

MEMORANDUM

To: PERSONNEL MANAGEMENT LIAISONS Date: June 17, 1994
Reference Code: 94-34

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Labor Relations Officers
Personnel Officers

From: Department of Personnel Administration

Subject: Federal Department of Transportation Drug/Alcohol Testing Regulations

On February 15, 1994, the Federal Department of Transportation issued its final regulations for drug and alcohol testing in the transportation industry. The Federal Highway Administration (FHWA) portion of these regulations make various changes in the testing program in the motor carrier industry. Most significant to the State is the FHWA's extension of the full Federal drug and alcohol testing requirements (including random testing) to all drivers who must possess a commercial drivers license (CDL), including those who work for government.

The State of California must implement these regulations by January 1, 1995. The Department of Personnel Administration (DPA) will provide assistance and coordination to State departments in implementing them; however, departments will have the primary responsibility to ensure the regulations are implemented within their own agency by the January 1, 1995 effective date. Attached, for your information, is a summary of the drug and alcohol testing requirements.

There are many issues that will need to be addressed as these regulations are implemented. DPA has been working with a group that includes staff from those departments employing the largest number of affected employees, and other State agencies impacted by the Federal regulations. DPA plans to meet with this working group throughout the implementation process and will be sharing information with all affected departments on an ongoing basis.

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In addition to the most heavily impacted departments, DPA would like to identify other State departments that have employees who must possess CDLs. If your agency has any employees who must possess a CDL to perform their State job, please identify the number and classes of affected employees and notify DPA by June 24, 1994. Please send your responses to:

Sydney Perry
Policy Development Office
Department of Personnel Administration
1515 Street, North Building, Suite 400
Sacramento, CA 95814-7243

OR

FAX (916) 324-0524, CALNET 454-0524

We are planning to meet with all agencies that are impacted in the near future to provide an overview of the regulations and address implementation issues.

If you have questions or desire additional information regarding this program, you may contact Sydney Perry, Policy Development Office at (916) 445-9244, CALNET 485-9244.



Peter J. Strom, Assistant Chief
Policy Development Office

Attachment

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Applicability and Implementation Dates

APPLICABILITY

With few exceptions, drivers required to have a commercial driver's license (CDL) are subject to the controlled substance and alcohol testing rules. A CDL is required for drivers operating a vehicle in excess of 26,000 pounds GVWR, designed to carry 16 or more passengers (including the driver), or of any size, which is used in the transportation of a placardable amount of hazardous material. This extends those currently covered by the rule to include both inter- and intrastate truck and motor coach operations, including those operated by:

- Federal, State, local and tribal governments
- Church and civic organizations
- Farmers and custom harvesters (unless exempted)
- Apiarian industries
- For-hire and private companies

Exemptions

- Drivers exempted by their issuing state from commercial driver's license requirements.
- Drivers of vehicles less than 26,001 pounds GVWR, required by their state to possess a commercial driver's license.
- Drivers whose place of reporting for duty (home terminal) is located outside the territory of the United States.
- Active-duty military personnel.

IMPLEMENTATION

The alcohol and controlled substances testing rules shall be implemented as follows:

- Large Employers (50 or more drivers as of March 17, 1994) - must implement the requirements of the rule beginning January 1, 1995.
- Small Employers (0 - 49 drivers as of March 17, 1994) - must implement the requirements of the rule beginning January 1, 1996.

NOTE: Those employers subject to controlled substance testing prior to this rule must implement split sample urine collection procedures by August 15, 1994.

This document provides an overview of a specific section of the Federal Highway Administration (FHWA) drug use and alcohol testing rules published February 15, 1994. The information in this document is a general summary of the rules; it should not be relied upon for the legal requirements of the rules. For more information on the rules, refer to the preamble of the rule (common to all modes of transportation) and 49 CFR Parts 40 and 382.

Updated: April 1, 1994

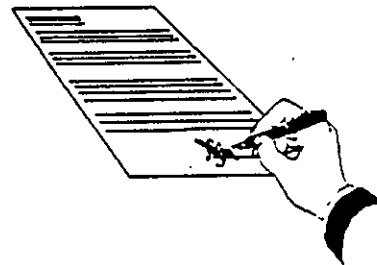


Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Employer's Drug and Alcohol Policy Requirements

In order to have a successful drug and alcohol testing program, it is important drivers know what is expected of them. The Federal Highway Administration requires each employer provide educational materials that explain the requirements of the alcohol and drug testing regulations and the employer's policies and procedures with respect to meeting those requirements.



