

Alcohol and Drug Rules

ALCOHOL AND DRUG RULES: AN OVERVIEW

The following is a general overview of the Federal Motor Carrier Safety Administration's (FMCSA) alcohol and drug testing rules for persons required to obtain a commercial driver's license (CDL). The information is intended to provide a general summary of the rules; it should not be relied upon to fulfill all legal requirements stipulated in the regulations. It does not contain many of the requirements or special circumstances detailed in the FMCSA and DOT rules. A comprehensive list of the alcohol and drug testing rules published by the FMCSA and the DOT Office of the Secretary (OST) applicable to CDL drivers and their employers is available at the end of this document.

WHAT ARE THE RULES?

The FMCSA regulations require alcohol and drug testing of drivers, who are required to have a CDL. The DOT rules include procedures for urine drug testing and breath alcohol testing. Urine drug testing rules were first issued in December 1989. In 1994, the rules were amended to add breath alcohol testing procedures. In the years following the implementation of the drug and alcohol testing requirements, a number of factors including changes in testing technology, and the issuance of a number of written interpretations, required OST to review and revise the rules. In December of 2000, OST published final rules that incorporated these factors, as well as input from the public sector, into the existing drug and alcohol testing regulations. In August of 2001, the FMCSA revised modal specific drug and alcohol testing regulations published in 49 Code of Federal Regulations Part 382 to reflect the revisions made by OST.

WHO IS AFFECTED BY THESE RULES?

The FMCSA rules apply to safety-sensitive employees, who operate commercial motor vehicles requiring a CDL.

Examples of drivers and employers that are subject to these rules are (the following does not represent a complete listing):

- Anyone who owns or leases commercial motor vehicles
- Anyone who assigns drivers to operate commercial motor vehicles
- Federal, State, and local governments
- For-Hire Motor Carriers
- Private Motor Carriers
- Civic Organizations (Disabled Veteran Transport, Boy/Girl Scouts, etc.)
- Churches

WHAT ALCOHOL USE IS PROHIBITED?

Alcohol is a legal substance; therefore, the rules define specific prohibited alcohol-related conduct. Performance of safety-sensitive functions is prohibited:

- While using alcohol.
- While having a breath alcohol concentration of **0.04 percent** or greater as indicated by an alcohol breath test.
- Within four hours after using alcohol.

In addition, refusing to submit to an alcohol test or using alcohol within eight hours after an accident or until tested (for drivers required to be tested) are prohibited.

WHAT ALCOHOL TESTS ARE REQUIRED?

The following alcohol tests are required:

- Post-accident - conducted after accidents on drivers whose performance could have contributed to the accident (as determined by a citation for a moving traffic violation) and for all fatal accidents even if the driver is not cited for a moving traffic violation.
- Reasonable suspicion - conducted when a trained supervisor or company official observes behavior or appearance that is characteristic of alcohol misuse.
- Random - conducted on a random unannounced basis just before, during, or just after performance of safety-sensitive functions.
- Return-to-duty and follow-up - conducted when an individual who has violated the prohibited alcohol conduct standards returns to performing safety-sensitive duties. Follow-up tests are unannounced. At least 6 tests must be conducted in the first 12 months after a driver returns to duty. Follow-up testing may be extended for up to 60 months following return to duty.

HOW DOES RANDOM ALCOHOL TESTING WORK?

Random alcohol testing must be conducted just before, during, or just after a driver's performance of safety-sensitive duties. The driver is randomly selected for testing from a "pool" of subject drivers. The testing dates and times are unannounced and are reasonably spread throughout the year. Each year, the number of random tests conducted by the employer must equal at least 10% of average number of driver positions subject to the regulations.

HOW WILL ALCOHOL TESTING BE DONE?

The rules allow for screening tests to be conducted using saliva devices or breath testing using evidential breath testing (EBT) and non-evidential breath testing devices approved by the National Highway Traffic Safety Administration

(NHTSA). NHTSA periodically publishes a list of approved devices in the Federal Register.

Two tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. The driver and the individual conducting the confirmation breath test (called a breath alcohol technician (BAT)) complete the alcohol testing form to ensure that the results are properly recorded. The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results. The confirmation test results determine any actions taken.

Testing procedures that ensure accuracy, reliability and confidentiality of test results are outlined in the Part 40 rule. These procedures include training and proficiency requirements for the screening test technicians (STT), breath alcohol technicians (BAT), quality assurance plans for the breath testing devices (including calibration requirements for a suitable test location), and protection of driver test records.

WHO DOES THE TESTING?

