

# **MODAL RULES (SUMMARY)**

From SAP Guidelines,

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## **OPERATING ADMINISTRATIONS' RULES (SUMMARY)**

49 CFR Part 40 (40.33(a)) states that SAPs must be knowledgeable about the DOT agency regulations applicable to the employers for whom the SAPs conduct assessments. The following is a list of regulations that govern an employer's implementation of the DOT drug and alcohol testing rules:

The FMCSA regulation is 49 CFR Part 382.

The FRA regulation is 49 CFR Part 219.

The FAA regulation is 14 CFR Part 121.

The FTA regulation is 49 CFR Part 655.

The PHMSA regulation is 49 CFR Part 199.

The USCG regulation is 46 CFR Parts 4, 5, and 16.

Drug and alcohol testing (including SAP) procedures are 49 CFR Part 40.

The following pages contain a short summary of some of the operating administrations' requirements. Copies of the complete rule texts are available on the DOT Internet web site ([www.dot.gov/ost/dapc/](http://www.dot.gov/ost/dapc/)).

<b>Federal Motor Carrier Safety Administration (FMCSA)</b>
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**Covered employee:** A person who *operates (i.e., drives)* a Commercial Motor Vehicle (CMV) with a gross vehicle weight rating (gvwr) of 26,001 or more pounds; or is designed to transport 16 or more occupants (to include the driver); or is of any size and is used in the transport of hazardous materials that require the vehicle to be placarded.

**Types of tests for drugs:** Pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-up.

**Types of tests for alcohol:** Pre-employment (optional), random, reasonable suspicion, post-accident, return-to-duty, and follow-up.

**Definition of accident requiring testing:** Any accident involving a fatality requires testing. Testing is also required in accidents in which one or more motor vehicles are towed from the scene or in which someone is treated medically away from the scene; *and* a citation is issued to the CMV driver.

**Reasonable-suspicion determination:** One trained supervisor or company official can make the decision based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

**Pre-duty alcohol use prohibitions:** Four (4) hours prior to performance of duty.

**Actions for BACs 0.02 – 0.039:** The employee cannot be returned to duty until the next day or the start of the employee's next regularly scheduled duty period, but not less than 24 hours following the test.

**Employee training:** Employer must provide educational materials explaining drug and alcohol regulatory requirements and employer's policies and procedures for meeting regulation requirements. Distribution to each employee of these educational materials and the employer's policy regarding the use of drugs and alcohol is mandatory.

**Supervisor training:** One-hour of training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. One-hour of training is also required on the specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol use.

**Reportable employee drug and alcohol violations:** No requirements to report violations to FMCSA.

**Other:** Drivers are prohibited from using alcohol for eight hours following an accident (as described above) or until they have undergone a post-accident alcohol test, whichever occurs first.

<b>Federal Railroad Administration (FRA)</b>
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**Covered employee:** A person who performs *hours of service* functions at a rate sufficient to be placed into the railroad's random testing program. Categories of personnel who normally perform these functions are *locomotive engineers, trainmen, conductors, switchmen, locomotive hostlers/helpers, utility employees, signalmen, operators, and train dispatchers*.

**Types of tests for drugs:** Pre-employment, random, reasonable suspicion, reasonable cause, post-accident, return-to-duty, and follow-up.

**Types of tests for alcohol:** Pre-employment (optional), random, reasonable suspicion, reasonable cause, post-accident, return-to-duty, and follow-up.

**Definition of accident requiring testing:** FRA's post-accident testing rule requires urine and blood specimen collection from surviving employees and also tissue from deceased employees (these collection procedures go well beyond the normal Part 40 procedures). For surviving employees, these specimens are collected at an independent medical facility. FRA regulation, 49 CFR Part 219 Subpart C, stipulates the level of events requiring testing and who has to be tested. The collected specimens are analyzed only at FRA's contract laboratory. Post-accident testing provides FRA with accident investigation and usage data.

**Reasonable-suspicion determination:** One trained supervisor can make the decision for alcohol testing based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. A decision to conduct a drug test requires two supervisors (only the on-site supervisor must be trained).

**Reasonable-cause determination:** Employers are authorized to use federal authority to test covered employees after specific operating rule violations or accidents/incidents which meet the criteria in 49 CFR Part 219 Subpart D.

**Pre-duty alcohol use prohibitions :** Four (4) hours prior to performance of duty or after receiving notice to report for covered service, whichever is the shorter period.

