



2.9.5 *Drug and Alcohol Testing for Employees in Positions Requiring a Commercial Motor Vehicle Operator's License*

1. Purpose

This policy is prepared in accordance with federal law and applicable Department of Transportation (DOT) regulations governing drug and alcohol testing of commercial motor vehicle operators and applicable state or local laws.

The University of San Diego (USD) is committed to protecting the safety, health and well-being of its employees and the general public from the adverse effects of drug and alcohol abuse. This commitment extends to vehicle operators who perform for USD safety sensitive functions regulated by federal law and regulations. This policy applies to all USD employees who are required to maintain a commercial motor vehicle operator's license in order to perform their job duties ("drivers" or "covered drivers"). Any questions regarding this policy should be directed to the Risk Management Department or the Department of Human Resources.

2. Overview

- 2.1** This policy describes the substance abuse prohibited by the DOT, the DOT mandatory drug- and alcohol-testing requirements for covered drivers, and the consequences of violating the regulations and/or failing DOT-required drug and/or alcohol tests.
- 2.2** USD strictly prohibits the use or possession of any amount of alcohol or non-prescribed controlled substances, including prescription drugs for which a driver does not have a valid prescription, while on university time, on university property, or in a university vehicle. The university also strictly prohibits a driver from reporting for work with a detectable amount of alcohol or controlled substances in his or her system.
- 2.3** Any covered driver who violates the DOT regulations governing drug and alcohol abuse and testing and/or any provision of this policy will be subject to disciplinary action, up to and including termination, even for a first offense. Job applicants who violate this policy will be denied employment.

3. Responsibility

All drivers are encouraged and expected to report to their supervisor any information regarding the use of controlled substances, alcohol, or any other substance which may affect an individual's safe performance of his or her job responsibilities.

4. Definitions

- 4.1 Alcohol.** "Alcohol" means ethyl alcohol and includes any beverage or medicine containing ethyl alcohol.
- 4.2 Commercial Motor Vehicle (CMV).** A "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle: (i) has a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; (ii) has a gross vehicle weight rating of 26,001 or more pounds; (iii) is designed to transport 16 or more passengers, including the driver; or (iv) is of any size and is used in the transportation of hazardous materials requiring placarding under federal law.
- 4.3 Controlled Substances.** In this policy, "controlled substances" refers to any drug regulated under the Federal Controlled Substances Act, and includes drugs available only by prescription.
- 4.4 On-Duty and Duty.** "On-duty" and "duty" cover any and all time engaged in safety-sensitive functions. From a university perspective, these include all time performing any work for USD.
- 4.5 Performing a Safety-Sensitive Function.** A driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.
- 4.6 Prohibited Drugs.** Prohibited drugs include those drugs (and such metabolites) for which the university must test pursuant to DOT regulations, including but not necessarily limited to marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).
- 4.7 Refusal-to-Test.** A refusal to take a drug or alcohol test includes:
- 4.7.1** Failure to appear for a test within a reasonable time period, as determined by USD, after being directed to do so;
- 4.7.2** Failure to remain at the test site until the testing process is complete once the process has begun;

- 4.7.3 Failure to provide a urine specimen for any drug test required under the DOT Rules;
- 4.7.4 Failure to permit monitoring and observation in the case of a directly monitored or observed collection;
- 4.7.5 Failure to provide a sufficient amount of urine (when there is no adequate medical explanation for the failure);
- 4.7.6 Failure to take a second test when required to do so by USD or the collector;
- 4.7.7 Failure to undergo a medical examination or evaluation directed under the DOT rules;
- 4.7.8 Failure to cooperate with any part of the testing process;
- 4.7.9 Submission of a verified adulterated or substituted test result;
- 4.7.10 Failure to attempt to provide a saliva or breath specimen;
- 4.7.11 Failure to provide a sufficient breath specimen (when there is no adequate medical explanation for the failure); and/or
- 4.7.12 Failure to sign required certifications.

A refusal to submit to a DOT-mandated drug and/or alcohol test is a violation of the DOT regulations and carries the same consequences as a positive test. A refusal-to-test will subject a driver to disciplinary action up to and including termination from employment.

