

**THE TOWNSHIP OF WOODBRIDGE DEPARTMENT OF TRANSPORTATION
ALCOHOL AND DRUG-FREE WORKPLACE POLICY**

Revised February 4, 2021

PURPOSE:

The Township of Woodbridge (hereinafter referred to as the Township), subscribes to the belief that the abuse of alcohol and/or drugs by Township employees is incompatible with the Township's obligation to seek to provide a safe and productive work environment and its responsibility to the public to insure their safety and trust in the Township. The Township further believes that healthy, drug-free employees are a greater asset to the Township, to society and to themselves. Accordingly, the Township hereby establishes the following policies and procedures for all employees who hold a Commercial Driver's License ("CDL") who perform safety-sensitive functions as defined under Department of Transportation ("DOT") regulations, or who can be called upon to perform safety-sensitive functions. While such employees are subject to DOT testing and other procedures pursuant to this policy, they are also subject to the Township's general Drug and Alcohol Testing Policy, to the extent it does not conflict with this policy or DOT regulations, including but not limited to the procedures and policies concerning non-DOT drug and alcohol testing.

AUTHORITY:

This policy is intended to comply with all applicable federal and state statutes and regulations governing workplace anti-drug and drug testing, including, but not limited to, the following:

49 CFR, Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs;

49 CFR, Part 382: Federal Motor Carrier Safety Administration (FMCSA) Controlled Substances and Alcohol Use and Testing; and

The Township's general Drug and Alcohol Testing Policy.

TOWNSHIP POLICY:

It is the responsibility of employees to maintain personal health so they are physically and mentally capable of performing in the workplace. The abuse of drugs or alcohol is an unsafe and counterproductive practice which will not be tolerated at The Township of Woodbridge. NOTE: In this policy, the terms "abuse and substance abuse" will be used to mean the use or abuse of or dependency on illegal drugs, alcohol, or drugs that can be prescribed but are used in a manner inconsistent with the prescription.

Any Township employee reporting for work and found to be under the influence of alcohol or drugs or using drugs or alcohol while at work, in the possession of, manufacture of, selling, offering for sale, trading, or providing illegal drugs or alcohol will be subject to disciplinary action up to and including termination. This policy is in effect for all employees while on Township property, to include the parking lots, or while engaged in

Township business. (Township sponsored activities which may include the responsible service of alcoholic beverages are not included in this provision provided abuse does not occur).

In an effort to ensure that the Township of Woodbridge is an "Alcohol and Drug Free Workplace" and to comply with Department of Transportation ("DOT") Regulations, a drug testing program will be in effect for all CDL holders. This program will provide for pre-employment, random, post-accident, reasonable suspicion, return to duty, and follow-up testing. The Township has retained an agent to manage and administer the testing program.

Any employee reporting for work impaired is unable to properly perform required duties and will not be allowed to work. If possible, the supervisor will first seek another trained supervisor's opinion of the employee's status. The supervisor will subsequently consult privately with the employee about the observation. If, in the opinion of the supervisor, the employee is considered impaired, the employee will be required to be tested for alcohol and illicit substances, depending on the supervisory determination of the observed impairment. (Under no circumstances should an impaired employee be allowed to drive).

Prescription drugs prescribed by the employee's physician may be taken during working hours. However, the employee is responsible for knowing the side effects of the prescription drugs, and knowing if such side effects may adversely affect the employee's safe and effective work performance. The employee is required to notify the supervisor if the use of properly prescribed prescription drugs may adversely affect the employee's work performance. Moreover, such prescription drugs must be used only as prescribed. The abuse of prescription drugs will not be tolerated.

PRE-EMPLOYMENT TESTING:

All prospective employees applying for a DOT safety-sensitive position will be required to undergo a pre-employment test for the presence of alcohol and illicit drugs. Receipt by the Township of a negative test result is required prior to engaging in any safety sensitive function or an offer of employment. A positive test result will disqualify an applicant from further consideration at that time. If the pre-employment drug test results in a negative dilute, then the prospective employee must retake the drug test within 24 hours of notification. If the employee does not retake the test within 24 hours of notification, the drug test will be considered a refusal to test and a positive test. If the second drug test results in a negative dilute, then the drug test will be considered a positive test and the prospective employee will not be eligible for hire.

