



RULES OF THE STATE PERSONNEL BOARD

478-1-.21D Substance Abuse Testing for Federally Regulated Transportation Positions

(1) Applicability:

- (a) Applicants for, and employees in, positions that perform safety-sensitive transportation functions are subject to federally regulated substance abuse testing.
- (b) The testing programs in this Sub-Rule apply to all employment categories of federally regulated work (e.g., full-time, part-time, temporary, hourly, internship, etc.).
- (c) Prior to placing an individual in a position subject to federally regulated testing, the appointing authority should notify the employee or applicant of the testing requirements and of the consequences for a positive result or testing refusal.
- (d) Facilities and procedures used for substance abuse testing of federally regulated transportation employees and applicants must meet all requirements established by the U.S. Department of Transportation in 49 C.F.R. Part 40. Such requirements do not allow for use of “instant” drug testing products, such as on-site testing kits described in Section (9) of Rule 478-1-.21.

(2) Determination of Federally Regulated Positions Subject to Substance Abuse Testing:

- (a) Each appointing authority must designate as federally regulated those positions whose incumbents perform safety-sensitive transportation functions, as follows:
 - 1. motor carrier functions as defined by the Federal Motor Carrier Safety Administration in 49 C.F.R. Part 382;
 - 2. maritime functions as defined by the US Coast Guard/Department of Homeland Security in 46 C.F.R. Part 16; and,
 - 3. public transportation functions as defined by the Federal Transit Administration in 49 C.F.R. Part 655.
- (b) The appointing authority will also designate as federally regulated those other positions that may become subject to substance abuse testing by federal law or regulation.

Rules of the State Personnel Board

- (c) The appointing authority will update a position's designation, as needed, when assigned duties change.

(3) Types of Testing:

(a) Pre-Employment:

Individuals offered employment in a federally regulated transportation position must successfully complete a pre-employment drug test and receive a negative result prior to performing safety-sensitive transportation duties.

(b) Random Testing:

All federally regulated employees are subject to random drug testing. Random alcohol testing requirements vary by federal operating administration. Employees whose positions are randomly selected for substance abuse testing must neither refuse testing nor receive a positive result as a condition of employment.

1. Subject Pool(s):

The DOAS Commissioner will establish a pool(s) composed of all positions designated as being federally regulated by the appointing authorities. Each pool will have a selection rate that complies with applicable federal standards.

2. Random Sample:

The DOAS Commissioner will periodically direct that a sample of positions be randomly selected from each pool. Random selection is made such that each position within a pool has an equal chance of being selected each time.

3. Random Selection Notice:

The DOAS Commissioner or designee will notify each appointing authority of positions, if any, that have been selected from the pool(s). The notice will contain the effective date to be used for determining the incumbent(s) to be tested and when testing will begin.

Rules of the State Personnel Board

4. Who to Test:

The incumbent of each selected position as of the effective date specified in the random selection notice will be subject to testing, unless that individual is no longer assigned safety-sensitive transportation functions.

(i) Multiple Incumbents:

Should a selected position have more than one incumbent as of the effective date specified in the random selection notice, all incumbents will be subject to testing.

(ii) Vacant Positions:

If a position was vacant as of the effective date specified in the random selection notice, no incumbent testing for that position will take place.

5. When to Test:

Selected employees may be tested during a 30-calendar-day period that begins on the effective date specified in the random selection notice.

(i) Whenever possible, the appointing authority should send selected employees for testing on the effective date specified in the random selection notice.

(ii) To accommodate scheduling, workload, or other business needs, the appointing authority may delay issuing the testing directive to an employee until a later date and time when operations will not be unduly disrupted. The testing date should be as soon as possible and must be within 30 calendar days following the effective date specified in the random selection notice.

(iii) Random testing is not permitted before the effective date specified in the random selection notice.

(iv) Incumbents selected for random alcohol testing must be tested just before or just after performing safety-sensitive transportation functions. If the test is not performed within two (2) hours of the performance of safety-sensitive transportation functions, the appointing authority must create and retain a

Rules of the State Personnel Board

written record stating the reasons why the alcohol test was not properly administered.

(v) Incumbents on Leave:

If the incumbent of a selected position is on any form of paid or unpaid leave as of the effective date specified in the notice of random selection and the incumbent returns to duty within 30 calendar days of the effective date, the appointing authority is to send the incumbent for testing as soon as possible following the return-to-duty and within the 30-calendar-day testing window. If the incumbent does not return to duty within the 30-calendar-day testing window, the incumbent is not sent for testing.

(c) Post-Accident Testing:

Any employee performing safety-sensitive transportation functions who is involved in an on-the-job accident, as defined by the applicable federal operating administration, is required to undergo substance abuse testing, as ordered, as soon as possible, and in accordance with applicable federal regulations as a condition of employment.

