

Drug and Alcohol Testing Program

Responsible Administrator: Controlled Substances & DOT Program Coordinator
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Summary: The UC Irvine Drug and Alcohol Testing program carries out the Federal regulations set forth by the Department of Transportation (DOT) regarding operating commercial vehicles.

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1. Program Description

The UC Irvine Drug and Alcohol Testing program carries out the Federal regulations set forth by the Department of Transportation (DOT) regarding operating commercial vehicles.

2. Scope

The regulations are designed to protect the public by requiring employers to test transportation employees for the use of alcohol and drugs. Transportation employees covered under the DOT regulations are subject to random testing.

3. Definitions

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

Alcohol Testing Site - A place selected by the employer where employees present themselves for the purpose of providing breath or saliva samples for an alcohol test. Alcohol testing sites must be private to insure no unauthorized persons see or hear the test results.

Blood alcohol content (BAC) - (also called Blood alcohol content, blood alcohol concentration, blood ethanol concentration, Blood Alcohol Level (BAL)) is most commonly used as a metric of intoxication for legal or medical purposes.

Collection Site - A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

Confirmed Drug Test - A confirmation test result received by an MRO from a laboratory.

Consortium/Third Party Administrator (C/TPA) - A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs.

Designated Employer Representative (DER) - An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in

the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40.

Dilute Specimen - A specimen with creatine and specific gravity values that are lower than expected for human urine.

DOT, The Department, DOT Agency - These terms encompass all DOT agencies, including, but not limited to, the USCG, the FAA, the FRA, the FMCSA, the FTA, NHTSA, RSPA, and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

Drugs - Illegal drugs and prescription and non-prescription drugs that can affect the ability to drive. The drugs for which tests are required under Part 40 and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

Environmental Health & Safety (EHS) - The campus occupational health department located at UCI. This department is responsible for managing the DOT Drug and Alcohol testing program for the campus.

Evidential Breath Testing Device (EBT) - A device that measures alcohol concentration in the breath.

Human Resources (HR) - Department on campus which coordinates testing and personnel procedures with the applicable department and EH&S.

Medical Review Officer (MRO) - A physician who has been retained by UC Irvine and who meets the Department of Transportation requirements.

Negative Alcohol Test Result - Any breath alcohol test result less than .020 is considered a negative test under the DOT rules and regulations.

Safety-sensitive function - All on-duty time that a transportation employee spends driving, available or waiting to drive, or working in or near a vehicle as described above. All of a transportation employee's hours of work are considered a safety-sensitive function unless the employee has been restricted to non-safety-sensitive duties.

Substance Abuse Professional (SAP) - A person who evaluates employees who have violated DOT drug and/or alcohol regulations and makes recommendations concerning education, treatment, follow-up testing, and aftercare. The SAP can be a licensed physician, a licensed psychologist, or a certified employee assistance professional.

Screening Test (Alcohol) - An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Screening Test Technician (STT) - A person who instructs and assists employees in the alcohol Screening Test process and operates an Alcohol Screening Device.

Third Party Administrator (TPA) – External administrative operator, not a UC entity.

Transportation employee - An employee, regardless of job title, who operates a vehicle that:

- Has a gross combined weight rating of more than 26,000 pounds, or
- Has 16 or more seats or
- Must be placarded under the Hazardous Materials Regulations for hazardous waste.

Job applicants and occasional drivers who meet the above qualifications are also included.

4. Responsibilities

Applicability

The DOT rule covers employees and contract labor personnel, whose UC Irvine duties are such that federal regulations require them to hold a Class B Commercial Driver's License (CDL) in order to drive a commercial motor vehicle (CMV) on public highways, and who, during the course of the workday, operate or are expected to be in readiness to operate:

- A vehicle with a gross combination weight of 26,000 or more pounds;
- A vehicle designed to transport 16 or more passengers, including the driver;
- A vehicle used in the transportation of hazardous materials that require the motor vehicle to be placarded under the Hazardous Materials Regulations.