Failure to keep an appointment with the agent, which was previously agreed to by both the prospective employee and the agent, will be viewed as an attempt to elude the testing or alter its results. No further consideration for employment will be given the prospective employee at that time.

RANDOM TESTING:

All employees who have CDLs will be subject to random, unannounced alcohol and drug testing.

Testing will be done during working hours. The Township shall be responsible for the costs of the tests. Selection criteria, numbers of tests, and test frequency will be determined by the language of FMCSA regulations and will be communicated to employees by Township management or its agent. Upon notification of selection, the employee will report to the designated collection site immediately. Failure to report will be viewed as an attempt to elude the test or alter its results and will result in disciplinary action up to and including termination.

REASONABLE SUSPICION TESTING:

All employees are subject to a fitness for duty evaluation and/or DOT drug or alcohol testing, to include urine and breath testing, when there is reasonable suspicion to believe that the employee is in violation of this policy. A reasonable suspicion referral for testing will be made on the basis of documented, objective facts and circumstances which are consistent with the long and short term effects of substance abuse.

Examples of reasonable suspicion include, but are not limited to, the following:

- Physical signs and symptoms consistent with substance or alcohol abuse.
- Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, alcohol, or drugs.

Reasonable suspicion testing determinations will be made by a supervisor or Township official who is trained to detect the signs and symptoms of drug and alcohol use and who can reasonably conclude that an employee may be adversely affected or impaired in his/her work performance due to substance abuse. If another trained supervisor or Township official is immediately available, he/she will verify that there is reasonable suspicion before the employee is transported to the agent's facility. Upon a decision to initiate a test, the Union will be notified, which notification shall not interfere with the testing process in any way.

NOTE: Employees are cautioned that various over-the-counter and prescribed medications can adversely affect ability to operate vehicles and other equipment. It is the employee's responsibility to report to work each day fit for his or her duties.

Employees will be assigned to alternate duties until the results of the DOT drug testing and/or fitness for duty examination are received by the Township. Receipt of a negative drug or alcohol test result and, where applicable, a doctor's statement that the employee is fit for duty is required prior to continued employment. If the reasonable suspicion drug test results in a negative dilute, then the employee must retake the drug test within 24 hours of notification. If the employee does not retake the test within 24 hours of notification, the drug test will be considered a refusal to test and a positive test. If the second drug test results in a negative dilute, then the drug test will be considered a positive test.

Employees who are medically determined to be temporarily unfit to perform their duties, but who test negatively for alcohol or drugs, will be returned to duty when they obtain the original examining doctor's written statement that they are fit for duty. Where applicable, if such

employee has tested negatively for alcohol or drugs, but the Township has independent concerns about his/her ability to safely and effectively perform safety-sensitive functions, and he/she has not been determined to be fit for duty, he/she will be placed on a paid leave of absence, pending the results of the fitness for duty examination by the Township's physician. If the fitness duty examination needs to be rescheduled due to the employee, then any further leave of absence will be unpaid and the employee can use his/her accrued time.

POST ACCIDENT TESTING:

As soon as practicable following an occurrence involving a commercial motor vehicle, the driver of such vehicle will be required to submit to a post-accident test for alcohol if:

1. The accident involved the loss of human life; or
2. The driver received a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - i. Bodily injury to any person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or
 - ii. One or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

When a post-accident test is indicated the Township will make every effort to have said test performed within two hours of notification of the accident. At no time will a period of more than eight hours transpire between notification and DOT-post-accident testing for alcohol. Documentation of the entire post-accident procedure should be made by all personnel involved in the notification and testing process.

