EBT) device.

The following actions constitute refusal to test:

* Failure to appear for any DOT-required test within a reasonable time after being directed to do so by an employer or C/TPA
* Failure to remain at the testing site until the testing process is complete
* Failure to provide a urine or breath sample for a DOT-required drug test
* Failure to permit observation or monitoring in the case of a directly observed or monitored collection in a drug test
* Failure to provide a sufficient amount of urine or breath when directed without a legitimate medical explanation
* Failure or refusal to take an additional drug test an employer or collector directs the employee to take
* Failure to undergo a medical examination or evaluation as directed by an MRO as part of the verification process or as directed by the DER
* Failure to cooperate with any part of the testing process
* For an observed collection, failure to follow the observer’s instructions to raise clothing above the waist, lower clothing and undergarments, and turn around to permit the observer to verify that there is no prosthetic or other device that could be used to interfere with the collection process
* Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process
* Admitting substitution or adulteration of a specimen to the collector or MRO
* Failure to sign Step #2 of the Alcohol Testing Form when directed to do so

Test results

**Controlled substances.** If the controlled substances test returns a negative result, the MRO will communicate that result to [Company Name’s] DER.

If a controlled substances test returns a positive result for one or more of the prohibited substances, the employee will be interviewed by an MRO to determine if there is a legitimate medical reason for the result. If a legitimate medical reason is established, the MRO will report the result to the DER as negative. If there is no legitimate medical reason for the result, the MRO will report the result to the DER as positive.

If a controlled substances test is found to be adulterated or substituted, the MRO will interview the employee to determine whether there is a legitimate medical reason for the result. If a legitimate medical reason is established, the MRO will report the result to the DER as cancelled. If there is no legitimate medical reason, the MRO will report the result to the DER as a refusal to test.

The DER will also report a test result as nonnegative if an employee refuses to discuss the results with the MRO or fails to provide the MRO with acceptable medical documentation to explain the nonnegative test result.

Positive test results and refusals to test will result in immediate removal from safety-sensitive duties and referral to an SAP for evaluation.

If an employee’s urine specimen returns a positive test result for a controlled substance, he or she has 72 hours from the time of the verified result to request analysis of the B (split) container from a certified laboratory different from the one that tested the A (primary) container.

**Alcohol.** An alcohol test that shows an alcohol concentration of less than 0.02 will be reported by the MRO as a negative result. An alcohol concentration greater than 0.02 and less than 0.04 will be reported to the DER and the employee will be removed from safety-sensitive functions until the start of his or her next regularly scheduled shift or for 24 hours, whichever is later. An alcohol concentration of 0.04 or greater will result in immediate removal from safety-sensitive functions and referral to an SAP for evaluation.

Prohibited conduct

The following actions constitute prohibited conduct for commercial drivers and all other employees who perform safety-sensitive duties as defined at 49 CFR 382.107:

* Reporting for duty or remaining on duty with an alcohol concentration of 0.04 or higher
* Using alcohol while performing safety-sensitive functions
* Performing safety-sensitive functions within 4 hours after consuming alcohol
* Using alcohol before a postaccident alcohol test and within 8 hours after an accident that triggers a postaccident alcohol test
* Refusing to submit to any DOT-required preemployment controlled substances test, postaccident controlled substances or alcohol test, reasonable suspicion controlled substances or alcohol test, return-to-duty controlled substances or alcohol test, or a follow-up controlled substances or alcohol test
* Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while using any Schedule I drug listed in 21 CFR 1308.11
* Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while using any non-Schedule I drug listed in the other Schedules in 21 CFR 1308, except when the use is consistent with a valid prescription issued by a licensed medical practitioner who is familiar with the driver’s medical history and has advised the driver that the substance will not adversely affect the driver’s ability to safely operate a motor vehicle
* Reporting for duty, remaining on duty, or performing a safety-sensitive function after testing positive for a prohibited controlled substance or adulterating a test specimen for controlled substances

Consequences of prohibited conduct

Employees found to have engaged in prohibited drug- or alcohol-related conduct will be immediately removed from performing safety-sensitive functions and will be referred to an SAP for evaluation. Such employees will be provided with a list of local SAPs with names, addresses, and telephone numbers.

No employee will be allowed to return to safety-sensitive duties without successfully complying with all recommendations resulting from the SAP’s evaluation, including return-to duty testing, follow-up testing, and any other measures recommended by the SAP. Employees *may* *not* seek the evaluation of a second SAP after the initial evaluation in order to obtain another recommendation.