In addition to being subject to drug testing any time while at work, such individuals are subject to alcohol testing during those periods of time when they are currently performing, have recently performed, are about to perform, or are required to be in readiness to perform and immediately available to perform any of the following on-duty-safety sensitive duties as described in the DOT federal regulations, including:

- At a carrier's facility or any public property waiting to be dispatched.
- Inspecting, servicing, or conditioning a commercial motor vehicle.
- Driving a commercial motor vehicle.
- All time in or upon a commercial motor vehicle except in a sleeper berth.
- Performing, supervising, assisting, or attending commercial motor vehicle, loading or unloading, including processing paperwork.
- Performing post-accident duties.
- Repairing, obtaining assistance, or attending a disabled commercial motor vehicle.

It is UC Irvine policy that all drivers are considered to be immediately available to perform one or more of the above on-duty functions (1) through (7) and therefore are subject to pre-employment and random drug and alcohol testing, reasonable suspicion drug and alcohol testing, and follow-up drug and alcohol testing during all working hours unless explicitly excused from all DOT on-duty functions.

Regardless of job classification, an employee or contractor may not drive a University motor vehicle unless that individual's name appears on the current University CDL-holder's list indicating that the driver is subject to the random testing provisions of the DOT rule. Each department participating in the Program maintains their respective CDL- holder's list.

5. Program Components

Mandatory Inquiry

University employment applicants for positions involving the operation of a CMV are required to identify all employers for the previous 10 years during which the applicant has driven a CMV. From this list of past employers, the hiring department will contact employers for the preceding two years. If any prior employer reports that the applicant had an alcohol test with a concentration of 0.04 or greater, a verified positive controlled substances test result, or a refusal to be tested during this period of time, the application will not be processed further until the applicant submits a specific, written authorization to release this information to the department for review. Upon receipt of these records, the hiring department will forward them to the designated UC Irvine Substance Abuse Professional for review in coordination with HR and EHS. Any costs associated with the SAP will be recharged back to the departments. The purpose of this review is to verify that the applicant has not attempted to evade any required treatment and that other reinstatement requirements have been satisfied prior to the time the applicant sought employment at UCI.

Review of Evaluation Records and Return-To-Duty Test Records

Specifically, records that are required to be kept by previous employers will be requested in order to check the following:

- The department will verify that a determination was made by a Substance Abuse Professional concerning the driver's need for assistance.
- The department will verify that the driver complied with all treatment recommendations of the Substance Abuse Professional. If a follow-up testing program had been established, the current status of the applicant's completion of the program will be requested.
- The department will verify that the driver passed the required return-to-duty test before being allowed to perform any safety- sensitive functions. A pre-employment drug test may be used to satisfy return-to-duty drug test requirements.

UC Irvine will not hire drivers who have not yet had their CDLs reinstated. Therefore, drivers who have violated DOT drug and/or alcohol prohibitions at UC Irvine or elsewhere will not be hired if they have not satisfactorily completed all reinstatement DOT requirements (including any required rehabilitation, medical recertification to drive, and return-to-duty testing).

6. Reporting Requirements

Testing for Substance Abuse

Testing for substance abuse is required by UC Irvine in six situations: pre-employment, random selection, reasonable suspicion, post accident, return-to-duty, and follow-up after reinstatement to safety-sensitive functions following removal for violating a drug/alcohol prohibition. Each of these situations is discussed below:

It is UC Irvine's policy that applicants for CMV driver positions must pass a DOT pre-employment drug and alcohol test, which will be conducted after an offer is made but prior to being hired for, or transferred to, the position. The requirement for DOT pre-employment testing applies to new hires, existing employees transferring into CMV driver positions, and non-campus employee drivers who are used by the campus as CMV drivers. The final results of the tests must be in the department's possession prior to awarding the position to the applicant or transfer candidate. Therefore, sufficient time should be allowed for pre-employment testing. Drug test results are typically verified by the Medical Review Officer (MRO) within 5 working days but may take a week or longer in some cases.