As soon as practicable following an occurrence involving a commercial vehicle, the driver of such vehicle will be required to submit to a post-accident test for controlled substances if:

1. The accident involved the loss of human life; or
2. The driver received a citation within 32 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - i. Bodily injury to any person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or
 - ii. One or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

When a post-accident test is indicated the Township will make every effort to have said test performed within 32 hours of notification of the accident. At no time will a period of more than

32 hours transpire between notification and DOT post-accident testing for controlled substances. Documentation of the entire post-accident procedure should be made by all personnel involved in the notification and testing process.

A driver who is subject to post-accident testing, for alcohol or for controlled substances, must remain readily available for such testing or may be deemed to have refused to submit to testing.

Receipt by the Township of a negative alcohol and drug test result is required prior to return to duty. If the drug test results in a negative dilute, then the employee must retake the drug test within 24 hours of notification. If the employee does not retake the test within 24 hours of notification, the drug test will be considered a refusal to test and a positive test. If the second drug test results in a negative dilute, then the drug test will be considered a positive test. A positive test result may disqualify an employee from further employment or reinstatement at the time or any time in the future.

RETURN TO DUTY TESTING:

EMPLOYEES WHO TEST POSITIVE:

Any employee who tests positive for alcohol or illicit substances, and who is not terminated, will not be permitted to return to work until they have met the following:

1. The employee must be evaluated by a Substance Abuse Professional (“SAP”). This professional must meet the criteria outlined in the DOT's Alcohol and Drug Rules for Substance Abuse Professionals.
2. The employee must comply and complete all recommendations made by the Substance Abuse Professional and be able to document same.
3. The employee must submit to a return-to-duty test and a proof of a negative test result must be received by the Township.

When the employee is cleared to return to work, he/she will be required to pass an alcohol and drug test. Upon receipt of a negative finding, if an employee is allowed to return to work he/she will be subject to follow-up testing as required by the SAP and this policy. If the drug test results in a negative dilute, then the employee must retake the drug test within 24 hours of notification. If the employee does not retake the test within 24 hours of notification, the drug test will be considered a refusal to test and a positive test. If the second drug test results in a negative dilute, then the drug test will be considered a positive test. The cost of the follow-up testing will be equally split between the Township and the employee.

FOLLOW-UP TESTING:

Any employee returning to work with the Township after being disqualified for a positive alcohol or drug test or returning to work after a leave of absence for voluntary substance abuse treatment will be subject to random drug and alcohol screening performed by the Township, for a period of a minimum of twelve (12) months following the employee's return to work, in accordance with the SAP's recommendation. Thereafter, the employee may be subject, at the SAP's discretion, to follow-up testing for up to sixty months following the employee's return to

work. At the expiration of the sixty-month period, the employee shall be subject to drug and alcohol testing in accordance with the general provisions of this policy. An employee who tests positive on a follow-up random drug/alcohol test shall be subject to immediate termination. If a follow-up random drug test results in a negative dilute, then the employee must retake the drug test within 24 hours of notification. If the employee does not retake the test within 24 hours of notification, the drug test will be considered a refusal to test and a positive test. If the second drug test results in a negative dilute, then the drug test will be considered a positive test.

DISCIPLINARY ACTION

The Township reserves the right to take disciplinary action against an employee for a positive drug or alcohol test. An employee who tests positive on a **random drug/alcohol test** may be subject to disciplinary action, but will not be terminated for testing positive on the first random drug/alcohol test. A first offense under a **random drug/alcohol test** shall result in a minimum of a thirty (30) day suspension. A first offense shall remain on an employee's record for a seven (7) year period. An employee shall be subjected to immediate termination for a second offense during the seven (7) year period. Employees who test positive to other types of drug and alcohol screening conducted in accordance with this policy, including but not limited to reasonable suspicion drug or alcohol testing, may be subject to disciplinary action up to and including termination.

