



SUPERVISOR'S REASONABLE SUSPICION HANDBOOK

This handbook is provided to assist supervisors of safety-sensitive employees in making decisions about reasonable suspicion drug and alcohol tests as required by the Department of Transportation Anti-Drug and Alcohol Misuse Prevention Rules. This handbook will serve as your reference for the responsibility to monitor employees and maintain compliance with the drug and alcohol use standards in the DOT rules.

*For Supervisors of
DOT Covered
Employees*



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Introduction

What are the specific regulations directing employers' implementation of the DOT drug and alcohol testing program?

- FMCSA regulation is 49 CFR Part 382
- FRA regulation is 49 CFR Part 219
- FAA regulation is 14 CFR Part 120
- FTA regulation is 49 CFR Part 655
- PHMSA regulation is 49 CFR Part 199
- USCG regulation is 46 CFR Parts 4, 5, and 16
- Drug and Alcohol Testing Procedures are 49 CFR Part 40

Overview

History of the DOT drug and alcohol misuse prevention rules

Let's do a quick overview of Department of Transportation's Anti-Drug and Alcohol Misuse Prevention rules. In 1988, the Department of Transportation issued safety regulations that require transportation employers to implement workplace Anti-Drug policies and programs. These programs are to include drug testing, drug prevention training, and sanctions for employee illegal drug use. The goal of the anti-drug rules is to protect public safety while deterring illegal drug use by safety-sensitive employees. The 1988 rules applied to employers in the Aviation, Railroad, Commercial Motor Vehicle, Commercial Marine, and Liquid and Gas Pipeline industries. This covered approximately 4 million employees in safety-sensitive transportation occupations. In 1994, in response to the Omnibus Transportation Employee Testing Act passed by Congress, the Department of transportation issued even more expanded drug testing regulations. These rules added over 3 million employees to the categories subject to drug testing. Safety-sensitive employees of city, county, or other public transit services, are subject to alcohol and drug testing requirements under rules issued by the F.T.A. Additionally, employees who operate a vehicle requiring a commercial driver's license are subject to substance abuse testing. This expansion of the scope of the Federal Motor Carrier Safety Administration rule added over 3 million city county and state employees, school bus drivers, and intrastate commercial motor vehicle drivers to the scope of the FMCSA alcohol and drug testing regulation. The Omnibus Transportation Employee Testing Act also required the Department of transportation to add alcohol testing to its existing drug testing programs. The FAA, FRA, FMCSA and FTA all issued alcohol misuse prevention rules based on a philosophy of prevention and deterrence with a focus on fitness for duty. The rules establish specific



standards of conduct related to alcohol use and the performance of safety-sensitive duties. Alcohol misuse is defined as: on-duty use, usage within 4 hours of reporting for duty (8 hrs for flight crew members), or having an alcohol concentration of 0.04 or greater just before, during, or just after performing safety-sensitive duties. The consequences of engaging in alcohol misuse are removal from safety-sensitive duties and evaluation by a substance abuse professional to determine if the employee needs assistance in resolving problems associated with alcohol use.

The rules require alcohol breath testing in the following circumstances: post-accident; random; reasonable suspicion; and return-to-duty/follow-up. In addition to testing requirements, employers are required to implement an alcohol misuse prevention policy, provide training for supervisors, maintain records and documents related to alcohol testing, and establish resources for employee substance abuse assistance.

The Department of Transportation has established specific procedures for conducting alcohol testing. The procedures require the use of breath or saliva alcohol testing devices. Evidential Breath Testing (EBT) equipment must be used for a confirmation test if the initial screening test is 0.02 or greater. The Department of transportation procedures also establishes qualifications for Screening Test Technicians and Breath Alcohol Technicians who administer the tests. The testing procedures provide for employee privacy protection and ensure the accuracy and reliability of alcohol test results through a quality assurance program.

Why Training?

Training Requirement

Each of the DOT rules requires employers to provide training for supervisors of safety-sensitive employees. The training must include specific information on the physical, behavioral, and performance indicators of probable drug or alcohol use. Supervisors who may make reasonable suspicion test determinations must complete at least 2 hours of supervisor training—one hour on signs and symptoms associated with drug use and one hour on signs and symptoms associated with alcohol misuse. Employers must maintain documentation of the Supervisor's participation in the required training.

