Revised December 23, 2019

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SECRETARY'S POLICY AND PROCEDURE MEMORANDUM (PPM) NO. 21

SUBJECT: Substance Abuse and Drug-Free Workplace Policy

EFFECTIVE DATE: December 19, 1989

INSTRUCTIONS: This memorandum supersedes all memoranda and manuals.

1. PHILOSOPHY

A. The use of illegal and unauthorized drugs and the misuse of alcohol are serious social problems that are even more unacceptable in the workplace. The State of Louisiana and the Department of Transportation and Development (DOTD) have a compelling interest in the welfare and safety of its employees and the traveling public, the maintenance of a high level of productivity, and the quality service to the general public. The establishment of a drug-free work environment in compliance with Louisiana R.S. 49:1001, et.seq., preserves property and equipment, promotes public safety, and reduces absenteeism and job-related accidents and injuries, while enhancing overall job performance, productivity levels, and the image and reputation of this Department.

B. To enhance national highway transportation safety, Congress passed the Omnibus Transportation Employee Testing Act of 1991. This act requires alcohol and drug testing of certain safety-sensitive employees in the aviation, motor carrier, railroad, and mass transit industries. The DOTD positions subject to these federal drug and alcohol testing requirements include drivers who are required by State or Federal law to have a Commercial Driver's License (CDL) and who operate Commercial Motor Vehicles (CMVs), and crew members operating LA DOTD Rural Ferries covered by the United States Coast Guard (USCG)

C. The DOTD is a drug-free workplace and prohibits the use, abuse, and presence of alcohol, illegal or unauthorized drugs and other prohibited controlled substances in the bodies of its employees while on duty, on-call, or engaged in DOTD business, on or off DOTD/State premises. The presence of alcohol, illegal or unauthorized drugs, and other prohibited controlled substances in a state vehicle, while on or off duty, is also prohibited.

Prohibited drugs include any drug which is not legally obtainable; any drug which is legally obtainable, but has been illegally obtained; prescription drugs not being used as prescribed; or any substance which affects an employee's ability to safely and competently perform assigned job duties. The presence of alcohol is indicated by a confirmed alcohol concentration of 0.02 or greater.

The DOTD does not authorize the use of "medical marijuana" to be a valid medical explanation for a safety-sensitive employee's positive drug test result. Therefore, Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use "medical marijuana." Marijuana, whether medical or not, remains a drug listed in Schedule I of the Controlled Substances Act. As such, it remains unacceptable for any safety-sensitive employee subject to drug testing under the DOTD's drug testing regulations to use marijuana.

2. EMPLOYEE RESPONSIBILITIES

To maintain a safe work environment, all DOTD employees are responsible for:

A. Reporting for duty in a physical and emotional condition that maximizes their ability to perform assigned tasks in a competent and safe manner.

B. Submitting to drug and alcohol tests as described in this policy when required by an Appointing Authority.

C. Notifying their supervisor, before reporting for duty, when they believe, or have been advised by a physician or pharmacist, that a prescription or over-the-counter medication being taken may impair their ability to perform usual job duties.

D. Maintaining prescription drugs in prescribed quantity and being able to produce original prescription containers when required.

E. Notifying their supervisor, at the beginning of the next scheduled workday, of a citation, arrest, or conviction of any drug or alcohol-related offense (including DWI), which occurs on or off duty.

3. DRUG AND ALCOHOL TESTING REQUIREMENTS

Whether announced or unannounced, applicants and employees are required to submit to drug and alcohol tests under the following circumstances:

A. **Pre-employment.** All potential DOTD employees are subject to pre-employment drug testing following a job offer, and must report for such on the same date that the pre-employment paperwork is completed. Potential DOTD employees shall be given at least a 24-hour advance notice of this requirement. This includes student appointments, job appointments, WAE (When Actually Employed) appointments, and unclassified appointments, as a condition of employment or re-employment with DOTD. Current DOTD employees are required to undergo pre-employment drug

testing before being reassigned, temporarily detailed, reallocated, promoted, or demoted from a non-safety sensitive position or a LA DOTD safety-sensitive position (Appendix B) to a USDOT safety-sensitive position (Appendix A). An offer of employment, reassignment, detail, reallocation, promotion or demotion will be withdrawn, if a confirmed positive drug test result is reported or is verified by the Medical Review Officer as either adulterated or substituted, and any current DOTD employees will be further subject to the disciplinary action specified under the Enforcement provisions of this PPM.

B. **Post-Accident/Incident**.

(1) Any employee who is directly involved in a potentially serious accident or incident in which the employee's action or inaction may have been a causative factor is subject to post-accident drug and alcohol testing.