4.8 Safety-Sensitive Functions. Safety-sensitive functions include:

- 4.8.1 All time waiting to be dispatched, unless the driver has been relieved from duty by USD;
- 4.8.2 All time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- 4.8.3 All time spent at the driving controls of a commercial motor vehicle in operation;
- 4.8.4 All time, other than driving time, in or upon any commercial motor vehicle;

4.8.5 All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle; and

4.8.6 All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

5. Prohibitions and Consequences

5.1 Any violation of this policy may result in:

5.1.1 Immediate removal from safety-sensitive functions;

5.1.2 Referral to a substance abuse professional (SAP);

5.1.3 Disciplinary action up to and including termination from employment; and/or

5.1.4 Possible disqualification from performing DOT-regulated functions.

5.2 The DOT regulations and USD strictly prohibit the following:

5.2.1 Alcohol Concentration. Drivers are prohibited from reporting for duty, remaining on duty, or being immediately available for duty requiring the performance of safety-sensitive functions while having an alcohol concentration of .04 or greater in his/her system.

Any driver who reports for duty, remains on duty, or is available for duty, and who tests positive for alcohol at a concentration of .02 to .039, shall be immediately removed from safety-sensitive employment for twenty-four (24) hours or until the driver's next regular duty period, whichever is longer, and also may be subject to disciplinary action up to and including termination from employment. If the driver is permitted to return to safety-sensitive employment, the driver must receive a result of less than .02 on an alcohol test before returning to such employment.

In addition to the federal standards described above, drivers also are subject to applicable California law. Pursuant to California law, any driver found to have an alcohol concentration of .01 or greater shall be removed from service for twenty-four (24) hours, and also may be subject to disciplinary action up to and including termination from employment. If the driver is permitted to return to safety-sensitive employment, he or she must receive a result of less than .01 on an alcohol test before returning to such employment.

- 5.2.2 On-duty use.** No driver shall use or consume alcohol while performing safety-sensitive functions.
- 5.2.3 Pre-duty use.** No driver shall perform safety-sensitive functions within four (4) hours of using alcohol.
- 5.2.4 Use following an accident.** No driver who is required to take a post-accident alcohol test as set forth below shall use alcohol for eight (8) hours following the accident, or until he or she undergoes a post accident alcohol test, whichever occurs first.
- 5.2.5 Refusal to submit.** No driver shall refuse to submit to an alcohol or drug test required by the DOT regulations.
- 5.2.6 Controlled substances use.** A driver may not report for duty or remain on duty requiring the performance of any safety-sensitive function if the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to operate a commercial motor vehicle safely. Drivers must report prescription drug use to USD pursuant to DOT regulations.
- 5.2.7 Drug Testing.** A driver may not report for duty, remain on duty, or perform a safety-sensitive function if he or she has a verified positive, adulterated, or substituted test result.

6. Testing: When Testing Is Required

- 6.1** Testing of drivers is required as follows or otherwise as required by DOT regulations:
- 6.1.1 Pre-Employment/Pre-Use Testing.** Prior to the first time a driver performs safety-sensitive functions for USD, the driver will undergo testing for prohibited drugs. In addition, the driver may undergo testing for alcohol. The regulations require an individual to receive a negative drug test result in order to begin covered employment. This requirement also applies whenever a driver is transferred to a DOT covered position. For job applicants, a failure to receive a negative test result will result in the rejection of the employment application.
- 6.1.2 Post-Accident Testing.** Post-accident drug and alcohol testing is required for DOT-regulated drivers if:
- (i) The accident involves a human fatality;

- (ii) There is an injury requiring off-site medical attention and the driver receives a citation under state or local law for a moving traffic violation arising from the accident; or
- (iii) Any vehicle sustains disabling damage and the driver receives a citation under state or local law for a moving traffic violation arising from the accident.

Each surviving driver who was performing safety-sensitive functions with respect to the vehicle involved in the accident must be tested. Tests must be administered as soon as practicable following the accident. A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by USD to have refused to submit to testing. A driver who is involved in an accident while performing work for the university, regardless of its severity, is expected to immediately notify his or her supervisor.

6.1.3 Random Testing. Drivers are subject to unannounced random drug and alcohol testing. Selection for testing will be made by the university's outside testing administrator, using a scientifically valid method such as a random-number table, or a computer-based random-number generator that is matched with a driver's Social Security, payroll identification, or other comparable identifying numbers. Each driver will have an equal chance of being selected each time selections are made. Random tests will be spread reasonably throughout the calendar year. When a driver is notified that he or she has been selected to take a random alcohol and/or drug test, the driver must proceed to the test site immediately; provided, however, that if the driver is performing a safety sensitive function at the time of notification, USD will ensure that the driver ceases to perform the safety-sensitive function and then proceeds to the test site as soon as possible. A driver will be randomly tested for alcohol only while the driver is performing or ready to perform safety-sensitive functions, just before the driver is to perform safety sensitive functions, or just after the driver has ceased performing such functions.