To facilitate the use of casual, intermittent, or occasional drivers (such as trip-lease drivers and other non-campus employee drivers) the requirement for pre-employment testing may be waived if the driver has participated in a DOT drug and alcohol testing program elsewhere and the driver releases to the designated manager by completing the Release of Information – 49 CFR Part 40 Drug and Alcohol background check form to allow for verification of participation in that program.

Waiver of Pre-employment Drug Test

The pre-employment drug test may be waived if:

- Information is provided indicating the individual has participated in a DOT drug testing program within the previous 30 days as provided;
- Information reveals either that the individual was drug-tested by that program within the past 6 months or was not tested but was subject to random drug testing for the previous 12 months; and
- Information reveals that no prior employer has records showing the applicant engaged in prohibited drug or alcohol conduct within the previous 6 months.

Applicants for driver positions will be required to state whether they have failed an alcohol test (at 0.04 or

greater), or a drug test, have refused to be tested, or have violated any other DOT drug or alcohol prohibition within the preceding two years. If such a violation did occur, applicants are required to sign a written release of these records for review.

As described in Mandatory Inquiry, it is UC Irvine's policy that employment applicants for CMV driver positions who have previously violated DOT drug and/or alcohol prohibitions will not be hired until they are qualified to drive CMVs. That is, they must have satisfactorily completed all reinstatement and CMV driver qualification requirements.

After receipt of these records, an assessment will be made by a designated UC Irvine Substance Abuse Professional concerning the applicant's compliance with any required assistance or treatment.

Random Testing

The UC Irvine DOT random pool is composed of drivers who are regularly employed as well as intermittent, casual, and occasional drivers.

Individuals in the pool may be randomly selected for drug testing only or for both drug and alcohol testing. When an individual is randomly selected for both drug and alcohol testing, these tests will be administered during a single visit to the collection facility to minimize the number of work disruptions.

Drivers will be selected for testing through the use of a third party administrator's (TPA) computer-generated random list. All drivers will have an equal chance of being selected on each testing day. The dates for administering these tests will be reasonably spread throughout the year but will not be predictable.

Random testing may occur on any work shift on any work day throughout the year. Persons who are tested will be immediately available for re-selection on the next day. Drivers notified of selection for testing must proceed immediately to the designated testing site. The time allowed between notification and testing is no more than the requisite travel time to the testing site. A reasonable amount of transportation time will be allowed. If a driver is notified of his or her selection while performing a safety-sensitive function, he or she is required to cease performing the function as soon as it can be safely terminated and proceed to the testing site as soon as possible.

It is UC Irvine policy that all drivers are considered to be immediately available to perform one or more of the on-duty functions listed in Section 4 above and therefore are subject to random drug and alcohol testing while working.

Violation Rate

The violation rate for alcohol testing means the number of covered drivers who had an alcohol concentration of 0.04 or greater plus the number of drivers who refused a required random alcohol test, divided by the total reported number of employees in the UC Irvine DOT Drug and Alcohol testing program who were given required random alcohol tests plus the total reported number of employees who refused a required random alcohol test.

The alcohol testing rate will be increased to the maximum if the violation rate is poor for 1 year.

The alcohol testing rate may be decreased to the next lower level if the violation rate is good for 2 years.

- If the alcohol violation rate in a given calendar year is **1% or greater**, the annual rate required will be increased from its existing rate to **50%**.
- If the alcohol violation rate is **less than 0.5%** for 2 consecutive years, the random testing rate may be lowered from **25% to 10%**.
- If the alcohol violation rate is **0.5% or greater but less than 1%** for 2 consecutive years, the random testing rate may be lowered from **50% to 25%**.