The employer must ensure a copy of these materials is distributed to each driver (who shall sign for receipt of the documents), prior to the start of alcohol and controlled substances testing. The materials required to be made available to drivers shall include, at a minimum, detailed discussion of the following:

- The identity of the person designated by the employer to answer driver questions about the materials.
- Which drivers are subject to the alcohol misuse and controlled substance requirements.
- Explanation of what constitutes a safety-sensitive function, so as to make clear what period of the work day the driver is required to be in compliance.
- Specific information concerning driver conduct that is prohibited.
- The circumstances under which a driver will be tested for alcohol and/or controlled substances.
- The procedures that will be used to test for the presence of alcohol and controlled substances.
- The requirement that a driver submit to alcohol and controlled substance tests.
- An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test.
- The consequences for drivers found to have violated the prohibitions of this rule, including the immediate removal of the driver from safety-sensitive functions.
- The consequences for drivers found to have an alcohol concentration level of 0.02 or greater, but less than 0.04.
- Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life. Signs and symptoms of an alcohol or controlled substances problem, and available methods of intervening when an alcohol or a control substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

This document provides an overview of a specific section of the Federal Highway Administration (FHWA) drug use and alcohol testing rules published February 15, 1994. The information in this document is a general summary of the rules; it should not be relied upon for the legal requirements of the rules. For more information on the rules, refer to the preamble of the rule (common to all modes of transportation) and 49 CFR Parts 40 and 382.

Updated: April 1, 1994

Alcohol and Drug Testing Regulations for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Consequences to Drivers Engaging in Conduct Prohibited by the Federal Highway Administration's Drug Use and Alcohol Misuse Rules

Drivers who are known to have engaged in prohibited behavior, with regard to alcohol misuse or use of controlled substances, are subject to the following consequences:

- Drivers shall not be permitted to perform safety-sensitive functions.
- Drivers shall be advised by the employer of the resources available to them in evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances.
- Drivers shall be evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.
- Before a driver returns to duty requiring performance of a safety-sensitive function, he/she shall undergo a return-to-duty alcohol test with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substance use.
- In addition, each driver identified as needing assistance in resolving problems associated with alcohol or controlled substances shall be evaluated by a SAP to determine that the driver has followed the rehabilitation program prescribed.
- The driver shall also be subject to unannounced follow-up alcohol and controlled substance testing. The number and frequency of such follow-up testing shall be as directed by the SAP, and consist of at least six tests in the first 12 months.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Prohibited Alcohol and Controlled Substance-Related Conduct

The following alcohol and controlled substance-related activities are **prohibited** by the Federal Highway Administration's drug use and alcohol misuse rules for drivers of commercial motor vehicles (CMVs):

- ▶ Reporting for duty or remaining on duty to perform safety sensitive functions while having an alcohol concentration of 0.04 or greater.
- ▶ Being on duty or operating a CMV while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken.
- ▶ Using alcohol while performing safety-sensitive functions.
- ▶ When required to take a post-accident alcohol test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- ▶ Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion or follow-up testing requirements.
- ▶ Reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the driver uses any controlled substance, except when instructed by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV.
- ▶ Reporting for duty, remaining on duty or performing a safety-sensitive function, if the driver tests positive for controlled substances.



Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Types of Testing

In order to enhance highway transportation safety, Congress passed the Omnibus Transportation Employee Testing Act of 1991. The Act required the FHWA to establish regulations requiring CMV drivers to be tested for use of controlled substances and the misuse of alcohol. The following are the types required to be performed:

- Pre-employment Testing
- Random Testing
- Reasonable Suspicion Testing
- Post-Accident Testing
- Return-to-Duty Testing
- Follow-up Testing

SPLIT SAMPLE TESTING

Controlled substances tests conducted on or after August 15, 1994 must follow split sample procedures. Under this provision, a driver whose urine sample has tested positive for a controlled substance has the option (within 72 hours of being notified by the MRO) of having the other portion of the split sample tested at another laboratory. If the second portion of the sample also tests positive, then the driver is subject to the sanctions contained in the regulations. If the second portion produces a negative result, or for any reason the second portion is not available, the test is considered negative and no sanctions are imposed.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Return-to-Duty and Follow-Up Testing

RETURN-TO-DUTY TESTING

Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding alcohol misuse, the driver shall undergo a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02.

Each employer shall also ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding controlled substance use, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

In the event a return-to-duty test is required, the driver must also be evaluated by a substance abuse professional (SAP) and participate in any assistance program prescribed.