TESTING PROCEDURES:

Collection of the urine specimen shall be done in accordance with federal regulations as described in 49 CFR, Part 40. Instructions for employees are attached as Appendix A. The employee must give his consent to be tested. A refusal to submit to such tests will be considered a positive test. Collection will be done at a collection site designated by the agent/Township, following DOT custody procedures. Return to duty and follow-up testing will be conducted under direct observation.

DRUG TESTING:

All DOT drug testing required by the Township of Woodbridge pursuant to this policy will be performed in accordance with DOT guidelines. This testing process will look for the presence of the following substances: Acetylmorphine, Amphetamines, Cocaine, Codeine, Hydrocodone, Hydromorphone, MDMA/MDA, Marijuana, Methamphetamine, Morphine, Opiates, Oxycodone, Oxymorphone, Phencyclidine, and any other substances that may hereafter be covered under DOT regulations. Under no circumstances will any DOT testing be performed on any non-DOT specimen provided by a Township of Woodbridge employee. Any testing for other substances would be subject to the Township's general Drug and Alcohol Testing Policy.

Drug testing is by urinalysis using split samples. Split sample testing requires the specimen be divided into two separate bottles during the collection process. These two bottles are designated as (1) the primary specimen which shall contain no less than 30 ml. of urine, and (2) the "split" specimen which shall contain no less than 15 ml. of urine. Upon arrival at the laboratory the primary specimen will be opened and tested. In the first screening test, immunoassay techniques are used to screen urine specimens for classes of drugs. In the second or confirmation test, any

positive results found in the first screening will be confirmed using the tandem technique of gas chromatography/mass spectrometry (GC/MS) which positively identifies and quantifies the presence of drugs. No test result will be reported by the laboratory to the Medical Review Officer ("MRO") as a non-negative drug test result unless both the initial screening test and the confirmation test are positive.

The laboratory shall report the test results and accompanying documentation to the MRO who shall evaluate the chain of custody, urine custody form, and test results. If a test is reported non-negative by the laboratory, the MRO will interview the employee to make an independent evaluation of whether the test should be reported as negative or positive. In the event the MRO's determination is to verify the positive laboratory result, the MRO will report the results of a drug test only to the Township's designated agent. If the drug test results in a negative dilute, then the employee must retake the drug test within 24 hours of notification. If the employee does not retake the test within 24 hours of notification, the drug test will be considered a refusal to test and a positive test. If the second drug test results in a negative dilute, then the drug test will be considered a positive test.

Should an interview with the employee be necessary, the MRO will make two attempts on consecutive business days to call the employee. Should the MRO fail to make contact, he/she shall contact the Township's designated representative to request that the employee contact the MRO.

The Township's designated representative shall inform the employee of the MRO's request in a confidential manner. Failure to respond within 24 hours of being informed by the Township's representative will be noted by the MRO when positive test results are reported. If the MRO and the Township's designated representative are unable to contact the employee, the employee will be placed on unpaid medical leave pending dismissal. It is the employee's responsibility to provide a phone number at which he/she can be contacted on the chain of custody form.

To the extent that any of the procedures set forth in this policy are inconsistent with applicable DOT regulations, the DOT regulations would supersede the procedures set forth in this policy.

ALCOHOL TESTING:

The DOT rules require breath testing for alcohol. The testing must be done using an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). This testing can only be performed by a Breath Alcohol Technician (BAT) that is certified in the equipment being used.

Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test and no further testing is required. If the initial screening shows an alcohol concentration of 0.02 or greater, a second or confirmation test is required. The confirmation test must be taken 15 minutes after the initial screening. During that 15 minute period the employee being tested is to remain with the Breath Alcohol Technician and must refrain from eating, drinking, smoking, or belching. After the 15 minute waiting period a second breath test will be

performed. The results of the second test stand and become the official test result.

