

(8) Each employer shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(9) A covered employee shall only be randomly tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(10) If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency, the employee shall be subject to random alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's functions.

(11) If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may—

(i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(ii) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

(d) *Reasonable suspicion alcohol testing.* (1) An employer shall require a covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the alcohol misuse prohibitions in §§ 120.19 or 120.37.

(2) The employer's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who

makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (d)(2) of this section are made during, just preceding, or just after the period of the work day that the covered employee is required to be in compliance with this rule. An employee may be directed by the employer to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(4)(i) If a test required by this section is not administered within 2 hours following the determination made under paragraph (d)(2) of this section, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination made under paragraph (d)(2) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(ii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of, or impaired by, alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an employer permit the covered employee to perform or continue to perform safety-sensitive functions until:

(A) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(B) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination made under paragraph (d)(2) of this section that there is reasonable suspicion that the employee has violated the alcohol misuse provisions in §§ 120.19 or 120.37.