Employers are responsible for implementing and conducting the testing programs. They may do this using their own employees or contract services, or by joining together in a consortium that provides services to all member companies. Law enforcement officers will not conduct the tests as part of roadside or other inspections. However, under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable. Any individual conducting the test must be trained to operate the EBT and be proficient in the breath testing procedures.

WHAT ARE THE CONSEQUENCES OF ALCOHOL MISUSE?

Drivers who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. Drivers who have engaged in alcohol misuse cannot return to safety-sensitive duties until they have been evaluated by a substance abuse professional and complied with any treatment recommendations to assist them with an alcohol problem. To further safeguard transportation safety, drivers who have any alcohol concentration (defined as 0.02 or greater) when tested just before, during or just after performing safety-sensitive functions must also be removed from performing such duties for 24 hours. If a driver's behavior or appearance suggests alcohol misuse, a reasonable suspicion alcohol test must be conducted. If a breath test cannot be administered, the driver must be removed from performing safety-sensitive duties for at least 24 hours.

HOW WILL EMPLOYEES KNOW ABOUT THESE NEW RULES?

Employers must provide detailed information about alcohol misuse, the employers' policy, the testing requirements, and how and where drivers can get help for alcohol abuse. Supervisors of safety-sensitive drivers must attend at least one hour of training on alcohol misuse symptoms and indicators used in making determinations for reasonable suspicion testing.

ARE EMPLOYEES ENTITLED TO REHABILITATION?

Drivers who violate the alcohol misuse rules will be referred to a substance abuse professional for evaluation. Any treatment or rehabilitation would be provided in accordance with the employer's policy or labor/management agreements. The employer is not required under these rules to provide rehabilitation, pay for treatment, or reinstate the driver in his/her safety-sensitive position. Any employer who does decide to return a driver to safety-sensitive duties must ensure that the driver: 1) has been evaluated by a substance abuse professional; 2) has complied with any recommended treatment; 3) has taken a return-to-duty alcohol test (with a result less than 0.02); and 4) is subject to unannounced follow-up alcohol tests.

HOW WILL THE FMCSA KNOW IF THESE RULES ARE BEING FOLLOWED?

Employers are required to keep detailed records of their alcohol misuse prevention programs. The FMCSA will conduct inspections or audits of employers' programs. Additionally, selected employers will have to prepare annual calendar year summary reports for the FMCSA. These reports will be used to help monitor compliance and enforcement of the rules, as well as to provide data on the extent of alcohol misuse and the need for any future program and regulatory changes.

ARE DRIVER ALCOHOL TESTING RECORDS CONFIDENTIAL?

Yes. Test results and other confidential information may be released only to the employer and the substance abuse professional. Any other release of this information is only with the driver's written consent. If a driver initiates a grievance, hearing, lawsuit, or other action as a result of a violation of these rules, the employer may release relevant information to the decision maker.

WILL FOREIGN OPERATORS HAVE TO COMPLY WITH THESE RULES?

Yes. The FMCSA requires foreign motor carriers to comply with the alcohol rules when their drivers operate in the United States.

WHAT ABOUT DRUG TESTING?

The drug testing rules cover the same drivers as the alcohol testing rules. The types of tests required are: pre-employment; reasonable suspicion; post-accident; random; return-to-duty; and follow-up.

HOW IS DRUG TESTING DONE?

Drug testing is conducted by analyzing a driver's urine specimen. The analysis is performed at laboratories certified and monitored by the Department of Health and Human Services (DHHS). The list of DHHS approved laboratories is published monthly in the Federal Register. The driver provides a urine specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody document, and prepares the specimen and accompanying paperwork for shipment to a drug-testing laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security; proper identification and integrity are not compromised. The Omnibus Transportation Employee Testing Act of 1991 requires that drug testing procedures for commercial motor vehicle drivers include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Both bottles are sent to a laboratory. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the driver has 72 hours to request the split specimen be sent to another DHHS-certified laboratory for analysis. This split specimen procedure essentially provides the driver with an opportunity for a "second opinion".

WHAT DRUGS ARE TESTED FOR?

All urine specimens are analyzed for the following drugs:

1. Marijuana (THC metabolite)
2. Cocaine
3. Amphetamines
4. Opiates (including heroin)
5. Phencyclidine (PCP)

The testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications or preparations are not reported as positive results.

WHO REVIEWS AND INTERPRETS THE LABORATORY RESULTS?

