

 CITY OF TUCSON	City of Tucson Central Safety Services Number: S-030 Subject:	Page 1 of 10
	CDL/Safety Sensitive Random Drug and Alcohol Testing Procedure	Effective Date: April 7, 2010
		Reviewed/ Revised: January 1, 2013

1.0 PURPOSE

This procedure has been established to provide employees with information and policy regarding the City of Tucson procedure for Random Drug and Alcohol Testing for Commercial Driver's License (CDL) and Safety Sensitive positions.

This Procedure is to be referenced and applied in conjunction with Administrative Directive **2.02-22 Drug and Alcohol Use: Impaired Employees Physical Evaluations; Applicant Testing.**

This procedure incorporates elements from the Code of Federal Regulations (CFR) Title 49, Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs, and Title 49, Part 382 – Controlled Substance and Alcohol Testing.

2.0 SCOPE

This procedure will apply to all City of Tucson employees who are required to possess a valid Arizona Commercial Driver's License (CDL) as defined by 49CFR §382.107 and are operating CDL equipment as required by the essential functions of the job classification.

This procedure will apply to all City of Tucson employees occupying a job classification designated by the Human Resources Department as Safety Sensitive.

3.0 DEFINITIONS

Alcohol Screening: A scientific test to measure the percentage of alcohol contained in the subject's breath.

Covered Employees: As defined in the Scope of this procedure. These employees will constitute two (2) separate "pools" or employee groups, subject to random testing.

Department Contact: The primary person and secondary (backup) designated by the Department to distribute notification to employees regarding drug and alcohol testing.

Medical Marijuana: The Department of Transportation's Drug and Alcohol Testing Regulation 49CFR Part 40, at 40.151(e) does not authorize "medical marijuana" under state laws to be a valid medical explanation for a (transporting)

Subject: CDL and Safety Sensitive Random Drug and Alcohol Testing Procedure	Number: S-030	Rev. January 1, 2013	Effective Date: April 7, 2010	Page 2 of 10
---	------------------	-------------------------	----------------------------------	-----------------

employee's positive drug test result. Further – Marijuana remains a drug listed in Federal Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive (CDL) employee subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana. (Reference – DOT Office of Drug and Alcohol Policy and Compliance Notice – found in Appendix B.)

Medical Review Officer (MRO): A licensed physician who will review and interpret all drug and alcohol test results obtained from the laboratory on behalf of the City of Tucson.

Notification: Conveyance of written direction, informing the employee of the immediate need to report for random drug and alcohol testing at the City of Tucson's contract provider for drug and alcohol testing services.

Random: The unscheduled and computerized selection of City employees who per Administrative Directive 2.02-22 are required to be tested for drugs and alcohol, performed by a contract vendor for the City of Tucson.

Urinalysis Screening: A scientific test to measure the presence of controlled substances in the subject's urine.

4.0 RESPONSIBILITIES

A. Department Directors

1. Department Directors shall appoint a primary and secondary person as Department Contacts to receive and distribute written notifications to supervisors and employees regarding random drug and alcohol testing.

B. Department Contact

1. The Department Contact shall be responsible for receiving testing notification in electronic format from Central Safety Services and conveying official written notice to the employee and the employee's supervisor, as per this procedure and also secure for employee transport to/from the Medical Care Provider facility.

C. Supervisor

1. Supervisors shall ensure that employees receive and immediately respond to written notification for drug and alcohol testing as per this procedure.

D. Employees

1. Employees shall immediately acknowledge the receipt of written notification by reporting to the Medical Care Provider designated on the notification form as per this procedure and shall remain at the testing site until all testing has been completed and the employee has been released by the Physician or their designee to return to duty.

Subject: CDL and Safety Sensitive Random Drug and Alcohol Testing Procedure	Number: S-030	Rev. January 1, 2013	Effective Date: April 7, 2010	Page 3 of 10
---	------------------	-------------------------	----------------------------------	-----------------

E. Central Safety Services

1. Central Safety Services shall maintain a current list of CDL employees and shall supply the Medical Care Provider with an updated list of CDL employees as required.
2. Central Safety Services shall maintain a current list of Safety Sensitive employees and shall supply the Medical Care Provider with an updated list of Safety Sensitive employees as required.
3. Central Safety Services shall coordinate notifications with the Department Contact.
4. Central Safety Services shall keep the results of all drug and alcohol testing confidential and shall maintain results of all drug and alcohol testing in a secure location.
5. Central Safety Services shall forward the results of all positive drug and alcohol testing to Human Resources Director or their designee, to execute the policies and procedures defined in Administrative Directive 2-02-22 Section IX - Discipline for Violation of the City's Alcohol and/or Controlled Substance Policies.