Post-Accident Testing Requirements				
DOT Agency	Testing Criteria	Who is Tested	Specimen Type	Collection Time Frame
FMCSA	1. There is a fatality; or 2. The driver is cited for a moving violation AND either: a) The vehicle is towed from the scene; or b) Someone is medically evacuated from the scene.	The surviving driver. <i>(FMCSA regulations do not call for testing of deceased drivers.)</i>	Urine for drug testing. Saliva or breath for alcohol screening; breath for alcohol confirmation testing.	<u>Drug testing</u> - Up to 32 hours from time of event. <u>Alcohol testing</u> - Within 2 hours, but cannot exceed 8 hours from time of event.
FTA	1. There is a fatality; or 2. an individual receives medical treatment away from the scene; or 3. the rubber-tired vehicle is towed from the scene due to disabling damage; or	<u>Fatal Accident</u> Each surviving employee operating the mass transit vehicle at the time of the accident. Also, any other covered employee whose performance could have contributed to the accident.	Urine for drug testing. Saliva or breath for alcohol screening; breath for alcohol	<u>Drug testing</u> - Up to 32 hours from time of event. <u>Alcohol testing</u> - Within 2 hours, but cannot exceed 8 hours from time of event.

Rules of the State Personnel Board

	4. the fixed guideway vehicle or vessel is removed from operation.	<u>Non-Fatal Accident:</u> Each employee operating the mass transit vehicle <i>unless the employee's performance can be completely discounted as a contributing factor.</i> Also, any other covered employee whose performance could have contributed to the accident.	confirmation testing.	
USCG	<p>A serious Marine Incident that results, or, in the employer's estimation may result, in any of the following:</p> <ol style="list-style-type: none"> 1. One or more fatalities. 2. An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties. 3. Property damage in excess of \$100,000. 4. Actual or constructive total loss of any inspected vessel or any self-propelled vessel of 100 gross tons or more. 5. A discharge of oil exceeding 10,000 gallons into navigable waters. 6. A release of a Hazardous Substance greater than or equal to its reportable quantity into navigable waters. 	Those personnel directly involved in a Serious Marine Incident.	<p>Urine for drug testing.</p> <p>Breath, saliva, or blood for alcohol testing.</p>	<p>Drug testing - Within 32 hours from time of event unless precluded by safety concerns, and then as soon as safety concerns are addressed.</p> <p>Alcohol testing - Within 2 hours of the event or as soon as safety concerns are addressed, but cannot exceed 8 hours from time of event.</p>

Rules of the State Personnel Board

(d) Reasonable Suspicion/Reasonable Cause:

Any federally regulated transportation employee may be required to submit to substance abuse testing when a trained agency/entity official determines there is a compelling reason to suspect an employee is not free from illegal drugs and/or alcohol while on duty.

1. The determining official's training must have minimally included one (1) hour of illegal drug training and one (1) hour of alcohol training covering physical, behavioral, speech, and performance indicators of probable illegal drug use or alcohol misuse.
2. The reasonable suspicion must be based on the trained official's specific observations of the employee's current appearance, behavior, speech, and/or smell usually associated with drug or alcohol use.
3. A written record, signed by the observing official, must be made to document the observations leading to reasonable suspicion.
4. Alcohol testing may be conducted only when the employee is scheduled to perform safety-sensitive transportation functions.

(e) Return-to-Duty:

1. Federally regulated individuals with a previous drug/alcohol-free workplace violation must successfully complete drug and/or alcohol testing (whichever applies to the violation) as ordered and receive a negative result as a condition of return to employment in a safety-sensitive transportation function.
2. Federal regulations require return-to-duty testing be conducted under direct observation.

(f) Follow-Up:

Following a determination by a Substance Abuse Professional that an employee who has violated an alcohol or drug provision is in need of assistance in resolving problems associated with alcohol or drug abuse, the appointing authority will ensure that the employee is subject to unannounced follow-up alcohol and/or drug testing, whichever is applicable.

Rules of the State Personnel Board

1. Mandatory follow-up testing will be conducted only when the employee is scheduled to perform safety-sensitive transportation functions.
2. Testing must be conducted at least six (6) times in the first 12 months following return to safety-sensitive transportation functions and may, upon the recommendation of the Substance Abuse Professional, be continued for up to 60 months.
3. The employee must successfully complete each follow-up test as ordered and receive a negative result as a condition of employment.
4. Federal regulations require follow-up testing be conducted under direct observation.

(4) Directive to Report:

- (a) The appointing authority is to provide the applicant or employee a written directive specifying when and where to report for federally regulated substance abuse testing. The directive is not to be given in advance of the time the applicant/employee is to proceed for testing. If the individual is performing safety-sensitive transportation functions at the time of notification, the individual should cease as soon as possible, then report for testing.
- (b) An employee directed to report for reasonable suspicion testing should be accompanied and not permitted to transport her/himself.