(2) Only an Appointing Authority, using the information available at that time, can require an employee to submit to such tests. However, trained supervisors may recommend to the Appointing Authority that drug/alcohol tests be conducted based on their knowledge of the circumstances resulting in the accident. When such tests are conducted, the employee shall not operate DOTD equipment until notified of negative test results.

(3) For some accidents, however, certain federal agencies (FMCSA, USCG, or FAA) require that post-accident drug/alcohol testing be conducted on DOT safety-sensitive employees (listed in Appendix A), whose performance contributed to, or cannot be discounted as contributing to an accident. (If the employee was not performing safety-sensitive duties when the accident occurred or if the below-listed criteria is not met, tests must be conducted under LA DOTD authority on a Non-DOT chain-of-custody and breath alcohol testing form.) Appointing Authorities are required to arrange for post-accident drug/alcohol testing as follows:

(a) The Federal Motor Carrier Safety Administration (FMCSA) requires that when an accident occurs involving a commercial motor vehicle (CMV) on a public road in commerce, the CDL driver must be post-accident drug/alcohol tested when the accident results in one of the following:

1 A fatality occurs, whether or not the driver caused the accident.

2 When the driver is issued a citation for a moving traffic violation, **and** there is either:

a. Bodily injury requiring immediate medical treatment away from the scene or

b. Disabling damage to any motor vehicle involved requiring towing.

(b) The United States Coast Guard (USCG) requires that post-accident drug/alcohol tests be conducted when there is a serious marine accident that results in one or more of the following:

1 One or more deaths.

2 An injury to any person (including passengers) which requires medical treatment beyond first aid and, in the case of an employee, which renders the employee unable to perform routine job duties.

3 Damage to property in excess of $100,000, or actual or constructive total loss of either an inspected vessel or any vessel of 100 gross tons or more.

4 Discharge of any reportable quantity of a hazardous substance into navigable waters, whether or not resulting from a marine casualty.

C. **Random.** Random drug and alcohol testing are required of employees who hold safety-sensitive positions, as listed in Appendices A and B. Random tests are unannounced and spread throughout the calendar year. An employee's failure to go directly to the testing facility upon being notified of a random test constitutes a refusal to test, and the employee will be subject to disciplinary action specified under the Enforcement provisions of this PPM.

D. **Reasonable Suspicion.** Drug and alcohol testing will be conducted when a trained supervisor observes behavior or appearance that is characteristic of drug use or alcohol misuse. The decision to test must be based on specific observations concerning the employee's appearance, behavior, speech, or body odor. (The possession of alcohol, although a violation of this policy, does not constitute a need for reasonable suspicion testing.) A written record must be made of the observations leading to either a drug or alcohol test and signed by the observing supervisor and, when practicable, by two supervisors. Before subjecting any employee to reasonable suspicion testing, however, the supervisor(s) must obtain verbal approval from the appropriate Appointing Authority. Supervisors are trained on recognizing signs and symptoms of

drug use and alcohol misuse, and a written record of the training is made and retained for documentation.

E. **Return-to-Duty.** Following a violation of this policy's provisions, and in the event the employee is re-employed after a minimum of one (1) year from his/her separation date, the employee is required (at his/her own expense) to have undergone and completed any treatment prescribed by a Substance Abuse Professional (as defined by federal law [49 CFR Part 40]), and is additionally subject to drug and/or alcohol testing before returning to duty. Observed collections are permitted for this type of testing. The employee will also be required to certify in writing his/her understanding and acceptance of a rehabilitative (or return-to-work) agreement. Return-to-duty requirements continue to apply even if an employee changes jobs or has a break in service.

F. **Follow-up.** All employees, safety-sensitive and non-safety sensitive, who voluntarily, as a condition of continued employment or re-employment, participate in an substance abuse rehabilitation program are subject to unannounced drug and/or alcohol tests for a minimum of one (1) year but not more than five (5) years, as determined by the treating Substance Abuse Professional. At a minimum, the employee will be subjected to six (6) unannounced follow-up tests in the first 12 months following the employee's return-to-duty. Observed collections are permitted for this type of testing. Follow-up testing continues to apply even if employees change positions or has a break in service.

