Drug and Alcohol Testing DOT and FTA Compliance

Anyone designated by the United States Department of Transportation (DOT) as a safety-sensitive employee is subject to DOT drug and alcohol testing. But what does “safety-sensitive” mean? The Federal Transit Administration (FTA) states that “Operators of revenue service vehicles, CDL-holding operators of nonrevenue service vehicles, vehicle controllers, revenue service vehicle mechanics, firearm-carrying security personnel” all qualify as safety-sensitive, while the Federal Motor Carrier Safety Administration (FMCSA) mandates that anyone who holds a Commercial Drivers License (CDL) and operates a Commercial Motor Vehicle (CMV) is a safety-sensitive employee. This brief will provide guidance for employers who must test safety-sensitive employees for drug and alcohol use and misuse, and prepare employees for what to expect.

DOT Drug and Alcohol Tests

The U.S. DOT drug and alcohol testing procedures can be found in the rule 49 CFR Part 40, or “Part 40.” All DOT tests must be performed separately from non-DOT tests, must be given priority, and must be completed before any non-DOT test is begun. The results of a DOT test must not be altered or disregarded due to the results of a non-DOT test. Simply because one test is negative does not mean that the other will be negative, as well. A qualified service agent may be used to conduct drug and alcohol testing.

The DOT tests only for the following drugs:

- Marijuana metabolites /THC
- Cocaine metabolites
- Amphetamines (including methamphetamine and MDMA—a.k.a. ecstasy)
- Opiates (including codeine, heroin, morphine)
- Phencyclidine (PCP)

All DOT drug tests must be completed using the Federal Drug Testing Custody and Control Form (CCF), while alcohol tests must be completed using the Department of Transportation Alcohol Testing Form (ATF). These completed forms are sent to a Medical Review Officer (MRO) for verification.

Specimen Guidelines

- DOT drug tests may only use urine
- DOT urine specimens cannot be tested for any other drug besides those specified for DOT testing
- DOT specimens cannot be tested for any other purpose, such as a DNA test
- DOT alcohol tests may use either saliva or breath
- DOT alcohol confirmation breath tests must use approved Evidential Breath Testing Devices (EBTs) that only analyze breath.
- Employers with more than 200 safety-sensitive employees must send quality control specimens to the laboratory the employer uses to ensure accuracy
When Are DOT Drug and Alcohol Tests Administered?

The drug testing process always includes—regardless of DOT agency—three parts: collection, testing at a laboratory, and review by an MRO.

Testing takes place at the following times:

- **Pre-employment**—required of new employees and those who have been out of work for 90 days; drug testing is required, alcohol testing is not
- **Reasonable Suspicion/Cause**—if a supervisor or company official trained to recognize the signs of drug or alcohol use suspects an employee of being under the influence of drugs or alcohol, testing is required; the observations that led to the testing must be documented
- **Random**—it is recommended that testing occur at least quarterly; the 2010 FTA random drug testing rate is 25 percent, while the random alcohol testing rate is 10 percent
- **Return to Duty**—required after a violation of drugs and/or alcohol; employee will be tested six unannounced times in 12 months; a violation is defined as a confirmed positive drug test, a confirmed blood alcohol level of .04 or greater, or a refusal to take a test
- **Follow-up**—after the return-to-duty testing period (one year) has passed, this testing may continue for a period of up to five years, in addition to other DOT-mandated drug and alcohol testing
- **Post-accident**—drug testing must be given within 32 hours of the event, while alcohol tests should be given within two hours, but cannot exceed eight hours after the event; a supervisor must document any reason why the testing could not happen within these timeframes; medical assistance must take priority over drug and alcohol testing

Employees chosen for drug and alcohol testing should be notified and tested discreetly. Procedures should be in place so that employees receive no advance notice. When an employee is notified of his or her selection, he or she must proceed to the collection site immediately—all actions the employee takes must lead to an immediate specimen collection.

Employees should not be allowed to go to their lockers, desks or vehicles once they have been notified. A supervisor should accompany employees to the testing site, if possible. It is best to have collectors or Breath Alcohol Technicians (BATs) come to the workplace, when possible. For offsite or unsupervised collections, establish an expected time of arrival.