The Federal Railroad Administration rule requires that supervisors of Hours-of-Service employees complete at least 3 hours of training on drug and alcohol testing requirements, including reasonable suspicion test determinations. The Federal Aviation Administration rule requires that supervisor training on reasonable suspicion drug testing consist of 2 hours training, plus recurrent supervisor training at intervals specified in the aviation employer's anti-drug and alcohol misuse prevention plan.



Explanation of reasonable suspicion drug and alcohol testing

REASONABLE SUSPICION / REASONABLE CAUSE

You are required to conduct a test for drugs or alcohol [or both] if a trained supervisor or trained company official believes or suspects an employee is under the influence of drugs or alcohol [or both]. The supervisor or company official must have been trained to recognize the signs and symptoms of drug and alcohol use. Testing cannot be required based solely on a guess or hunch or complaint from another person or phone call tip. The suspicion must be based on specific observations by the supervisor or company official concerning the employee's current appearance, behavior, speech, and smell that are usually associated with drug or alcohol use. The reasonable suspicion / reasonable cause observations of the supervisor or company official must be documented.

The **FRA** requires two supervisors – at least one of whom is trained and on site – to make the testing determination.

FAA does not require the determination to be face-to-face.

Role of the Supervisor in Reasonable Suspicion Testing (Criteria for Reasonable Suspicion Test Determination)

Are you authorized to order reasonable suspicion tests, and have you been trained to spot the signs and symptoms?

If you supervise employees who perform safety sensitive duties then you **absolutely have the power** to initiate reasonable suspicion drug tests, however if you haven't been formally trained on how to spot the signs or symptoms of substance abuse you should seek the help of another supervisor who has.

Is this a crisis or performance situation?

In the event the employee showing signs and symptoms (blurred vision, loss of balance, slurred speech, violent or erratic behavior, etc.) then it's imperative you remove the employee from performing safety sensitive duties immediately. This is a crisis situation. There should be no hesitation; the safety of the employee, co-workers and general public are at risk.

If your suspicions are based on things such as showing up late for work, underperformance, excessive risk taking, dramatic behavioral changes or swings, and such then you be working towards building documentation that might lead to a reasonable suspicion test later. This is generally handled by conducting recurring performance reviews



and setting performance goals. This allows you the opportunity to both document the history of the employee's behavior and set performance goals that they agreed to meet. If later, they fail to achieve the goals they agreed to, it creates a stronger case for performing a reasonable suspicion drug test – assuming the signs and symptoms lead you in that direction.

When did you observe the signs and symptoms?

DOT regulations state that in order for observations to be valid they must occur '**just before, during or just after**' performing a safety sensitive duty.

Are your observations based on specific, articulable and contemporaneous information?

These are the criteria the DOT specifies supervisor observations must meet.

Specific: For ex. Specific would be "Glassy and bloodshot eyes" versus non-specific "Seemed out of it".

Articulable: This means you can accurately describe the specific signs or symptoms. For example, you couldn't say that an employee "associates with the drug abusing type crowd" because there are no specific characteristics that can be described that wouldn't be based on speculation or stereotypes.

contemporaneous: This means your observations occurred just before, during or after their work period. For example, watching an employee get drunk at a weekend softball game isn't directly relevant for determining a reasonable suspicion test on a Monday.

Do you need a second supervisor observer?

No. For FMCSA, PHMSHA, FTA, USCG and many FAA organizations, a single supervisor can make the call. If you're covered by the FAA and have 50 or fewer employees a single supervisor can make the call. FAA covered organizations with more than 50 employees need to have a second supervisor concur. One of the two FAA supervisors must be trained in DOT reasonable suspicion signs and symptoms. However always seek a second supervisor's opinion when possible.



The intervention: Interview the employee and keep information confidential

How do you intervene? Simply remove the employee from performing their safety sensitive duty, take them into a private office or other private location (preferably with a second supervisor) and ask them for an explanation of the signs and symptoms you've observed. Document their responses. All information should be kept confidential. The goal of the intervention is not to get the employee to admit use, the goal is to simply document the employee's responses. Employees might have reasonable explanations for some signs and symptoms, for example red or bloodshot eyes might be the result of severe allergies, but if combined with slurred speech and loss of balance the explanation is no longer valid.

