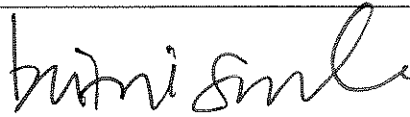




Policy Title	<b>Drug and Alcohol Testing under DOT Regulations for Commercial Driver's License Holders</b>
Effective Date	March 1, 2019
Supersedes	Policy dated August 1, 2012
Approval	 State Personnel Director
References	Omnibus Transportation Testing Act of 1991 49 CFR Parts 40, 382 25 IAC 4-1-1 Executive Order 90-5

**PURPOSE**

To promote a healthy and safe work environment for employees and the public, all covered employees are required to submit to drug and alcohol tests as a condition of employment. Copies of Parts 382 and 40 can be found on the internet at the Office of Drug & Alcohol Policy & Compliance's website <http://www.dot.gov/ost/dapc/index.html>.

**SCOPE**

This policy applies to all employees subject to the executive authority of the Governor and State Personnel Department, whose position requires the possession of a commercial driver's license (CDL), every employee performing a "safety-sensitive function" as defined herein, and any person applying for such positions.

**POLICY STATEMENT**

1. The use of illegal drugs by employees, on or off duty, will not be tolerated.
2. No employee shall unlawfully:
  - a) manufacture,
  - b) distribute,
  - c) dispense,
  - d) possess,
  - e) usea controlled substance, or be under the influence of a controlled substance while in the course and scope of employment.
3. No employee shall use or be under the influence of alcohol while in the course and scope of employment.
4. No employee shall report for duty or remain on duty or operate a state vehicle while:



- a) having any measurable amount of alcohol in his/her system (which for enforcement purposes is defined as a reading of .02 or more on a breath testing device),
  - b) having any measurable trace of a controlled substance in his/her system for which the employee does not have a prescription, legally valid in Indiana, or
  - c) impaired by a legally prescribed controlled substance.
5. The State will conduct DOT-regulated drug and alcohol testing in these situations:
- a. Pre-employment,
  - b. Randomly,
  - c. Based upon reasonable suspicion,
  - d. Post-accident,
  - e. Upon return-to-duty and following-up on positive test results.
6. No employee who is required to maintain a CDL shall refuse to submit to an alcohol or controlled substance test required in any of the abovementioned situations.
7. Employees are encouraged to seek evaluation and treatment when concerned about their use of alcohol or drugs, including prescription drugs. Information about alcohol and drugs, including a list of Substance Abuse Professionals (SAP) throughout the state, may be found at <https://www.in.gov/spd/2414.htm>. Links for the State's Employee Assistance Program (EAP), and plan documents and summaries of state employee group health plans may be found at <https://www.in.gov/spd/2337.htm>. Time spent in treatment for substance abuse may qualify for coverage under family and medical leave (FML) for eligible employees.

## **DEFINITIONS**

Adulterated Specimen - A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration – Alcohol in a volume of breath (shown as grams of alcohol/210 liters of breath) as indicated by an evidential breath test. For enforcement purposes a breath alcohol concentration of 0.02 or greater will be considered a positive test result.

Applicant – An individual who has received a contingent offer for a position requiring a CDL.

Breath Alcohol Technician (BAT) – An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing (EBT) device.

CDL – Commercial Driver's License.



Collector – A collector is an individual trained in protocols for collecting urine specimens to be tested for controlled substances.

Controlled Substance – The meaning assigned by 21 U.S.C. 802 and includes all substances listed on schedules I through V as they may be revised from time to time (21 CFR 1308 and 21 USC 812). In most circumstances, employees will be tested for the following controlled substances: Amphetamines, Cocaine, Marijuana, Opioids, and Phencyclidine (PCP).

Designated Employer Representative (DER) – A management designee who coordinates administration of the DOT-regulated CDL program at the local level.

Donor – A donor is the individual providing a urine specimen for testing for controlled substances or providing breath for a breath alcohol test.

DOT – U. S. Department of Transportation.

EAP – Employee Assistance Program.

Laboratory – A laboratory used in this program will be SAMHSA-certified (Substance Abuse and Mental Health Services Administration) and use DOT protocols for processing specimens.

Medical Review Officer (MRO) – A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the State's controlled substance testing program. The MRO must have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test, medical history and other relevant biomedical information.