(5) Rejected or Unsuitable Sample:

- (a) When a pre-employment, return-to-duty, or follow-up drug testing sample is rejected or determined to be unsuitable for testing by the testing laboratory, the donor will be directed to appear for retesting. These testing programs require such retesting because a negative result is required for the applicant/employee to be eligible for employment in the position.
- (b) The appointing authority has the discretion to require retesting when a random, reasonable suspicion, or post-accident drug testing sample is rejected or determined unsuitable for testing.

Rules of the State Personnel Board

(6) Consequences of Positive Drug Testing Result or Refusal:

- (a) An applicant or employee whose drug test result is reported by the MRO as positive, adulterated, or substituted or who otherwise refuses a drug test will be immediately dismissed or the offer of employment withdrawn.
- (b) The applicant or employee is further disqualified from future State employment for a period of two (2) years from the date of testing or refusal, whichever is later.
 - 1. If the applicant/employee is employed with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS).
 - 2. DOAS will notify the other State agency/entity employer of the disqualification from employment. The other employer will dismiss the employee.
- (c) The appointing authority is to provide the applicant/employee with a list of qualified Substance Abuse Professionals (SAPs) or contact information for an SAP network that will offer qualified SAPs to the applicant/employee.

(7) Consequences for Positive Alcohol Result or Refusal:

- (a) An employee whose test indicates an alcohol concentration of 0.02 or greater will be given an alcohol confirmation test not less than 15 minutes nor more than 20 minutes after the original screening test.
- (b) The appointing authority must dismiss the employee upon receiving a positive alcohol confirmation test result of 0.02 or greater for return-to-duty or follow-up testing.
- (c) The appointing authority may take the disciplinary action determined appropriate, up to and including dismissal, upon receiving a positive alcohol confirmation test result of 0.02 or greater for random, reasonable suspicion, or post-accident testing. At a minimum, the appointing authority will not allow the employee to resume safety-sensitive transportation functions for the period required by the applicable federal operating administration and policies set by this Sub-Rule. (See chart below.)

Rules of the State Personnel Board

DOT Alcohol Confirmation Test Result Consequences		
DOT Agency	Result	Action
FMCSA	Less than 0.02	No action required.
	0.02 - 0.039	Employee may not resume safety-sensitive transportation functions for 24 hours.
	0.04 or greater	Immediate removal from safety-sensitive transportation functions. Employee may not resume safety-sensitive transportation functions until successfully completing the return-to-duty process.
FTA	Less than 0.02	No action required.
	0.02 - 0.039	Employee cannot work until (1) the employee's alcohol concentration measures less than 0.02; or (2) the next scheduled duty period, but not less than 8 hours from the time of the test.
	0.04 or greater	Immediate removal from safety-sensitive transportation functions. Employee may not resume safety-sensitive transportation functions until successfully completing the return-to-duty process.
USCG	Less than 0.02	No action required.
	0.02 – 0.039	Employee may not resume safety-sensitive transportation functions for 24 hours.
	0.04 or greater	Immediate removal from safety-sensitive transportation functions. Employee may not resume safety-sensitive transportation functions until successfully completing the return-to-duty process.

1. If the employee is not dismissed, all scheduled work time from the time of the positive test until the employee returns to duty will be charged to suspension without pay.
2. The return-to-duty process is as follows:
 - (i) Evaluation by a Substance Abuse Professional (SAP).

Rules of the State Personnel Board

- (ii) Successful completion of any education, counseling, or treatment prescribed by the SAP.
 - (iii) Follow-up evaluation by the same SAP.
 - (iv) A negative return-to-duty alcohol test result of less than 0.02.
3. The appointing authority is to provide an employee who refused alcohol testing or whose test result was .04, or higher, with a list of qualified Substance Abuse Professionals (SAPs) or contact information for an SAP network that will offer qualified SAPs to the employee.
 4. The appointing authority may require that SAP evaluation and services are at the expense of the employee.
- (d) An employee who refuses alcohol testing will be immediately dismissed and disqualified from future State employment for a period of two (2) years from the date of refusal.
1. If the employee has dual employment with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS).
 2. DOAS will notify the other employer of the applicable disqualification from employment. The other employer will dismiss the employee.

Authority:

O.C.G.A. §§ 45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board)

Federal Law References:

33 C.F.R. §§ 95, et seq., United States Coast Guard - Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug

46 C.F.R. §§ 4, et seq., United States Coast Guard - Marine Casualties and Investigations

46 C.F.R. §§ 16, et seq., United States Coast Guard Regulations - Chemical Testing

49 C.F.R. §§ 40, et seq., Procedures for Transportation Workplace Drug and Alcohol Testing Programs

49 C.F.R. §§ 382 et seq., Federal Motor Carrier Safety Administration - Controlled Substances and Alcohol Use and Testing

Rules of the State Personnel Board

49 C.F.R. §§ 655, et seq., Federal Transit Authority - Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

41 U.S.C. §§ 8101, et seq., Drug Free Workplace Requirements for Federal Contractors

53 Fed. Reg. 11979, et seq., as amended, HHS Regulations - Mandatory Guidelines for Federal Workplace Drug Testing Programs