What if the employee refuses?

You simply need to inform the employee that a refusal to submit to a reasonable suspicion drug test has the same consequences as testing positive. They can refuse, so be prepared to cite your company policy or specific DOT regulations.

What if the employee has a prescription and they want to submit for proof/explanation?

Whether or not an employee has a prescription is irrelevant to a reasonable suspicion drug test. Proceed with the process regardless.

What if the employee admits using? Is a test still needed?

Yes. The regulations state the employee must submit to a test. There is no "opting out" for admitting use. They employee could easily change their story later and say they never admitted use.

Do not let the employee escort themselves to the collection site and do not perform the collection yourself

Employees suspected of being under the influence should not be allowed to escort themselves to the collection site. Further, the supervisor making the reasonable suspicion test determination cannot be the person to administer the drug or alcohol test.

Document observations within 24 hours

DOT regulations specify that supervisors need to document their observations within 24 hours. In the event the employee tests positive and challenges you legally or otherwise,



proper documentation of your observations will help any future conversations about the event.

Make sure all documentation is stored in the employee file

The employee might test negative, it's a real possibility that the employee may be under the influence of a substance that

- Isn't part of the drug testing panel and therefore wouldn't be detected (K2, Spice and other newer substances are common examples, and/or
- The employee hasn't previously ingested the substance and therefore the body might not have the metabolites present to that would show up in a lab test.

Alcohol tests are different because they do not test for past use, rather they can tell whether a person is under the influence at that very moment.

Documentation of employee behavior can help establish an actionable pattern of negative employee performance even if the employee tests negative.

Remember enabling substance abusing employees to get away with their behavior puts everyone's safety at risk, including the employee who may need help with an addiction and transfers the consequences of their behavior to others.

Forms



Reasonable Suspicion Guidelines & Tips For Supervisors

As a supervisor it's your responsibility to hold the line against substance abuse in the workplace and insure that your organization's policy is followed to the letter treating everyone equally no matter how the employee responds to your actions.

The testing program is designed to protect everyone by getting rid of alcohol and drugs from the workplace—not people.

Supervisor Intervention Tips:

Do Not.....

- Diagnose
- Moralized
- Be overly sympathetic
- Cover up
- Talk about with others

Do.....

- Know the policy
- Focus on job performance
- Be specific
- Be respectful
- Document

Observe, Identify, and Investigate

Observe, Identify and Investigate poor performance that may be related to substance abuse. Look for Appearance, Behavioral, and Performance Indicators.

Document

Document your observations. Don't Diagnose. If possible get a second supervisor as a witness.

Remove the Employee

Remove the employee from performing safety sensitive tasks immediately if you feel they pose a treat to themselves or others. Waffling can cost lives.

Confirm

In a private place ask the employee for an explanation of their behavior, and remind them of the DOT rules and/or your policy.

Confront

Based on your written observations ask them to take a test. Give them a choice to comply. If they refuse remind them a refusal is treated as a positive, and then document the refusal.

Notify the Collection Site

Notify the collection site you are sending an employee for testing. It is a good idea to also notify your Designated Employer Representative (DER).

Escort the employee to the testing site

Escort the employee to the testing site and arrange for transportation home.

Stick to the Plan in Your Policy

Stick to the plan in your policy. Treat everyone equally. Document the entire event as soon as possible but no later than the end of the shift.

**Reasonable Cause Script:**

“(_____), as you know the Company has a Drug and Alcohol Testing Program Policy and as an employee of the Company you have agreed to abide by its policy to prevent drug and alcohol abuse in the workplace.

At this time, as your supervisor I am instructing you that you must submit to a reasonable cause drug screen and/or breath test at this time.

A company representative will go with you to the collection facility.”

Suspected employee is not allowed to drive himself/herself in a Company vehicle to the collection site location. If an employee leaves the premises in a private vehicle against the supervisor's instruction, the Designated Employer Representative or Supervisor may consider notifying local authorities. Check your company policy for further guidance.



DOT SUPERVISOR'S REASONABLE SUSPICION DETERMINATION GUIDE

"There is something about _____, _____ today.
(Employee Name - PRINT)

(Employee ID#)

I am recording my observation of indicators of probable drug/alcohol use here:"

WHEN IS IT HAPPENING?