On-call status – Employees are in scheduled on-call status when they have been assigned a time period outside regular work hours during which they are waiting to be engaged and required to remain in work-ready status in anticipation of performing safety-sensitive duties prior to the start of their next regularly-scheduled shift.

Safety Sensitive duties –

- Driving a commercial motor vehicle which requires the driver to have a commercial driver's license (CDL),
- Inspecting, servicing, or repairing any commercial motor vehicle,
- Waiting to be dispatched to operate a commercial motor vehicle,
- Performing all other functions in or upon a commercial motor vehicle,
- Loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments being loaded or unloaded,
- Performing driver requirements associated with an accident, or



- Repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

Split Specimen – A part of the urine specimen that was sent to the first laboratory and retained unopened, which is transported to a second laboratory in the event an employee requests that it be tested following a verified positive, adulterated or substituted test result of the primary specimen.

Substance Abuse Professional (SAP) – A licensed physician (Doctor of Medicine or Osteopathy); a licensed or certified social worker; a licensed or certified psychologist; a licensed or certified employee assistance professional; a state-licensed or certified marriage and family therapist; or a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc>.

Substituted Specimen – A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

TPA – Third Party Administrator of the State’s drug and alcohol testing program.

Test, Cancelled – a drug or alcohol test that has an identified problem that cannot be or has not been corrected as defined in 49 C.F.R. §40.83(c). A cancelled test is neither positive nor negative.

Test, Confirmation – *In alcohol testing:* a second test, following a screening test with a breath alcohol result of 0.02 or greater, that provides quantitative data of alcohol concentration.

*In controlled substance testing:* a second test to identify the presence of a specific drug or metabolite. In order to ensure reliability and accuracy, this test is separate from and uses a different technique and chemical principle than that of the screening test.

Test, Verified - A drug test result or a validity testing result from a Department of Health and Human Services (HHS) certified laboratory that has undergone review and final determination by the MRO.

## **RESPONSIBILITIES**

Employees are responsible for:

- reporting for duty in a work-ready condition;
- remaining in a work-ready condition throughout the assigned shift;
- reporting to his/her supervisor the use of medically authorized drugs or other substances that may create a direct threat by impairing job performance of safety-sensitive functions and providing proper written medical authorization to work from a physician; and
- submitting to drug and/or alcohol testing in appropriate circumstances when required.

Meeting the responsibility to report for duty/remain in a work-ready condition requires the following actions:



- The consumption of illegal drugs is prohibited at all times, and employees may be tested any time during the performance of their duty.
- All covered employees are prohibited from using alcohol within 4 hours prior to performing safety-sensitive functions.
- Covered employees with a breath alcohol concentration 0.02 or greater are prohibited from reporting for duty or remaining on duty.
- The consumption of alcohol is prohibited for covered employees during their assigned on-call hours. See definition for “on-call status” in this policy.
- An unscheduled employee who is called to report back to duty may acknowledge the use of alcohol and the inability to perform safety-sensitive functions without disciplinary action. All covered employees are prohibited from consuming alcohol, including medications with alcoholic content, while at work and for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- The appropriate use of legally prescribed drugs and non-prescription medication is not prohibited. It is, however, the employee’s responsibility to inform the physician of the employee’s job duties and determine from the physician, or other health care professional, whether or not the prescribed drug may impair their job performance or mental or motor function. Employees are required to report the use of medically authorized drugs or other substances that may create a direct threat by impairing job performance of safety sensitive functions to his/her supervisor and provide proper written medical authorization to work from a physician. Failure to report the use of such drugs or failure to provide proper evidence of medical authorization may result in disciplinary action.

Submitting to drug and/or alcohol testing in appropriate circumstances when required includes not refusing. You have refused to take a test if you:

- Fail to provide a breath or urine sample,
- Provide an insufficient volume without valid medical explanation,
- Adulterate or substitute a specimen,
- Fail to appear within a reasonable time,
- Leave the scene of an accident without just cause prior to submitting to a test,
- Leave the collection facility prior to test completion,
- Fail to permit an observed or monitored collection when required,
- Fail to take a second test when required,
- Fail to undergo a medical examination when required,
- Fail to cooperate with any part of the testing process,
- Fail to sign Step 2 of alcohol test form,
- Once test is underway, fail to remain at site and provide a specimen, or
- MRO verifies that you provided an adulterated/substituted sample.