**Actions for BACs 0.02 – 0.039:** The employee cannot be returned to duty until the start of the employee's next regularly scheduled duty period, but not less than 8 hours following the test. Railroads are prohibited from taking further disciplinary action under their own authority.

**Employee training:** Employer must provide education materials that explain the requirements of the FRA rules as well as railroad policies and procedures with respect to meeting these requirements.

## **FRA (continued)**

**Supervisor training:** A total of three hours of training is required: one-hour on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use; one-hour of similar training on probable indicators of alcohol use; and one-hour of training on how to determine if an accident qualifies for post-accident testing.

**Reportable employee drug and alcohol violations:** No requirements to report violations to FRA. Engineers, who are the only certificate holders in the rail industry, will have their certificates reviewed for suspension or revocation by the employer when a FRA violation occurs. Note that a FRA alcohol violation occurs at 0.04 percent or greater. When a locomotive engineer is in a voluntary referral program, the counseling professional must report the engineer's refusal to cooperate in the recommended course of counseling or treatment.

### **Other:**

Anyone with direct or immediate supervisory authority over an employee may not collect that person's urine, saliva, or breath.

Refusal to test results in a mandatory minimum nine-month removal from covered service. During this nine-month period, there is no prohibition against the employee working a non-covered service position if agreeable to the employer.

Locomotive engineers (or other employees certified as a locomotive engineer at the time of the alcohol or drug violation) required both alcohol and drug return-to-duty tests; and both alcohol and drug follow-up tests.

Locomotive engineers who have a DUI are required by Part 240 to be evaluated to determine whether they have an active substance abuse disorder. A DUI is not considered to be a violation of FRA regulations if it occurred during the employee's off-duty time; therefore, any testing would be conducted under employer authority.

Employers must provide a ***voluntary referral program*** which allows an employee to self-refer for treatment, and a ***co-worker report program*** which allows one employee to refer another for treatment before the employer identifies a problem. Both of these ***employee assistance programs*** guarantee that employees will retain their jobs if they cooperate and complete the required rehabilitation program. For an engineer who is in a voluntary referral program, the counseling professional must report the engineer's refusal to cooperate in the recommended course of counseling or treatment to the employer.

<b>Federal Aviation Administration (FAA)</b>
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**Covered employee:** A person who performs *flight crewmember duties, flight attendant duties, flight instruction duties, aircraft dispatch duties, aircraft maintenance or preventive maintenance duties; ground security coordinator duties; aviation screening duties; and air traffic control duties*. Note: Anyone who performs the above duties directly or by contract for part 121 or 135 certificate holders, *sightseeing operations* as defined in 135.1(c), and *air traffic control* facilities not operated by the Government are considered covered employees.

**Types of tests for drugs:** Pre-employment, random, reasonable cause, post-accident, return to duty, and follow-up.

**Types of tests for alcohol:** Pre-employment (optional), random, reasonable suspicion, post-accident, return to duty, and follow-up.

**Definition of accident requiring testing:** Accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage. Testing must occur if employee's performance either contributed to the accident or cannot be completely discounted as a contributing factor of the accident. The decision not to test an employee must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident.

**Reasonable cause determination (drugs):** Two of the employee's supervisors, one of whom is trained, shall substantiate and concur in the decision to test the employee. If the employer is not an air carrier operating under 14 CFR part 121 and has 50 or fewer employees, a single trained supervisor can make the determination. A trained supervisor makes the determination based upon specific contemporaneous physical, behavioral or performance indicators of probable drug use.

**Reasonable suspicion determination (alcohol):** One trained supervisor makes the determination based upon specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body orders.

**Pre-duty alcohol use prohibitions :** Eight (8) hours prior to performance of flight crewmember duties, flight attendant duties, and air traffic controller duties. Four (4) hours prior to performance of other duties.

**Actions for BACs 0.02 - 0.039:** If the employer chooses to return the employee to covered services within 8 hours, the BAC retest must be below 0.02.

## **FAA (continued)**

**Employee training (drugs):** An employer must train all employees who perform safety-sensitive duties on the effects and consequences of prohibited drug use on personal health, safety, and work environment, and on the manifestations and behavioral cues that may indicate drug use and abuse. Employers must also implement an education program for safety-sensitive employees by displaying and distributing informational materials, a community service hot-line telephone number for employee assistance and the employer's policy regarding drug use in the work place which must include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a drug test required under the rule.