5.0 EDUCATION AND TRAINING

- A. All departments/divisions shall provide all CDL operators and Safety Sensitive employees subject to random drug and alcohol testing and their supervisors, with a copy of this directive. Employees shall acknowledge receipt of the directive by signature.

6.0 GENERAL

A. Random Testing

1. Random Testing shall be:
 - Scientifically Valid – Employees shall be selected by a third party contract vendor based solely upon payroll identification number;
 - Continuous – Random testing shall be conducted throughout the calendar year;
 - Unannounced and Immediate – Employees shall report immediately (within two (2) hours) to the Medical Care Provider upon receiving written notification to report for testing;
 - Conducted During Hours of Operation – Employees are subject to testing at any time during their assigned work day;
 - Without Interference from Management or Supervision – Departments and Supervisors shall not interfere, circumvent or compromise the notification process and shall immediately release employees from their duties and direct the employee to report for drug and alcohol testing; and
 - Conducted to meet Federal Motor Carrier Safety Association (FMCSA) guidelines.

Subject: CDL and Safety Sensitive Random Drug and Alcohol Testing Procedure	Number: S-030	Rev. January 1, 2013	Effective Date: April 7, 2010	Page 4 of 10
---	------------------	-------------------------	----------------------------------	-----------------

B. Random Testing Guidelines

The current mandated testing guidelines are:

- 50% of the covered employees for drug testing (urine), and
- 10% of the covered employees for alcohol testing (breath).

C. Selection

1. Selection of employees for random drug and alcohol testing shall be conducted by a Third Party Administrator under contract with the City of Tucson.
2. Random, computerized selection shall be conducted utilizing a unique employee identification number generated/created by the Third Party Administrator. Because the selection is random, employees shall understand:
 - They may never be selected;
 - They may be selected more than once;
 - They may be randomly selected for Drug Testing (urine) *or* Alcohol Testing (breath);
 - They may also be selected for *both* Drug and Alcohol Testing.
3. The Third Party Administrator shall provide Central Safety Services with a list of randomly-selected unique employee identification numbers.

D. Department Contact Notification

1. Central Safety Services shall prepare the Employee Notification Form and shall electronically mail the Notification Form (Appendix A) to the primary and secondary Department Contact. Department Contacts shall acknowledge receipt of the electronic mail by reply to sender.
2. If the Primary Department Contact is not available to perform Employee Notification, the Secondary Department Contact is expected to perform the Employee Notification.
3. The Department Contact shall hold all notifications confidential until conveyed to the employee and supervisor. This is especially critical when notifications are to be made to multiple employees, working different shifts.
4. The Department Contact shall make immediate notification to Central Safety Services if any selected employee is on leave of any type greater than one (1) work shift. Central Safety Services shall provide guidance to the Department Contact on whether to postpone notification to the employee on leave, or to remove the employee from notification.
5. The Department Contact shall have two (2) hours to convey Employee Notification to the Employee and the Employee's Direct Supervisor. If the Supervisor is utilized to make notification to an employee in the field, the Supervisor shall make the notification within the two (2) hour time frame. Notifications shall be made so that random drug and alcohol testing can be accomplished prior to the end of the employee's work shift, including travel time.

Subject: CDL and Safety Sensitive Random Drug and Alcohol Testing Procedure	Number: S-030	Rev. January 1, 2013	Effective Date: April 7, 2010	Page 5 of 10
---	------------------	-------------------------	----------------------------------	-----------------

E. Employee Notification

1. Once the employee receives the Employee Notification Form, they will have two (2) hours to report to the Medical Care Provider location listed on the Notification Form with their Arizona Driver's License. Note: Per **Administrative Directive 6.01-6 Driver's License Policy**, Paragraph C, Section 2, employees operating City equipment without a valid Arizona Driver's License *in their possession* are subject to disciplinary action.
2. Employees shall be transported to one of the locations specified on the Employee Notification Form by a member of supervision within two (2) hours of notification. Supervisors shall ensure the employee subject to drug and/or alcohol testing has their Arizona Driver's License in their possession.
3. The employee shall remain at the sampling site until all testing is complete and the employee is released by the testing physician or their designee.
4. **The following employee actions constitute a Refusal:**
 - An employee's refusal to be transported to the Medical Care Provider for drug and alcohol testing;
 - An employee's leaving the Medical Care Provider testing site prior to initiating random drug and/or alcohol testing;
 - An employee's refusal to submit to random drug and/or alcohol testing;
 - An employee's refusal to complete the random drug or alcohol testing in the manner prescribed by the physician or their designee.