Refusal to test will be considered the same as a positive test for purposes of disciplinary action.

Supervisors are responsible for:

- promptly reporting only to the DER any information obtained from an employee about impairment of ability to perform safety-sensitive duties or request for voluntary counseling/rehabilitation and otherwise maintaining confidentiality of the information;



- taking training required under DOT regulations;
- not permitting an employee who has used alcohol within 4 hours to perform or continue to perform a safety sensitive function;
- recognizing signs and symptoms of possible drug use and alcohol misuse, documenting observations indicating reasonable suspicion, and promptly reporting those suspicions to the Designated Employer Representative so the employee can be tested.

Agency Heads/Facility Heads are responsible for:

- designating a Designated Employer Representative.

Designated Employer Representative (DER) is responsible for:

- maintaining the accuracy of random pools of employees eligible for random drug and/or alcohol testing;
- maintaining confidentiality of testing schedules and results;
- ensuring appropriate notices are issued to employees;
- ensuring chain of custody forms are properly completed and submitted;
- serving as a resource for employees and supervisors with questions about the testing program or drug and alcohol use; and
- recommending disciplinary actions or pre-deprivation proceedings when appropriate.

## **PROCEDURES**

### **A. Types of and Reasons for Testing**

Employees shall be tested for blood alcohol concentration of 0.02 or higher.

Employees shall be tested for the following controlled substances:

- 1) Amphetamines/Methamphetamines
- 2) Cocaine
- 3) Phencyclidine (PCP)
- 4) Opioids (codeine/morphine)
  - a. Heroin (6-AM)
  - b. Hydrocodone/Hydromorphone
  - c. Oxycodone/Oxymorphone
- 5) Marijuana (THC/Cannabinoids)

Any other substances that may be identified using the same method used to test for controlled substances will not be tested and, if found, will not be reported.

### **Prescription Drug Use / Notice of Impairment**

The appropriate use of legally prescribed drugs and non-prescription medication is not prohibited. It is, however, the employee's responsibility to inform the physician of the employee's job duties and determine from the physician, or other health care professional, whether or not the prescribed drug may impair their job performance or mental or motor function.



Employees are required to report the use of medically authorized drugs or other substances that may create a direct threat by impairing job performance of safety-sensitive functions to his/her supervisor and provide proper written medical authorization to work from a physician. Failure to report the use of such drugs or failure to provide proper evidence of medical authorization may result in disciplinary action.

Employees needing reasonable accommodation due to a disability, including the effects of medication taken for the disability, may notify the HR representative of such need so that interactive discussions may be conducted. However, if notification to HR is not provided in advance of the employee receiving notice of a safety-sensitive assignment, or other assignment that may be adversely affected by the medication, an absence may still be subject to disciplinary action and then discussions may be conducted to address future situations.

### **Pre-employment Testing**

Offers of employment to positions that require the incumbent to possess and maintain a CDL shall be made contingent upon the applicant passing a controlled substance test. Any offer of employment with the State in a position requiring a CDL is conditioned on the prospective employee testing negative for drugs. An applicant shall be rejected if the pre-employment controlled substance test result is not negative, unless he/she can provide a valid medical statement highlighting a health problem as the cause of the test result. A negative pre-employment drug test result is required before an employee can first perform safety-sensitive duties.

An agency hiring a candidate who maintains a CDL must conduct a background check of the employee's previous employer for controlled substance and alcohol test violations. Within thirty (30) days of performing his/her job duties, DOT regulations require that the State obtain, to the extent available, certain controlled substance and alcohol testing records from the employee's previous employers for the previous three (3) years. As a condition of employment, the applicant shall provide the State with written authorization to obtain such records.

An agency hiring a candidate who does not maintain a CDL, but who will be required to obtain a CDL after employment, must conduct a pre-employment test before the employee can be assigned to perform any safety-sensitive duties. The test result must be negative, and the employee must be placed into the random pool at that time.

### **Random Testing**

Employees occupying positions requiring CDLs are subject to random testing for alcohol and controlled substances. Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed. Testing rates will meet or exceed the minimal annual percentage rate set each year by the DOT Administrator. The current year testing rates can be viewed on line at <http://www.dot.gov/ost/dapc/rates.html>.