If the confirmation test result shows an alcohol concentration of 0.02 or less, the official test result is negative and no action is required. If the result of the confirmation test is 0.02 or greater the employee is subject to further action by the Township as follows:

1. If the tested employee's alcohol concentration is between 0.02 and 0.039 the driver will be removed from driving for at least 24 hours.
2. If the tested employee's alcohol concentration is 0.04 or higher he/she must immediately be removed from any safety-sensitive duties until he/she (a) has been evaluated by a substance abuse professional; (b) has complied with any recommended treatment; and (c) has taken and passed a return-to-duty alcohol test (result must be less than 0.02). The employee is then subject to unannounced follow-up testing. (See Follow-up Testing in this policy).

To the extent that any of the procedures set forth in this policy are inconsistent with applicable DOT regulations, the DOT regulations would supersede the procedures set forth in this policy.

Applicants and employees are expected to report for alcohol and drug testing as required by this policy and in accordance with Township testing procedures. Employees are to report to work with no alcohol or illegal drugs in their bodies. **Any refusal to submit to alcohol breath testing or urinalysis drug testing as directed by supervisory personnel will be considered a refusal-to-test and may subject the employee to disciplinary action up to and including termination.**

CONFIDENTIALITY OF TEST RESULTS:

The results of any drug test will be reported and recorded in a confidential manner. Allowable communication of medical or test results will follow guidelines established in 49 CFR, Part 40. The results will not be reported to any additional parties without the employee's written authorization, except as outlined in 49 CFR, Part 40. A copy of the individual's test results will be available upon request.

QUALITY ASSURANCE OF TESTING PROGRAM:

The Township, through its agent, will take steps in its arrangements for testing to ensure that the laboratory is certified by the Substance Abuse and Mental Health Services Administration ("SAMHSA") and meets the requirements of the DOT.

Any employee who receives a positive test result will have the right to ask the Township's MRO to re-test the split sample at a SAMHSA certified laboratory of the MRO's choice.

The Township, through its agent, will make every effort to ensure that the equipment being used for alcohol breath testing meets all the requirements of the National Transportation Safety Board (NTSB) and all testing will be performed by a qualified Breath Alcohol Technician.

SUBSTANCE ABUSE RELATED BEHAVIOR:

Any employee engaging in the manufacture, distribution, dispensing, possession or use of any substances prohibited under DOT regulations, on Township premises, in Township vehicles, or while on Township business is subject to disciplinary action, up to and including termination. Any manufacture, distribution, dispensing, possession, or use of any substances prohibited under DOT regulations, by any employee in any manner which affects the employee's job performance, or which may cause the public or a government or corporate body to lose confidence in the Township's ability to perform its responsibilities is strictly prohibited, will not be tolerated, and may result in disciplinary action up to and including termination. Law enforcement officials could be notified, as appropriate, where criminal activity is suspected. Any employee convicted of violating a criminal drug statute must notify the designated Township representative or Department Head within five days of such conviction.

Any employee who refuses to comply with a request for drug testing shall be considered as having produced a positive test result and may be subject to disciplinary action, up to and including termination. Any employee who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution, shall face disciplinary action up to and including termination. In the event that the laboratory detects any substance which has been added to the sample to interfere with the normal testing process this will be considered a "refusal to test" and the same sanctions will apply.

The Township reserves the rights to inspect, investigate, and search for controlled substances at any time, without prior notice, on or in any and all Township premises and vehicles. The Township agrees not to search personal items contained in an employee's locker or to search the employee. All coolers are subject to inspection. If personal items need to be searched, the Township reserves the right to call the police. Refusal to cooperate with any inspection, investigation, or search that is authorized by a Township representative shall result in disciplinary action up to and including termination.

EMPLOYEES VOLUNTARILY SEEKING HELP:

The Township strongly encourages an employee with a drug/alcohol abuse problem to voluntarily step forward to tell the Township.

The Township will assist in referring the employee to appropriate assistance programs. Employees entering volunteer programs shall be eligible to use accrued time. Employees who have exhausted all accrued time can utilize an unpaid leave of absence as provided by Township policy. An unpaid leave of absence will be granted for a reasonable period of treatment. Employees returning from volunteer programs are subject to DOT return-to-duty testing procedures and requirements, and will be subject the Township's policies for follow-up testing in the Township's general Drug and Alcohol Testing Policy.