FOLLOW-UP TESTING

Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, each employer shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the substance abuse professional. The driver shall be subject to a minimum of six follow-up controlled substance and/or alcohol tests in the first 12 months.

Alcohol follow-up testing shall be performed only when the driver is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Pre-employment Alcohol and Controlled Substance Testing

Prior to the first time a driver performs safety-sensitive functions (any of those on-duty functions listed in the Federal Motor Carrier Safety Regulations section 395.2 *On-duty time*, paragraphs 1 through 7 - such as time spent driving vehicle, inspecting vehicle, loading vehicle, etc.) for an employer, the driver must submit to testing for alcohol and controlled substances.

No employer shall allow a driver to perform a safety-sensitive function unless the result of the breath alcohol test indicates a breath alcohol level of less than 0.02, and has received a controlled substance test result from the medical review officer (MRO) indicating a verified negative result.

If the results of the driver's alcohol test indicate a blood alcohol concentration of 0.02 or greater, but less than 0.04, the driver shall not be permitted to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following the administration of the test.

Exceptions:

An employer is not required to administer a pre-employment alcohol test if the driver has undergone a DOT required alcohol test within the previous 6 months, with a result indicating a blood alcohol level below 0.04. However, the employer must ensure that no prior employer of the driver has record of violations of any DOT alcohol misuse rules for the driver in the previous 6 months.

In addition, an employer is not required to administer a pre-employment controlled substance test if the following conditions are met:

- The driver must have participated in a drug testing program meeting the requirements of this rule within the previous 30 days; and*
- While participating in this program the driver must have either been tested for controlled substances in the previous 6 months, or participated in a random drug testing program for the previous 12 months; and*
- The employer must ensure that no prior employer of the driver has record of violations of any DOT controlled substance use rule for the driver in the previous 6 months.*

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Pre-employment Alcohol and Controlled Substance Testing, (continued)

In order to exercise either of the exceptions listed above, the employer must first contact the alcohol and/or controlled substance testing program(s) in which the driver has participated and obtain the following information:

- (1) The name(s) and address(es) of the program(s). This would generally be the driver's prior and/or current employer.
- (2) Verification that the driver participates or participated in the program(s).
- (3) Verification that the program conforms to the required procedures set forth in 49 CFR Part 40.
- (4) Verification that the driver is qualified under this rule, including that the driver has not refused to submit to an alcohol or controlled substance test.
- (5) The date the driver was last tested for alcohol and controlled substances.
- (6) The results of any drug or alcohol test administered in the previous six months, and any violations of the alcohol misuse or controlled substance rules.

NOTE: An employer who uses a driver more than once a year, but does not employ the driver, must assure itself at least once every six months that the driver participates in an alcohol and drug testing program which meets the requirements of this rule.

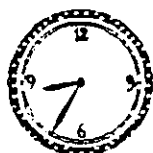
Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Post-Accident Alcohol and Controlled Substances Testing

As soon as practicable following an accident involving a commercial motor vehicle, each employer shall test for alcohol and controlled substances each surviving driver when either:

- the accident involved a fatality; or
 - the driver receives a citation under state or local law for a moving traffic violation arising from the accident.
- * For the purpose of this rule an accident is defined as an incident involving a commercial motor vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle is required to be towed from the scene.



When a required controlled substances test has not been administered within a reasonable time frame following the accident, the following actions shall be taken:

Time elapsed	Action Required
2 hours	If the driver has not submitted to an alcohol test at this time, the employer shall prepare and maintain on file a record stating the reason a test was not promptly administered.
8 hours	Cease attempts to administer alcohol test, and prepare and maintain record described above.
32 hours	If the driver has not submitted to a controlled substance test at this time, the employer shall cease attempts to administer the test, and prepare and maintain the record described above.

IMPORTANT NOTE:

Nothing in this document (or the rule itself) should be construed as to require the delay of necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

Driver's responsibility:

A driver who is subject to post-accident testing must remain available, or the employer may consider the driver to have refused to submit to testing. The driver subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Post-Accident Alcohol and Controlled Substances Testing (continued)

Employer's responsibility:

The employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this rule.

