

DOT Order 3910.1D Summary of Changes

Chapter I – General Program Provisions

Changes in this Chapter include some definition rewrites. The section on Responsibilities includes changes to existing responsibilities and addition of responsibilities for the Human Resource Offices. The Medical Review Officer (MRO) portion of this chapter has been reduced and an entire chapter has been created for the MRO.

Chapter II – Drug and Alcohol Awareness

The changes in this Chapter include:

- Supervisory Training, to further explain DPC requirements concerning providing statistical data to the Departmental Drug Office for inclusion in Annual Reports to Congress and the Department of Health and Human Services (HHS). It also specifies when training is to occur.
- Indicates that each Operating Administration is responsible for maintaining a budget to provide drug and alcohol awareness and education materials to employees. Employee education and awareness information is provided to the DDO for inclusion in the Annual Report to HHS.

Chapter III – General Testing Overview

There were a number of changes in this chapter:

- Instructions for adding or removing Testing Designated Positions (TDP) to the system.
- Authority to test.
- Granting leave when testing is in progress.
- Administrative testing errors.
- Reapplication instructions if an applicant fails the drug test.
- Pre-appointment testing of individuals for TDPs.
- Policy on official and unofficial details.
- Clarification of a memorandum that must be prepared when alcohol testing does not occur within the specified timeframe.
- AWOL status of employees who are scheduled to return to work within 8 hours.
- Addition of post-incident testing.
- Post accident/incident testing at an employee's residence.
- Post accident/incident testing at a hospital.
- Clarification on post-accident/incident reporting requirements.
- Clarifications on return-to-duty testing.
- Written documentation concerning drug and alcohol testing and retaining the document in the employee's personnel file.

Chapter IV – Specimen Collection

Changes include:

- General statement concerning the conduct of testing at an employee's residence under any condition and any type of test.
- Clarification of who can perform DOT urine collections.
- Clarification of same gender collections.
- Collection contractor training.
- Collector has 5 days to correct a chain of custody and control form (CCF) that the donor did not sign and the collector failed to annotate the remarks section of the CCF.
- Consequences if the fails to collector to both print and sign his/her name.
- Consequences if the donor fails to sign the CCF.
- Changes in shy bladder procedures.
- DDO will advise OST Security of all non-FAA verified positives, substitutions and/or adulterated test results.
- FAA DPC's will advise FAA Security of all FAA verified positives, substitutions and/or adulterated test results.

Chapter V – Commercial Drivers License (CDL) Testing

To avoid confusion and misinterpretation with the regulated industry rules, CDL testing was moved to separate chapter. CDL holders are tested because they fall under the regulated industry rule. They are the only DOT employees who are tested in accordance with the regulated industry and still must adhere to the DOT drug and alcohol testing Order.

Chapter VI – Laboratory Review and Testing

Paragraph 2.a. defines fatal flaws as errors requiring the laboratory to reject the specimen for testing.

Paragraph 2.b. clarifies that any criteria met in paragraph 2.a. will cause the specimen to be reported as rejected for testing.

Paragraph c. (4) The MRO or field MRO will direct a collection under observation for split specimens that fail to reconfirm.

Paragraph d. (g) Indicates that upon completion of analysis results are reported to the Departmental MRO via the Departmental Drug Office and to the field MRO via the FAA DPC.

Paragraph i. Spells out SAMHSA (Substance Abuse and Mental Health Services Administration).

Paragraph 3. The Departmental MRO will report unsatisfactory blind specimen results to Health and Human Services via the Departmental Drug Office.

Chapter VII – Medical Review Officer

This is a new chapter for MRO qualifications, roles and responsibilities, as well as actions to be taken on test results. **Please read in its entirety.**

Chapter VIII – Alcohol Testing

Paragraph 1 Policy – in the EXCEPTION paragraph inserted the words “after receiving a contingent offer of employment”.

Paragraph 5.b. Added a statement indicating that breath testing will not be conducted at an employee’s residence. If it is, it will be cancelled.

Paragraph 7. Added clarification of off-duty testing and the results of the test or refusal to test.

Paragraph 8.g. Discusses the BAT providing identification. Included reasonable suspicion tests as an instance when the BAT only needs to provide a drivers license as a source of identification.

Paragraph 8.h. Outlines BAT pre-screening responsibilities.

Paragraph 10.b. Inserted that the employee must remain within view of the BAT during the 15 minute wait for a confirmation test.

Paragraph 10.c. Inserted “and this Order” at the end of the last sentence in the paragraph.

Paragraph 10.d. Added procedures for the BAT in the event he or she failed to sign the Breath Alcohol Testing Form.

Paragraph 11. Added “within view of the BAT until the confirmation testing process has been completed” at the end of the last sentence.