It is crucial to note that the accommodations in this section apply only when an employee voluntarily comes forward. If a substance abuse problem is disclosed to the Township only after there has been (1) a positive drug or alcohol test, (2) a violation of a Township rule or standard, (3) a violation of law, or (4) a violation of this policy, the same conditions outlined in the return-

to-duty section of this policy apply. If an employee fails to remain drug free after the first voluntary rehabilitation, he/she could be discharged.

TRAINING:

In an effort to educate employees about the dangers of drug use and the Township's commitment to keeping drugs out of the workplace, the Township will post information covering the dangers of substance abuse, the Township's commitment to an alcohol and drug free workplace, and the penalties for violation of this policy.

Supervisory employees will receive at least two hours of training on identifying those individuals who might be impaired by the use of drugs or alcohol.

EMPLOYEE ACKNOWLEDGEMENT:

Each employee shall be given a copy of this policy. He/she must acknowledge receipt and understanding of the policy as a condition of employment. This acknowledgment is attached as Appendix D. Please sign and make sure to return this form to Human Resources.

APPENDIX A

DONOR'S CHECKLIST FOR DRUG TESTING

The collection of your urine will be conducted under procedures mandated by the Department of Transportation. The DOT regulations provide for your individual privacy unless there is reason to believe that you may have altered or substituted the urine specimen.

Please take a few minutes to read the following information, which describes your role in the collection process.

- Present required photo identification to the collector. If you do not have a photo ID, an employer representative will be asked to identify you.
- You may ask the collector to show his/her identification.
- Remove any unnecessary outer garments, e.g., coat, jacket. All personal belongings (e.g., purse, brief-case) must remain with outer garments. You may ask for a receipt.
- When instructed by collector, wash and dry your hands.
- You will be provided a sealed specimen bottle or collection container, or the collector may unwrap it in your presence. You will be allowed to select your specimen kit from a box full of like, sealed specimen kits.
- You may provide the specimen in the privacy of a stall or otherwise partitioned areas that allows for individual privacy.
- After providing the specimen to the collector, he/she will divide the sample into two separate bottles.
- You should initial the security tape on the specimen bottles to certify that it is your specimen. These sealed bottles will then be placed in a security bag or security box. These will be sealed with security tape in your presence.
- You should observe the entire collection procedure.
- You should complete the information on Copies 3 thru 6 of the custody and control form. You will be given a copy of the completed form after the collector has completed his/her certification.
- You should NOT list medications/prescriptions on any other copy of the form except the copy which you are given for your records.

The results of the laboratory analysis will be forwarded to our MRO. If the laboratory results are negative, the MRO will notify the employer. If the laboratory results are

positive, the MRO will contact you at the phone number you provided to give you the opportunity to discuss the test results.

APPENDIX B

INFORMATION REGARDING THE ADMINISTRATION OF THE TOWNSHIP'S DOT ALCOHOL AND DRUG POLICY

The Township has retained Prevention Specialists, Inc. as its agent to manage and administer the testing program.

The Designated Employer Representative is George Brew, and the alternate Designated Employer Representative is Darren Crocker or such other person as designated by the Township.

The laboratories utilized for testing under this policy include Lab Corp. and Medtox.

APPENDIX C

ATTACHMENTS

Attached are the following materials from the Department of Transportation:

1. DOT's Direct Observation Procedures
2. Cutoff Concentrations for Drug Tests
3. What is a Refusal to Take a DOT Drug Test, and What are the Consequences?
4. Do You Know What Happens if You Refuse?