All referral, evaluation, and treatment procedures will be conducted in accordance with the regulations at 49 CFR 40, Subpart O. Decisions regarding whether to return an employee to safety-sensitive duties following the SAP evaluation, referral, and education/treatment process will be made on a case-by-case basis.

If a driver is found to have an alcohol concentration of 0.02 or greater but less than 0.04, he or she will be removed from performing safety-sensitive functions, including driving a commercial vehicle, until the start of his or her next regularly scheduled shift or for at least 24 hours following administration of the test, whichever is later.

An alcohol concentration of 0.02 or greater but less than 0.04 will not result in DOT-required referral to an SAP or other consequences under the DOT alcohol use regulations. However, [Company Name] reserves the right under its independent authority to take other disciplinary steps in such situations, including but not limited to written warnings, unexcused absences, loss of pay and/or accrued time off for missed work shifts (as allowed under applicable state and/or federal law), suspension, and termination.

Commercial Driver’s License Drug and Alcohol Clearinghouse (Clearinghouse)

Preemployment queries

Before an employee performs safety-sensitive duties for [Company Name], the employee must provide written authorization for [Company Name] to query the Clearinghouse to obtain information about the driver’s history related to DOT alcohol and drug regulations. The query will uncover whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a DOT-required drug or alcohol test; or whether a prior employer has reported actual knowledge that the driver used alcohol on duty, used alcohol within 4 hours before performing safety-sensitive duties, used alcohol following an accident before a postaccident alcohol test or before 8 hours have passed (whichever is sooner), or used a controlled substance.

Annual query

[Company Name] will conduct a query of the Clearinghouse at least once per year for all employees required to comply with DOT drug and alcohol regulations. Drivers must provide consent for [Company Name] to conduct an annual limited query, which will tell [Company Name] whether there is information in the Clearinghouse about [Company Name’s] drivers but will not release the specific information. If the limited annual query shows that information exists in the Clearinghouse about any [Company Name] driver, that driver must provide consent for the [Company Name] to conduct a full query within 24 hours. Drivers will not be allowed to perform safety-sensitive functions until the full query is conducted and results confirm that the Clearinghouse record contains no prohibited conduct.

Information reported to Clearinghouse

[Company Name] is required under 49 CFR 382.701 to report drug and alcohol violations and certain other information to the Clearinghouse. All Service Agents acting on behalf of [Company Name] are required to report the same information. The following information will be reported to the Clearinghouse within 3 business days:

* An alcohol confirmation test with an alcohol concentration of 0.04 or greater
* A negative return-to-duty test result
* Refusal to take a DOT-required alcohol test
* Refusal to test a DOT-required drug test
* A report that the driver has successfully completed all follow-up testing as prescribed by an SAP
* Knowledge of on-duty alcohol use
* Knowledge of prohibited preduty alcohol use
* Knowledge of prohibited alcohol use following an accident
* Knowledge of controlled substance use

MROs and SAPs have separate Clearinghouse reporting requirements. MROs must report verified positive, adulterated, or substituted test results, as well as refusals to take a DOT-required drug test when the situation requires an MRO’s determination. SAPs must report the identities of drivers for whom they perform evaluations, the date of the initial assessment, successful completion of treatment and/or education, and the determination of eligibility for return-to-duty testing.

Education and training

[Company Name] will provide educational materials to employees explaining the requirements of the DOT drug and alcohol testing rules and [Company Name’s] policies and procedures for meeting these requirements. These materials will be distributed to each driver hired or transferred into a position requiring driving a commercial motor vehicle.

Educational materials distributed to drivers will include the following:

* A copy of this policy
* The DOT booklet *What Employees Need to Know About DOT Drug & Alcohol Testing*
* Information about the effects of alcohol and controlled substances on an individual’s health, work, and personal life; signs and symptoms of an alcohol or controlled substances problem; and available methods of intervening when an alcohol or controlled substance problem is suspected, including confrontation, referral to the Employee Assistance Program (EAP), and referral to management
* *[Other materials as applicable]*

All employees covered by this policy must sign the *Employee Acknowledgement Certificate* (p. 25) attesting to the fact that they have received a copy of the educational materials listed above. [Company Name] will maintain signed Employee Acknowledgement Certificates in employees’ driver qualification files and will provide a copy to employees.