The State submits all eligible employees' names to a computer-generated random selection system which eliminates management discretion. The random selection system provides an equal chance for each employee to be selected each time random selection occurs.

- Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made. Random selection by its very nature may result in employees being selected in successive selections more than once per calendar year.
- Random selections will be reasonably spread throughout the year.
- Each employee selected for testing shall be tested during the selection period.
- A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety sensitive functions; or just after the employee has ceased performing such functions.
- A covered employee may be randomly tested for prohibited drug use anytime while on duty.
- Each covered employee who is notified of selection for random drug or random alcohol testing shall proceed to the test site immediately.

### Post-Accident Testing

An employee occupying a position requiring a CDL will be required to submit to alcohol and/or controlled substance testing if, in the course of performing driving duties, the employee:

1. Is involved in an accident resulting in loss of human life; or
2. Receives a citation concerning an accident which requires either:
  - a. medical treatment away from the scene; or
  - b. a vehicle to be towed from the scene.

An employee occupying a position requiring a CDL must contact his/her supervisor as soon as possible following the accident. The supervisor shall complete the [FMCSA Post-Accident Documentation Form](#).

### Time Limits on Post-Accident Testing

1. If a post-accident alcohol test is not administered within two (2) hours following an accident, the supervisor of the employee shall prepare and maintain on file a record stating the reasons the test was not properly administered.
2. If a test is not administered within eight (8) hours after the accident, the supervisor shall cease attempts to have the alcohol test administered and prepare and maintain on file a record stating the reasons the test was not done within said eight (8) hours.
3. If a post-accident controlled substances test is not administered within 32 hours of the accident, the supervisor shall cease attempts to have the controlled substances test administered and prepare and maintain on file a record stating the reasons the test was not done within said 32 hours.
4. An employee subject to post-accident testing shall remain readily available for such testing, including notifying his/her supervisor of his/her location if he/she leaves the





accident scene. An employee who fails to do so shall be deemed to have refused to submit to testing.

Nothing herein shall be construed to require the delay of necessary medical attention for the injured or to prohibit an employee from leaving the accident scene for the time period required to obtain emergency assistance.

An employee shall follow instructions from his/her supervisor or management designee to complete required testing.

In the event that federal, state, or local officials conduct breath, blood or urine tests for the use of alcohol and/or controlled substances following an accident, employees must comply with such requests. The State may request testing documentation from such agencies and may ask the employee to sign a release allowing the State to obtain the test results.

In the event an employee is so seriously injured that he/she cannot provide a sample of urine or breath at the time of the accident; the employee must provide the necessary authorization as soon as possible so the State may obtain hospital records or other documents that would indicate the presence of alcohol or controlled substances in the employee's system at the time of the accident. Failure to release test results to the State may result in disciplinary action up to and including dismissal.

### **Reasonable Suspicion Testing**

Employees are required to take a drug and/or alcohol test(s) if there is reasonable suspicion that the employee is using or under the influence of alcohol and/or controlled substances. The determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Supervisors or management personnel who have reasonable suspicion, will take the following actions:

1. Keep the employee under direct observation until the situation is resolved;
2. The supervisor shall tell appropriate management personnel about his/her observations and discuss the circumstances and whether testing should be approved by the DER. If testing is approved, the employee will be immediately notified of the allegation and provided a brief explanation of the evidence giving rise to the allegation and an opportunity to respond prior to being required to submit a breath test and/or urinalysis. An admission by the employee that s/he has used drugs or alcohol shall be sufficient evidence on which to base disciplinary action without requiring the employee to submit to drug and/or alcohol testing;
3. The DER shall ensure that appropriate chain of custody forms are completed and transmitted to the collection site.
4. Management personnel shall transport the employee to an appropriate collection site and thereafter will ensure that arrangements are made for the employee to be transported to



- the employee's residence or place of lodging. Under no circumstances shall an employee be permitted to drive a state vehicle or a personal vehicle to or from the collection site;
5. An employee will not be permitted to drive a state vehicle or return-to-duty unless and until a negative test result has been received. If the test results are negative, then the employee will be reimbursed for any lost wages due to the suspension;
  6. If an alcohol test is not administered within two hours following the determination to conduct a reasonable suspicion test, the supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight hours following the determination to test, cease attempts to administer an alcohol test and update the record with the reasons for not administering the test.
  7. A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier; and
  8. Disciplinary action shall be initiated for any employee with a verified positive test result.