**** The FHWA recognizes post-accident tests conducted by Federal, State, and local officials as meeting the requirements of this rule under the following conditions:**

- The official must have independent authority to conduct the test;
- Test must conform to Federal, State or local requirements;
- Alcohol tests require blood or breath sample; and
- Controlled substances tests require urine sample.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Random Alcohol Testing

Random alcohol testing shall be conducted in accordance with the following requirements:

- Random alcohol testing shall be administered at a minimum annual rate of **25 percent** of the average number of driver positions.
- The employer shall ensure that random alcohol tests are unannounced and spread reasonably throughout the calendar year.
- The employer shall ensure that drivers selected for random alcohol tests proceed immediately to the testing site upon notification of being selected.
- A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, immediately prior to performing or immediately after performing safety-sensitive functions.
- Employers may pool interstate and intrastate drivers together for random alcohol testing.
- If an employer is required to conduct random alcohol testing under the rules of more than one DOT agency, the employer may either:

Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

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

- In the event a driver, who is selected for a random alcohol test, is on vacation or an extended medical absence, the employer can either select another driver for testing or keep the original selection confidential until the driver returns.

CONSORTIA

If the employer conducts random alcohol testing through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of subject drivers covered by the consortium.

OWNER-OPERATORS

An employer who employs only himself/herself as a driver must implement an alcohol and controlled substances testing program that includes more persons than himself/herself as covered employees in the random testing pool. Thus an owner-operator essentially must join a consortium.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Random Alcohol Testing (continued)

ALCOHOL TESTING RATE

The FHWA Administrator may decide to increase or decrease the minimum annual percentage rate for random alcohol testing based on the reported violation rate for the entire industry. The decision to change the testing rate will be made according to the following results:

<u>Violation Rate</u>	<u>Testing Rate</u>
Less than .5% for 2 consecutive years	10%
.5% - 1.0%	25%
1.0% or greater	50%

Each year the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of drivers. The new rate will become applicable on January 1 of the following year.

The first year a reduction in the minimum rate would be possible is 1999, due to the fact the data must be for the entire industry (for two years), which would be reported in 1998. Only one year of data is necessary to raise the minimum rate; however, two years are required to lower the rate.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Random Controlled Substances Testing

Random controlled substances testing shall be conducted in accordance with the following requirements:

- Random controlled substances testing shall be administered at a minimum annual rate of 50 percent of the average number of driver positions.
- The employer shall ensure that random controlled substances tests are unannounced and spread reasonably throughout the calendar year.
- The employer shall ensure that drivers selected for random controlled substances tests proceed immediately to the testing site upon notification of being selected.
- Employers may pool interstate and intrastate drivers together for random controlled substances testing.
- If an employer is required to conduct random controlled substances testing under the rules of more than one DOT agency, the employer may either:

Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

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

- In the event a driver, who is selected for a random controlled substances test, is on vacation or an extended medical absence, the employer can either select another driver for testing or keep the original selection confidential until the driver returns.

CONSORTIA

If the employer conducts random controlled substances testing through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of subject drivers covered by the consortium.

OWNER-OPERATORS

An employer who employs only himself/herself as a driver must implement a controlled substances testing program that includes more persons than himself/herself as covered employees in the random testing pool. Thus an owner-operator essentially must join a consortium.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Random Controlled Substances Testing (continued)

CONTROLLED SUBSTANCES TESTING RATE

The FHWA has proposed to lower the random testing rate to 25 percent if the industry-wide random positive rate is less than 1.0 percent for two consecutive calendar years, while testing at 50 percent. The rate would increase back to 50 percent if the industry random positive rate were 1.0 percent or higher for any subsequent year.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Reasonable Suspicion Alcohol and Controlled Substances Testing

An employer must require a driver to submit to an alcohol or controlled substance test when the employer has **reasonable suspicion** to believe the driver has violated the alcohol or controlled substances prohibitions.

"Reasonable Suspicion" - Belief that the driver has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable **observations** concerning the appearance, behavior, speech or body odors of the driver.

SUPERVISOR TRAINING

The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with the following requirements:

- Employers must ensure persons designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol or controlled substances testing receive: at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use.
- The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

ALCOHOL

Alcohol testing is authorized only if the observations are made during, just before, or just after the period of the work day the driver is required to be in compliance.

If a reasonable suspicion alcohol test is not administered within two hours following the observations, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight hours, the employer shall cease attempts to administer the test, and shall prepare and maintain the record listed above.

Currently, two supervisors must make the required observations to substantiate a reasonable suspicion controlled substance test. Under this rule, only one supervisor or company official is required to make the observations necessary to require the controlled substance or alcohol test. The FHWA believes requiring only one supervisor or company official to make a reasonable suspicion determination responds to the operational realities of motor carrier operations. The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test, in order to preserve protection for the drivers.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Reasonable Suspicion Alcohol and Controlled Substances Testing (continued)

RECORDS

A written record shall be made of the observations leading to a controlled substances test, and signed by the supervisor or company official who made the observations.