Refusal shall be considered a positive test result and is grounds for termination.
5. All random drug and alcohol testing is conducted on City time, at City expense.

F. Sample Collection

1. All employees shall be expected to present confirmation of identity in the form of:
 - Arizona Driver's License.
2. In the event the employee does not have in their possession a valid Arizona Driver's License, the Supervisor shall confirm the employee's identity to the Medical Care Provider and the testing shall proceed. Disciplinary action per Administrative Directive 6.01-6 - Arizona Driver's License Policy, may be warranted.
3. Employees shall abide and conform to direction of the Medical Care Provider when providing samples for testing, including split samples, or providing additional samples for confirmation testing.
4. For samples that cannot be readily obtained by the Medical Care Provider, the employee shall remain at the collection site and shall follow the direction of the Medical Care Provider until samples can be collected, or the employee has been released from the sampling process by the attending physician. Under this circumstance, the employee is subject to

Subject: CDL and Safety Sensitive Random Drug and Alcohol Testing Procedure	Number: S-030	Rev. January 1, 2013	Effective Date: April 7, 2010	Page 6 of 10
---	------------------	-------------------------	----------------------------------	-----------------

re-test following the notification process delineated in Paragraph E, Section 1, 2, 3 and 4.

5. In the event the Medical Care Provider has reason to believe the employee has altered or substituted a specimen submitted for testing, the Medical Care Provider may elect to acquire an additional sample for testing under Direct Observation.
6. Employees directly observed and reported to the City of Tucson by the Medical Care Provider as altering or substituting a sample for testing are subject to disciplinary action up to and including termination.

G. Dilute Negative Policy

1. If the Medical Review Officer (MRO) reports a negative random drug (urine) test was dilute, the employee is subject to immediate re-test and shall be notified of the test in the same manner as listed in Paragraph E, of this procedure. The result of the second test shall be considered the test of record.

H. Medical Review Officer (MRO)

1. All random drug (urine) laboratory test results shall be communicated directly from the Medical Care Provider to the MRO.
2. Suspect positive urine specimens shall be confirmed through gas chromatography/mass spectrometry by the testing laboratory.
2. The MRO shall notify the employee of their opportunity to request a test of the split sample.
3. The MRO officer shall contact or attempt to contact the employee directly three (3) times
4. The MRO shall, on a confidential basis, discuss the circumstances of a positive drug test in order to determine and explore possible alternative explanations for any positive drug test result. The MRO may request applicable employee medical records to confirm a legally-prescribed medication and may contact the employee's physician of record for confirmation regarding the legally- prescribed medication.
5. After employee interview and review of all pertinent medical information provided by the employee, the MRO shall make a determination of a negative or positive test and report the results Central Safety Services.
6. If after three (3) attempts to contact an employee, the MRO is unable to contact the employee, the MRO will contact Human Resources Director or their Designee, who will then contact the Department and have the employee contact the MRO within one (1) working day. If the employee is on leave, the employee shall contact the MRO on the day the employee returns to work and shall not be allowed to return to driving duty or a safety sensitive function duty until the MRO renders a decision regarding the test results and communicates the results to the Human Resources Director or their designee.
7. In the event the employee fails to contact the MRO by the next working day or the day of return to work after a leave of absence, then the result of

Subject: CDL and Safety Sensitive Random Drug and Alcohol Testing Procedure	Number: S-030	Rev. January 1, 2013	Effective Date: April 7, 2010	Page 7 of 10
---	------------------	-------------------------	----------------------------------	-----------------

the drug (urine) test shall be considered positive and reported to Central Safety Services.