### **Return-To-Duty Testing**

An employee who was not dismissed after a refusal to test or positive test result will be required to undergo a counseling or rehabilitation program for alcohol or controlled substance use. The employee may not return to duty until he/she tests negative for a controlled substance and/or tests below 0.02 breath alcohol and an MRO or SAP and the State have determined that the employee is fit for duty. An employee is subject to a return-to-duty test and follow-up tests. Follow-up tests are in addition to any random tests to which the employee is subject as part of the CDL pool.

### **Follow-up Testing**

Employees required to undergo a counseling or rehabilitation program for alcohol or illegal drug use as a result of the drug testing program will be placed on a follow-up list where they will be subject to regular, unannounced alcohol and/or drug testing as directed by the SAP. The number and frequency of such follow-up testing shall be directed by the SAP. The employee will be subject to follow-up testing for a period of 1 to 5 years as determined by the SAP. All testing will be conducted in accordance with Part 40, subpart O. Employees who complete an authorized drug treatment program and are returned to CDL positions will, in addition to the follow-up testing, be returned to the random pools.

Employees are responsible for the cost of counseling or rehabilitation programs. Family-Medical Leave may be available for eligible employees needing leave to attend treatment sessions.

### **Voluntary Rehabilitation and Counseling**

This section will not apply to any employee who tests positive through the testing program. The employee must voluntarily seek treatment through this section prior to being notified of a pending drug and/or alcohol test or involved in a situation that requires a reasonable suspicion or post-accident drug and/or alcohol test.



The State offers employees the use of counseling and rehabilitative services pursuant to coverage limitations and in accordance with the terms of its benefit programs. Employees are personally responsible for seeking treatment for alcohol and/or controlled substance dependence. Any voluntary request by an employee for assistance with his/her own alcohol and/or controlled substance dependency will remain as confidential as possible and shall not be used, in itself, as a basis for disciplinary action.

Employees are responsible for the cost of counseling or rehabilitation programs, including any testing required by a SAP as part of the program. Family-Medical Leave may be available for eligible employees needing leave to attend treatment sessions. Employees requesting FML for absences related to such treatment must comply with the notice and eligibility requirements of that policy.

The employee must be compliant with the treatment recommendations and abstain from using illegal drugs, and/or meet all responsibilities related to use of alcohol and prescription drugs and agree to submit to follow-up testing as required by the SAP before a return to work will be considered.

Prior to the employee's return to work after voluntary rehabilitation, a drug and/or alcohol test will be required through the State's TPA for drug/alcohol testing services and only non-DOT drug/alcohol testing forms will be utilized. Return to work testing by the State's TPA will be paid by the employing agency.

## **B. Testing Procedures**

### **Generally**

All testing will be performed by person(s) designated by the State. Employees and applicants will provide their samples without observation except when there is reason to believe a particular individual may alter or substitute the specimen provided. Reasons to believe a person may alter or substitute the specimen include, but are not limited to:

- 1) the individual has previously been found to be an illegal drug user;
- 2) the individual has previously tampered with a sample or has the equipment or implements capable of tampering, altering, or substituting urine samples;
- 3) the individual provides an unacceptable specimen (e.g., temperature is out of range, physical characteristics are not consistent with normal human urine) at the time of collection; or
- 4) the MRO has ordered the individual to be re-tested under direct observation.

All testing required by 49 CFR Part 40 for employees required to hold CDLs will be conducted in accordance with those requirements.

The Agency employing the employee will pay the cost of drug and alcohol testing that it requires or requests employees submit to, including confirmation testing of positive results from an initial test. Any additional tests that the employee may request will be paid for by the employee; see



also provision above for Voluntary Rehabilitation and Counseling concerns costs of testing during treatment and for consideration of returning to work after successful completion of a program.

Only a SAMHSA (Substance Abuse and Mental Health Services Administration) certified laboratory will be retained by the State to perform urinalysis for the detection of the presence of controlled substance(s). The laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance and scientific analytical methodologies.

Collection of urine samples must always be documented and sealed with a tamper proof sealing system in the presence of the employee who provided the sample to ensure that all tests can be correctly traced to the employee.