Reasonable Suspicion Testing

Drivers are required to submit to drug and/or alcohol testing upon request if supervision or management has reason to believe the driver has violated any of the drug and/or alcohol prohibitions except for suspected possession of alcohol. A reasonable suspicion drug and/or alcohol test will be administered if one or more supervisors or other management officials, who have been trained in behavioral observation, makes a specific observation concerning a driver's **appearance, behavior, speech, or body odor**. In the case of suspected drug use, the observations may include indications of the **chronic or withdrawal effects of controlled substances**. An attempt will be made to obtain corroboration from a second management official. However, failure to obtain the corroboration of a second management official will not prevent the conduct of a reasonable suspicion DOT test. When testing is required, supervision or management will make necessary arrangements for the testing and the required contact with Environmental Health and Safety and/or Human Resources, as described in DOT supervisory training. To accommodate special circumstances, supervisors are provided instructions during DOT supervisory training on how to arrange the conduct of drug and alcohol tests off site and on weekends and holidays.

If, for any reason, an alcohol test cannot be conducted within two hours following the determinations that reasonable suspicion exists to require testing, a written explanation of the reason for the delay is required to be placed on file by supervision or management. A copy will be sent to the EHS and/or HR DER. A reasonable suspicion alcohol test will not be administered after 8 hours following the determination and the reason why it was not administered will be documented and placed on file. A copy will be sent to the EH&S and/or HR DER.

A driver will be requested to undergo reasonable suspicion alcohol testing only:

- Just *before* the driver is to perform or is expected to be in readiness to perform safety-sensitive functions; or
- Just *after* the driver has ceased performing safety-sensitive functions.

A written record will be made of the observation leading to a reasonable suspicion drug or alcohol test, and signed by the supervisor or other trained university official who made the observations within 24 hours of the observed behavior or before the drug test result is released, whichever is earlier.

Reasonable Suspicion Removal without an Alcohol Test

If a supervisor has reason to believe a driver has used alcohol, and a reasonable suspicion alcohol test is not administered, the driver will be prevented from performing or continuing to perform safety-sensitive functions until either an alcohol test is administered with a result of less than 0.02 BAC, or 24 hours have elapsed.

Return-To-Duty Testing

Before a driver returns to duty in a safety-sensitive function after engaging in prohibited conduct, he or she must undergo a return-to-duty drug and/or alcohol test as specified by a Substance Abuse Professional. Return-to-duty alcohol test results must be below 0.02 BAC.

Post-Accident Testing

Situations require drug and alcohol testing of each surviving driver of a CMV as soon as practicable after an accident:

- The driver was performing safety-sensitive functions with respect to the vehicle and there was a loss of human life, or
- The driver was issued a citation for a moving traffic violation arising from the accident.
- Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- One or more motor vehicles incurring 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.

Drivers who are subject to post-accident testing are required to remain readily available for testing for the next 8 hours for an alcohol test and for the next 32 hours for a drug test, unless tested or excused from testing. Except in medical emergencies, failure of the driver to remain available for drug and/or an alcohol testing will be considered as *refusal to submit to testing*. Until tested for alcohol or excused from testing, the driver must abstain from consumption of alcohol for *8 hours* following the accident. Prior to being allowed to operate a CMV, drivers will be provided with the necessary information and instructions by their departments or divisions regarding the procedures to follow regarding where and when to submit to post-accident testing. These procedures will enable the driver to comply with this requirement whether on UC Irvine property, on the highway, or elsewhere.

IMPORTANT NOTE: Nothing in this document (or rule itself) should be construed as to require the delay of necessary medical attention for injured people following an accident or to prevent a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to an accident, or to obtain necessary emergency medical care. The supervisor at the scene of the accident/event should know the testing criteria and make a good faith effort decision to test or not test based on the information available at the time. The supervisor may consult with others, but the supervisor is the person who has to make the decision. If the testing cannot happen within the required time, the supervisor must document the reasons. Any employee required to be tested but needs medical assistance, must get the needed medical assistance first.