4. DRUG TESTING PROCEDURES

A. The State contracts with neutral, well-trained, professional medical personnel and certified laboratories for the collection, custody, storage, and analyses of urine specimens. A split sample collection method is used, with both the primary and split specimens shipped to the laboratory for all collections. The primary urine sample is analyzed by a Department of Health and Human Services (HHS) certified laboratory, and in strict compliance with HHS guidelines. The sample is tested for the presence of marijuana, opioids, amphetamines/methamphetamines, cocaine, and phencyclidine (PCP). A dual testing procedure is also used, where each primary sample that tests positive during an initial test is subjected to an additional, more precise confirmatory test. Any urine sample that is confirmed positive (i.e., exceeds federally adopted cutoff levels) or is adulterated or substituted is reported to the Medical Review Officer (MRO), a licensed, contracted physician.

B. Upon receipt of a positive, adulterated or substituted sample report, the MRO reviews the collection procedure, chain of custody, and testing methodology to exclude all possible medical explanations for these results. The MRO also contacts the

employee/applicant to rule out the possibility that medications, medical history, or any other conditions may have caused the positive result, before reporting these results to DOTD.

C. If the MRO confirms that the test result is positive, adulterated or substituted, the MRO shall advise the employee that he/she may, within 72 hours, request to the MRO that the split specimen (initially collected but separated and stored during the collection process) be tested in a different HHS-certified laboratory for which a positive, adulterated or substituted result was reported. This split sample testing is done at the employee's expense. DOTD will ensure that an employee's request to test his/her split specimen is conducted in a timely manner.

D. The MRO is not permitted to inform DOTD about the existence of a confirmed laboratory positive test pending verification with the employee, and DOTD is not allowed to take any disciplinary action concerning an employee until it receives the MRO's notification of a verified positive result.

5. ALCOHOL TESTING PROCEDURES

A. Evidential Breath Testing Devices (EBTs), approved by the National Highway Traffic Safety Administration (NHTSA), will be used by certified Breath Alcohol Technicians (BATs) or Screening Test Technicians (STTs). Testing sites will provide visual and aural privacy unless prevented by unusual circumstances. The employee must provide photo identification or be identified by an Employer Representative.

B. A breath alcohol screening test will be conducted, and the employee will immediately be told of the results. If the results are less than 0.02 alcohol concentration, no further testing is necessary, and the test results are reported as negative. If the screening test indicates an alcohol concentration of 0.02 or greater, a confirmation test will be performed within 30 minutes, but not less than 15 minutes, of completion of the screening test. If the confirmatory test again indicates an alcohol concentration of 0.02 or greater, the results will be immediately reported to the Appointing Authority and Designated Employer Representative (HQ/HR Employee Relations Specialist). The employee will be subject to disciplinary action specified under the Enforcement provisions of this PPM.

C. The Appointing Authority or designee will also be notified whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath, provide an adequate amount of breath (excludes medical inability) or fails to cooperate with the testing procedures in any way that prevents the completion of the test. These actions constitute a refusal to test, and the employee will be subject to disciplinary action specified under the Enforcement provisions of this PPM.

6. CONFIDENTIALITY

A. All drug and alcohol testing results and records are maintained under strict confidentiality by DOTD, the drug testing laboratory, and the MRO. Results cannot be released to others without written consent of the employee. Exceptions to these confidentiality provisions are limited to USDOT agencies when license or certification actions are required or to a decision-maker in arbitration, litigation, or administrative proceedings arising from a positive drug test.

B. Employees have the right to access all written information and documentation within seven (7) days, as required by Louisiana Revised Statute 49:1001.

C. Statistical records and reports are also maintained by DOTD, contracted physicians, and drug testing laboratories. This information is aggregated data and is used to monitor compliance with the rules and to assess the effectiveness of the drug testing program.

D. The DOTD has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in this PPM will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by this policy, discovered on DOTD/State property, or on the person of a DOTD employee to appropriate law enforcement agencies. Likewise, any employee engaged in the sale, attempted sale, distribution, or transfer of illegal drugs or controlled substances while on duty or on DOTD/State property will be referred to appropriate law enforcement authorities.

7. ENFORCEMENT

A. The use of illegal drugs and misuse of alcohol and other controlled or unauthorized substances will not be tolerated at DOTD. Substance abuse, which endangers the health and well-being of our employees and the traveling public, prevents quality service to the public and is inconsistent with this Department's mission. While the Department's position is firm, we will also resolve any reasonable doubt issues in the employee's favor.

B. Disciplinary actions will be taken after a complete and thorough review of all applicable data and in accordance with Chapter 12 of the Civil Service Rules and Secretary's Policy and Procedure Memorandum (PPM) No. 26 (Disciplinary System).

(1) Violations for which an employee is subject to <u>TERMINATION</u> are as follows:

(a) Refusal to submit to a drug or alcohol test, or failure to cooperate in any way that prevents the completion or delay of testing.

(b) Submission of an adulterated or substitute urine sample for drug testing.