6.1.4 Reasonable Suspicion Testing. Drivers are subject to drug and/or alcohol testing whenever they are reasonably suspected of using a prohibited drug or of misusing alcohol in violation of DOT regulations or USD policy. USD will base its determination that reasonable suspicion exists on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the individual. Reasonable suspicion determinations shall be made by a supervisor who is trained in detecting the symptoms of drug abuse or alcohol misuse. Reasonable suspicion testing will be performed only if the reasonable suspicion determination is made just before, during,

or just after the driver performs or is available to perform safety-sensitive functions.

6.1.5 Return-to-Duty Testing. No individual may return to safety-sensitive employment after receiving a verified positive test result for prohibited drugs or alcohol, or after refusing to submit to such a test, or otherwise violating applicable DOT drug and alcohol rules until he or she takes and passes a return-to-duty test. This requirement applies regardless of whether the individual is seeking work with USD or with any other DOT-regulated employer. Since the university reserves the right to take disciplinary action up to and including termination of employment when a driver engages in prohibited conduct, returning to duty may not be an option.

6.1.6 Follow-Up Testing. If and when a driver is permitted to return to a safety-sensitive position after taking and passing a return-to-duty test, the driver will be required to undergo unannounced follow-up alcohol and/or drug testing, as directed by a substance abuse professional. At a minimum, such testing shall include six (6) unannounced tests in the first 12 months following the return to employment. This requirement applies regardless of whether the individual is seeking work with the university or with any other DOT-regulated employer.

7. Testing Procedures

7.1 Testing for Alcohol

7.1.1 Alcohol testing is conducted in a manner consistent with applicable procedures for DOT-mandated alcohol testing of drivers. The testing will be performed by testing a breath or saliva sample as an initial test. Initial tests that are positive (.02 or above) will be confirmed using an evidential breath-testing (EBT) device.

7.1.2 A breath-alcohol technician (BAT) who has completed a course of instruction in the operation of an EBT device will conduct all breath alcohol tests. That training includes training in the principles of EBT methodology, operation and calibration checks, the fundamentals of breath analysis for alcohol content, and the procedures for obtaining a breath sample and interpreting and recording EBT results.

7.1.3 Screening tests using a saliva test may be performed. Only qualified Screening Test Technicians (STT) will administer saliva-based alcohol tests.

- 7.1.4 Law enforcement officers who have been certified by state or local governments to conduct breath-alcohol testing are deemed to be qualified as BATs.
- 7.1.5 The testing will use an EBT device that meets all requirements set forth in the DOT regulations.
- 7.1.6 Breath testing normally will be conducted in a location that affords visual and aural privacy to the person being tested sufficient to ensure that unauthorized persons cannot see or hear test results. If a breath test is requested following a reasonable suspicion determination, the supervisor who made that determination will not conduct the test.

7.2 Testing for Prohibited Drugs

- 7.2.1 Testing for prohibited drugs will be conducted in a manner consistent with applicable procedures for DOT-mandated drug testing of drivers. The testing will be performed by testing a urine sample provided by the individual at a collection site. After the collector has collected a sample, split the sample, and secured the sample, the sample (both containers) will be sent to a laboratory which has been certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) to conduct workplace drug testing.
- 7.2.2 The laboratory will perform an initial immunoassay test, and if that test is positive, the positive result will be confirmed using a method called gas chromatography/mass spectrometry (gc/ms).
- 7.2.3 A Medical Review Officer (MRO) will review presumptive positive test results, and will engage in reasonable attempts to contact the driver to discuss possible medical reasons for such results before verifying the test as positive and informing USD of the positive test result.
- 7.2.4 If the test is confirmed positive, a driver can request a test of the "split" sample (second container) within 72 hours of receiving notification of the test result. If the driver so requests, the split sample will be tested at the driver's expense at another laboratory certified by SAMHSA. However, a request for a test of the split specimen will not delay verification of the first test result.
- 7.2.5 If the laboratory detects that the sample has been adulterated or substituted, the laboratory will report that determination to the MRO. The MRO will make reasonable attempts to contact the driver to

discuss legitimate reasons for the result before verifying the test as a refusal-to test and informing USD of that result.

- 7.2.6** If the test is confirmed as negative, but dilute, USD may require the job applicant or driver immediately and without prior notice to submit to another test. (A positive dilute result is positive regardless of dilution).

8. Consequences of a Positive Result or Refusal-To-Test

Any driver who tests positive for alcohol at a level of .04 or greater, receives a verified positive test result for prohibited drugs, or refuses to submit to testing, will be removed immediately from safety-sensitive employment and referred to a Substance Abuse Professional (SAP) for evaluation, as required by the DOT rules. In addition, drivers will be subject to disciplinary action up to and including termination from employment.