Follow-Up Testing

Each driver who has been identified by a Substance Abuse Professional as needing assistance in resolving a substance abuse problem and who has returned to duty requiring the performance of a safety-sensitive function will be subject to unannounced follow-up drug and/or alcohol testing. The number, frequency, and types of these follow-up tests will be as specified by the Substance Abuse Professional. Follow-up tests will not involve advance notice to the individual.

Follow-Up tests will be conducted:

- While the driver is performing safety-sensitive functions;
- Just *before* the driver is to perform or is expected to be in readiness to perform safety-sensitive functions; or
- Just *after* the driver has ceased performing safety-sensitive functions.

Direct Observation Urine Collections

Federal regulations require a collector or observer to directly observe the employee while he/she provides a urine specimen if:

- The previous urine specimen was out of normal temperature range; or
- The collector previously observed the employee attempting to tamper or substitute a specimen; or
- The previous test result was invalid due to an interfering substance and the employee did not have a legitimate medical explanation; or
- The split specimen could not be tested following a non-negative test result;
- A Federal return-to-duty or follow-up test (after the employee has had a Federal positive test result or refusal to test).
- The collector (or the observer) must be of the same gender as the employee for direct observation collections.
- Shy Bladder (If the employee has difficulty providing a urine specimen)
- After the first unsuccessful attempt to provide an acceptable specimen, the employee has up to 3 hours to produce a single specimen of sufficient volume (The employee can't combine the specimens). The employee can consume up to 40 ounces of fluid.

- If you do not provide a specimen within those 3 hours, the employee must undergo a medical evaluation to determine if there was a medical reason for inability to do so.
- If a physician determines that there was no medical reason for failure to provide a urine specimen, the employee will be charged with a refusal.
- Hours of service limitations generally apply to random collections except when the collector determines a direct observation collection is required (as referenced above).

Note: Refusal to Test: A refusal to take a federal test usually has harsher penalties than a positive test result. Never refuse to cooperate with the testing requirements. Take the test and if needed, address any issues you have later.

A Refusal Includes

1. Failure to appear for a test or remain at the testing site.
2. Failure to cooperate with the testing process.
3. Failure to provide a sufficient amount of breath or urine (without an adequate medical explanation as determined by a physician through a required medical evaluation).
4. Adulteration or substitution of your urine specimen.
5. Failure to permit any part of the direct observation procedures.

Fatal Flaws

There are only a few procedural errors serious enough to be considered “fatal” flaws that cause a Federal Drug or Alcohol test to be cancelled. A fatal flaw is a non-correctable procedural error which creates the question of doubt whether the specimen tested was the employee’s or whether the test result on the specimen was correct (for example, if the specimen ID numbers on the specimen bottle do not match those on the test form).

7. References

DOT Employee page

<http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/overview-drug-and-alcohol-rules>

What Employees need to know about DOT Drug & Alcohol Testing

https://www.transportation.gov/sites/dot.gov/files/docs/ODAPC_Employer_Guidelines_%20June_1_2015_0.pdf

UC Irvine Policy

UC Drug and Alcohol Testing of Transportation Employees Policy

<https://ucipolicy.ellucid.com/documents/view/122/?security=b901097d19c362c1a14625f1579aaceb8e4a2713>

UC Policy

University Policy on Substance Abuse in the Workplace, November 1, 1990

<https://policy.ucop.edu/doc/4000386/SubstanceAbuse>

State of California

State of California, Department of California Highway Patrol, Controlled Substances and Alcohol Testing Compliance Checklist (CHP 800F [Rev 12-02] OPI 062)

<https://www.chp.ca.gov/CommercialVehicleSectionSite/Documents/N%20chp800f.pdf>

Federal Policy

Federal Motor Carrier Safety Administration (FMCSA)

<http://www.fmcsa.dot.gov/>