NOTE

The mere **possession of alcohol** does not constitute a need for reasonable suspicion testing, which must be based on observations concerning the driver's appearance, behavior, speech, or body odor.

Alcohol and Drug Testing Regulations for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Retention of Records

This document explains which controlled substance and alcohol test records must be completed and maintained, where they must be maintained and for how long. All records shall be maintained in a secure location with controlled access.

Required period of retention:

<u>Document to be maintained</u>	<u>Period required to be maintained</u>
Alcohol test results indicating a breath alcohol concentration of 0.02 or greater	5 Years
Verified positive controlled substance test results	
Refusals to submit to required alcohol or controlled substance tests	
Required calibration of Evidential Breath Testing Devices (EBT's)	
Substance Abuse Professional's (SAP's) evaluations and referrals	
Annual calendar year summary	
Records related to the collection process (except calibration) and required training	2 Years
Negative and cancelled controlled substance test results	1 Year
Alcohol test results indicating a breath alcohol concentration less than 0.02	

Types of records required to be maintained:

(1) Records related to the collection process:

- Collection logbooks (if used)
- Documents related to the random selection process
- Calibration documentation for EBT's
- Documentation of Breath Alcohol Technician (BAT) training
- Documentation of reasoning for reasonable suspicion testing
- Documentation of reasoning for post-accident testing
- Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing
- Consolidated annual calendar year summaries

Alcohol and Drug Testing Regulations for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Retention of Records (continued)

(2) Records related to the driver's test results:

- Employer's copy of the alcohol test form, including results
- Employer's copy of the drug test chain of custody and control form
- Documents sent to the employer by the Medical Review Officer
- Documentation of any driver's refusal to submit to a required alcohol or controlled substance test
- Documents provided by a driver to dispute results of test

(3) Documentation of any other violations of controlled substance use or alcohol misuse rules

(4) Records related to evaluations and training:

- Records pertaining to substance abuse professional's (SAP's) determination of driver's need for assistance
- Records concerning a driver's compliance with SAP's recommendations

(5) Records related to education and training:

- Materials on drug and alcohol awareness, including a copy of the employer's policy on drug use and alcohol misuse
- Documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials
- Documentation of supervisor training
- Certification that training conducted under this rule complies with all requirements of the rule

(6) Records related to drug testing:

- Agreements with collection site facilities, laboratories, MROs, and consortia
- Names and positions of officials and their role in the employer's alcohol and controlled substance testing program
- Monthly statistical summaries of urinalysis (40.29(g)(6))
- The employer's drug testing policy and procedures

Location of records:

All required records shall be maintained in a secure location with limited access. Records shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

For example: Specific records may be maintained on computer, or at a regional or terminal office, provided the records can be made available upon request from FHWA within two working days.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Release of Alcohol and Controlled Substances Test Information by Previous Employers

An employer may obtain from any previous employer of a driver, provided the driver has given his/her written consent, any information concerning the driver's participation in a controlled substances and alcohol testing program.

An employer must obtain and review the information listed below from any employer the driver performed safety-sensitive functions for in the previous two years. The information must be obtained and reviewed no later than 14 days after the first time a driver performs safety-sensitive functions. The information obtained must include:

- Information on the driver's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
- Information on the driver's controlled substances test in which a positive result was indicated.
- Any refusal to submit to a required alcohol or controlled substance test.

If the driver stops performing safety-sensitive functions for the employer before expiration of the 14-day period or before the employer has obtained the information listed above, the employer must still obtain the information. For example, if a driver quits after one week of employment and the information has not been obtained, the employer must still obtain the information.

The prospective employer must provide to each of the driver's previous employers of the past two years a written authorization from the driver for release of the required information. The release of this information may take the form of *personal interviews, telephone interviews, letters, or any other method that ensures confidentiality*. Each employer must maintain a written, confidential record with respect to each past employer contacted.

The employer may not use a driver to perform safety-sensitive functions if the employer obtains information indicating the driver has tested positive for controlled substances, tested at or above 0.04 breath alcohol concentration, or refused to test unless the employer has evidence the driver has been evaluated by a substance abuse professional, completed any required counseling, passed a return-to-duty test, and been subject to follow-up testing.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Annual Calendar Year Summary

An employer shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs. All employers shall complete the annual summary by March 15 each year, covering the previous calendar year.