**Employer Responsibilities**

Service agents are anyone outside your company that helps you implement DOT drug and alcohol regulations. There are many types of service agents:

- **Urine collector**—collects urine specimens; ships them to a laboratory certified by the U.S. Department of Health and Human Services (HHS); distributes copies of the CCF to the lab, MRO, employer and employee; maintains site security and integrity
- **Laboratory**—must be HHS certified; receives, analyzes and reports confirmed results to MROs
- **Medical Review Officer (MRO)**—receives lab results; determines if there are any medical reasons for positive, adulterated or substituted results; reviews and reports this verified result to the employer; must maintain confidentiality
- **Screening Test Technician (STT)**—conducts breath or saliva alcohol screening tests; documents results on the ATF; confidentially reports the results to the employer
- **Breath Alcohol Technician (BAT)**—collects and analyzes breath specimens for alcohol screening tests by using an approved evidential breath testing (EBT) device; documents the results on an ATF; confidentially reports the results to the employer
- **Substance Abuse Professional (SAP)**—evaluates employees who have violated DOT drug and alcohol policy; recommends education, treatment, follow-up and aftercare options; determines whether the individual has been successful using the recommended treatment and education
- **Consortium/Third Party Administrator (C/TPA)**—coordinates drug and alcohol testing services such as Management Information Systems (MIS) report preparation, urine collection, lab testing, MRO services, alcohol testing and SAP evaluations
Employers must provide safety-sensitive employees materials that explain DOT drug and alcohol testing policy. Documentation that these materials have been received by the employee must be provided. Materials, at minimum, should include:

- Name and contact information of person/s available to answer questions about DOT drug and alcohol testing
- Duties of safety-sensitive employees
- Any prohibited employee conduct
- When and why employees will be tested for drugs and/or alcohol
- Testing procedures
- What constitutes a refusal to test, and the consequences of refusal
- Consequences of DOT rule violation
- Effects of drugs and alcohol on a person’s health, work life and personal life
- Signs and symptoms of drug use and alcohol misuse
- Name and contact information for any individual or organization that can provide counseling, access to treatment programs, or other educational information

More appropriate materials may be provided. Training for supervisors is also available; the Transportation Safety Institute and FTA both offer substance abuse training for supervisors, as well as employees.

**Employer FAQs**

- **What happens when an employee violates DOT regulations?**

  If an employee tests positive, refuses a test, or in any other way violates DOT drug and alcohol testing policy, you must remove the employee from all safety-sensitive functions and provide that person with a list of qualified and available SAPs. The actual service or evaluation of an SAP is not required unless the employee will be coming back to work and performing safety-sensitive functions. In that case, an evaluation must be performed, and the SAP’s recommendations must be complied with first.

- **Can I fire an employee because of a violation?**

  There is no DOT rule or regulation stating that you can’t; you must conform to your own set of policies and procedures. Safety-sensitive functions of a job are, however, off-limits to employee if they violate DOT policy, until that person completes the SAP return-to-duty process.

- **Do I need to verify an employee’s past testing history?**

  You must check the person’s prior history before hiring or transferring to a safety-sensitive post. Written consent from the employee is required. If the person refuses consent, he or she may not perform safety-sensitive duties.

- **What are the reporting requirements?**

  You must submit MIS data upon request to the FTA, preferably through the Internet. These MIS reports must be completed annually, even if you are not asked to submit them.

Non-DOT drug testing programs and policies are allowed by the DOT. This includes using non-urine specimens for drug testing. However, DOT policy testing must be completely separate from your company’s policy testing. In addition, if you conduct your company’s policy testing along with DOT’s after an accident, DOT testing must be accomplished first.
What are the record keeping requirements?

- One year—records of negative and cancelled drug tests results, and any alcohol test results under a blood alcohol level concentration of .02
- Two years—inspection, maintenance and calibration records of EBTs, records relating to the drug and alcohol collection process, and supervisor and employee education and training records
- Three years—any information gained from previous employers regarding drug and alcohol test results
- Five years—records of a positive drug test or alcohol test with a blood alcohol level concentration of over .02, documentation of a refusal to take a required test, MIS reports, SAP reports, and all follow-up tests (including schedules)

Employee Responsibilities

All safety-sensitive employees are required to be tested for drug use and alcohol misuse. The important thing to remember is that the tasks you perform, and not your job title, define whether you are considered “safety-sensitive.”

Drug and Alcohol Use

You must not use or possess alcohol or illicit drugs while performing, or being assigned to perform, safety-sensitive duties. If you have a blood alcohol level of .04 (.02 in many cases, so check your company's policy), you may not report for service or remain on duty. This is also true if you have used any illicit drug, or any controlled substance not authorized by a medical professional. You may not use alcohol within four hours of reporting for duty, or being assigned of duty.

Testing Guidelines

You must not refuse to test for either drugs or alcohol. Adulterating or substituting your sample is similarly disallowed. Prescription medication may be allowed, so long as it has been prescribed by your doctor who has made a decision in good faith that the substance and dosage level will not inhibit your duties. Prescription medication as well as safely-administered over-the-counter drugs are not prohibited by DOT drug and alcohol regulations, but check your company’s policy first before you report for duty.

Your drug and alcohol testing history will be available to your next DOT-regulated employer.