An MRO shall be designated to receive all laboratory results from every type of test and assure that an individual who has tested positive has been afforded an opportunity to justify the test result as discussed below.

#### **Positive Alcohol Testing Protocols**

An employee who receives a positive test result on an initial alcohol breath test is required to take a confirmation validity test (second breathalyzer) within 15-30 minutes. If an employee provides medical documentation highlighting a health problem that prevents him from providing an adequate breath sample for an alcohol test, the potential discipline may be mitigated.

#### **Positive Controlled Substance Testing Protocols**

Within seventy-two (72) hours after an employee is notified of a positive, adulterated or substituted test result for a controlled substance, he/she may request that the "split" portion of his/her specimen be tested at a different SAMHSA laboratory. If the employee makes a request within seventy-two (72) hours to the MRO for the split portion to be tested, the MRO shall immediately arrange with the laboratory for all procedures to be performed in accordance with split specimen testing procedures. The cost of a split specimen test will be the responsibility of the employee; however, the test of the split specimen shall not be conditioned upon up-front payment.

#### **Role of an MRO**

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the Procedures for Transportation Workplace Drug and Alcohol Testing Programs in 49 CFR Part 40. For example, the MRO may choose to conduct medical interviews, review medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication.

Evidence to justify a positive result may include, but is not limited to:

1. a prescription legally valid in Indiana.
2. an affidavit from the employee's physician verifying a prescription legally valid in Indiana.



Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no legitimate explanation for the positive result, such result will then be considered a verified positive test result. Consistent with confidentiality requirements the MRO shall refer written determinations regarding all verified positive test results to the appropriate DER.

### **Non-routine Collection Situations**

#### **Dilute**

A specimen will be identified as dilute if it has creatinine and specific gravity values that are lower than expected for human urine. This determination is made by the laboratory, not the collector.

- If the lab reports a dilute negative specimen, donor must be re-tested.
- The donor may have to travel to an approved collection site to submit the second sample. If an employee has to travel to an approved collection site, management will transport the employee.
- Dilute negative results with creatinine levels 2-5 mg/dl will require an immediate recollection under direct observation in accordance with 49 C.F.R. §40.155(c)) and as noted below.
- If second test is also dilute, result will be reported as negative. MRO may note “second test after dilute” on results. A second test will be the result of record.
- If a positive test result is also identified by the MRO as dilute, that result is treated as a verified positive test which may result in dismissal from employment or a decision not to offer employment or to revoke a contingent offer of employment. The person shall not be directed to take a second test.

#### **Out-of-Temperature**

A specimen will be determined to be out-of-temperature if the temperature is higher than 100 degrees or lower than 90 degrees Fahrenheit.

- Determined by collector
  - The collection container has a temperature strip adhered to the outside of the container. The collector reads the temperature strip to determine if the specimen is above 100 or below 90 degrees Fahrenheit. It is not graduated to identify the exact temperature.
  - Collector also considers color of specimen and any other physical characteristics that are apparent.
  - If a specimen temperature is out of range, a second collection is immediately required.
- Collector will require donor to provide a specimen under direct observation.
  - Clothing must be raised above the navel and lowered to mid-thigh; donor must turn around in a circle.
  - Collector will observe the donor providing the specimen.



- If donor cannot provide a sufficient specimen under direct observation, collector may institute shy bladder protocols; however, if original specimen was sufficient, but just out-of-temperature, it is unlikely MRO will find a medical reason constituting shy bladder.

### Shy Bladder

The term “shy bladder” is applied to situations where the donor does not produce a sufficient amount of urine for testing. The required amount of 45 ml must be produced in one void and cannot be aggregated.