MANAGEMENT INFORMATION SYSTEM

Each year in January, the Federal Highway Administration (FHWA) will notify a select number of employers to submit their calendar year summary of alcohol and controlled substances test results. Upon notification, the employer shall submit the required summary to the FHWA by March 15 of that year, to the location specified. The report shall be accurate and in the form and manner prescribed by the FHWA. When the report is submitted by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official.

The report shall contain all the information outlined in 49 CFR Part 382.403. Sample forms detailing the required information accompany this document. This information is only required to be submitted when requested by the FHWA. If not requested, the annual calendar year summary shall be maintained by the employer for a period of five years, and presented for review, upon request from an agent of the U.S. Department of Transportation. If the report is submitted to the FHWA when not requested, it will be discarded.



Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
February 15, 1994

Subject: Medical Review Officer's Notification of Test Results and Retention of Records

The **Medical Review Officer (MRO)** is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program. The MRO shall have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history and any other relevant biomedical information.

EMPLOYER NOTIFICATION

The MRO may report controlled substances test results to the employer by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the MRO's evaluation.

The MRO must report to the employer the following:

- ▶ That the controlled substances test being reported was in accordance with 49 CFR Part 40.
- ▶ The name of the individual for whom the test results are being reported.
- ▶ The type of test indicated on the custody and control form (random, pre-employment, etc.).
- ▶ The date and location of the test collection.
- ▶ The identification of the persons or entities performing the collection and analysis of the specimens, and serving as the MRO for the specific test.
- ▶ The verified results of the controlled substances test (positive or negative) and, if positive, the identity of the controlled substance(s) for which the test was verified positive.
- ▶ That the MRO has made every reasonable attempt to contact the driver.

EMPLOYEE NOTIFICATION

Prior to verifying a "positive" result, the MRO shall make every reasonable effort to contact the driver (confidentially), and afford him/her the opportunity to discuss the test result. If after making all reasonable efforts and documenting them, the MRO is unable to reach the driver directly, the MRO shall contact a designated management official, who shall direct the driver to contact the MRO as soon as possible (within 24 hours).

Under **split-sample collection** procedures, the driver has 72 hours following notification of a positive result to request the secondary sample be analyzed. In the event a split-sample was not taken, or was of inadequate quantity, the original test would be voided, and the driver would not be subject to a retest.



Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

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Subject: **Medical Review Officer's Notification of Test Results and Retention of Records**
(continued)

While the primary sample is tested at specific thresholds for each controlled substance, the secondary (split) sample is analyzed only for the presence of controlled substances. If a negative result is reached on the secondary test, the original test results are disregarded.

RECORD RETENTION

The MRO shall maintain all dated records and notifications for verified **positive** controlled substances test results, identified by individual, for a period of **five years**.

The MRO shall maintain all dated records and notifications for **negative and cancelled** controlled substances test results, identified by individual, for a period of **one year**.

The MRO shall not release the individual controlled substances test results of any driver to any person without a specific, written authorization from the tested driver. However, this shall not prohibit the MRO from releasing results to the employer or Federal, State, or local officials with regulatory authority over the controlled substances testing program.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

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Subject: Definitions

"Alcohol"- the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

"Alcohol use"- the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

"Breath alcohol technician (BAT)"- an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

"Commercial motor vehicle"- a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle-

- (1) Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (2) Has a gross vehicle weight rating of 26,001 or more pounds; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of hazardous materials requiring placards.

"Confirmation test"- for alcohol testing means a second test, following a screening test with a result of 0.02 grams of greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

"Driver"- any person who operates a commercial motor vehicle. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

"Employer"- means any person (including the United States, a State, the District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle, including agents, officers, and representatives of the employer.

"Evidential breath testing device (EBT)"- A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

"Medical Review Officer (MRO)"- A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

"Performing (a safety-sensitive function)" - any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

Alcohol and Drug Testing Requirements for Commercial Motor Vehicle Drivers

Published by the Federal Highway Administration
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Subject: Definitions, (continued)

"Refusal to submit (to an alcohol or controlled substance test)"- a driver (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

"Safety-sensitive function"- any of those on-duty functions set forth in 395.2 *On-Duty time*, paragraphs (1) through (7) as listed below:

- (1) All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
- (2) All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
- (3) All time spent at the driving controls of a commercial motor vehicle.
- (4) All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
- (5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- (6) All time spent performing the driver requirements associated with an accident.
- (7) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

"Screening test (aka initial test)"- in alcohol testing it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

"Substance abuse professional"- a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