(c) Buying, selling, manufacturing, dispensing, distributing, or possessing alcohol or any illegal or unauthorized controlled substance while on duty or on DOTD/State premises.

(d) Unjustifiable possession of drug-related paraphernalia while on duty or on DOTD/State premises.

(e) Unjustifiable possession of prescription drugs or any dangerous, controlled substances.

(f) Driving a DOTD vehicle or operating DOTD equipment (or driving personal vehicle while on duty) while under the influence of drugs or alcohol, where tests administered by authorized officials confirm a policy violation.

(g) The presence of alcohol, illegal or unauthorized drugs, and other prohibited controlled substances, in a state vehicle, while on or off duty.

(h) Positive drug test result or confirmed 0.04 or above breath alcohol concentration.

(i) Under all of the above circumstances, the employee will be referred to a Substance Abuse Professional.

(2) Violation for which an employee cannot return to duty for a minimum of 24 hours:

(a) Confirmed breath alcohol concentration between 0.02 and 0.039.

(3) Violation for which employee is subject to a minimum 1-week suspension, possible return-to-duty agreement, or more severe disciplinary action (including termination):

(a) Failure to notify supervisor of any prescribed drugs/medications when the employee believes, or has been advised by a physician or

pharmacist, that the prescribed drugs/medication may impair the employee's ability to perform his/her usual duties and responsibilities.

(4) Violations for which employee is subject to a minimum 1-day suspension:

(a) Failure to notify supervisor of off-duty arrest or conviction of a driving while intoxicated, drug, or drug-related offense at the beginning of the next scheduled workday, when the employee occupies a safety-sensitive position. (See positions listed in Appendices A and B.)

(b) Failure to maintain prescribed drugs/medication in prescribed quantity and unable to produce original prescription container.

(5) Violation for which employee is subject to written reprimand:

(a) Failure to notify supervisor of off-duty arrest or conviction of a DWI, drug, or drug-related offense at the beginning of the next scheduled workday, when the employee occupies a non-safety sensitive position.

8. EMPLOYEE ASSISTANCE PROGRAM (EAP)

A. Early recognition and treatment of drug and/or alcohol dependency are essential to successful rehabilitation. Those employees recognizing a substance abuse problem should seek assistance from the Department's EAP Coordinator in the Human Resources Section. Referrals are held in strict confidence, but supervisors and Appointing Authorities who need to know will be kept abreast of the employee's treatment, leave needs, and prognosis on a case-by-case basis.

B. Employees who are referred to the EAP Coordinator by their supervisor, or who, as a condition of continued employment, participate in an alcohol/substance abuse rehabilitation program are subject to the return-to-duty and follow-up tests, as specified in paragraphs 3.E. and 3.F.

9. GENERAL PROVISIONS

A. Prior to employing a prospective employee in a USDOT safety-sensitive position (Appendix A), DOTD is required to check drug and alcohol testing records from the prospective employee’s previous DOT-regulated employers, for the years specified by the particular USDOT mandating agency (FMCSA, USCG, or FAA). In order to request these records, the prospective employee must provide DOTD with written consent. Should a prospective employee fail to provide the written consent, the offer of employment, promotion, reassignment, reallocation, detail or demotion will be

withdrawn.

If any violations of the DOT drug and alcohol regulations are reported, the previous employer or the prospective employee must provide documentation of successful completion of the DOT required SAP and follow-up testing program. If this documentation is not provided, the employment offer will be withdrawn.

B. The DOTD reserves the right to have a licensed physician of its own choice determine if use of a prescription drug/medication produces effects which may impair the employee's performance or increase the risk of injury to the employee or others. If such is the case, DOTD will suspend the work activity of the employee during the period in which the employee's ability to safely perform his/her job may be adversely affected. The employee may be allowed to use accrued leave, placed on leave without pay, or where possible, have his/her job duties modified.

C. Although substance abuse testing outlined in this policy is restricted to the five previously specified drugs and alcohol, DOTD reserves the right to require employees to submit to additional tests, if circumstances warrant. Such tests will only be administered when post-accident and reasonable suspicion drug/alcohol testing produce negative results, and the employee's action/inaction clearly reveals impairment of ability to safely perform job duties. Separate samples will be collected for these additional tests, and the testing process will comply with all DHH regulations.

Shawn D. Wilson, Ph.D.
Secretary

Attachments

APPENDIX A

Positions subject to drug and alcohol testing, including random testing, as mandated by the United States Department of Transportation (USDOT) and the Federal Motor Carrier Safety Administration (FMCSA).