I. Reporting Results – Drug and Alcohol Testing

1. The MRO shall report the results of random drug (urine) testing to Central Safety Services. Results may be listed in the following manner:
 - Negative
 - Negative-dilute; with remarks
 - Rejected; with remarks
 - Positive; with drug(s) noted
 - Adulterated (Contaminated); with remarks
 - Substituted; with remarks
 - Invalid; with remarks
2. Central Safety Services shall report all positive drug (urine) test results to Human Resources Director or their Designee. Per Administrative Directive 2.02-22, Section IX, Paragraph A, employees testing positive for a controlled substance, other than medication legally prescribed by a licensed physician, shall be terminated.
3. The MRO shall report the results of alcohol (breath) testing to Central Safety Services. Results shall be listed in the following manner:
 - Test results of less than 0.02 percent (0.02%) shall be reported as negative.
 - Test results greater than or equal to 0.02 percent (0.02%) shall be reported as positive.
4. Central Safety Services shall report all positive alcohol (breath) test results to Human Resources Director and their Designee, Drug and Alcohol Specialist. Per Administrative Directive 2.02-22, Section V, Paragraph C, CDL /Safety Sensitive employees with alcohol concentration between 0.02 and 0.04 percent shall be removed from driving duties and Safety Sensitive functions for a period of not less than twenty-four (24) hours following administration of the test. CDL/Safety Sensitive employees with an alcohol concentration of 0.04 percent or higher are subject to disciplinary action in accordance with Section IX of Administrative Directive 2.02-22.
5. Positive random drug and alcohol test results for CDL employees shall be reported to the Department of Transportation (DOT) Drug and Alcohol Testing Management Information System (MIS) in accordance with DOT regulations.

J. Confidentiality

1. Central Safety Services shall retain all random drug and alcohol test results for documentation in the employee's confidential medical file.
2. Except as required by law or expressly authorized or required by DOT regulations 49CFR Part 40 test results shall be considered confidential and shall not be released. A test result from CDL or Safety Sensitive

Subject: CDL and Safety Sensitive Random Drug and Alcohol Testing Procedure	Number: S-030	Rev. January 1, 2013	Effective Date: April 7, 2010	Page 8 of 10
---	------------------	-------------------------	----------------------------------	-----------------

employee will be released to only those authorized by DOT rules to receive such information. This includes:

- The employee, if they request the results in writing from the Human Resources Department. The request is limited to the employee's use of alcohol or controlled substances, including any records pertaining to test results;
- In case of accident, the entity retaining legal jurisdiction and/or the DOT;
- In the case of legal proceedings, a written request submitted to the Human Resources Department in consultation with the City Attorney's Office;
- Written requests from subsequent employers.

K. Additional Drug and Alcohol Testing Information

1. Information regarding drug and alcohol testing for the following circumstances is referenced in **Administrative Directive 2.02-22**:
 - Pre-employment
 - Reasonable Suspicion
 - Post-accident
 - Return to Duty
 - Follow-up
 - Non-CDL employees

7.0 ADVICE AND COUNSEL

- A. Administrative Directive 2.02-22 – Drug and Alcohol Use: Impaired Employees Physical Evaluations: Applicant Testing
- B. Administrative Directive 6.01-6 – Driver's License Policy
- C. Title 49, Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
- D. Title 49, Part 382 – Controlled Substance and Alcohol Testing.

Subject: CDL and Safety Sensitive Random Drug and Alcohol Testing Procedure	Number: S-030	Rev. January 1, 2013	Effective Date: April 7, 2010	Page 10 of 10
---	------------------	-------------------------	----------------------------------	------------------

Appendix B

DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE

Recently, the Department of Justice (DOJ) issued guidelines for Federal prosecutors in states that have enacted laws authorizing the use of “medical marijuana.”

<http://www.fmcsa.dot.gov/documents/medical-marijuana-notice.pdf>

We have had several inquiries about whether the DOJ advice to Federal prosecutors regarding pursuing criminal cases will have an impact upon the Department of Transportation’s longstanding regulation about the use of marijuana by safety-sensitive transportation employees – pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency response personnel, among others.

We want to make it perfectly clear that the DOJ guidelines will have no bearing on the Department of Transportation’s regulated drug testing program. We will not change our regulated drug testing program based upon these guidelines to Federal prosecutors.

The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize “medical marijuana” under a state law to be a valid medical explanation for a transportation employee’s positive drug test result.

That section states:

§ 40.151 What are MROs prohibited from doing as part of the verification process?

As an MRO, you are prohibited from doing the following as part of the verification process:

(e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the “medical marijuana” laws that some states have adopted.)

Therefore, Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use “medical marijuana.” Please note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.

We want to assure the traveling public that our transportation system is the safest it can possibly be.

Jim L. Swart
Director
Office of the Secretary of Transportation
Office of Drug and Alcohol
Policy and Compliance
Department of Transportation
October 22, 2009