If you have a violation:

- You will be given a list of Substance Abuse Professionals
- You are advised to contact an SAP for appropriate education, treatment, follow-up tests, and aftercare
- If you are coming back to work to perform safety-sensitive duties, you must comply with the SAP’s recommendations; however your employer is under no obligation to return you to work
- Remember that any violations may incur additional consequences due to your company’s policy
Reporting, Education and Assistance Programs

Education and training programs are required by all agencies to provide information on drug and alcohol use and misuse, DOT testing regulations, company testing policy, and the consequences of a positive test.

Employee Assistance Programs, or EAPs, are optional and may be provided by the employer or by a union. While some focus on drug and alcohol problems and addictions, others may provide employee and family counseling, and health and wellness activities.

Voluntary referral programs are optional and provided by either the employer or a union. These programs give you the opportunity to self-report, and receive evaluation and treatment, before any mandatory testing takes place.

Peer reporting programs also are optional and provided by either a union or the employer. Depending on company or union policy, co-workers may be required, or simply encouraged, to report a substance abuse violation by another co-worker.

Recent DOT Drug and Alcohol Testing Program Final Rules and Updated Regulations

All final rules and regulations can be found online; please refer to the list of resources in the following pages for links to the final rules for these regulations.

- “Medical marijuana” is not considered a valid medical explanation for a positive drug test result
- The DOT is required to follow the Department of Health and Human Services testing procedures and protocols
- The DOT must test for MDMA (ecstasy)
- Initial testing for heroin is required
- Cocaine cutoff levels have been lowered to 150 ng/mL for initial testing, while confirmation testing cutoff levels have been lowered to 100 ng/mL
- Amphetamine cutoff levels have been lowered to 500 ng/mL for initial testing, while confirmation testing cutoff levels have been lowered to 250 ng/mL
- Every MRO will need to be re-qualified every five years, but will not need to be trained by an HHS-approved training organization so long as the MRO meets DOT training requirements
- HHS-certified Initial Testing Facilities (IITFs) may not conduct initial drug testing, since they cannot conduct confirmation testing.
- DOT employers are authorized to disclose to state CDL authorities any drug and alcohol testing violation of an employee who holds a CDL and operates a CMV, as state law requires
- All alcohol screening devices (ASDs) must have been approved by the National Highway Traffic Safety Administration (NHTSA), be published by NHTSA in the Federal Register, and have been approved by the DOT in part 40
- Return-to-duty and follow-up testing requires direct observation collection
Resources

Part 40—Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Federal Register Notices and Compliance Notifications

DOT Office of Drug and Alcohol Policy and Compliance Notice—“Medical Marijuana”
http://transit-safety.fta.dot.gov/DrugAndAlcohol/Regulations/Interpretations/MedicalMarijuana/ODAPC_Medical_Marijuana_Notice.pdf

Procedures for Transportation Workplace Drug and Alcohol Testing Programs Final Rule Docket OST 2010-0026—consistency with HHS

Procedures for Transportation Workplace Drug and Alcohol Testing Programs Final Rule Docket OST 2008-0184—disclosing reports to state authorities

Procedures for Transportation Workplace Drug and Alcohol Testing Programs Final Rule Docket OST 2007-26828—qualified alcohol screening devices

Procedures for Transportation Workplace Drug and Alcohol Testing Programs Final Rule Docket OST 2003-15245—direct observation

Important Forms, Lists and Procedures

Federal Drug Testing Custody and Control Forms and Department of Transportation Alcohol Testing Forms
http://www.dot.gov/ost/dapc/documents.html

US DOT Drug and Alcohol Testing MIS Data Collection Form
http://www.dot.gov/ost/dapc/mis.html

Current List of Certified Labs
http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html

Substance Abuse Professional (SAP) Training and Examination
http://www.dot.gov/ost/dapc/testingpubs/SAP_Exam_Sources.doc
Drug and Alcohol Program Inspectors Drug Testing Service Agents State by State Listing (scroll down to “Drug and Alcohol Program” and select “Drug Testing Service Providers.”)

DOT’s Direct Observation Procedures

FTA Drug and Alcohol Training Schedule

FTA Drug and Alcohol Current Random Testing Rates
http://www.dot.gov/ost/dapc/rates.html

Training Guides, Kits and Manuals

Drug and Alcohol Compliance for Employees

Drug and Alcohol Compliance for Employers
http://www.dot.gov/ost/dapc/testingpubs/Employer%20Guidelines%20August%2031%202009.pdf

Drug-Free Workplace Kit
http://workplace.samhsa.gov/WPWorkit/index.html

DOT’s 10 Steps to Collection Site Security and Integrity Video and Poster


This is not a legal document that adds to or makes any official interpretations of DOT rules. This publication is for educational purposes only.

For more information, please visit www.NationalRTAP.org, or contact National RTAP directly at info@nationalrtap.org or at 888-589-6821.