- Determined by collector
- Donor is unable to produce 45 ml of urine all at once (cannot add smaller specimens together to aggregate one sufficient specimen).
- Time clock starts when donor produces an insufficient quantity of urine on their first attempt. DOT protocol will require donors to make an attempt even if they say they can't provide a specimen.
- Time clock runs for a maximum of 3 hours.
  - Donor must remain at the collection site for the full 3 hour time frame unless released by the collector after providing a single specimen of at least 45 ml.
  - Donor should be allowed to consume up to 40 ounces of fluid during the 3-hour time period.
  - Second and subsequent attempts to provide a sufficient quantity of urine may occur during the 3-hour time period.
  - If donor leaves the collection site without being released by the collector or prior to the expiration of the 3-hour time period, that is reported as a refusal to test. A refusal to test may result in dismissal from employment or a decision not to offer employment or to revoke a contingent offer of employment.
- At the expiration of the 3-hour time period without providing a sufficient specimen, the donor will be directed to have a medical evaluation.
  - Donor may choose to consult a physician and submit medical documentation of a condition that would explain the inability to produce a sufficient amount of urine. The Donor has 5 weekdays (not including weekends or state holidays) to obtain that medical documentation. If donor is making a good faith effort, but submits documentation that an appointment cannot be scheduled within that time period, additional time may be allowed.
  - If donor states his intention at the time of collection not to seek medical documentation, that will be reported at that time as a refusal to test; there's no need for the MRO to wait 5 days before reporting that result. A refusal to test may result in dismissal from employment or a decision not to offer employment or to revoke a contingent offer of employment.
  - DER may contact MRO to ask if there is a delay in obtaining the medical documentation.
  - If this situation occurs during a random test, the employee may be returned to safety-sensitive duties until the final result is received from the MRO. In other testing situations, the applicant/employee cannot perform safety-sensitive duties until the final result is received from the MRO.



- Failure to submit medical documentation (or submission of insufficient documentation) will be reported as a refusal to test which may result in dismissal from employment or a decision not to offer employment or to revoke a contingent offer of employment.
  - A statement that the donor has “situational anxiety” related to urination will not be sufficient if the condition is not established beyond this one drug test.

#### Direct Observed Collection Procedure

- Direct observed collection will be performed immediately with no advanced warning under DOT requirements when:
  - The collector identifies a donor’s attempt to alter or tamper with their specimen;
  - A specimen test result is reported as invalid because there is no adequate medical explanation for the result;
  - When a positive, adulterated or substituted test result is reported as a cancelled test because testing on the split specimen could not be performed;
  - The temperature of the specimen falls outside the range of 90 - 100° F; or
  - The reason for testing is return-to-duty or follow-up.
- The collection site will immediately notify the agency employing or offering employment to the donor of the occurrence and perform a second collection by direct observation.
- Every observed collection will be conducted by a collector of the same sex as the donor.
- An observed collection will be performed immediately upon detection, and observed specimen collected will be sent for analysis.
- The reason to perform direct observation collection will be provided to the employee by the collector.

#### **C. Disciplinary Consequences**

Violations of this policy will result in disciplinary action up to and including dismissal from employment. Contingent offers of employment will be revoked for any applicant in violation of this policy.

#### **D. Supervisor Training & Employee Education**

Training will be provided for supervisors to assist in identifying and addressing substance abuse by employees. Training may be accomplished through various means including contracting out to private organizations and in-house training courses. Supervisors over employees required to maintain CDLs must receive the training required by DOT regulations.

Employees required to maintain CDLs must receive the training required by DOT regulations.

#### **E. Additional Information and Forms**

##### **Records and Confidentiality**

While the State will make efforts to keep the specific medical information related to drug and alcohol tests confidential, test results may be used in administrative proceedings, arbitrations, police investigations and proceedings, and court cases arising as a result of the employee’s drug testing. If the employee is to be referred to a treatment facility for evaluation, the employee’s test



results will also be made available to the employee's counselor. The employee will be asked for consent before specific medical information is released to anyone other than those already mentioned.

All discussions between employees and MROs concerning legitimate explanation of positive test results are confidential unless the employee poses a safety risk, which requires the MRO to discuss the situation with the State. If medically supportable reasons exist to explain the positive result, the MRO will report the test result to the State as negative.

#### **EAP Referral and Availability**

The State shall continue its sponsorship of an [EAP](#) which includes programs for referrals for substance abuse prevention and treatment and for the rehabilitation of employees with substance abuse problems.

#### **Reference Materials**

[Acknowledgement of Receipt of Policy](#)

[Contact Information for the State's third party administrator of drug/alcohol testing](#)

[Informational material related to the health effects and workplace issues caused by alcohol and certain specified drugs](#)

[CDL forms](#)

[DOT Employee Handbook](#) at

[https://www.transportation.gov/sites/dot.gov/files/docs/Employee\\_Handbook\\_Eng\\_2014\\_A.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/Employee_Handbook_Eng_2014_A.pdf)

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