JOBS REQUIRING CDL

Electrician (all signal except Section 45/Gang 761) (District 02/Gang 007 w/air brake endorsement)
Electrician Specialist (all signal except Section 45/Gang 761) (District 02/Gang 007 w/air brake endorsement)
Electrician Specialist Foreman (all signal except Section 45/Gang 761) (District 02/Gang 007 & 775 w/air brake endorsement)
Electrician Specialist Leader (all signal except Section 45/Gang 761) (District 02/Gang 007 w/air brake endorsement)
Electronic Technician Trainee (all signal except Section 45/Gang 761)
Electronic Technician (all signal except Section 45/Gang 761)
Electronic Technician Advanced (all signal except Section 45/Gang 761)
Electronic Technician Supervisor (all signal except Section 45/Gang 761)
Engineering Technician 1- 7 {Section 67/Gang 003 (Geotech. Exploration)}
Equipment Inspector (all except Section 42/Gang 009)
Highway Foreman 1
Highway Foreman 2 (except former Bridge Operator Foreman, District Sign/Traffic Supervisor, Navigational Lock Master and Tunnel Maintenance/Operator Supervisor)
Maintenance Repairer 2 (only District 02/Gang 775)
Mechanic – Body Repairer 2 (only Section 42/Gang 071/Position No. 83424)
Mechanic 3 (only Section 42/Gang 071/Position No. 12083)
Mechanic Supervisor B (only Section 42/Gang 071/Position No. 117481)
Mobile Equipment Operator 1/Heavy
Mobile Equipment Operator 2/Heavy
Mobile Equipment Operator 2
Roadside Development Herbicide Applicator
Trades Apprentice (All signal except Section 45/Gang 761) (District 02/Gang 007 w/air brake endorsement) (Bridge, except Section 51)

Positions subject to drug and alcohol testing, including random testing, as mandated by the United States Department of Transportation (USDOT) and the Federal Aviation Authority (FAA).

AVIATION PERSONNEL

Aircraft Fleet Chief Pilot
Aircraft Pilot 2

APPENDIX A (cont'd)

MARINE PERSONNEL

Positions subject to drug and alcohol testing as mandated by the United States Department of Transportation (USDOT) and United States Coast Guard (USCG). Random drug testing is mandated for marine personnel by the United States Coast Guard (USCG); however, random alcohol testing is required by LA DOTD (Non-DOT) authority.

Marine Chief Engineer
Marine Deckhand
Marine Deckhand/Toll Collector
Marine Engineer 1
Marine Engineer 2Marine Master 1
Marine Master 2
Marine Master 3
Marine Oiler
Marine Operations Superintendent 1
Marine Operations Superintendent 2
Marine Operator 2

APPENDIX B

Additional safety-sensitive positions subject to drug and alcohol testing, including random testing, as required by LA DOTD (Non-DOT) authority.

Bridge and Lock Operator 1Bridge and Lock Operator 2District Sign Specialist 1
District Sign Specialist 2
District Sign Specialist Leader
Highway Foreman 2 (only former Bridge Operator Foreman, District Sign/Traffic Supervisor, Navigational Lock Master and Tunnel Maintenance/Operator Supervisor)
Engineering Technician 1-4 (Districts, only Gang 051, and Section 51 employees performing bridge inspection duties)
Engineering Technician 5 (former Bridge Inspection Team Leader)
Engineering Technician 7 (former Bridge Maintenance & Inspection Supervisor)
Engineering Technician DCL {former Staff Engineer Specialist Advanced-Bridge Maintenance (Section 51)}
Maintenance Repairer 1 (only District 02/Gang 912 - Navigational Locks)
Maintenance Repairer 2 (only District 02/Gang 912 - Navigational Locks)
Mechanic 1
Mechanic 2
Mechanic 3 (except Section 42/Gang 071/Position No. 12083 and District 02/Position No. 176915, 180249, 7219, 13007, and 125007)
Mechanic 4
Mechanic – Body Repairer 1
Mechanic – Body Repairer 2 (except Section 42/Gang 071/Position No. 83424)
Mobile Equipment Operator 1
Professional Engineering Staff (Section 51 only)
Trades Apprentice (Repair Shop only)
Welder (Section 51/Bridge)
Welder Forman (Section 51/Bridge)
Welder Master (Section 51/Bridge)

Marine safety-sensitive positions subject to drug and alcohol testing, including random testing, as required by LA DOTD (Non-DOT) authority.

Marine Maintenance Superintendent 1
Marine Maintenance Superintendent 2
Marine Mechanic 1
Marine Mechanic 2
Marine Trades Helper (except Gang 003)