Date: _____ Time: _____

WHAT IS HAPPENING? (attach additional paper if necessary)

I see _____

OBSERVED BEHAVIOR:

<u>Physical Indicators:</u>	<u>Behavioral Indicators</u>	<u>Speech Indicators</u>
☐ Dilated Pupils ☐ Constricted Pupils ☐ Drowsiness ☐ Cold Sweats ☐ Rapid Breathing ☐ Dizziness ☐ Tremors ☐ Excessive Yawning ☐ Chronic Redness of Eyes ☐ Chronic Nasal Problems ☐ Odor of Marijuana ☐ Odor of Alcoholic Beverage ☐ Noticeable weight loss ☐ Loss of Appetite ☐ Ravenous Appetite ☐ Unsteady Walk/Stumbling	☐ Depression ☐ Moodiness ☐ Alienation ☐ Combativeness ☐ Panic Reactions ☐ Neglect of Personal Hygiene ☐ Anxiety ☐ Irritability ☐ Agitation ☐ Restlessness ☐ Euphoria	☐ Thick ☐ Slurred ☐ Excessively Talkative ☐ Rapid ☐ Incoherent <u>Performance Indicators</u> ☐ Unable to Concentrate ☐ Errors in Judgment ☐ Impaired Reasoning

Observer's Name: _____ / _____
Print Signature

Phone: _____ Title/Dept: _____ / _____

Additional
Observer's Name: _____ / _____
Print Signature

Phone: _____ Title/Dept: _____ / _____

☐ I concur with the observer	☐ I do not concur with the observer
Test to be performed: ☐ Drug ☐ Alcohol ☐ Both	Test to be performed ☐ Alcohol



FAA Reasonable Cause/Reasonable Suspicion Testing Form

Please record the following information to document your reasonable cause/reasonable suspicion test determination.

Employee's Name: _____ Employee's ID/SSN: _____

Job Title: _____

Location of Incident: _____ Date: _____ Time Observed: _____

Trained Supervisor's Name & Signature: _____

Concurring Supervisor's Name & Signature: _____

Observations (Please check all that apply, and include descriptions of any *changes* in behavior.)

Appearance:

- | | | | |
|-------------------------------------|--|--|--|
| ☐ Normal | ☐ Tremors/ Twitches | ☐ Flushed or Pale | ☐ Dilated Pupils |
| ☐ Sleepy | ☐ Sores/ Puncture Marks | ☐ Heavy Eyelids | ☐ Bloodshot eyes |
| ☐ Disheveled | ☐ Excessive Sweating | ☐ Cleanliness | ☐ Other (explain below) |

Description/Notes: _____

Behavior/ Demeanor:

- | | | | |
|--|------------------------------------|--|--|
| ☐ Nervous | ☐ Erratic | ☐ Mood Swings | ☐ Lethargic |
| ☐ Irritable | ☐ Paranoid | ☐ Verbally/Physically Abusive | ☐ Highly Excited |
| ☐ Confusion/Inattentive | ☐ Combative | ☐ Fatigue/ Sleeping/ Drowsiness | ☐ Other (explain below) |

Description/Notes: _____

Motor Skills:

- | | | | | |
|-----------------------------------|---|----------------------------------|-------------------------------------|--|
| ☐ Normal | ☐ Swaying | ☐ Falling | ☐ Unbalanced | ☐ Other (explain below) |
| ☐ Unsteady | ☐ Lack of Coordination | ☐ Fidgety | ☐ Stumbling | |

Description/Notes: _____

Speech:

- | | | | |
|-------------------------------------|--------------------------------------|--|--|
| ☐ Normal | ☐ Slurred | ☐ Loud | ☐ Other (explain below) |
| ☐ Incoherent | ☐ Exaggerated | ☐ Talking Excessively | |

Description/Notes: _____

Odor:

- | | | |
|------------------------------------|---|--|
| ☐ Normal | ☐ Smell of Alcohol | ☐ Excessive Cologne |
| ☐ Body Odor | ☐ Smell of Marijuana | ☐ Other (explain below) |

Description/Notes: _____

Test Conducted: ☐ Yes ☐ No

Comments: _____