Paragraph 11.d. Added the sentence “The tentative offer of a safety or security sensitive position with DOT will be withdrawn if an applicant has a confirmation result of 0.02 or greater. Added the sentence “The OA HR is responsible for referring the applicant to the DPC who will explain rehabilitation and follow-up testing requirements. The costs associated with rehabilitation and follow-up testing is the responsibility of the applicant. **(NOTE: DOT currently does not perform pre-employment alcohol testing, but has the option to start this type of testing at any time.)**

Paragraph 12.c. Inserted the statement that a donor may be allowed up to 3 attempts to provide a sufficient volume of breath.

Paragraph 16.c. Inserted “make up to three attempts to provide a sufficient volume of breath” at the end of the last sentence.

Paragraph 16.e. Inserted language indicating the problem must be correct with five days of the initial test date.

Paragraph 18. Inserted language indicating a printed copy of the result residing in the EBT must be provided to the DDO within five days of the initial test date.

Paragraph 19. Revised as follows: The determination to reinstate an employee’s security clearance, if it has been suspended, will be made by the employee’s security organization in accordance with DOT M 1630.2B and any OA directives. Should the clearance not be restored, the employee must not perform any security-related duties in conjunction with their TDP responsibilities. After the security clearance is suspended, but prior to a determination to reinstate or revoke it, the OA must initiate action to assure the employee does not have access to security-sensitive information Managers must contact their servicing Human Resources Office to determine an appropriate course of action.

Chapter IX – Rehabilitation

Paragraph 2. After the first sentence in the paragraph, inserted “The employee is no longer eligible to self-refer.” Revised last two sentences: Following initial counseling, the employee must be given an opportunity to enter an agency recommended substance abuse rehabilitation program by the EAP manager or coordinator. The recommendation shall be made with the agreement of the DMRO or FMRO, or Substance Abuse Provider (SAP).

Paragraph 2.a. Inserted a paragraph discussing testing of employees whose medical clearances have not been returned as a result of a medical reason unrelated to drugs and alcohol.

Paragraph 2.c. Inserted a paragraph requiring employees who are out of work for 30 days or more unrelated to his or her rehabilitation program, the employee’s follow-up testing program will be extended to ensure he or she completes the required 1 year follow-up testing program.

Paragraph 5.c. Revised to read: If the employee makes an attempt to self-refer once the DOT collectors/BATS arrive at the testing site, for any reason, conducted under the Department’s testing program, the information provided by the employee shall be used by the appropriate OA officials to make a determination of illegal drug use or alcohol misuse against that employee. Additionally, an employee may not self-refer after an arrest on a DUI/DWI charge and is subject to OA Table of Penalties

Paragraph 6. Last paragraph revised to read: The determination to reinstate an employee's security clearance, if it has been suspended, will be made by the employee's security organization in accordance with DOT M 1630.2B and any OA directives. Should the clearance not be restored, the employee must not perform any security-related duties in conjunction with their TDP responsibilities. After the security clearance is suspended, but prior to a determination to reinstate or revoke it, the OA must initiate action to assure the employee does not have access to security-sensitive information. Managers must contact their servicing Human Resources Office to determine an appropriate course of action.

Chapter X – Confidentiality

Paragraph 2.b. Inserted a new statement indicating that negative drug test results will be provided to DOT employees upon request. Procedures are outlined in the DOT Drug and Alcohol Testing Guide.

Paragraph 2.d. New requirement concerning requests from NTSB: Requests received by OAs should be immediately forwarded to the DDO for response.

Chapter XI – Drug and Alcohol Prohibitions and Disciplinary Action

Paragraph 2. – Determining Drug Violations. Changed to read as follows: “The determination by management that an employee has engaged in conduct which constitutes a drug violation of this Order or OA policy may be made on the basis of:”

Paragraph 2.e. – Determining Drug Violations. Added: despite no criminal conviction, an administrative inquiry may disclose credible evidence that the person engaged in behaviors that violate the Order or OA policy or,

Paragraph 3. Disposition Following a Drug Violation. Added “or OA Policy”

Paragraph 4.a. – Refusal to enter or successfully complete a substance abuse rehabilitation program Added as last sentence: There is no opportunity to enter a rehabilitation program for this offense.

Paragraph 4.b. – Refusal to enter or successfully complete a substance abuse rehabilitation program Added as last sentence: There is no opportunity to enter a rehabilitation program for this offense.

Paragraph 4.d. – Refusal to enter or successfully complete a substance abuse rehabilitation program Added additional paragraph: OAs will also initiate action to remove an employee from Federal service who has a second violation of conduct prohibited by this Order. The second violation does not have to be the same as the first violation. Additionally, OAs that can establish a nexus between off-duty behaviors and the employee's occupation may consider any action taken the OA's Table of Penalties as

a first or second offense. There is no opportunity to enter a rehabilitation program for this offense.

Paragraph 4.e. – Refusal to enter or successfully complete a substance abuse rehabilitation program Inserted: “interference with testing/collection process, undue delay of the testing /collection process, failure to show the collector the contents of his/her pockets” Also inserted as last sentence: There is no opportunity to enter a rehabilitation program for this offense.