Supervisor Training

All [Company Name] employees who supervise drivers of commercial motor vehicles will receive at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on controlled substances use. The training will include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances and will provide supervisors with the necessary background and information to determine whether reasonable suspicion exists to require a driver to undergo an alcohol or controlled substances test. Training will be administered before any employee assumes such supervisory responsibilities.

Recordkeeping

[Company Name] will retain the following records of its controlled substance and alcohol testing and prevention program:

*[Depending on whether your program is administered in-house or through Service Agents or a C/TPA, some records in this list may not apply. Delete the records that do not apply to your program from the list.]*

* Collection logbooks
* Documents relating to the random selection process
* Calibration documentation for EBT devices
* Documentation of BAT training
* Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests
* Documents generated in connection with decisions on postaccident tests
* Documents verifying existence of a medical explanation of a driver’s inability to provide adequate breath or urine specimens for testing
* A copy of each annual calendar year summary as required by 49 CFR 382.403
* The employer’s copy of the alcohol test form, including test results
* The employer’s copy of the controlled substances test chain of custody and control form
* Documents sent by the MRO to the employer
* Documents related to the refusal of any driver to submit to an alcohol or controlled substances test
* Documents presented by a driver to dispute the result of an alcohol or controlled substances test
* Documents generated in connection with verifications of prior employers’ alcohol or controlled substances test results that the current employer is required to obtain
* Records related to other violations of the DOT drug and alcohol regulations
* Records pertaining to an SAP’s determination concerning a driver’s need for assistance
* Records concerning a driver’s compliance with an SAP’s recommendations
* Educational and training materials on alcohol misuse and controlled substances use awareness, including a copy of the employer’s policy on alcohol misuse and controlled substances use
* Documentation of compliance with the education and training requirements at 49 CFR 382.601, including the driver’s signed receipt of educational materials
* Documentation of training provided to supervisors in making reasonable suspicion determinations
* Certification that any training complies with all applicable DOT requirements
* Agreements with collection site facilities, laboratories, BATs, STTs, MROs, and C/TPAs
* Names and positions of officials and their role in the employer’s DOT alcohol and drug testing program
* Semiannual laboratory statistical summaries of urinalysis as required by 49 CFR 40.111(a)
* [Company Name’s] alcohol and controlled substances policy and procedures

Records will be retained according to the following schedule:

|  |  |
| --- | --- |
| **Type of record** | **Retention period** |
| Records of drivers’ alcohol test results indicating an alcohol concentration of 0.02 or greater | 5 years |
| Records of drivers’ verified positive controlled substances test results | 5 years |
| Documentation of refusals to take required alcohol and/or controlled substances tests | 5 years |
| Driver evaluation and referrals | 5 years |
| Calibration documentation | 5 years |
| Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations | 5 years |
| A copy of each annual calendar year summary created to comply with requirements at 49 CFR 382.403 | 5 years |
| Records related to the alcohol and controlled substances collection process (except calibration of EBT devices) | 2 years |
| Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.02 | 1 year |
| Records related to the education and training of BATs, STTs, supervisors, and drivers | As long as the individuals perform the functions that require the training and for 2 years after ceasing to perform those functions |

All records will be maintained at [location] and will be made available for inspection at [Company Name’s] primary place of business, [Address], within 2 business days after a request has been made by an authorized representative of the FMCSA. [Company Name] also complies with all legitimate requests for records by the Secretary of Transportation, any DOT agency, any state or local officials with regulatory authority over [Company Name] or its drivers, and the National Transportation Safety Board (NTSB) when requested as part of a crash investigation.

Drivers may request in writing to obtain copies of any records pertaining to that driver’s use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. Upon receiving such a request, [Company Name] will promptly provide the records to the driver.

Records related to an individual driver’s alcohol and controlled substances test results will be provided to a subsequent employer only upon written request from the driver.

Employee Acknowledgement Certificate

I certify that I have received a copy of [Company Name’s] DOT Drug and Alcohol Testing Policy and the following supporting educational materials:

*[Modify list as necessary.]*

* The DOT booklet *What Employees Need to Know About DOT Drug & Alcohol Testing*
* Information about the effects of alcohol and controlled substances on an individual’s health, work, and personal life; signs and symptoms of an alcohol or controlled substances problem; and available methods of intervening when an alcohol or controlled substance problem is suspected, including confrontation, referral to the Employee Assistance Program (EAP), and referral to management
* *[Other materials as applicable]*

I understand that my employment with [Company Name] requires full adherence to the policy and all applicable laws and regulations referenced therein.

**Employee Name (print):** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Employee Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Supervisor Name (print):** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Supervisor Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_