



To: Members, Passenger Vessel Association

Re: Materials for Checking Drug and Alcohol Testing History of Prospective Employee for Safety-Sensitive Position

A rule issued by the U.S. Department of Transportation (DOT) requires you as a marine employer to seek to obtain the drug and alcohol testing history of a prospective employee for a safety-sensitive position on a vessel. To be prudent, you should assume that every position on board a passenger vessel is a safety-sensitive position.

You must first obtain the written consent of the prospective employee to seek the drug and alcohol testing history over the past two years from prior transportation employers. **If the prospective employee does not provide written consent, you cannot place the prospective employee in a safety-sensitive position.**

Please note that the regulation permits employment of the prospective employee in a safety-sensitive position, even if the prior employer fails to provide the requested information, as long as you have made a good faith effort to obtain the information.

To show full compliance with the regulation, it is critical that you accurately document all actions you take.

To assist you in complying with the federal rule, here are three templates for your use. They are in Word format so that you can modify them as necessary. In certain places, it will be appropriate for you to insert your company's name and contact information, as well as the name of the prospective employee. PVA encourages you to print these templates on your company letterhead and use them to assist you in complying with the DOT rule: The three documents are:

- (1) Request to Prior Employer to Obtain Drug and Alcohol Testing Information of Prospective Employee;
- (2) Prospective Employee's Consent for Release of Drug and Alcohol Testing Information; and

(3) Response to Employer's Request for Drug and Alcohol Testing Information of Your Prior Employee.

The text of the applicable federal regulation is also included.

These templates are provided by the Passenger Vessel Association as a service to its members. If you have any questions or comments, please contact PVA Headquarters at 703-807-0100 or pva@vesselalliance.com.

Request to Prior Employer To Obtain Drug and Alcohol Testing Information Of Prospective Employee

To: *[Name of Prior Employer as Identified by Employee]*

From: *[Name of Your Company]*

Re: Desire of *[name of prospective employee]* to obtain employment in a safety-sensitive position with *[your company name]*

Date:

The above-named individual wishes to be employed with this marine employer in a safety-sensitive position. This person has identified your company as a previous DOT-regulated employer for which drug and alcohol testing was performed.

In accordance with the U.S. Department of Transportation's requirements in Title 49, *Code of Federal Regulations*, section 40.25, this is a request for you to provide us with the drug and alcohol testing results of the individual over the past two years.

The above-named individual has provided us with written consent to obtain this information from you. A copy of the consent form is enclosed.

Specifically, as required by the federal regulation, we request information on:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- (2) Verified positive drug tests;
- (3) Refusals to be tested (including verified adulterated or substituted drug test results);
- (4) Other violations of DOT agency drug and alcohol testing regulations; and
- (5) If the individual violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

In addition, as required by the federal regulation, we request any drug or alcohol testing information you may have obtained from previous employers of the above-named individual under Title 49 *Code of Federal Regulations* section 40.25 or other applicable DOT agency regulations.

We will comply with the confidentiality requirements of Title 49 *Code of Federal Regulations* Section 40.25 regarding information you provide pursuant to this request.

If you have questions about this request, please contact us at *[your phone number]*. Thank you for your assistance.

[To be filled out by previous employer pursuant to Title 49, *Code of Federal Regulations*, Section 40.25]

1. Has this person ever been tested positive for a controlled substance in the last two years?
Yes _____
No _____

2. Has this person ever had an alcohol test with a Breath Alcohol Concentration of 0.04 or greater in the last two years?
Yes _____
No _____

3. Has this person ever refused a required test for drugs or alcohol in the last two years?
Yes _____
No _____

4. Have there been any other violations of DOT agency drug and alcohol testing regulations with regard to this person?
Yes _____
No _____
If yes, please explain

5. If this person violated a DOT drug and/or alcohol regulation as stated above, please provide documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests), if applicable.

Name of Person Providing Information _____

Title and Company _____

Mailing Address _____

Telephone _____

Signature _____ Date _____

Prospective Employee's Consent for Release Of Drug and Alcohol Testing Information

To: Prospective Employee

From: *[Name of Your Company]*

Re: Consent for Release of Drug and Alcohol Testing Information

Date:

You have applied to be employed with *[name of your company]* in a safety-sensitive position. As a marine employer, this company must comply with the U.S. Department of Transportation's requirements in Title 49, *Code of Federal Regulations*, section 40.25. Therefore, we must seek your drug and alcohol testing information for the past two years from any Department of Transportation (DOT)-regulated employer, and we need your written permission to ask for this required information. Without your written consent, federal regulations prohibit us from employing you in a safety-sensitive position.

Consent for Release of Drug and Alcohol Testing Information Records

Applicant's Name _____

Applicant's Address _____

Social Security Number _____

Telephone _____

In the past two years, have you held any type of position with any Department of Transportation (DOT)-regulated employer (for instance, maritime, trucking, aviation, railroad, etc.) in which you were required to undergo drug and alcohol testing?

Yes _____ (if so, provide the requested information for each employer
on next page)

No _____

In the past two years, have you tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which you applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules?

Yes _____

No _____

Prior DOT-Regulated Employers During the Preceding Two Years

Employer #1

Company Name _____

Address _____

Phone _____

Fax _____

Employment Dates _____

Contact Person _____

Employer #2

Company Name _____

Address _____

Phone _____

Fax _____

Employment Dates _____

Contact Person _____

By my signature, I authorize my previous employers to release my Drug and Alcohol Testing Records to *[name of your company]*. I also certify that I have not tested positive, or refused to test, on any pre-employment drug or alcohol test within the past two years administered by a DOT-regulated employer that did not hire me. My signature also certifies that I have listed all my DOT-regulated employers from the previous 24 months.

_____ Prospective Employee's Printed Name

_____ Prospective Employee's Signature

_____ Date

Response to Employer's Request For Drug and Alcohol Testing Information Of Your Prior Employee

To: *[Name of DOT-Regulated Company Seeking Prior Drug and Alcohol Test Information of Prospective Employee]*

From: *[Name of Your Company]*

Re: Response to your Request for Drug and Alcohol Testing Information of *[Name of Your Former Employee]* for the Past Two Years

Date:

In compliance with Title 49, Section 40.25, *Code of Federal Regulations*, you have requested the drug and alcohol testing history for the past two years for the above-named individual, an applicant for employment in a safety-sensitive position with your company. You have provided a written authorization for the release of such information signed by the above-named individual.

In compliance with Title 49, Section 40.25, *Code of Federal Regulations*, we are providing the requested drug and alcohol testing information.

Signed _____

Name _____

Title and Company _____

Address _____

Phone _____

Date _____

Title 49, Code of Federal Regulations

TITLE 49--TRANSPORTATION

Subtitle A--Office of the Secretary of Transportation

PART 40--PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS--

Subpart B--Employer Responsibilities

Section 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

(1) Alcohol tests with a result of 0.04 or higher alcohol concentration;

(2) Verified positive drug tests;

(3) Refusals to be tested (including verified adulterated or substituted drug test results);

(4) Other violations of DOT agency drug and alcohol testing regulations; and

(5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

(c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to

perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

(f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

(g) The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b) (5) and (e) of this section).