**Employee training (alcohol):** Employers must provide covered employees with educational materials that explain the alcohol misuse requirements and the employer's policies and procedures with respect to meeting those requirements. The information must be distributed to each covered employees and must include such information as the effects of alcohol misuse on an individual's health work, personal life, signs and symptoms of an alcohol problem; and the consequences for covered employees found to have violated the regulatory prohibitions.

**Supervisor training (drugs):** One-hour of training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. In addition, supervisors must receive employee training as defined above. Reasonable recurrent training is also required.

**Supervisor training (alcohol):** One-hour of training is required on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

### **Reportable employee drug and alcohol violations :**

Each employer must notify the FAA about any covered employee who holds a certificate issued under 14 CFR Parts 61 (pilots and flight and ground instructors), 63 (flight engineers and navigators), or 65 (air traffic control tower operators, aircraft dispatchers, airframe or power plant mechanics, and repairmen) who has refused to take a drug or alcohol test. The MRO may report a positive or refusal (i.e. adulterated, substituted results or no medical explanation for providing an insufficient specimen) on behalf of the employer.

Each employer must notify the FAA about any safety-sensitive employee who is required to hold an airman medical certificate issued under 14 CFR Part 67 who has a positive drug test result, an alcohol test result of 0.04 or greater, or who has refused to submit to testing. The MRO may report a positive or refusal (i.e. adulterated, substituted results or no medical explanation for providing an insufficient specimen) on behalf of the employer.

## **FAA (continued)**

Each employer must not permit an employee who is required to hold a medical certificate under part 67 to perform a safety-sensitive function to resume that duty until the employee has received a new medical certificate issued by the FAA Federal Air Surgeon *and* the employer has ensured that the employee meets the return to duty requirements of Part 40. (Medical certificates are not operating certificates but employees cannot continue to perform airman duties without a medical certificate.)

According to FAA's regulation 14 CFR part 121 Appendix I, Section VII.C.1 & 2, when a MRO verifies a drug test result or a SAP performs the initial evaluation, they must ask the employee whether he or she holds or would be required to hold an airman medical certificate issued under 14 CFR part 67 of this chapter to perform a safety-sensitive function for the employer. [This requirement only applies to MROs and SAPs who provide services for FAA regulated employers.] If the employee answers in the affirmative, the employee must obtain an airman medical certificate issued by the Federal Air Surgeon dated after the drug and/or alcohol violation date.

The SAP must wait until the employee obtains their airman medical certificate before reporting to an employer that the employee demonstrated successful compliance with the SAP's treatment and/or education recommendations.

<b>Federal Transit Administration (FTA)</b>
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**Covered employee:** A person who performs a *revenue vehicle operation; revenue vehicle and equipment maintenance; revenue vehicle control or dispatch (optional); Commercial Drivers License non-revenue vehicle operation; or armed security duties.*

**Types of tests for drugs:** Pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-up.

**Types of tests for alcohol:** Pre-employment (optional), random, reasonable suspicion, post-accident, return-to-duty, and follow-up.

**Definition of accident requiring testing:** Any accident involving a fatality requires testing. Testing following a non-fatal accident is discretionary: If the employer can show the employee's performance could not have contributed to the accident, no test is needed. Non-fatal accidents that may require testing must have disabling damage to any vehicle or immediate medical attention away from the scene to meet the testing threshold.

**Reasonable-suspicion determination:** One trained supervisor or company official can make the decision based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

**Pre-duty alcohol use prohibitions :** Four (4) hours prior to performance of duty.

**Actions for BACs 0.02 – 0.039:** If the employer chooses to return the employee to covered service within 8 hours, the BAC re-test must be below 0.02.

**Employee training:** Employer must provide education with display and distribution of informational materials and a community service hot-line telephone number, if available. One-hour of training on the effects and consequence of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. Distribution to each employee of the employer's policy regarding the use of drugs and alcohol with signed receipt is mandatory.

**Supervisor training:** One-hour of training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. One-hour of training is also required on the specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol use.

**Reportable employee drug and alcohol violations:** No requirements to report violations to FTA.

**Other:** Anyone with direct or immediate supervisory authority over an employee may not collect that person's urine, saliva, or breath.

<b>Pipeline and Hazardous Materials Safety Administration (PHMSA)</b>
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**Covered employee:** A person who performs on a pipeline or liquefied natural gas (LNG) facility an *operation, maintenance, or emergency-response* function.