All drug test results are reviewed and interpreted by a physician (Medical Review Officer (MRO)) before they are reported to the employer. If the laboratory reports a positive result to the MRO, the MRO contacts the driver (in person or by telephone) and conducts an interview to determine if there is an alternative medical explanation for the drugs found in the driver's urine specimen. If the driver provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer.

WHAT DRUG USE IS PROHIBITED?

The drug rules prohibit any unauthorized use of the controlled substances. Illicit use of drugs by safety-sensitive drivers is prohibited on or off duty. The FMCSA has some additional rules that prohibit the use of legally prescribed controlled substances (such as barbiturates, amphetamines, morphine, etc.) by safety-sensitive drivers involved in interstate commerce.

WHAT ARE THE CONSEQUENCES OF A POSITIVE DRUG TEST?

A driver must be removed from safety-sensitive duty if he/she has a positive drug test result. The removal cannot take place until the MRO has interviewed the driver and determined that the positive drug test resulted from the unauthorized use of a controlled substance. A driver cannot be returned to safety-sensitive duties until he/she has been evaluated by a substance abuse professional, has complied with recommended rehabilitation, and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the driver's continued abstinence from drug use is also required.

HOW DOES RANDOM DRUG TESTING WORK?

Employers are responsible for conducting random, unannounced drug tests. The total number conducted each year must equal at least 50% of the safety-sensitive drivers. Some drivers may be tested more than once each year; some may not be tested at all depending on the random selection. Random testing for drugs does not have to be conducted in immediate time proximity to performing safety-sensitive functions. Once notified of selection for testing, however, a driver must proceed immediately to a collection site to accomplish the urine specimen collection.

ARE EMPLOYEE EDUCATION AND TRAINING REQUIRED?

Employers must provide information on drug use and treatment resources to safety-sensitive drivers. All supervisors and officials of businesses with safety-sensitive drivers must attend at least one hour of training on the signs and symptoms of drug abuse. This training is necessary to assist supervisors and company officials in making appropriate determinations for reasonable suspicion testing.

ARE DRIVER DRUG TESTING RECORDS CONFIDENTIAL?

Yes. Driver drug testing results and records are maintained under strict confidentiality by the employer, the drug-testing laboratory, and the medical review officer. They cannot be released to others without the written consent of the driver. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation or administrative proceedings arising from a positive drug test. Statistical records and reports are maintained by employers 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 programs.

WHERE CAN I GET MORE INFORMATION?

ACCESS TO THE FMCSA WEBSITE: www.fmcsa.dot.gov

For assistance with the procedures of how to conduct an alcohol or drug test contained in Part 40, contact:

Office of the Secretary of Transportation
Office of Drug and Alcohol Program Compliance,
Room 10317
400 Seventh Street, S.W.
Washington, D.C. 20590
(202) 366-3784

LISTS OF RULES PUBLISHED

February 15, 1994

Part II

Common Preamble; Limitation on Alcohol Use by Transportation Workers

Part III

Final Rule, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Proposed Rule, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Notice, Highway Safety Programs; Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids

Part VII

Final Rule; Controlled Substances & Alcohol Use and Testing

Other Important Documents Published in 1994:

April 20, 1994 NHTSA Model Specs for EBTs

August 19, 1994 DOT Final Rule - Technical amendments

November 23, 1994 FMCSA Obsolete Regulations
December 2, 1994 NHTSA Model Specs Screening Devices
December 2, 1994 Common DOT Rule Blood; Withdrawal
December 2, 1994 Common DOT Rule Random Drug Testing
December 16, 1994 NHTSA Correction Screening Devices
December 29, 1994 NHTSA Model Specs Calibration Units

1995 Federal Register Publications

March 13, 1995 FMCSA Final Rule - MIS Recordkeeping
March 16, 1995 NHTSA Model Specs for EBTs
April 19, 1995 DOT New Custody & Control Form
April 20, 1995 DOT Rule - Non-Evidential Screeners
May 10, 1995 Common DOT Rule: Pre-employment Alcohol
September 22, 1995 FMCSA Foreign Applicability Final Rule

1996 Federal Register Publications

March 8, 1996 FMCSA Technical Amendments

2000 Federal Register Publication

December 19, 2000 Final Rule Procedures for Transportation Workplace Drug and Alcohol Testing Programs

2001 Federal Register Publication

August 17, 2001 Final Rule Controlled Substances and Alcohol Use and Testing

Specific questions addressing any of this material may be directed to the FMCSA Division Office in your State. For a listing of telephone numbers, please click on the following link:

http://www.fmcsa.dot.gov/about_fmcsa/who_we_are/offices/fieldoffs.htm or call FMCSA's main number at 1-800-832-5660.