9. Driver Assistance Resources

- 9.1** If a driver is concerned about his or her use of alcohol or controlled substances, it is the driver's responsibility to seek assistance. USD may provide a confidential referral to its Employee Assistance Program, or a driver may seek assistance on his or her own from available programs in the community. In some instances, the driver may be eligible for a leave of absence to pursue rehabilitation.
- 9.2** When a driver has engaged in prohibited conduct, the driver will be referred to an SAP for evaluation. The SAP will determine what assistance the driver needs in resolving problems associated with alcohol misuse and prohibited drug use and prescribe a program of education and/or treatment. Each driver shall be monitored by the SAP to determine if the driver has properly followed any prescribed education and/or treatment program. A driver who has violated the FMCSA regulations must be evaluated by an SAP and follow any recommended course of treatment to be eligible to work in any DOT-regulated employment again. The driver may not take a return-to-work drug and/or alcohol test until the SAP authorizes him or her to do so.
- 9.3** If, after completing SAP-prescribed treatment, a driver seeks work performing safety-sensitive functions for another employer, or seeks reinstatement with USD, the DOT regulations require that he or she be subject to unannounced follow-up alcohol and/or drug testing, to be administered by USD or the new employer following the driver's return-to-duty. The number and frequency of such follow-up tests will be as directed by the SAP and shall consist of at least six (6) tests in the first twelve (12) months following the driver's successful completion of a return-to-duty test. An individual may undergo return-to-duty and follow-up testing for both alcohol and controlled substances as prescribed

for that particular individual. Follow-up testing will not be required for more than sixty (60) months from the date of the individual's return-to-duty.

- 9.4** When referral to an SAP is required by the regulations (i.e., when a driver has engaged in prohibited conduct), and the driver is still employed or retained by USD, the driver must use an SAP approved by USD. The driver also will be required to complete any recommended course of treatment to the satisfaction of USD before USD will consider reinstating the driver. The decision to reinstate the driver is in the sole discretion of the university.
- 9.5** Job applicants who fail a pre-employment test or refuse to comply with the pre-hire testing process will be denied employment, are prohibited from performing safety-sensitive work, and will be provided with SAP contact information.

10. Information & Training On Controlled Substances/ Alcohol Abuse

- 10.1** Information regarding the dangers of drug abuse and alcohol abuse will be provided periodically by USD. If any driver has questions about drug abuse and alcohol misuse, the driver should contact his or her supervisor or the Human Resources Department.
- 10.2** USD will provide supervisor training in a manner consistent with the requirements of the DOT regulations.

11. Confidentiality

- 11.1** Information relating to driver compliance with this policy will be kept confidential and disseminated only within USD to those with a need to know, or to the DOT in accordance with the regulations. Information will be released to other persons or entities only at the specific written request of the driver.
- 11.2** Notwithstanding the foregoing, USD may release information about a driver's compliance with this policy to the National Transportation Safety Board (NTSB) as part of an accident investigation upon written request; to a decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the driver and arising from a positive drug or alcohol test or a refusal-to-test; or as otherwise may be required by law.

12. Obligation to Contact Prior Employers

- 12.1** Before an applicant or employee will be permitted to perform any DOT-regulated safety-sensitive functions for the first time for USD, USD is obligated to request information regarding whether the individual has, in the past three (3) years, participated in a DOT-mandated drug and alcohol testing

program, tested positive for prohibited drugs, had an alcohol test with a concentration of .04 or greater, refused to be tested, or otherwise violated any DOT drug and alcohol rule, by contacting each of the driver's previous employers and prospective employers for whom the driver performed DOT-regulated functions.

- 12.2** USD cannot use a driver to perform safety-sensitive functions if the university obtains information confirming the driver's positive alcohol test with a result of .04 or greater, verified positive drug test result, refusal to be tested, or other violation of DOT drug and alcohol rules, unless the driver also provides information regarding his or her successful completion of treatment recommended by a Substance Abuse Professional, and confirmation that the driver successfully completed any additional return-to-duty requirements, including education, treatment, return-to-work and follow-up tests.
- 12.3** In order for USD to obtain the required information, the individual will be required to complete and sign a written request and consent to release information for each of the individual's previous and current employers during the preceding three (3) year period. Any individual who refuses to provide USD with written authorization for such release of information will not be considered for employment as a driver with USD.
- 12.4** Individuals also will be asked whether they have tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the individual applied for, but did not obtain, safety-sensitive DOT-regulated employment in the past three (3) years.

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