**Types of tests for drugs:** Pre-employment, random, reasonable cause, post-accident, return-to-duty, and follow-up.

**Types of tests for alcohol:** Post-accident, reasonable suspicion, return-to-duty, and follow-up.

**Definition of *accident* requiring testing:** An accident is one involving gas pipeline facilities or LNG facilities or involving hazardous liquid or carbon dioxide pipeline facilities.

**Reasonable-suspicion determination:** One trained supervisor can make the decision based upon signs and symptoms.

**Reasonable-cause determination:** One trained supervisor can make the decision based upon reasonable and articulable belief that the employee is using prohibited drugs on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use.

**Pre-duty alcohol use prohibitions :** Four (4) hours prior to performance of duty.

**Actions for BACs 0.02 – 0.039:** If the employer chooses to return the employee to covered service within 8 hours, the BAC retest must be below 0.02.

**Employee training (Drugs):** Employer must provide EAP education with display and distribution of informational materials; display and distribution of a community service hot-line telephone number; and display and distribution of the employer's policy regarding the use of prohibited drugs.

**Employee Training (Alcohol):** Employer must develop materials that explain policies and procedures (as well as names of those who can answer questions about the program) and distribute them to each covered employee.

**Supervisor training:** One-hour of training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. One-hour of training is also required on the specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol use.

**Reportable employee drug and alcohol violations:** No requirements to report violations to PHMSA.

<b>United States Coast Guard (USCG)</b>
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**Covered employee:** A person who is *on board a vessel* acting under the authority of a *license, certificate of registry, or merchant mariner's document*. Also, a person *engaged or employed on board a U.S. owned vessel* and such vessel is required to engage, employ or be operated by a person holding a license, certificate of registry, or merchant mariner's document.

**Types of tests for drugs:** Pre-employment, periodic, random, reasonable cause, and post-serious marine incident (SMI), return-to-duty, and follow-up.

**Types of tests for alcohol:** 49 CFR Part 40 alcohol-testing requirements do not apply to the Maritime Industry. 46 CFR Part 4.06 requires post-SMI chemical testing for alcohol use. 33 CFR Part 95.035 allows for a marine employer or a law enforcement officer to direct an individual to undergo a chemical test for intoxicants when reasonable cause exists or a marine casualty has occurred.

**Definition of incident requiring testing:** An SMI is defined in 46 CFR 4.03-2. In general, an SMI is: A discharge of 10,000 gallons or more of oil into the navigable waters of the United States, whether or not resulting from a marine casualty; a discharge of a reportable quantity of a hazardous substance into the navigable waters or into the environment of the United States, whether or not resulting from a marine casualty; or a marine casualty or accident required to be reported to the Coast Guard, involving a vessel in commercial service, and resulting in any of the following: One or more deaths; an injury to any person (including passengers) which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a commercial vessel, which renders the person unable to perform routine vessel duties; damage to property in excess of \$100,000; actual or constructive total loss of any inspected vessel; or actual or constructive total loss of any uninspected, self-propelled vessel of 100 gross tons or more.

**Reasonable-cause determination (drugs):** The marine employer must have a reasonable and articulable belief that the individual has used a dangerous drug. This belief should be based on the direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use and where practicable based on the observation of two persons in supervisory positions.

**Reasonable-cause determination (alcohol):** The employee was directly involved in the occurrence of a marine casualty or the individual operated a vessel and the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.

**Pre-duty alcohol use prohibitions :** Four (4) hours prior to performance of scheduled duty.

**USCG (continued)**

**Employee training:** Employer must provide education with display and distribution of informational materials and a community service hot-line telephone number. Distribution to each employee of the employer's policy regarding the use of drugs and alcohol is mandatory. Training must include the effects of drugs and alcohol on personal health, safety, and work environment; and manifestations and behavioral cues that may indicate drug and alcohol use and abuse.

**Supervisor training:** One-hour of training is required on the effects of drugs and alcohol on personal health, safety, and work environment; and manifestations and behavioral cues that may indicate drug and alcohol use and abuse.

**Reportable employee drug and alcohol violations:** Results of all post-SMI tests and positive drug test results for all mariners who hold a license, certificate of registry or merchant mariner's document must be reported to the nearest Coast Guard Officer in Charge, Marine Inspection.