Paragraph 4.f. – Refusal to enter or successfully complete a substance abuse rehabilitation program. Inserted the word “components” to explain that all components of the EAP rehabilitation program must be completed. Inserted “There is no opportunity to enter a rehabilitation program for this offense.

Paragraph 5.a. – Alcohol Misuse Concentration. Added “on a confirmation test” at the end of the last sentence in the paragraph.”

Paragraph 5.b. On-Duty Alcohol Use. Added: “There is no opportunity to enter a rehabilitation program for this offense”.

Paragraph 5.d. Use of Alcohol Following an Accident or Incident. Added “Incident”.

Paragraph 5.e. Refusal to Submit to a Required Alcohol Test. Added the word “selectee”. Added as last sentence: There is no opportunity to enter a rehabilitation program for this offense.

Paragraph 6. Determining Alcohol Violations. Added “or OA policy” after the word “Order”.

Paragraph 6.b. Change: DOT may take action to suspend an employee indefinitely if it has reason to believe that the employee has committed a crime involving alcohol misuse for which a term of imprisonment by be imposed, prior to determining a violation of this Order. There is no opportunity to enter a rehabilitation program for this offense.

NOTE: This applies to FAA employees in safety-sensitive positions and CDL holders.

Paragraph 6.h. Modified: The results of a breath test for the use of alcohol, conducted by Federal, State, local or tribal government officials having independent authority for the teste, shall be considered the equivalent of a breath alcohol test conducted under this Order if the employee is on duty when the test occurs, provided such test conforms to applicable Federal, State, local or tribal government alcohol testing requirements, and the results of the test are obtained by the employer. If the employee is on duty and is found through contact with the law enforcement agency the employee refused the breathalyzer test, the employee’s removal from Federal service will be initiated. If the employee refuses to enter rehabilitation (or it is a second violation of this Order), he or she will be removed from Federal service.

Should the employee be tested off-duty during the conduct of the the breath test by law enforcement, the results of a breath alcohol test conducted by Federal, State, local or tribal government officials having independent authority for the test, will be used to determine whether the employee violated an abstinence requirement governed by this Order. Otherwise, the OA's Table of Penalties, any written guidance or past practice applies. The results of such a test or refusal to test may be used as one factor by the OA in making a decision concerning the employee and whether there is credible evidence that the employee may have abused alcohol. In initiating any action, the OA must show there is a nexus between the employee's conduct and their employment.

Paragraph 7. Second paragraph modified – inserted “OA directives” after DOT M 1630.2B. Added as last sentence: If the only TDP responsibilities available are security in nature, managers must contact their servicing Human Resources Office to determine appropriate course of action.

Paragraph 8.a. On-duty use of alcohol. Added last sentence: On duty use includes when an individual is ready to perform, or immediately available to perform such functions or otherwise are in a paid duty status. There is no opportunity to enter a rehabilitation program for this offense.

Paragraph 8.c. Repeated alcohol-related misconduct. Added new paragraph: The agency will also initiate action to remove an employee from Federal service who has a second violation of conduct prohibited by this Order. The second violation does not have to be the same as the first violation. Additionally, OAs that can establish a nexus between off-duty behaviors and the employee's occupation may consider any action taken under OA's Table of Penalties as a first or second offense.

Paragraph 8.f. Refusal to comply with procedures during alcohol testing. Added “interferes, with or unduly delays” in next to the last sentence. Added last sentence: “There is no opportunity to enter a rehabilitation program for this offense.”

Paragraph 8.g. Refusal to enter or successfully complete an alcohol related substance abuse rehabilitation program. Added last sentence: “There is no opportunity to enter a rehabilitation program for this offense.”

Paragraph 9.a. Not Ready for Duty. Added next to the last sentence: “If the employee is scheduled to return to work in less than 8 hours, he/she will be placed in an AWOL status until the 8 hours has elapsed.”

Added under First occurrence. “An employee who engages in this misconduct will be dismissed from the worksite and charged AWOL status for the remainder of the shift. In addition, the employee will be issued a letter of admonishment.”

Paragraph 10. Off-duty Drug- and Alcohol-Related Conduct and Self-Referral. When an OA learns of an off-duty drug and/or alcohol misconduct event covered under this

paragraph, the employee is no longer eligible to self-refer to the EAP. Such misconduct includes, but is not limited to:

- a. Driving while intoxicated (DWI)
- b. Driving under the influence (DUI)
- c. Any other police matter where the use of drugs or alcohol is noted in police report or court documents, etc., or
- d. Refusal to submit to an alcohol test.

The OA may learn about an off-duty situation through any other available means. Some employees may come to the attention of management because of:

- a. a Report of Investigation,
- b. newspaper article,
- c. information or inquiry from a police source,
- d. information obtained as a result of periodic medical examination, or
- e. an illness related medical examination.

For the purpose of this offense, a plea of no contest or other plea arrangement is not cause for drug or alcohol misconduct to be excused under this Order. Appropriate action may be taken in accordance with the OAs Table of Penalties.