DOT's Direct Observation Procedures

Office of Drug and Alcohol Policy and Compliance
U.S. Department of Transportation



1. DOT's 49 CFR Part 40 directly observed collections are authorized and required only when:

- The employee attempts to tamper with his or her specimen at the collection site.
 - The specimen temperature is outside the acceptable range;
 - The specimen shows signs of tampering ~ unusual color / odor / characteristic; or
 - The collector finds an item in the employee's pockets or wallet which appears to be brought into the site to contaminate a specimen; or the collector notes conduct suggesting tampering.
- The Medical Review Officer (MRO) orders the direct observation because:
 - The employee has no legitimate medical reason for certain atypical laboratory results; or
 - The employee's positive or refusal [adulterated / substituted] test result had to be cancelled because the split specimen test could not be performed (for example, the split was not collected).
- The test is a Follow-Up test or a Return-to-Duty test.

2. The observer must be the same gender as the employee.

3. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry "clean" urine and urine substitutes AND for watching the employee urinate into the collection container.

- The observer requests the employee to raise his or her shirt, blouse or dress / skirt, as appropriate, above the waist, just above the navel; and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.
- *If The Employee Has A Device:* The observer immediately notifies the collector; the collector stops the collection; and the collector thoroughly documents the circumstances surrounding the event in the remarks section of CCF. The collector notifies the DER. This is a refusal to test.
- *If The Employee Does Not Have A Device:* The employee is permitted to return clothing to its proper position for the observed collection. The observer must watch the urine go from the employee's body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.

4. Failure of the employee to permit any part of the direct observation procedure is a refusal to test.

DOT Rule 49 CFR Part 40 Section 40.87

Subpart F - Drug Testing Laboratories

§ 40.87 What are the cutoff concentrations for drug tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) ²	50 ng/mL ³	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ³	Benzoylecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.

Methamphetamine		Methamphetamine	250 ng/mL
MDMA ⁴ /MDA ⁵	500 ng/mL	MDMA MDA	250 ng/mL 250 ng/mL

¹For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

²An immunoassay must be calibrated with the target analyte, Δ -9-tetrahydrocannabinol-9-carboxylic acid (THCA).

³**Alternate technology (THCA and Benzoyllecgonine):** When using an alternate technology initial test for the specific target analytes of THCA and Benzoyllecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoyllecgonine).

⁴Methylenedioxyamphetamine (MDMA).

⁵Methylenedioxyamphetamine (MDA).

(b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.

(c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

(d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 49862, August 16, 2010; 77 FR 26473, May 4, 2012; 82 FR 52244, November 13, 2017]

Last updated: Wednesday, April 15, 2020

DOT Rule 49 CFR Part 40 Section 40.191

Subpart I—Problems in Drug Tests

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) As an employee, you have refused to take a drug test if you:

- (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));
- (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)) for 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)) 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, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));
- (5) Fail 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));
- (6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, §40.197(b));
- (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). 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 following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;
or
- (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).

(9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.

(10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.

(11) Admit to the collector or MRO that you adulterated or substituted the specimen.

(b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(d) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.

(1) As the collector, you must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF.

(2) As the MRO, you must note the refusal by checking the "Refusal to Test" box in Step 6 on Copy 2 of the CCF, checking whether the specimen was adulterated or substituted and, if adulterated, noting the adulterant/reason. If there was another reason for the refusal, check "Other" in Step 6 on Copy 2 of the CCF, and note the reason next to the "Other" box and on the "Remarks" lines, as needed. You must then sign and date the CCF.

(e) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 71 FR 49384, Aug. 23, 2006; 73 FR 35974, June 25, 2008; 75 FR 59108, September 27, 2010]

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U.S. Department of Transportation
Office of Drug and Alcohol Policy and Compliance

*Do **YOU** know what happens *if* **YOU** **REFUSE?***

If you refuse to take a DOT drug or alcohol test:

- You will be immediately removed from the performance of any safety-sensitive function until you complete the Return-to-Duty Process
- You will need to see a DOT-qualified Substance Abuse Professional and comply with the education and/or rehabilitation requirements
- You could have a hard time finding another job
- You must complete the Return-to-Duty Process, including directly observed tests, and you may have to pay for those tests
- Your certificate, license, rating or authorization may be revoked, suspended or restricted

For more information, visit the ODAPC website at: <http://www.dot.gov/odapc>